

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2018**

QUESTION 1 — 40 POINTS

Peter and Tom were friends. Peter and Tom attended a ball game. After the game, they got into Tom's car, which was parked in the ballpark stadium parking lot. Peter insisted on driving because Tom had a few alcoholic drinks at the game. Tom was upset that Peter insisted on driving.

Tom's car had a problem with the steering. The steering wheel would lock at random times and the driver would be unable to turn. Tom had previously received a post card in the mail from ABC Car Company, the manufacturer of Tom's car, asking Tom to return the car to the dealership for some important repairs. The post card did not detail the steering wheel problem, and Tom did not return the car to the dealership for any repairs.

As Peter and Tom were leaving the stadium parking lot, Tom was yelling at Peter. Peter turned his head to yell back at Tom just as the car was entering an intersection. Victor was a pedestrian crossing the intersection in the crosswalk at the same time the car entered the intersection. Tom yelled at Peter to look out, Peter attempted to swerve, but the car's steering locked. The car struck Victor.

Victor's spouse, Cathy, was present and watched Victor get struck by the car. Cathy was unfazed by the crash and told Victor to get up and brush it off. Victor did get up but had suffered internal injuries that were not immediately apparent. He was later treated by Dr. Ortho improperly and ended up with permanent liver damage.

What theory or theories of liability might reasonably be asserted in each of the following actions (1.1 through 1.4), what defenses can reasonably be raised, and which party is likely to prevail?

- 1.1. Victor v. Peter. Discuss.**
- 1.2. Victor v. Tom. Discuss.**
- 1.3. Victor v. ABC Car Company. Discuss.**
- 1.4. Victor v. Dr. Ortho. Discuss.**

- 1.5. Under what theory or theories might Cathy bring an action against any of Peter, Tom and ABC, what damages might she reasonably seek, and is she likely to prevail? Discuss.**

[End of Question 1]

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QUESTION 2 — 40 POINTS

Storage Corp. owns an old brick warehouse along one side of an alley. The alley and the building on the other side of the alley are owned by Nextdoor Corp., but Storage Corp. personnel sometimes park their cars in the alley.

A few months ago, Morgan, the manager of Storage Corp., was returning from a work errand in his car. As he was driving into the alley, he was talking on his cell phone with a customer and, distracted by the call, accidentally bumped his car in Storage Corp.'s brick wall, causing it to crack. But Morgan did not tell anyone else about this incident.

Paint-R-Us is a painting contractor that Nextdoor Corp. hired to paint its building along the alley. Last month, Paint-R-Us employee Parker was working in the alley with another Paint-R-Us employee, Wilson. Each was on a separate ladder. While they were painting, Wilson was careless and fell off his ladder, which then crashed into the Storage Corp. wall. The Storage Corp. wall thereupon collapsed into the alley knocking Parker off his ladder and crushing him. Paint-R-Us was aware that Wilson had caused or been involved in several work-related accidents.

Parker was severely injured by the collapse of the wall. He was transported by ambulance by Regional EMS, which is a qualified health care provider. On the way to the hospital with Parker, the ambulance ran into the back of another car. As a result of the impact, Parker was thrown from the ambulance and died instantly on impact.

Parker is survived by his wife, Blair. Blair has suffered severe depression as a result of Parker's death.

2.1. What types of claims are available to Blair? Discuss.

What theory or theories of liability might reasonably be asserted in each of the following actions (2.2 and 2.3), what defenses can reasonably be raised, and which party is likely to prevail?

2.2. Blair v. Wilson and Paint-R-Us. Discuss.

2.3. Blair v. Storage Corp. Discuss.

2.4. Blair wants to bring an action against Regional EMS based on medical malpractice. Is she likely to prevail? Discuss.

[End of Question 2]

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QUESTION 3 — 20 POINTS

Each of the following ten multiple choice items counts for two points. Select the letter that corresponds with the correct answer.

- 3.1. damage caused by animals

- 3.2. negligent entrustment

- 3.3. battery

- 3.4. conflict of laws; products liability

- 3.5. defamation

- 3.6. invasion of privacy

- 3.7. tortious interference with contract

- 3.8. survival action; rank of designated beneficiaries

- 3.9. assault

- 3.10. merchant liability

[End of Question 3]

END OF TORTS TEST

**LOUISIANA STATE BAR EXAMINATION
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FEBRUARY 2018**

QUESTION 1 — 40 POINTS

Pam was traveling south on a Louisiana state highway. Pam was stopped at a red light. Three days before, Pam had discovered that her brake lights were not working, but she had not gotten around to getting her brake lights repaired.

Dan was also travelling south on the same Louisiana state highway at the same time behind Pam. Dan was going through a break up with his girlfriend Tina, and Tina was texting Dan incessantly as Dan was driving. Dan sent a text to Tina asking Tina to stop texting while Dan was driving, but Tina did not comply. Dan was checking the latest text from Tina when he ran into the back of Pam's vehicle as Pam was stopped at the red light.

Pam suffered a broken arm, and her car was completely wrecked and undriveable. She was transported to the emergency room at Hospital via ambulance. While at Hospital, Dr. Smith, the emergency room physician at the time, mistakenly gave Pam the wrong medication. In addition, the nurse administered the medication improperly. Pam suffered a total and permanent loss of sight due to these actions. Dr. Smith was not employed by Hospital, but instead was privately employed and had privileges at Hospital. The nurse was employed by Hospital.

In each of the following actions, (i) what theory or theories of liability might reasonably be asserted, (ii) what defenses can reasonably be raised, and (iii) which side is likely to prevail?

- 1.1. Pam v. Dan. Discuss.**
- 1.2. Pam v. Tina. Discuss.**
- 1.3. Pam v. Dr. Smith. Discuss.**
- 1.4. Pam v. Hospital. Discuss.**

[End of Question 1]

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QUESTION 2 — 40 POINTS

Patrice went shopping at Everything Mart. Patrice often shopped at Everything Mart and knew that it was not the tidiest store. When Patrice was at the end of the produce aisle, she slipped on a grape and fell, which caused a severe injury to her head.

Tom was an employee at Everything Mart. Tom was instructed to make rounds of the store every hour to ensure that there were no foreign objects on the floor. As Tom was entering the produce aisle, he did not see Patrice lying on the floor and tripped over her, injuring his knee. Neither Tom nor Patrice could get up from the floor due to their injuries, but they had a conversation while remaining on the floor. Tom told Patrice that his knee was injured, and Tom told Patrice that grapes are often on the floor of the produce aisle at Everything Mart. Patrice told Tom that she was losing consciousness. Patrice asked Tom to make sure that “Jesse knows that I love him!”

Patrice eventually died from her injuries. At the time of her death, Patrice was married to her second husband, Wayne. Patrice and Wayne did not have any children together. Wayne had one child from a previous marriage, Jesse. Jesse was a minor at the time of Patrice’s death. Although Jesse lived with Patrice and Wayne, Patrice never adopted Jesse.

Prior to her marriage to Wayne, Patrice was married to Fred. That marriage ended in divorce. Patrice and Fred had one child born of their marriage, Tiffany. Tiffany was 23 at the time of Patrice’s death.

A. Each of the following parties wants to bring a lawsuit against Everything Mart to recover damages for Patrice’s death.

2.1. Wayne

2.2. Jesse

2.3. Tiffany

2.4. Fred

What theory or theories of liability, if any, might each reasonably assert, what defenses, if any, might reasonably be raised and which side is likely to prevail in each case? Discuss each fully.

B. **2.5.** Tom wants to bring an action against Everything Mart to recover damages for his injuries. What theory or theories, if any, might he reasonably assert, what defenses, if any, might reasonably be raised and is he likely to succeed? Discuss fully.

[End of Question 2]

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QUESTION 3 — 20 POINTS

Ten multiple choice questions, each worth 2 points, tested the following areas of law:

- 3.1. Battery
- 3.2. Art. 2317. Acts of others and things in custody.
- 3.3. Government immunity
- 3.4. Comparative fault
- 3.5. Self-defense
- 3.6. Merchant liability
- 3.7. Negligence; duty
- 3.8. Invasion of privacy
- 3.9. Art. 667. Limitations on the use of property.
- 3.10. Defamation

[End of Question 3]

END OF TORTS TEST

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 1 — 40 POINTS TOTAL

Oil and Gas Co. (Oil and Gas) purchased land to drill a gas well. The well is immediately adjacent to land owned by the Good Times Casino (Casino).

Although Oil and Gas did the actual drilling of the well, the well was designed by Drilling Consultant Co. (Consultant). Consultant knew that a blowout was possible and included blowout preventers in its design.

Peter was an employee of Consultant. Peter was on site as the well was being drilled.

While Oil and Gas was drilling the well, there was a blowout and the gas caught fire. The drilling rig burned to the ground. Peter suffered serious burns in the fire. After an investigation, it was determined that the blowout was mainly caused by an improper well design, although drilling operator error may have contributed to the blowout.

The fire spread and burned Casino to the ground. Mr. High Roller, an out of state resident, was furious because he was unable to gamble at Casino until it could be rebuilt.

For each of the following, what type of action might reasonably be asserted and under what theory or theories of tort liability? What defenses, if any, can reasonably be raised in each action? Which party is likely to prevail in each action?

- 1.1. Oil and Gas v. Consultant. Discuss.**
- 1.2. Peter v. Oil and Gas. Discuss.**
- 1.3. Peter v. Consultant. Discuss.**
- 1.4. Casino v. Oil and Gas. Discuss.**
- 1.5. Mr. High Roller v. Oil and Gas. Discuss.**

[End of Question 1]

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QUESTION 2 — 40 POINTS TOTAL

Main Street is lined with buildings that share common walls. Depot Co. (Depot) was building a store on Main Street. Depot's new store had a common brick wall that was originally constructed by, and is still owned by, Neighbor Co. (Neighbor).

While building its store, Depot discovered that the common brick wall that it shared with Neighbor was not properly supported and was in danger of falling. To repair the wall, Depot would have to access the property on the Neighbor side and possibly disrupt Neighbor's business. Depot informed Neighbor of the danger. However, neither Depot nor Neighbor did anything about the wall.

The bricks in the common brick wall were manufactured by Acme Brick Co. (Acme). The bricks were guaranteed to last for 50 years. The bricks in the common brick wall were installed 45 years ago.

The bricks in the common wall between Depot and Neighbor crumbled just as Pam was walking down Main Street. The crumbling brick wall instantly killed Pam. Pam is survived by her husband, Steve and her niece, Nancy.

After Pam's burial, Steve went to the scene, saw the crumbling bricks, and began sobbing. Steve has been in therapy since.

Pam's niece, Nancy, lived with Pam and depended on her for support.

For each of the following, what type of action might reasonably be asserted and under what theory or theories of tort liability? What defenses, if any, can reasonably be raised in each action? Which party is likely to prevail in each action?

- 2.1. Steve v. Acme. Discuss.**
- 2.2. Steve v. Depot. Discuss.**
- 2.3. Steve v. Neighbor. Discuss.**
- 2.4. Nancy v. Any Potential Defendants. Discuss.**

[End of Question 2]

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QUESTION 3 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Conflict of laws (1), intentional torts (4), medical malpractice (1), merchant liability (1), strict liability (1), survival actions (1), workers' compensation (1)

[End of Question 3]

END OF TORTS TEST

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 1 — 40 POINTS

Question 1A (26 points)

Zack was not feeling well and drove himself to the emergency room at Louisiana General Hospital for treatment. While at the emergency room, Zack was treated with intravenous drugs. Zack was prematurely discharged from the emergency room. He was still intoxicated from the intravenous drugs at the time of discharge. Zack did not have another person who was available to drive him home.

Zack drove himself from the emergency room while intoxicated. Because of the intoxication, Zack ran a stop sign and crashed into Theresa. Theresa was texting her grandmother, Maria, at the time of the crash. Both Zack and Theresa suffered severe injuries from the car crash.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defenses can reasonably be raised, and which party is likely to prevail?

- 1.1. Theresa v. Zack. Discuss.
- 1.2. Zack v. Theresa. Discuss.
- 1.3. Zack v. Louisiana General Hospital. Discuss.
- 1.4. Theresa v. Louisiana General Hospital. Discuss.

Question 1B (14 points)

After the crash and despite her injuries, Theresa sent a text to Maria that read, “I have just been in an accident @ corner of Main St. and 1st Ave. Send help.” Maria called an ambulance and the ambulance arrived at the scene shortly after the wreck. The ambulance then took Theresa to the hospital. Theresa suffered through the entire ambulance ride and passed away soon after arriving at the hospital.

About 30 minutes after Theresa was transported from the scene by ambulance, Maria arrived at Main St. and 1st Ave. and saw the wreckage that was formerly Theresa’s vehicle. Maria fell down on the ground and sobbed uncontrollably after viewing the wreckage. The condition of the car revealed that it would be unlikely anyone survived the wreck. Maria’s grief was debilitating. Maria eventually made it to the hospital only to find out that Theresa passed away minutes before Maria arrived at the hospital [assume for purposes of 1B only that Theresa died as indicated here, not only “suffered severe injuries” as stated in 1A above].

Theresa is survived by her grandmother, Maria, her father, Frank, and her sister, Susan. Theresa and Susan had an extremely close relationship.

What tort claims may reasonably be brought by the following parties, and against whom? Discuss each.

- 1.5. Maria
- 1.6. Frank
- 1.7. Susan

[End of Question 1]

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QUESTION 2 — 40 POINTS

Sarah worked for ACME Trucking Company (hereinafter, “ACME”). On February 3, 2017 at approximately 3 p.m., Sarah was driving her truck in a southerly direction on La. Highway 34 in St. Helena Parish. Sarah was talking on her cell phone when one of the tires of the truck suffered tread separation. The truck tire was manufactured by BadDay Tires. ACME knew that there was a potential problem with BadDay Tires, but ACME decided to purchase those tires from BadDay Tires anyway.

Because Sarah was on the phone, she was unable to control the truck after the tread separation, and she crashed into Paul who was traveling in a northerly direction on the same highway. Both Paul and Sarah suffered injuries from the wreck.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defenses can reasonably be raised, and which party is likely to prevail?

- 2.1. Sarah v. ACME. Discuss.

- 2.2. Sarah v. BadDay Tires. Discuss.

- 2.3. Paul v. ACME. Discuss.

- 2.4. Paul v. BadDay Tires. Discuss.

- 2.5. ACME v. BadDay Tires. Discuss.

[End of Question 2]

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QUESTION 3 — 20 POINTS

Multiple choice questions, each worth 2 points, testing the following areas of law:

- 3.1 Battery
- 3.2 Defamation
- 3.3 Medical Malpractice
- 3.4 Invasion of Privacy
- 3.5 Tortious Interference with Contract
- 3.6 Self-defense (Intentional Torts)
- 3.7 Merchant Liability
- 3.8 Assault
- 3.9 Comparative Fault
- 3.10 Negligence; Duty

[End of Question 3]

END OF TORTS TEST

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JULY 2016

Question 1 (40 Points)

The City of Pawnee, Louisiana (City) commissioned Meadows Gallery, a well-respected outdoor art gallery and installer, to install a valuable sculpture, per City's specifications, in the center median of Boulevard, a four lane street in a quiet residential neighborhood. The specifications called for "natural" collision protection around the sculpture that would not interfere with its aesthetic appeal. Meadows Gallery installed the sculpture near a stand of trees several weeks ago and has been contemplating additional protective barriers, but has yet to install them.

Ron was driving in the right-hand lane down Boulevard when suddenly, Sebastian, a 9-year old child, ran into the street chasing a soccer ball. To avoid hitting Sebastian, Ron swerved into the left lane without looking and hit another car driven by Leslie that was speeding past him, far in excess of the posted speed limit.

Leslie lost control of her car and hit the sculpture. Upon impact, a metal piece of the sculpture broke loose and jettisoned through the air, striking Sebastian in the head and causing serious injury and permanent brain damage. Leslie suffered substantial damage to her car, but only minor physical injury. Prior to this incident, the City had neither inspected the installation nor received any complaints regarding the sculpture.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defense(s) can reasonably be raised; what damages are potentially recoverable; and which party is likely to prevail?

- 1.1 Leslie v. Ron. Discuss.
- 1.2 Sebastian v. Ron. Discuss.
- 1.3 Sebastian v. Leslie. Discuss.
- 1.4 Sebastian v. City. Discuss.
- 1.5 City v. Meadows Gallery. Discuss.

[End of Question 1]

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QUESTION 2

30 PTS

Hayley applied the popular Smooth Evolution (SE) lip balm to her lips and was alarmed when her lips quickly became dry and coarse. In an attempt to relieve the symptoms, she applied more of the SE lip balm, but to her dismay, the symptoms worsened. Her lips began to burn and crack around the edges, and blisters soon appeared, which prompted her to share her story and a close-up image of her irritated lips on Facebook. The post set off a frenzy of responses from other individuals who claimed to have recently had the same experience when using SE lip balm.

In response to the Facebook fury, SE issued a widely-disseminated public statement that stated its products are made with the highest quality ingredients and meet or exceed all industry safety and quality standards, but noted that allergies to personal care products are extremely common and those who experience any irritation from its products – or any product – should not continue to use them. SE did not conduct any additional testing of its lip balm to determine product safety and quality in response to the Facebook claims.

A few days later, Hayley sought medical attention as her symptoms had not improved. She was seen at Parish Hospital, a qualified healthcare provider, where routine bloodwork was completed. Hayley's blood test results revealed a severe allergic reaction to salicylic acid, a common ingredient in lip balm products. However, Hayley's test results were inadvertently switched with those of another patient, which subjected Hayley to additional and painful diagnostic tests in vain. Unfortunately, the delay in treatment that would have otherwise prevented her demise proved fatal for Hayley. She passed away after much physical and emotional suffering, which was particularly intense while the hospital was at a loss for a diagnosis, and all of which was witnessed by her husband Hub.

Later independent testing of the SE lip balm Hayley had used revealed that it had a concentration of salicylic acid that could be lethal to those who are allergic to the substance.

- 14 pts 2.1 Under what theory or theories of liability might Hub reasonably bring an action against SE for Hayley's death? Discuss.
- 6 pts 2.2 What defense(s) might SE reasonably raise and what is its likelihood of success? Discuss.
- 10 pts 2.3 Hub wants to bring an action against Parish Hospital for medical malpractice. What process must he first complete before bringing suit; what is his burden of proof; and what is the maximum amount that can he recover against Parish Hospital for Hayley's damages? Discuss.

[End of Question 2]

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LOUISIANA BAR EXAMINATION

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QUESTION 3 (20 Points)

Pam was employed by Dunder Mosquito Control (Dunder) as an office assistant to Michael, the general manager. When Pam interviewed for the job, Michael assured her that her job duties as an office assistant did not include any driving on behalf of Dunder while on company time.

One day, Michael was visiting a customer's particularly mosquito-infested jobsite to demonstrate Dunder's proprietary mosquito control formula when he realized he had left the formula back at the office. Not wanting to inconvenience the customer further, Michael called Pam just as she was clocking out for the day and requested she bring the formula to him at the jobsite.

Michael advised Pam to don a Dunder mosquito-proof suit before coming out to the site, but Pam, who was not accustomed to using the protective gear, neglected to do so. Upon arriving to the customer site, Pam jumped out of her car with the canister of formula in hand, ran it over to Michael and back to her car while attempting to swat away the biting mosquitoes. Inevitably, Pam was bitten many times where her skin was exposed. Within hours, Pam developed a mild fever, skin rash, and muscle and joint pain. After examining her and running some tests, Pam's physician informed her that she had contracted a mosquito borne virus as a result of the bites she received while at the Dunder customer location (Pam had no other exposure to mosquito bites before this event). Pam thereafter suffered severe medical issues preventing her from working for several weeks and incurred significant medical expense for the anti-viral medications necessary to treat her illness.

After several weeks, Pam was released to return to work and she was very excited for her first day back. Unfortunately, as she pulled into Dunder's parking lot, she inadvertently hit Customer's vehicle. The collision caused injuries to Customer and damages to the Customer's vehicle. Customer then sued Pam for personal injuries and damage to her vehicle.

- 10 pts 3.1 Under what theory or theories of liability could Pam recover damages from Dunder? Is she likely to succeed? Discuss.
- 10 pts 3.2 Under what theory or theories of liability might Customer also name Pam's employer, Dunder, as a defendant in Customer's lawsuit? Is Customer likely to succeed in her claim against Dunder? Discuss.

[End of Question 3]

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LOUISIANA BAR EXAMINATION

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QUESTION 4
(10 Points)

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 Elements of, and defenses to, a claim for battery
- 4.2 Elements of a claim for battery
- 4.3 Louisiana's merchant liability statute
- 4.4 Punitive damages for tort claims
- 4.5 Tortious interference with contract

[End of Question 4]

END OF TORTS EXAMINATION