

Section II. Essay Questions. (Total Time 180 minutes—30 minutes unallocated).

Essay Question I. (80 minutes).

Skier and Driver hitched up Driver's boat and went to the lake to water-ski. At the lake they launched the boat and began to set up for their day of fun. They filled a cooler with beer and started drinking. They both remarked about Driver's badly frayed tow rope, and joked about how they did not have a third person available to act as a spotter while Driver steered the boat. They noted how much boat traffic was out on the lake that day, and congratulated each other on how skillful and daring they were. Then they started skiing, with Driver steering the boat and occasionally glancing over his shoulder to see how Skier was doing. Once they were well off shore Driver suddenly increased the speed of the boat. The sudden increase in speed caused the frayed tow rope to break. The broken end of the rope recoiled toward Skier, striking him in the head and stunning him before he fell into the water. Skier fell face down in the water and began to drown. Driver, however, had not noticed anything.

Randy, who was once a member of the area water ski patrol, noticed what was going on. Randy put the boat into a sharp left hand turn. Unfortunately, he did not look where he was going and his boat ran into the side of another boat with just one Driver (not passenger look out) that was also pulling a skier in the same area. The collision injured Randy and the two occupants of the other ski boat, the Bystanders. Because of the significant delay in rescuing him, Skier nearly drowned and suffered a significant brain injury. His brain injury was significantly worsened by the negligence of the emergency room physician (P) and staff of Mercy Me hospital.

The law that controls the defenses in this case is pure comparative negligence.

Discuss 1) Skier's cause of action against Driver, 2) the affect on Skier's case of Randy's conduct and the conduct of the emergency physician, and Mercy Me staff, and 3) any defenses Driver might have.

Finally discuss the effect of Randy's conduct and any defenses Driver might have to a cause of action brought by Bystanders for Driver's actions.

Essay Question II. (40 minutes)

On Sunday at 10:00 p.m., Mary boarded a Delta Airlines flight in Atlanta with non-stop service to Raleigh-Durham. The plane pulled back from the terminal, but stopped on the tarmac for an hour. Finally, the pilot made an announcement: "Due to mechanical problems, we will need to change equipment to get you to Raleigh." We apologize for any inconvenience, and thank you for flying Delta. Shortly thereafter, flight attendants ushered Mary and other passengers out of the plane and onto a waiting bus. Mary assumed that the bus would take her to another plane. Within minutes however, Mary realized something was wrong and asked others on the bus where they were going. The bus had left the airport and was on route to the Raleigh-Durham airport, some 7 hours away. One passenger, who didn't speak Spanish, went to the front of bus and demanded, to no avail, to be taken back to the terminal. The bus driver did not understand English

and just smiled and nodded. Mary, who speaks Spanish fluently, watched what happened and determined it was pointless to do anything more.

The bus finally reached Raleigh Durham at 6:00 am on Monday morning. Mary has come straight to your office and asks that you file a claim against Delta. Evaluate her claim.

Essay Question III. (30 minutes)

The comparative institutional competence argument at the national level— federal courts versus Congress or federal agencies—is often posed by the question of whether courts ought to recognize a federal regulatory compliance defense, (for OSHA (Occupational Safety and Health Administration) compliance, or FDA (Federal Drug Administration) compliance, or Federal Highway and Safety Standards compliance) refusing to recognize tort claims when a defendant can establish conformity with these and like administrative safety standards. What are the strongest arguments for and against a federal regulatory compliance defense?