ANSWER TO OUESTION NO. 2

(1) Parker v Daisy--Battery:

In order to establish a claim of battery, a plaintiff must demonstrate that the defendant had the intent to cause a harmful or offensive contact with another person, or knowing, with substantial certainty, that such contact would result. *Boumelhem v BIC Corp,* 211 Mich App 175, 184 (1995). Here, the facts indicate that Daisy took the lid off her drink and intentionally threw it in Parker's face. She knew with substantial certainty that the contents of her cup would come into contact with Parker's face. Thus, Parker could sue Daisy for battery.

(2) Sara v Movie Theater--Premises Liability:

A prima facie case of negligence requires a party to establish: (1) a duty; (2) breach of that duty; (3) proximate cause; and (4) damages. *Jones v Enertel, Inc,* 254 Mich App 432, 437 (2002). In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc,* 464 Mich 512, 516 (2001). However, the duty generally does not encompass warning about or removing open and obvious dangers unless the premises owner should anticipate that special aspects of the condition make even an open and obvious risk unreasonably dangerous. *Id.,* pp 516-517. Whether a hazardous condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Novontney v Burger King Corp (On Remand),* 198 Mich App 470, 474-475 (1993).

Here, Sara is clearly an invitee and the movie theater owes a duty to protect her from unreasonable risks of harm caused by a dangerous condition, like a slippery floor. As such, the movie theater probably had a duty to clean up the wet floor when the danger became obvious. The facts indicate that Johnny knew of the danger. The movie theater can be held vicariously liable for the negligence of an employee if it was committed while the employee was acting within the scope of his employment. *Rogers v JB Hunt Transport, Inc,* 466 Mich 645, 649 (2002). But the facts indicate that only a few minutes had lapsed from when Daisy spilled her drink and when Sara slipped. Additionally, the facts as presented allow for a discussion on whether the danger was open and obvious,

allow for a discussion on whether the danger was open and obvious, i.e., Sara came barreling through the entrance--was she paying attention? Was the danger hidden? Did it have any special aspects?

(3) Parker v Fred--No-Fault:

Under Michigan law, the operator of a motor vehicle is liable for an injury caused by the negligent operation of a motor vehicle. MCL 257.401(1). However, Parker can only recover non-economic damages if she suffered death, serious impairment of a body function, or permanent serious disfigurement. MCL 500.3135(1).

Here, the facts indicate that Fred was not paying attention to the roadway when he hit Parker with his car. Therefore, this claim would clearly fall under the No-Fault Act. Therefore, Parker could only recover non-economic damages for pain and suffering if she can prove a permanent serious disfigurement based on the ugly scar left on her forearm. Whether a scar is a permanent serious disfigurement depends on the scar's physical characteristics rather than its effect on the person's ability to lead a normal life. *Kosack v Moore,* 144 Mich App 485, 491 (1985). Whether a scar is serious must be answered by resorting to common knowledge and experience. *Nelson v Myers,* 146 Mich App 444, 446 (1985). The scar must be readily noticeable; a hardly discernable scar is not a permanent serious disfigurement. *Petaja v Guck,* 178 Mich App 577, 579-580 (1989). The facts as presented could support an argument for a permanent serious disfigurement. As such, Parker could recover in an action against Fred.