EXAMINERS' ANALYSIS OF QUESTION NO. 15

A. Paula's Injuries

The first question is whether Dan's actions were entitled to the limited immunity provided by MCL 691.1501(1), which states in relevant part:

> *A* physician, physician's assistant, *registered professional nurse*, or licensed practical nurse *who in good faith renders emergency care without compensation at the scene of an emergency, if a* physician-patient relationship, physician's assistant-patient relationship, *registered professional nurse-patient relationship,* or licensed practical nurse-patient relationship *did not exist before the emergency, is not liable for civil damages as a result of acts or omissions by the* physician, physician's assistant, *registered professional nurse*, or licensed practical nurse *in rendering the emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct*. [Emphasis added.]

The rule in Michigan, therefore, is that a registered professional nurse who in good faith renders emergency care without compensation – and without a pre-existing patient-nurse relationship - is immune to civil damages for acts or omissions that do not amount to gross negligence or willful and wanton misconduct.

The facts show that Dan was a registered professional nurse who rendered emergency care at the scene of an emergency. The facts indicate that Dan did not know Paula (in fact she called him "sir", not Dan), so there could be no pre-existing registered nurse-patient relationship. Finally, there is nothing to suggest that Dan's treatment of Paula was anything but in good faith, as he quickly responded to an injured person who appeared to be badly bleeding after just being hit by a bike. Indeed, Paula informed Dan that she was bleeding badly. The fact that Dan later discovered that the injury was not severe, does not detract from his initial good faith belief that there was an emergent situation requiring his assistance. See

Pemberton v Dharmani, 207 Mich App 522, 528 (1994). Additionally, Dan refused any compensation offered by Paula, i.e., the hot dog. Nothing in the facts suggest that Dan's conduct amounted to gross negligence, especially since there was only a small cut and not much real blood, and Paula's complaint only asserts that he was negligent. Consequently, Dan is immune from the negligence claim for the treatment he rendered to Paula after her accident.

B. Emotional Damages Relating to Fluffy

This issue focuses on whether Paula can recover emotional damages in her negligence claim against Dan resulting from Dan's refusal to treat Fluffy. The answer is that she cannot, because under Michigan law a pet is considered personal property, *Koester v VCA Animal Hospital*, 244 Mich App 173, 176 (2000), citing *Ten Hopen v Walker*, 96 Mich 236, 239 (1893), and non-economic damages are not recoverable for damage to property, real or personal. See *Koester*, 244 Mich App at 176-177 and *Price v High Pointe Oil Co*, 493 Mich 238, 247-249, 264 (2013). Hence, Paula's negligence claim that seeks to recover emotional distress damages for the injuries to Fluffy fails to state a claim.

Applicants may raise whether Paula can recover based upon the "bystander" tort of negligent infliction of emotional distress. That tort requires proof that:

> (1) the injury threatened or inflicted on the third person is a serious one, of a nature to cause severe mental disturbance to the plaintiff; (2) the shock results in actual physical harm; (3) the plaintiff is a member of the third person's immediate family, and (4) the plaintiff is present at the time of the accident or suffers shock "fairly contemporaneous" with the accident. *Taylor v Kurapati*, 236 Mich App 315, 360 (1999).

Here, the argument would fail because the injury Paula saw was an injury to a pet, not a family member. A point or two should be given if the issue is raised but rejected.