

EXAM INSTRUCTIONS

Midterm Exam | Torts (Spring 2025) | Professor Colin Doyle

Exam Format

This exam is 16 pages including the instructions. Please make sure that you have all the pages.

This exam has three parts and two appendices.

Each of the three parts consists of a fact pattern and an essay question. The three parts are equally weighted at one-third of your total grade.

On the Examplify software, enter your answers to Part I under Question 101, your answers to Part II under Question 102, and your answers to Part III under Question 103.

The appendices included in this exam packet are identical to the appendices on our course website. Appendix A is a list of cases discussed in-depth during class. Appendix B is a list of legal rules that you are not expected to have memorized.

Given that you have **three hours** to complete this exam, and the exam has three equally weighted parts, arithmetic and common sense may lead you to spend one hour on each part. But your mileage may vary. Three hours should be ample time to complete this exam. Whether and how you use the three hours is up to you.

If you are using a computer to type your answers, the character limit for each of the three parts of the exam is 5,000 characters. Let's spell this out so that no one is mistaken. Part I (Question 101) has a character limit of 5,000 characters. Part II (Question 102) has a character limit of 5,000 characters. Part III (Question 103) has a character limit of 5,000 characters. You can track the length of your answer with Examplify's on-screen character count tool. Make sure that you are tracking the "characters with spaces" count, not the word count. The character limits apply to each part of the exam individually.

If you are writing your answers by hand, limit your answers to one bluebook per part, writing on every other line, only on the front of each page. Your answer to each of the three parts of the exam should not exceed one bluebook.

Do not exceed the character or bluebook limits. You will not receive credit for any part of an answer that exceeds these limits.

The purpose of the character limit is to encourage you to organize your answers and write clearly. You should spend a fair amount of time thinking and taking notes before starting to write your exam responses. A shorter answer that is focused and organized is much better than a longer answer that is disorganized and unfocused. You do not need to reach the character limit to perform well on this exam.

You can use contractions but do not use abbreviations unless those abbreviations are supplied in the fact pattern. Refer to plaintiffs and defendants by their last names or

as plaintiff or defendant. If you use abbreviations that are not permitted, during grading those abbreviated words will be replaced with the full version of the word for determining the character count.

The events in the exam take place in the fictional state of Loyola. Unless otherwise specified, the cases we have read from other states are persuasive, not binding, authority. Like all other states in the union, the state of Loyola is bound by Supreme Court precedent on issues of constitutional law that apply to the states.

For every question on the exam, Loyola follows the same jurisdictional rules. Page 4 of the exam lists out all the jurisdictional rules that are settled law in the state of Loyola. Not every rule will be relevant to every question. If a jurisdictional rule is not included on that list, you may assume that there is no governing precedent on that issue in the state of Loyola.

If you believe that you need to know facts that the questions do not provide, please state the assumptions explicitly and proceed to answer the question. But please read the questions carefully. Do not waste your time and character count by addressing issues that are not raised by the facts specified in the question.

Do not address issues that we haven't covered yet in class, including contributory and comparative negligence, assumption of risk, factual causation, and proximate cause. Analysis of those topics will not be credited when evaluating your answers.

Reliance on materials not covered by the course — including cases, other legal authorities, law review articles, treatises, and hornbooks — will not be credited when evaluating your answers.

Confidentiality

This exam is confidential. You may not share or discuss the exam — including its contents or your answers — with anyone at any time after you receive the exam, or after the other person has received the exam, until the final grades for the course are posted. In answering the questions on this exam, you may not ask others for help or use artificial intelligence for help. Violation of these rules constitutes prohibited conduct under Section 11.1 of the JD Handbook and similar rules in Handbooks for Graduate Programs.

Exam Questions

Any questions about the exam that arise during the exam must be directed to the proctor in the exam room. After the exam, any questions about the exam must be directed to Office of the Registrar, not the professor. The Office of the Registrar may be contacted in person at the office located in Founders Hall, Room 105, by phone at 213-736-1130, by email at registrar@lls.edu, or by chat on the Office of the Registrar's website at <https://www.lls.edu/academics/officeoftheregistrar/>.

You are not permitted to contact the professor concerning any exam-related questions on the day of the exam or for the remaining exam period until final grades are posted, because it is important to preserve anonymity during the exam administration process.

Anonymity

Use your 7-digit LLS ID Number on this exam. Do not include your name and do not make any remarks that will jeopardize your anonymity or anyone else's anonymity on the exam before the exam grades are posted.

JURISDICTIONAL RULES

For every question on the exam, Loyola follows the same jurisdictional rules. This page lists out all the jurisdictional rules that are settled law in the state of Loyola. Not every rule will be relevant to every question. If a jurisdictional rule is not included on that list, you may assume that there is no governing precedent on that issue in the state of Loyola.

Damages

Loyola does not have a state statute that addresses when a plaintiff is permitted to recover punitive damages. There's no governing state caselaw on either punitive damages or noneconomic damages.

Res Ipsa Loquitur

A plaintiff can establish the defendant's negligence by proving either that the defendant failed to exercise reasonable care or that res ipsa loquitur applies. The plaintiff is not permitted to present both theories of the case to the jury. In other words, in circumstances in which res ipsa may apply, the plaintiff must choose between proving negligence through res ipsa or proving negligence based on the defendant's failure to exercise reasonable care.

Affirmative Duties

For affirmative duties, Loyola follows California and uses the *Rowland* factors.

Duties of Landowners and Occupiers

For duties of landowners and occupiers, Loyola follows the classic common law rules recognizing three broad classes of plaintiffs: trespassers, licensees and invitees.

STOP!

DO NOT READ

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UNTIL INSTRUCTED TO DO SO

PART I (QUESTION 101) ESSAY QUESTION

You are an appellate court judge in the state of Loyola. The defendant, Oopsie Pies Bakery, is appealing from a judgment for the plaintiff, Ashley Giles, following a jury trial. The only issue on appeal is whether the punitive damages award violates the Due Process Clause of the Fourteenth Amendment to U.S. Constitution.

An employee of Oopsie Pies bakery was carrying a tub of frosting through the bakery from the front door to the kitchen where the baking is done. The employee mishandled the tub of frosting, accidentally letting the frosting spill out over the floor in an area where customers line up to place their orders. Having noticed the spill but needing to get pies in the oven, the employee waited to clean up the mess until she was done with her baking tasks.

In the meantime, Ashley Giles, an elderly customer, entered the store, slipped on the spilled frosting, fell, and fractured her skull. According to expert witness testimony from Giles's doctor, Giles lost consciousness immediately upon impact and was left in a permanent comatose condition from which she will never recover.

At trial, it was revealed that Giles is not the first customer who has been harmed by Oopsie Pies. After a snowstorm two years ago, Oopsie Pies did not shovel the sidewalk in front of the store. A customer slipped on the icy sidewalk and broke her hip. Last year, Oopsie Pies underbaked a dozen cheesecakes, resulting in nine people having to go to the hospital for food poisoning. None of these injured patrons have sued the bakery. Oopsie Pies has been fined by the board of health on three separate occasions in amounts totaling \$1,500 for improper food storage, cross-contamination, and poor personal hygiene. If a health inspector had inspected the restaurant at the time of the accident, Oopsie Pies could have been fined another \$1,000 for the offense of having food on the floor.

A jury found Oopsie Pies Bakery negligent and awarded Giles \$2,000,000 in compensatory damages and \$10,000,000 in punitive damages. The defendant now appeals the punitive damages award.

Write the opinion of the appellate court.

PART II (QUESTION 102) ESSAY QUESTION

You are a junior attorney at a law firm representing YumYum Donuts, a donut franchise that is being sued for negligence by Brendan Patterson, a customer who suffered serious physical injuries during an armed robbery at a YumYum Donuts location.

Patterson was the only customer at YumYum Donuts when a masked robber brandishing a handgun entered the store and demanded that Patterson and the two store employees put their hands in the air. The robber put the gun to Patterson's head and told him to hand over his wallet. Patterson complied. The robber then demanded that the cashier open the cash register and give him all of the money. The cashier did not do so. Instead, she said, "Oh, I don't know how this cash register works. I need to call my manager and ask her how to open it. Just let me call her on my cellphone and let her know there's a robbery, and then she can tell me how to open the register for you." The robber became extremely agitated, struck Patterson in the face with the butt of the handgun, breaking Patterson's nose, and told the cashier that he would shoot Patterson if the cashier did not "quit playing games" and open the cash register immediately. Patterson, who believed that he was going to die because of the cashier's actions, screamed at the cashier to open the drawer and give the money to the robber, at which point the cashier complied and opened the cash register drawer. The robber took the money and fled. YumYum Donuts was unaware at that time of any prior similar crimes or any crimes at this donut shop.

The plaintiff's complaint alleges that the cashier breached a duty to the plaintiff because she did not comply promptly with the robber's demands.

A partner at your firm has asked you to develop a legal argument for your client.

From: Process, Drew Drew.Process@deweycheatemhowe.com

Sent: Monday, March 4, 2025 10:49 PM

To: You

Subject: Need your big brain on that donut case

Hey,

YumYum Donuts wants this case gone yesterday. Very bad publicity if this drags on, no time for arguments in front of a jury on this one. Can we get this case dismissed ASAP because YumYum didn't owe the plaintiff a duty of care? What have you got?

Because we have other attorneys analyzing issues of contributory and comparative negligence, assumption of risk, factual causation, and proximate cause, don't address those issues. Also, I know you studied vicarious liability in law school, but in case you forgot, YumYum Donuts can be held liable for the tortious conduct of its employees. So if the cashier was negligent, YumYum is liable. Donut screw this up!

Best,

Drew

PART III (QUESTION 103) ESSAY QUESTION

You are a trial court judge in the State of Loyola overseeing a negligence lawsuit. Your job is to issue a ruling on a defendant's motion for summary judgment and a plaintiff's motion for summary judgment.

Known for its beautiful sunset views, Mount Cardozo is a popular tourist destination within the state of Loyola. Located at the base of the mountain, the Overlook Hotel promises its guests unbeatable sightseeing and photo opportunities, guaranteeing every guest a room with a balcony and a view. One night at sunset, a hotel guest, Sofia Hernandez, stepped out onto her hotel room's fourth-floor balcony to take a photograph of the sunset over Mount Cardozo. Leaning over the balcony to get a better angle for her photograph, Hernandez fell over the edge of the balcony, landed on the sidewalk below, and suffered serious personal injuries.

Hernandez sued the Overlook Hotel for negligence. The discovery process has revealed the following information.

The local building code requires hotel balcony railings that are at least 30 inches above the ground to be at least 36 inches high and to be able to withstand a force of 200 pounds in any direction. The hotel's railing design meets these code specifications exactly. The railings are 36 inches high and have been tested to be able to withstand a force of 200 pounds in any direction. The building code also requires gaps between railing balusters (upright vertical supports) to be small enough to prevent a 4-inch sphere from passing through. The hotel's railing design does not meet these code specifications. The balusters are far enough apart that a 5-inch sphere can pass through. There was no warning sign on the railing cautioning guests about the risk of falling over the edge.

The plaintiff's expert witness, an experienced architect familiar with hotels across the state, testified that some hotels in high-rise or scenic areas install railings at least 42 inches high and use sturdier materials, due to the increased likelihood of guests piling onto the balcony and leaning out to get better views or to take photos. The expert witness estimated that 25% of the hotels in scenic areas took these precautions and that 25% of hotels with balconies included warning stickers on the railings that said, "Do not leave children unattended near balcony. Do not climb on balcony. Severe risk of bodily injury."

Both parties agree that the hotel had the legal duty to exercise reasonable care to protect Hernandez against both known dangers and those that would be revealed by inspection. The only legal issue in dispute is whether the defendant breached their duty of care to the plaintiff.

The defendant has filed a motion for summary judgment, contending that the hotel is not negligent as a matter of law. The plaintiff has also filed a motion for summary judgment, contending that the hotel is negligent as a matter of law.

How do you rule on these motions? Be sure to explain the legal reasoning behind your rulings. Because both motions address the same legal issue, you should feel free to write one ruling that addresses the merits of both motions rather than write two separate rulings that include duplicative analysis of the same issues.

APPENDIX A: LIST OF CASES

This list includes cases discussed in-depth during class. It is not an exhaustive list of all cases. You are welcome and encouraged to reference cases discussed in the casebook that are not included in this list. You will not receive credit for referencing cases that were neither discussed in class nor included in the casebook. The cases are listed chronologically in the order that we discussed them in class.

Hammontree v. Jenner: “The Driver with Epilepsy”

Vosburg v. Putney: “The Schoolboy Kicker”

Seffert v. Los Angeles Transit Lines: “Suffering by Bus”

McDougald v. Garber: “The Comatose Sufferer”

BMW of North America, Inc. v. Gore: “Punitive Damages and Due Process”

State Farm Mutual Auto Insurance Company v. Campbell: “More on Punitive Damages and Due Process”

Mathias v. Accor Economy Lodging, Inc.: “Punishing the Bedbug Hotel”

Adams v. Bullock: “The Swinging Wire and Electric Trolley”

Braun v. Buffalo General Electric Co.: “Electrocution at a Construction Site”

Bethel v. New York City Transit Authority: “Bus Seat Collapse”

Baltimore & Ohio Railroad v. Goodman: “Reasonable People and Railroad Crossings”

Pokora v. Wabash Railway Co.: “Revisiting Reasonable People and Railroad Crossings”

Akins v. Glen Falls: “Baseball Park Injuries”

The T.J. Hooper: “Tugboats and Radios”

Martin v. Herzog: “The Buggy Without Lights”

Tedla v. Ellman: “Walking on the Side of the Highway”

Rushink v. Gerstheimer: “Leaving Keys in the Ignition”

Trimarco v. Klein: “Broken Shower Door”

Robinson v. District of Columbia: “Jaywalking”

United States v. Carroll Towing Co., Inc.: “The Hand Formula”

Byrne v. Boadle: “The Falling Flour Barrel”

Larson v. St. Francis Hotel: “The Falling Armchair”

Connolly v. Nicollet Hotel: “The Chaotic Convention”

McDougald v. Perry: “The Flying Tire”

Ybarra v. Spangard: “The Unconscious Patient”

Harper v. Herman: “The Boat Owner in Shallow Water”

Farwell v. Keaton: “The Fatal Pickup Attempt”

Union Pacific Railway v. Cappier: “The Railroad that Ran Over a Man and Let Him

Die”

Maldonado v. Southern Pacific Transp. Co. (Ariz. App. 1981): “Another Railroad that Ran Someone Over”

Tarasoff v. Regents of University of California: “The Psychiatrist Who Didn’t Warn the Murder Victim”

Randi W. v. Muroc Joint Unified School District: “The Alleged Sexual Predator’s Recommenders”

Strauss v. Belle Realty Co.: “Falling Down the Stairs During a Blackout”

Reynolds v. Hicks: “Underage Drinking and Driving”

Carter v. Kinney: “Bible Study Slip-and-Fall”

Heins v. Webster County: “Hospital Slip-and-Fall”

APPENDIX B: LEGAL RULES

This list includes legal rules covered in class that you are not expected to have memorized. You should commit to memory any legal rules covered in class or in the casebook that are not listed below.

Do not use this list to predict the legal rules that you will be tested on during the exam. That would be a big mistake, as the many of the most important rules are *not* included in the list because you are expected to have them memorized.

Keep in mind that the midterm exam will not address every topic covered in class. Therefore, only some of these rules will be relevant to answering the exam questions.

Rules of Civil Procedure

Motion to Dismiss

A motion to dismiss is a formal request for a court to dismiss a case. A defendant may file a motion to dismiss for failure to state a claim upon which relief can be granted. With this motion, the defendant contends that even if all the factual allegations in a plaintiff's complaint are true, they are insufficient to establish a cause of action. A trial court should grant this motion if the plaintiff has not asserted a plausible claim for relief based on well-pleaded facts.

Summary Judgment

Summary judgment is a judgment entered by a court for one party and against another party without a full trial. In civil cases, either party may make a pre-trial motion for summary judgment. Rule 56 of the Federal Rules of Civil Procedure governs summary judgment for federal courts. Under Rule 56, in order to succeed in a motion for summary judgment, a movant must show 1) that there is no genuine dispute as to any material fact, and 2) that the movant is entitled to judgment as a matter of law. "Material fact" refers to any facts that could allow a fact-finder to decide against the movant. Many states have similar pre-trial motions. If the motion is granted, there will be no trial. The judge will immediately enter judgment for the movant.

Directed Verdict

A directed verdict is a ruling entered by a trial judge after determining that there is no legally sufficient evidentiary basis for a reasonable jury to reach a different conclusion. Directed verdicts have been largely replaced by judgment as a matter of law. In federal court, motions for a directed verdict are governed by Rule 50 of the Federal Rules of Civil Procedure. A court should grant this motion if no reasonable jury could have legally sufficient evidence to find for a party on a particular issue.

Excessive Verdict

An excessive verdict is a verdict that shocks the conscience because it appears to stem from factors extraneous the judicial proceedings. For instance, the jury may have been prejudiced against the defendant or overly swayed by emotionally draining evidence. Most verdicts are deemed excessive because the money damages

awarded far exceed the compensation given in similar cases; the typical result is a judge-ordered decrease of the award.

Remittitur

Remittitur is a trial court order in response to an excessive damage award or verdict by a jury which gives the plaintiff the option to accept a reduced damage award or conviction, or the court may order a new trial. Latin for “to send back, to remit.” The purpose of remittitur is to give a trial court the ability, with the plaintiff’s consent, to correct an inequitable damage award or verdict without having to order a new trial.

Additur

Additur is a procedure by which a court increases the amount of damages awarded by the jury. A party may move for additur, or the court may *sua sponte* order additur, if the jury awards an inadequate amount of damages. The purpose of additur is to allow the court to assess and increase the jury award having to order a new trial. The Supreme Court held in *Dimick v. Schiedt* that additur violates the Seventh Amendment and so is not permissible in federal courts. Many state courts allow additur, however, when the defendant agrees to the increased award on the condition that the court deny plaintiff’s motion for a new trial.

Punitive Damages

In *BMW of North America, Inc. v. Gore* the Supreme Court instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

As an example of state law governing punitive damages, under California Civil Code § 3294, “where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to actual damages, may recover damages for the sake of example and by way of punishing the defendant.”

These terms are defined as follows:

- (1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
- (2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.
- (3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

Rules from Tort Law

According to the California Jury Instructions:

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence. It is the failure to use ordinary or reasonable care. Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others under circumstances similar to those shown by the evidence.

Section Three of the Restatement Third:

A person acts negligently if the person does not exercise reasonable care under all the circumstances. Primary factors to consider in ascertaining whether the person's conduct lacks reasonable care are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm.

Section 283 of the Restatement Second:

Unless the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under like circumstances.

Section 10 of the Restatement Third:

- (a) A child's conduct is negligent if it does not conform to that of a reasonably careful person of the same age, intelligence, and experience, except as provided in Subsection (b) or (c).
- (b) A child less than five years of age is incapable of negligence.
- (c) The special rule in Subsection (a) does not apply when the child is engaging in a dangerous activity that is characteristically undertaken by adults."

Section 11 of the Restatement Third:

- (a) The conduct of an actor with a physical disability is negligent only if the conduct does not conform to that of a reasonably careful person with the same disability.
- (b) The conduct of an actor during a period of sudden incapacitation or loss of consciousness resulting from physical illness is negligent only if the sudden incapacitation or loss of consciousness was reasonably foreseeable to the actor.
- (c) An actor's mental or emotional disability is not considered in determining whether conduct is negligent, unless the actor is a child."

Section 299A of the Restatement Second:

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade

is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities.

Section 295A of the Restatement Second:

In determining whether conduct is negligent, the customs of the community, or of others under like circumstances, are factors to be taken into account, but are not controlling where a reasonable man would not follow them.

Section 14 of the Restatement Third:

An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect.

Section 288A of the Restatement Third:

- (1) An excused violation of a legislative enactment or an administrative regulation is not negligence.
- (2) Unless the enactment or regulation is construed not to permit such excuse, its violation is excused when
 - (a) the violation is reasonable because of the actor's incapacity;
 - (b) he neither knows nor should know of the occasion for compliance;
 - (c) he is unable after reasonable diligence or care to comply;
 - (d) he is confronted by an emergency not due to his own misconduct;
 - (e) compliance would involve a greater risk of harm to the actor or to others.

Section 315 of the Second Restatement:

There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless

- (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
- (b) a special relation exists between the actor and the other which gives to the other a right to protection.

Section 314A of the Second Restatement:

Generally, a special relationship giving rise to a duty to warn is only found on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection.

Section 322 of the Second Restatement:

If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm.

Section 324 of the Second Restatement provides that one who, being under no duty to do so, takes charge of another who is helpless is subject to liability caused by:

(a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him."

The Restatement expresses no opinion as to whether "an actor who has taken charge of a helpless person may be subject to liability for harm resulting from his discontinuance of the aid or protection, where by doing so he leaves the other in no worse position than when the actor took charge of him." The Third Restatement requires an actor to exercise reasonable care in discontinuing aid for someone who reasonably appears to be in imminent peril. Restatement (Third) Torts: Liability for Physical and Emotional Harm § 43.

Section 327 of the Second Restatement:

One who knows or has reason to know that a third person is giving or is ready to give to another aid necessary to prevent physical harm to him, and negligently prevents or disables the third person from giving such aid, is subject to liability for physical harm caused to the other by the absence of the aid which he has prevented the third person from giving.

Section 311 of the Restatement Second of Torts, involving negligent conduct, provides that:

(1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results (a) to the other, or (b) to such third persons as the actor should reasonably expect to be put in peril by the action taken.

(2) Such negligence may consist of failure to exercise reasonable care (a) in ascertaining the accuracy of the information, or (b) in the manner in which it is communicated."

Rowland v. Christian, 443 P.2d 561 (Cal. 1968), enumerates a number of considerations that have been taken into account by courts in various contexts to determine whether a departure from the general rule of not imposing an affirmative duty is appropriate:

[T]he major [considerations] are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered,

the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved."

For specific policy reasons thought to be important, courts sometimes determine that no duty exists, thereby withdrawing the possibility of the defendant being held liable for the harm, even if negligent. Courts properly do this, according to the Third Restatement, when they articulate "categorical, bright-line rules of law applicable to a general class of cases." Restatement (Third) Torts: Liability for Physical and Emotional Harm § 7(b).

Carter v. Kinney, 896 S.W.2d 926 (Mo. 1995), traces the historical rules of premises liability:

Historically, premises liability cases recognize three broad classes of plaintiffs: trespassers, licensees and invitees. All entrants to land are trespassers until the possessor of the land gives them permission to enter. All persons who enter a premises with permission are licensees until the possessor has an interest in the visit such that the visitor 'has reason to believe that the premises have been made safe to receive him.' That makes the visitor an invitee. The possessor's intention in offering the invitation determines the status of the visitor and establishes the duty of care the possessor owes the visitor. Generally, the possessor owes a trespasser no duty of care; the possessor owes a licensee the duty to make safe dangers of which the possessor is aware; and the possessor owes invitees the duty to exercise reasonable care to protect them against both known dangers and those that would be revealed by inspection. The exceptions to these general rules are myriad."

Section 332 of the Restatement Second extends invitee status to a person who is "invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public."

Section 333 of the Restatement Second states the duty owed to trespassers:

Except as stated in §§ 334–339, a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care (a) to put the land in a condition reasonably safe for their reception, or (b) to carry on his activities so as not to endanger them." "The listed exceptions create obligations to warn, for example, when the possessor knows that persons "constantly intrude upon a limited area" of the land and may encounter a hidden danger, or when the possessor fails to exercise reasonable care for the safety of a known trespasser. Generally, though, the duty is simply not to willfully or wantonly harm trespassers.

Section 342 of the Restatement Second provides that an occupier is subject to liability to invitees if the occupier:

(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

Section 339 of the Restatement Second provides rules governing child trespassers,

A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Student I.D. # 7_____