

Exam Number _____

**WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW**

Examination in TORTS

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Instructions:

This examination comprises two questions. Answer the questions on the basis of the facts given. You may need to assume some facts fully to answer the question, in which case, state what facts may have to be established in evidence.

If relevant, you may assume that the jurisdiction has adopted a pure comparative fault rule and retained the common law rule for joint and several liability.

Write legibly on every other line and use only one side of the page. If typing, double space. Answer questions in separate blue books.

GOOD LUCK!

Duration:	Three (3) hours
Additional Reading Time:	30 minutes

You may consult your books, notes, or other materials.

I.

Alfred and Betty had three children from their marriage, Charlene, Darlene, and Errol. At the time of these events, the children were respectively eleven, nine, and eight years of age. Model parents, active in community affairs, they were approached by the State of Virgessee Child Welfare Agency (the Agency) about accepting a foster child. After consideration, they agreed. The Agency officers selected Frank, a fourteen-year-old boy, who had been abandoned by his natural parents. He had drifted from foster home to foster home for over eight years. The Agency officers said that Frank needed “the stability of a loving home just like yours.” They made no further inquiries about Frank.

Two weeks after accepting Frank as a foster child, Charlene, Darlene, and Errol became withdrawn. Alfred and Betty explained this as an adjustment to Frank’s presence in the family. When they raised this with Agency officers, they were told: “It’s just a normal response. Don’t worry.”

Some twelve months after, Dr. Gloria Grotius, during a routine medical examination for school enrollment, observed telltale indications that Errol had been sexually abused. She reported her observations to the State Department of Human Services (the Department). The applicable state statute required that “any person having a ‘reasonable suspicion’ that a child has been or is being sexually abused must report that fact and the identity of the suspected perpetrator to the [Department].” The departmental officers immediately took protective custody of all the children.

The city police, alerted by the Department, requested Alfred and Betty to accompany them to the local precinct, where they were questioned together and alone over a period of three hours. As a condition of release, they agreed to undergo a lie detector test. Eventually, they were permitted to return home.

It took a week for psychologists to piece together the facts surrounding the children’s abuse. They established that Frank had abused the children ever since his inclusion in the family. The children had remained silent because of Frank’s threat to kill them if they uttered a word. Charlene, Darlene, and Errol, despite pleas from Alfred and Betty, were prevented from seeing or talking to their parents and were not returned home until the Agency Director authorized their return after her review of the file some three days after the truth was established.

Frank was confined to a special state institution where, with counseling, he revealed the reasons for his molestation of the children. From the age of six to ten, he

had been the victim of sexual abuse at the hands of foster parents Harold and Irene. He had

subsequently sexually abused younger children in two other foster homes before he came to reside with Alfred and Betty.

Alfred and Betty and their children suffered great mental anguish as a result of these events. Alfred and Betty became obsessively protective of their children. In an attempt to ease recovery, they decided to take the children on a visit to Disney World in Florida. Upon entering Main Street in Disney World, Jules, dressed as Mickey Mouse, moved towards Errol playfully to embrace him. Alfred, thinking that Mickey Mouse was about to molest Errol, reacted by violently attacking Jules. Ivan, a Russian weightlifter of massive proportions, rushed to restrain Alfred, but his momentum knocked both Jules and Alfred onto a nearby high-speed Dodg'em car track. Onlookers, including the children, witnessed the gruesome accident as cars impaled Jules and Alfred on their bumpers. Jules, in addition to multiple fractures, received third-degree burns as his Mickey Mouse suit caught fire due to his pummeling by the Dodg'em cars. (The suit, designed to keep its wearer cool, when subjected to the friction of the Dodg'em car collisions, built up a large static electrical charge that sparked in the proximity of the positive terminals of the electric Dodg'em cars.)

Advise the injured parties of their causes of action in tort law in these circumstances. (Assume that the state has waived governmental immunity.)

II.

Wendy and Xavier married some ten years before these events occurred. They live in Sticks, West Virginia, and both are thirty-eight years of age. Wendy became pregnant. Her past pregnancies had terminated in miscarriages. Attempting to reduce the risk, Wendy consulted Dr. Yvonne Yonker, a local physician, who diagnosed Wendy's past problems as arising from stress and prescribed her a tranquilizer. Yvonne did not relate to Wendy any risks of taking the tranquilizer. Recent studies in the *New England Journal of Medicine* linked the tranquilizer with an increased incidence of malformation of the limbs of children who are exposed in utero. (The incidence over the normal incidence of malformation of the limbs was established at ten to twelve percent.)

Because of Wendy's age, Yvonne took the precaution of referring her to Testing Laboratories in Charleston. The laboratory tested Wendy's amniotic fluid for indications of any genetic abnormality, including "malformed limb syndrome." Unbeknownst to Testing Laboratories, an employee, an active member of anti-abortion groups, believing that the laboratory was promoting abortions, interfered with the computerized information generated from the testing of the amniotic fluid. Wendy was told that no abnormalities were found. (The sample of amniotic fluid was disposed of after the testing, precluding any subsequent verification.)

Wendy gave birth to a baby with short stumps as limbs whom Wendy and Xavier named Martin. Both Wendy and Xavier were distraught; an expected joyful event had been turned into a tragedy.

Xavier, in this downcast mood, repaired to a tavern on the outskirts of Sticks. He drank whiskey for six hours. The proprietor served him whiskey while he was visibly drunk until 2:00 a.m., two hours beyond the closing time set by state law for taverns holding the relevant class of liquor license. State law also provided that: "No licensed establishment shall serve liquor to a visibly drunk individual." Xavier began to drive home, but failed to turn on his lights. While stopped at a traffic light, Zach drove his fully-laden Mack Truck into the back of Xavier's car. The traffic lights were situated on the north side of a steep hill thirty feet from its brow. Zach was traveling north to Pittsburgh loaded with coal and was accustomed to taking this remote, hilly West Virginia route late at night to avoid the heavily-used interstate. He knew of the location of the traffic light and invariably ran it, never expecting to encounter another vehicle on the route. He says: "I done the thing that my trucking buddies and me do – gun it to keep the rig roll'n at the top of the hill. 'Cept'n for dead skunks, nothin's ever on the road. I was lookin' real hard. I didn't see nothin' on the road." Evidence shows that a

truck of the weight of Zach's, approaching the hill from the south, needed to reach a speed of 85 miles per hour at the foot of the hill to achieve its apex at 30 miles per hour.

Xavier's severe injuries made him susceptible to violent mood swings. After returning from the hospital, Wendy, fearing him, hid his handgun. Xavier, after some weeks of rummaging through the house, found the gun and shot Martin before turning the gun on himself. The shot wounded Martin, necessitating the amputation of his right arm stump. Xavier was rendered permanently comatose when the bullet entered his brain. He is kept alive on life support in the Sticksville hospital.

Advise all injured parties of their possible causes of actions, chances of success, and the principles upon which damages will be assessed, in these circumstances.