

You can use laptops today

Final Exam Info:

Four-hour in-class exam

3 Parts

Parts I and II are essay questions that involve the same fact pattern.

Part III has a separate fact pattern and essay question.

Each part has a character limit of 8,000 characters (3,000 more than midterm).

General Questions

When there are two different restatements on the same matter should we bring in both or just one?

Could we go over law and economics philosophy?

Under which broad categories do NIED, med mal, and vicarious liability fit under?

In our rule statements, can we just call it "the rule from Fletcher"?

Which old/traditional standards are no longer applicable anywhere (as opposed to ones considered common law or otherwise still practiced in some jurisdictions)?

Damages

Negligence - Reasonable Care

Can you please go over reasonable person standard with an example?

Negligence - Duty

What is the duty in Special Relationship? In the way that the duty for NNI or NNCR is to mitigate the consequences of your actions.
Reasonable Care Under the Circumstances in the relationship?
Protection to the extent it's been availed?

Medical Malpractice

When thinking about expert testimony, we discussed geography + experience. Is there a preferred outcome and is it the nation-wide standard?

NIED

When would the Traditional Requirements for Allowing Recovery for NIED Claim come up?

Negligence - Factual Cause

In MDL's, at what point can someone walk away and not be bound by its judgment? Can it be at anytime?

Will market share liability only be available to products liability cases?

Negligence - Proximate Cause

Confirmation this is the rule for Intervening Cause: Rule: Harm has to relate to what made the action negligent in the first place when the harm that happened to P was the thing that made your action negligent in the first place, you can't escape because something else happened

If harm that occurred is a direct result of D's negligence, then is proximate cause a non-issue?

In *Steinhauser v Hertz Corp*—the response to a proximate cause argument was "not too far in time and space." Is that another way of saying that b/c the schizophrenia happened directly after (ie not too far in space and time) the car accident, it was foreseeable that something like this could have occurred?

Can we please go over the **Proximate Cause medical malpractice rule** again? This hypo specifically was confusing: driver drives P into tree but doctor accidentally kills P. Know driver can be held liable for bruised and fractured ankle - but in class we said they **CAN** be held liable for subsequent death.

Version 1: Friend was negligent driving car, PL injured, subsequent medical malpractice.

Version 2: PL was negligent driving car, PL injured, subsequent medical malpractice.

Negligence - Defenses

What do we need to know from *Li v Yellow Cab company* - we didn't really go over in class?

For apportionment, you gave us a two-step test. FIRST: separate injury on factual cause; SECOND: for injuries that multiple Δ s cause, separate out based on each injury. How do these two steps differ from each other practically?

First step: Separate injuries based on factual cause.

Second step: For injuries that multiple defendants caused, sort out liability based on the contribution rule in the jurisdiction.

When in our analysis do we talk about joint and several liability versus contributory and comparative negligence? Do we do full negligence analyses per defendant (including any injuries caused by each individual defendant), and then discuss joint and several liability?

I can't quite visualize when we would be going from a negligence cause of action for defendants to then negligence cause of action breakdowns for plaintiffs.

Also, since apportionment is always based on factual cause, if we've already analyzed causation for each defendant, any defendant who does not satisfy the factual cause requirement would be excluded from the joint and several liability analysis, right? Would you just stop talking about that particular defendant after the causation analysis and then move onto the next defendant?

For comparative negligence [pure comparative, not as great as, no greater than] you said we aren't going to have to calculate the numerical amount/percentage of damages, so would we just generally apply the rules in deciding damages depending on which jurisdiction we are in?

How do we do comparative fault with negligence and intentional torts?

A previous MC question for a contracts final found a waiver of liability to be enforceable. But in my notes, I have written that liability waivers are unenforceable. I am very confused.

For assumption of risk just want to confirm = generally the more power and control a company has over P the more likely the court will find it unenforceable?

For our purposes, does assumption of risk relieve your duty of RC or provide insulation from liability? Is this just a jurisdictional issue?

Could the rescue doctrine be negligence defense?

I guess the question is how far does foreseeability of negligent harm extend. So a train hits a father's child he scoops up the child and run out to the road in search of a doctor. In his haste, the feet of his child that he carries hit an elderly woman. She falls and breaks her hip. She sues the father for negligence. He tries rely on the doctrine laid out by Cardozo the “danger invites rescue” and says that the harm resulting from negligence is the train companies fault.

Should we be prepared for other vicarious liability questions outside employment related matters?

I had written on my notes that Miller and Christensen had opposite outcomes. If this is true, was it because the 3 criteria for vicarious liability were not in existence at the time of Miller?

Is Christensen basically opening up the definition of “scope of employment” since Miller?

Strict Liability

Want to clarify that as a defense for Strict liability or products liability claim one affirmative defense is comparative responsibility. Does this just mean holding the defendant strictly liable but bringing in Plaintiff's fault?

Comparative Responsibility as a defense for Strict Liability; can you give an example of a time this would apply/how it works? (all I can think is an employee eating nuclear waste)

Products Liability

What are the elements that we could list on an exam for manufacturing defects and design defects?

How do we analyze a question involving a manufacturing defect?

For products liability can we go over how excessive preventable danger intertwines with **reasonable** alternative design?

For design defect rule related to 3rd party modifying a product --> do we use the Missouri standard of Arizona/CA one? Or will you specify on the exam which to use?

Can we go over defending against a products liability claim (a S/L claim too)?

Intentional Torts

What are the differences between purposefully, knowingly, and recklessly in torts versus in crim?

A person acts recklessly in engaging in conduct if: (a) the person knows of the risk of harm created by the conduct or knows facts that make the risk obvious to another in the person's situation, and (b) the precaution that would eliminate or reduce the risk involves burdens that are so slight relative to the magnitude of the risk as to render the person's failure to adopt the precaution a demonstration of the person's indifference to the risk.

Can we re-go over the hypo you gave about working at coca cola and knowing a bottle will explode vs knowing this specific bottle will explode?

In *Garret V Daily* it seems like in their determination knowledge or substantial certainty the court is sneaking in a consideration of what a reasonable 5-year-old would do would you say that is correct?

In the HYPO where the child was not aware of the adult, only realizing her when she sat down, would the 5yo be responsible for this?

For False imprisonment: one of the ways a person can be confined is by threats. We've defined that as a direct consequence of leaving. How would you distinguish that threat next to a threat of future harm (which is not sufficient)? How attenuated can the threat be before its no longer sufficient to be considered a way of confinement?

For IIED claims, if we proved the conduct was intentional, should we explain why it's not reckless?

Is the Reasonable Person standard for which we find **if** something is outrageous, offensive, extreme, or scary, susceptible to the same exceptions as when discussing reasonable person & reasonable care? For example: π has “no reasonable way” to escape for a Reasonable Person or a Reasonable Child?

For Hart v Geysel, are the majority and minority rules relevant?

Majority - yes liability, consent no defense

Minority - no liability, mutual unlawful action

Do we have rules for self-defense and defense of property or are we just basing those off the cases from class?

Section 63 of the Restatement (Second) of Torts on self-defense:

An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against unprivileged harmful or offensive contact or other bodily harm which he reasonably believes that another is about to inflict intentionally upon him.

In Vincent v Lake Erie, a necessity defense states that you would not be liable trespass but would be liable for damages because there came point in the storm when they were not protecting life just property value of ship. Is that correct?

Alternatives to Tort

Does “no-fault” in workers’ comp mean something different than strict liability?

