

**Final Exam – Torts 550 Fall Semester 2011  
December 5, 2011, 2 p.m.**

**Instructions:**

This examination consists of two parts; one multiple choice section and one essay. **The total time permitted for the exam is 3.5 hours.** You will have 90 minutes (plus 10 minutes reading time) for the multiple choice part. Answer multiple choice questions on the scantron answer sheet provided, using a #2 pencil. You will take the multiple choice section first, and the papers will be collected before the essay section is handed out. Please turn in the multiple choice questions when time is called. You may refer to your materials, i.e., **your** books, notes and outlines. You may not refer to commercial outlines, your hard drive, or the internet. Since multiple choice exams are particularly susceptible to honor code violations, please keep your eyes to your own papers. You should answer all of the questions.

The essay section consists of one problem type question. For this section, there will be **90 minutes plus 20 minutes reading time.** Note the weight to be given to the two sections of this question. The essay portion is an open book exam, and again, you may use your book or any outline **you** prepared. NO Commercial outlines will be allowed in the exam, and you may not access the internet or your computer's hard drive. Remember to read the question carefully and answer only the question posed. Most points are allocated for analysis, so organize carefully to show this analysis. This means you will have 20 minutes of unallocated time for reading, organizing and outlining. Please use the time to organize yourself and make your answers precise and concise.

For those using exam books: In the essay section (Part II), if more than one exam booklet has been used to answer the question, be sure your examination number appears on each booklet indicating the total number of booklets utilized by the individual number of each book. (E.g., #1 of 2, #2 of 2.) The only identification permitted to appear on the blue book is the examination number which has been assigned. Please do not indicate anything else on the blue books that will identify you.

Before you begin working on the exam, check to see if you have Part 1, pages 1 through 20 and Part 2 – pages 1 through 4. Part I. Multiple Choice. (50 points, 90 minutes, 45 Multiple Choice Questions, 2 minutes a question, each of equal value).

**DO NOT GO TO THE NEXT PAGE UNTIL YOU ARE INSTRUCTED TO DO SO.**

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**QUESTION:**

Dr. Annette Alderson an OB/GYN is retained by Barbara concerning her pregnancy. She had been married to Colin for ten years and had undergone In Vitro Fertilization (IVF) procedures to bear a child. The IVF procedure had resulted in multiple embryos of which two were implanted into Barbara's uterus. The other embryos were frozen.

Dr. Alderson monitored the pregnancy and at thirty weeks performed an ultrasound that revealed that one of the twin fetuses had malformed heart and lungs. Dr. Alderson pointed out the life problems that this fetus would suffer once born and Barbara and Colin both agreed that the fetus ought to be aborted. They were concerned about the emotional and financial consequences of rearing a physically handicapped child. Dr. Alderson and her team performed the abortion.

After examination of the fetus still *in utero* it was discovered that the healthy twin fetus had mistakenly been aborted and the twin with the heart and lung complications had been left intact. Both Barbara and Colin are dismayed and emotionally distraught after Dr. Alderson informs them. Dr. Alderson says: "You have two choices. You could have me terminate the pregnancy or the fetus can be brought to term and born with the serious ailments I warned you about earlier."

Barbara and Colin quarrel about the right course to take. Colin, who wants the fetus aborted, walks out on Barbara and moves in with a long term lover Dolores. A few days later, Barbara, home alone in her apartment, is attacked by a criminal intruder and beaten severely.

Barbara and Colin had rented an apartment from LandLords, Inc. in a building where some assaults had occurred in the common areas and nearby streets. This was the first time an assault had occurred in an apartment. Barbara had not checked the monitor of the security camera at her door but

opened it excitedly, expecting Colin to have returned. The assailant had entered the main door of the building without being questioned by the security service, Fort Knox, Inc. and unimpeded had taken the elevator to the upper floors. Evidence shows that other tenants, where the assailant had knocked and sought entry, had checked their security monitors and had refused entry to the assailant. They had, however, made no attempt to warn the Fort Knox guards, whose contact number was posted beside the camera monitors in each apartment following an initiative of the building tenants association concerned about criminal activity in the area.

Barbara is badly injured and is unconscious for a week. Colin cannot be found for a week. He is on vacation in Fiji. The fetus suffers injuries requiring an immediate delivery via C section if his life is to be saved. The child Ozzie suffers from the consequences of premature birth, in particular epilepsy, and the heart/lung complications that will demand constant medical intervention. Experts say Ozzie is likely to live about 7 to 8 years.

1. Advise Barbara on the legal recourse she may have, and the principles of the damages she may obtain, in these circumstances. Include a discussion of possible actions that may be pursued on behalf of Ozzie. (40% of grade).
2. After you have litigated this case you are asked to write a short piece, no more than a typed page on the policy issues that this case raises. (10% of grade).