

**UNIVERSITY OF MARYLAND  
SCHOOL OF LAW**

**TORTS  
(3 Hours)**

**Professor Weiss  
Evening Division  
No. \_\_\_\_\_**

**Friday, December 22, 1995  
6:30 - 9:30 p.m.**

**Signature: \_\_\_\_\_**

**Printed Name: \_\_\_\_\_**

**INSTRUCTIONS:**

Sign and print your name in the blanks above. Put the number found above on each of your blue books on the outside cover and on the envelope. If you write more than one blue book (e.g., two), put on the cover of the first: "1st of 2," and on the second, "2nd of 2," etc. Do not put your name on the blue books or on the envelope at any place. When you turn in your blue books, return the questions.

Each student is responsible for ensuring that all the completed examination papers (usually blue books) and the examination question sheets are handed in to the examination administrator. No examination papers will be accepted after the examination administrator has collected the materials.

Upon completion of the examination, put your answers to the examination in the envelope, fasten the flap with the clasp, and hand in the envelope to the exam administrator. Be sure to include all of your answers -- you will be graded only on what is inside the envelope. Do not put the exam questions in the envelope. Hand in the questions separately to the exam administrator. Do not put your name anywhere on the envelope or on your answers. Both the envelope and your answers should contain your exam number, the course name, and the instructor.

**SPECIAL INSTRUCTIONS:**

This examination is OPEN BOOK, MODIFIED. You may use your casebook and supplement, your classnotes, and any other non-commercial materials you have prepared alone or with your classmates. You may not have with you any hornbooks, commercial outlines or other published materials, nor any published materials xerographically reproduced, nor any materials purchased from any source for money or any other form of consideration other than a mutual exchange between class members of study materials.

For grading purposes, each question will be weighted approximately in proportion to the time allocated for the answer. If your examination is handwritten, please write only on one side of the page, and only on every other line. If your examination is typewritten, it is to be triple spaced with ample margins.

Students may use computers on this exam. Computers may be used for wordprocessing only. Students must supply their own equipment, including computers and printers. Students using computers must take the exam in the assigned typing room; the TAL Center, the clinic and other law school equipment and facilities are not available for student use on exams. The student work product must be completed and returned to the exam proctor according to the normal exam administration rules. No allowance for additional time will be given for equipment failure, etc. Students must submit either hard copy or a floppy disk in Wordperfect 5.1, 5.2 or ASCII text format. A student who chooses to submit the exam on floppy disk must keep a duplicate, backup floppy disk, with no other files on it, made simultaneously with the original.

**PLEASE TAKE NOTE** that students choosing to submit the exam on floppy disk bear the entire risk of disk failure or other cause of inability of the instructor's computer to read, or printer to print, the contents of the disk.

### **Question I (90 minutes)**

Molly Maloney, age 23, suffers from severe, chronic schizophrenia, and has been institutionalized for 8 years. She has been adjudicated incompetent to manage her affairs, and her parents, Magda O'Malley and Paul Maloney, hold legal authority in these matters. Three years ago, they transferred her to the private mental hospital where she now resides, Better Manors Institute, in a beautiful, rural area of the 51st State of Merrylande.

When she was admitted to Better Manors Institute ("the Institute"), the hospital required Magda and Paul Maloney to sign their standard consent form, which read in pertinent part as follows:

I understand that Molly Maloney 's (hereinafter "the patient") mental and physical condition may require the administration of medication for the control of symptoms, and I hereby consent to and authorize physicians employed by the institute to prescribe and administer any such medication that they, in the exercise of their best medical judgment, deem appropriate to treat either the underlying mental illness, any physical condition, whether or not pertaining thereto, or any behavioral symptoms, whether or not related to the patient's condition of chronic schizophrenia .

I understand that the patient's behavior may cause her to be a danger to herself and/or to others and may require that she be placed in restraints, in seclusion, or under other forms of institutional control to prevent her from causing harm to herself or to others. I hereby consent to and authorize the staff of the institute to take whatever measures they deem appropriate in light of the circumstances.

I understand that other patients, as well as this patient, pose an

unavoidable risk of sudden outbursts of violent behavior to each other, and hereby consent to assume the risks of such conduct.

I hereby certify that I have full authority to consent to such treatment or medication on behalf of my adult daughter.

Signed

/s/ Magda O'Malley

/s/ Paul Maloney

Every patient, or their legally authorized representative, has been required to sign this consent form as a condition of admission to the institute.

When Molly Maloney first entered the Institute, she was seldom in contact with reality, spending most of her day in a dream-like fog, envisioning herself in Ireland of 200 years ago, rolling her wheelbarrow through streets dark and narrow, crying "Cockles!" and "Mussels!" and trying to sell her wares. She believed most others, including the Institute staff and her fellow patients, were local thieves and pickpockets, out to steal her merchandise. Her trance-like state, however, was relatively peaceful.

Before entering the Institute, her physicians had been unsuccessfully treating her with a traditional medication, "petamadine," which works to restore contact with reality in about 45 % of schizophrenics, but has no beneficial effect for the rest. A year after her transfer to the Institute, however, its medical staff decided more drastic measures were necessary if the young woman was ever to regain self-awareness and move toward living a normal life. They placed her on a regimen of a new, and still somewhat experimental drug, "alphabeta." Alphabeta has been through extensive testing and approved for use as an anti-ulcer medication, but it is still experimental as a remedy for schizophrenia. Preliminary trials suggest that the drug relieves the worst symptoms of disconnection from reality for about one person in three.

Most of the known side effects of the drug are pretty minor, including occasional mild headaches and nausea. However, it is believed that about one person in a thousand reacts to this drug by suffering violent, epilepsy-like seizures. In clinical practice, it is particularly difficult to discern the frequency with which patients suffer this type of side effect, because patients suffering from severe mental illness, including schizophrenics, often suffer similar seizures, usually referred to as "brain storms," without the use of this medication, and occurring so randomly that no medical causes have yet been identified. The customary practice in the psychiatric profession is to put such patients in restraints, in complete isolation, until the violence passes. A second, more rare side effect, occurring perhaps once in 100,000 patients, is deterioration of memory function, akin to that suffered after a stroke.

For the first fifteen months after being treated with alphabeta, Molly Malone's condition improved considerably. Her lucid periods grew more and more frequent, and there were whole days in which she remained in contact with reality and behaved normally.

However, on April 10, 1995, she suffered a severe episode of violent seizures. She began

a fight with a second patient, Steven Slugger, in which she suffered a black eye and several badly bruised ribs. After he turned around, she hit him in the back of the head with an empty bed pan, causing him a minor concussion. The nurse who intervened to break up the fight, William Wilson, suffered a sprained wrist in the process, and had to call in two husky orderlies to subdue Molly Malone.

Malone was put in restraints, and told she would have to remain in isolation until she could assure the inquiring nurse that she was now calm. For four weeks, she was unable to give such assurance, and remained, under sedation, in restraints and isolation. Finally, a doctor who looked in on her realized that she had long since ceased to be violent, but that she seemed to be barely able to speak, and to have lost her memory. Subsequent examination determined that the patient had suffered permanent brain damage, leaving her with impaired memory function, as well as with an exceptionally placid and passive personality. She is unlikely ever to be able to take care of herself outside the institutional environment, although many of her schizophrenic symptoms have eased.

All appropriate parties have sued, counter-claimed or cross-claimed against each other for damages. Discuss and decide all issues.

## **Question II (45 minutes)**

The record at trial reveals the following facts: Defendant Paul Jones, 76 years of age, while in the farmhouse he shared with his daughter and her family, told his daughter to dress and to put outdoor clothes on his eight-year-old granddaughter and his six-year-old grandson. She proceeded immediately to do so. The entire family planned to drive to town with Paul Jones in his car.

Jones walked about 50 feet from the house to the garage inside which his car was parked, having started to warm up its engine earlier. He entered the car, looked in the rear-view and side-view mirrors, immediately put the car into backward motion and, after traveling no more than 3 or 4 feet, struck his granddaughter. She suffered a broken leg and a concussion. The grandson was struck a glancing blow, but he suffered no injuries requiring hospitalization. The mother has filed suit on behalf of her minor children, seeking compensation from Jones for the children's injuries.

Defendant testified that when he left the house to back the car out of the garage, the children were still in the house and their mother had not yet put their outdoor garments on them. He also testified that it usually took him only one minute or, if he walked slowly, two minutes, to walk the 50 feet from the house to the garage. On the day of the accident, he stated, he had started backing the car as soon as he entered it and had looked in the rear-view and side-view mirrors, since the engine was warmed up and ready to go. He did not sound the horn or give other, oral warning.

He stated that he did not know that the children were behind his car, that they were too short to be visible through windows or mirrors, and that he had not believed it possible that they

could be outside, so soon after his having left them in the house. He also claimed that it should have been obvious to the children that he was about to back up the car, because a defective exhaust system meant that a huge cloud of smoke was emitted whenever he began to back up. The children admitted to seeing the exhaust and knowing it usually signified that the car was about to back out, but explained that they had been too busy taunting each other to pay any attention until the car actually began moving.

Defendant's view of the area behind his car was narrowly limited. The garage was a two-car garage and the defendant's car was in the stall farthest from the house. The stall nearest the house was empty and its overhead door was closed. Had defendant opened that door, his view from his seat in the car of the area from the house to the garage would have been enlarged substantially.

A traffic ordinance for the county provides:

"No vehicle operator shall drive his or her vehicle in reverse without either first making a warning sound, or looking through rear and side view mirrors and windows to ascertain that no person or object will be injured thereby."

This case was tried to you as judge, sitting without a jury. Write an opinion, deciding the case and fully explaining your reasoning.

### **Question III (45 minutes)**

At about 1 a.m., on August 22, 1994, defendant David Danielson was working in his Red Horse Oil service station at the intersection of South Street and Vine in HappyTown, Merrylande, when a group of young men drove into the station. Three of the group entered the office of the station. One of the young men told Danielson that his car had run out of gas down the street.

Danielson initially refused to give the group any gas because they did not produce the required red can. He also noticed that the person who asked for gas was "hipped up, dancing around". One of the group later admitted that they were all intoxicated. The young man who originally requested the gas persisted, however, and pointed out a blue oil can. Defendant Danielson continued to refuse service until the man "started putting his hand in his pocket" and asked "are you going to put gas in there?" Thereupon, Danielson put one or two gallons of gas in the can and was given a six-dollar ring for security.

About 20 minutes later, the young men set fire to the Soul Plane Dance Hall a short distance from the station. The men had been denied admission to the hall before their trip to the gas station. While parking their car in the lot across the street from the dance hall, the young men also side-swiped a car belonging to Penny Pincher, who had just left the dance hall and gotten into her vehicle to go home. The collision damaged her car and caused her a whiplash injury.

Plaintiffs Alan Allen and Betty Boop were injured in the fire. Plaintiff Penny Pincher is

suing for her whiplash and the damage to her car. The young men had no visible assets, so plaintiffs sued only the gas station owner/operator.

Your firm represents Danielson. The above facts were established in pre-trial depositions and are factually undisputed. Write a memo to the senior partner with whom you are working on the case, analyzing your prospects for success, and recommending whether to try to settle the case at this point or to litigate it to conclusion.

**- END OF EXAMINATION -**