

## FINAL EXAMINATION-FALL 2014

### TORTS

#### HOUSE OF RUSSELL

1. **DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after 3 pm on Friday, December 5, 2014. You must submit your answers by 6 pm on Monday, December 8, 2014. If you turn in your answers after 6 pm on December 8, then you will receive an F for your grade. **NO EXCUSES.**
2. **TURNING IN YOUR ANSWER:** Turn in your answer by sending the file to registrar@law.du.edu. Sending your answer with either a send receipt or a delivery receipt is a good idea. As well, send yourself a copy of the message that you send to the registrar. This will verify the fact and time of your sending your answer. **DO NOT SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL.** In the subject line of your email, put the following text: “Russell-Torts-[exam number]” where [exam number] is your exam number. Name the file that contains your answer using the same convention: Russell-Torts-[exam number]. Do **NOT** contact Professor Russell with exam-related difficulties.
3. **OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you may consult any written material that you wish. However, you violate the Honor Code if you discuss, show, or distribute this examination or your answers to anyone at all before 6 pm on Monday, December 8. Avoid, for example, posting anything on Facebook that looks like a request for assistance. Avoid, too, appearing to work with other people in study rooms or the library. Once the examination starts, you may not discuss it with anyone at all before the examination ends on Monday.
4. **EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. Do not put your name anywhere on the exam. You should name the file Russell-Torts-[Exam Number]

5. **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit will be one of the challenges of this examination. Please include the word count at the end of your answer.
6. **FORMATTING:** Please double-space your answers. Avoid miniature fonts, okay? Avoid putting bullet points in front of every paragraph as this is oddly distracting to Professor Russell. Note, too, when the registrar rechecks the word count, bullet points are sometimes counted as words. This generates needless confusion.
7. **HOW TO ANSWER:** In answering, use judgment and common sense. Be organized. Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. Avoid waste of time by avoiding lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.
8. **JURISDICTION:** The laws of Newstate, the 51st state of the union, apply to all the issues in this examination. Newstate is NOT Colorado. New City is the name of a fictional city.
9. **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write and edit your answers. You will earn a better grade by being thorough and concise. And, of course, well-organized answers will be the best answers that earn the highest grades.
10. **KEEP A COPY:** You should retain a copy of your exam answer. You should feel free, of course, to keep a copy of the exam.
11. **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Student Conduct Office in Driscoll Center North (303-871-4504) immediately after this examination ends.
12. **GOOD LUCK:** Good luck and have an excellent break.

**“Hands up. Don’t Shoot.”**

The following news story appeared on November 23, 2014, a few days before the Ferguson, Missouri grand jury announced that there would be no indictment of police officer Darren Wilson for the killing of Michael Brown.

New City, Newstate. – A woman appears to have accidentally fatally shot herself in the head with a gun bought to prepare for possible Ferguson-related unrest, according to sources briefed on the police investigation.

The shooting occurred Friday night in downtown New City, the city’s Metropolitan Police Department said. New City is located in Newstate, which lies just across the Newstate River from Ferguson, Missouri. New City lies at the confluence of the Newstate, Mississippi, and Missouri rivers.

The female victim, identified in a police report as Becca Campbell, 26, was a passenger in a car involved in an auto accident.

Her 33-year-old boyfriend was driving.

Sources said that the boyfriend, Ben Funder, told police that the couple had bought a gun because of fears of unrest related to the pending grand jury decision concerning the shooting of Michael Brown.

According to sources, Funder told investigators that as they drove late Friday night, the victim waved a gun and chanted, “We’re ready for Ferguson!”

Campbell pointed the loaned gun at Funder, and he ducked to get out of the way of the gun. At that point, he accidentally rear-ended another car.

Campbell said the accident caused the gun to go off and that a bullet struck his girlfriend in the head. Campbell’s mother was in the back seat of the vehicle at the time.

The victim was rushed to a hospital but died.

The investigation is continuing because police want to be sure the story as told by the boyfriend is correct, the sources said.

[End of news story]

Since the accident and shooting, additional details have emerged. However, there are two different versions of what transpired.

Funder explains that he and his girlfriend Campbell bought the gun because they thought there might be violence when the Grand Jury returned its decision regarding the prosecution of Darren Wilson. Since Michael Brown's death, Campbell had been an active protester in Ferguson.

Funder explained that he and Campbell purchased the gun at a Newstate gun shop called "Guns 'R Us." They first visited the shop on 14 November to shop for guns. They picked out a Glock 19, which they felt was a good-sized, easy-to-fire handgun that either of them could readily conceal. Campbell was very excited about the purchase. Campbell and Funder submitted her name and identification to the dealer, who then cleared her with a background check using the National Instant Criminal Background Check System. The system, which links to several databases managed by the FBI, including the National Crime Information Center, runs an individual's name through federal and state criminal records. Campbell cleared the background check, but because Campbell was a little short on cash that night, they did not purchase the gun that evening and instead came back on the Friday the 21st of November after Campbell received her next paycheck.

Funder explains that on Friday the 21st, he and Campbell chatted with the store owner as they completed the purchase. The owner reviewed the gun's features with them, sold them some

ammunition, and tried to convince them that they should each own a handgun. Campbell emphasized that she wanted a gun in order to protect herself after the Grand Jury announced its decision. “Good idea,” said Clint, the store owner. After she paid for the gun, Campbell asked Clint to load the gun for her, so that she could be certain that the gun was loaded properly. Clint filled the magazine, inserted the magazine into the gun, and filled a backup magazine, which he put into the gun case that he also sold them. Clint then walked Campbell and Funder to the Funder’s car in the parking lot. Being an “old school” gentleman, Clint opened the passenger-side door for Campbell and also said hello to Campbell’s mother, who had remained in the back seat of the car while her daughter and Funder purchased the gun. Campbell’s mom had used the opportunity to take a little nap. After saying hello to Campbell’s mother, Clint then handed the weapon to Campbell—the daughter, that is—and, separately, gave her the gun case once she was in the car with her seatbelt securely fastened. Clint thanked them for their business, and the happy, gun-owning couple drove off.

They had the gun for 45 minutes before Campbell was shot.

Funder explains that Campbell held the gun in her hands while he drove the car. She loved the weight and feel of the gun and admired its technology. She pointed the gun out the front window of the car and imagined pulling the trigger and watching the windshield shatter. She murmured “bang, bang.” Funder was excited too, but he became anxious. Campbell started pointing the loaded gun out the partly open, passenger side window. “Bang, bang.” She swiveled the gun from the front to the right. Funder remembers saying, “That’s enough, honey. Let’s put the gun away.” Campbell then started pointing the gun out the driver’s side window as Funder drove. First she pointed it in front of him, and then she pointed the Glock right at him. Funder

had experience with weapons from the time he was a young boy, and he knew never to point a weapon—whether loaded or not—at another person unless you intended to shoot that person. He remembered his own father beating that lesson into him. Literally.

Funder says that he was afraid when his girlfriend pointed the loaded Glock right at him. However, he tried to make a joke. He says that he took his hands off the wheel, put them in the air, and said, “Hands up. Don’t shoot.” At that point, Funder says he heard and felt the impact as his car crashed into the Ford Taurus stopped at a red light in front of him. He claims that he was so focused on the gun that he lost track of his driving, did not notice that the light in front of him had turned red, and did not see the car stopped at the light directly in front of him. His story is that when his car slammed into the car in front of him, the gun went off, and the shot went into his girlfriend Campbell’s head. He guesses that she pointed the gun away from him and toward herself just before he crashed into the car in front of them. Or, he guesses that the impact of the crash turned the gun toward her head.

Funder says that his girlfriend was conscious when he called 9-1-1 and when the paramedics arrived. She looked terrified. She bled a lot, lost consciousness, and went into cardiac arrest while riding in the ambulance to the hospital. The paramedics were not able to revive her nor were the hospital’s Emergency Department physicians, one of whom officially declared her to be dead.

Campbell’s injury and death generated huge bills. The paramedics, who worked hard to save her life, sent a bill totaling \$25,670. The hospital has also sent a bill for the emergency treatment by physicians and staff in the amount of \$35,890. The cost of her burial was \$17,000. The Glock, with magazines, ammunition, and case, cost \$725. For several years, Campbell has

been helping her mother by paying \$200/month of her mother's rent. The coroner's autopsy, which cost \$4,500, showed that the impact of the car crash broke Campbell's left leg, right arm, and her sternum.

Campbell's mother is heart-broken with grief over the loss of her only daughter. She does have a son who is 30 years old.

Campbell's mother has talked with police about what she heard in the car. After they left Guns 'R Us, Campbell's mother tried to continue her nap. She was not able to sleep, but she relaxed by keeping her eyes closed as she hummed hymns to herself. She heard her daughter admiring the gun and saying, "bang, bang."

The mother's story differs from the boyfriend's story after the point where her daughter pointed the gun at Funder. She remembers that he said, "Hands up. Don't shoot." However, with her eyes still closed, she believes that she heard Funder say, angrily, "How'd you like it if I pointed this at you?!" She opened her eyes in shock as the gun went off, and she cannot say whether her daughter or Funder had control of the gun. She believes that Funder may have pulled the trigger either accidentally or intentionally. One thing that reinforces her belief is that she believes—but cannot say for certain—that *after* the gunshot, Funder accelerated the car and crashed into the back of the Ford Taurus. She thinks that the shot came before the crash.

Campbell's mother's physical injuries are exacerbating her grief. She fractured her right forearm and her right cheekbone when the force of the crash threw her forward. She was not wearing a seatbelt because she believed that Newstate only required front seat passengers to wear seatbelts. Campbell's mother is glad to have Medicare, because her out-of-pocket costs related to the accident have only amounted to \$475.

Of course the two passengers in the Ford Taurus—the car into which Funder crashed—also suffered injuries. The driver, an undocumented immigrant from Sweden named Razmus Primus, had no driver's license other than an expired Swedish driving license. Primus was also drunk at the time of the accident. He had been drinking Akvavit, which is an important part of Scandinavian drinking culture, where it is often drunk during festive gatherings, such as Christmas dinners and weddings. Akvavit, like vodka, is distilled from either grain or potatoes but is then flavored with herbs, spices, or fruit oil. Primus's blood alcohol, when checked at the hospital with a blood draw about an hour after the accident, was 0.16, which was double Newstate's legal limit.

Primus's injuries, as often happens with drunks, were not as severe as one might expect. Fortunately, he was wearing his seat belt at the time of the crash. At the accident scene, he had excruciating neck pain, and the paramedics who transported him to the hospital took precautions consistent with the possibility that his neck was broken. At the hospital, after careful imaging studies and including x-rays and an MRI, the physicians ruled out any broken bones and diagnosed severe cervical strain and other soft tissue injuries. Primus, a European who was accustomed to excellent universal health care at no cost, was shocked to receive a \$12,000 bill from the paramedics and a \$43,789 bill from the hospital. He has no idea how he will pay these bills nor how he will pay for the physical therapy the doctors prescribed. His Ford Taurus, which had a market value of \$17,500, was totaled in the crash. He also lost a case of Akvavit, which was in the trunk of the car and was crushed during the collision.



Primus's passenger, Sigert Ebert, was less fortunate. He was seated in the front, passenger seat and wearing his seat belt when the crash occurred. The impact fractured his pelvis in three places, and his head slammed into the Ford's dashboard with such force that he suffered a concussion and broken nose and has dizziness and vision problems both of which the doctors believe may be permanent. Orthopedic surgeons successfully repaired his pelvic fracture and discharged him (with an \$82,000 bill for the hospital services alone) to a rehabilitation facility. Ebert, also an undocumented immigrant from Sweden, was also shocked by the medical bill, but that is the least of his worries now. While in the hospital, Ebert contracted *Clostridium difficile*, which is commonly known as *C. diff.* (When he began to have symptoms, Ebert was worried that he had contracted The Ebola from a nurse who had recently returned from Liberia, where she had cared for Ebola patients as part of a volunteer effort with Médecins Sans Frontières [Doctors Without Borders]). Roughly 12 percent of hospital patients in the United States contract a hospital-acquired or iatrogenic infection; 100,000 people die each year from these infections. *C. diff.* is one of the most common hospital-acquired infections and also one of the most deadly. Ebert is now in the hospital being treated for the terrible, chronic diarrhea and abdominal pain that are the most common symptoms of *C. diff.* Ebert has a 30 percent chance of dying.

**Your job is to analyze fully the potential tort claims that the five people involved in the car crash may have.** Your job is NOT to evaluate any criminal charges that might be brought against anyone involved; you should focus on the civil claims. As well, do not focus on any potential products liability claims that any injured person might make; an expert in products liability will look into these matters. As part of your analysis, you should consider the Newstate statutes that you will find below.

**Statute 1. Improperly handling firearms in a motor vehicle.**

- (A) No person shall knowingly discharge a firearm while in or on a motor vehicle.
- (B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.
- (C) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:
- (1) In a closed package, box, or case;
  - (2) In a compartment that can be reached only by leaving the vehicle;
  - (3) In plain sight and secured in a rack or holder made for the purpose;
  - (4) If the firearm is at least twenty-four inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least eighteen inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.
- (D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:
- (1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.
  - (2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance prohibited for persons operating a vehicle regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.
- (E) No person who has been issued a concealed handgun license, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:
- (1) Fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the motor vehicle;

(2) Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the commercial motor vehicle;

(3) Knowingly fail to remain in the motor vehicle while stopped or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(4) Knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;

(5) Knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(F)

(1) Divisions (A), (B), (C), and (E) of this section do not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles unless the appointing authority of the person has expressly specified that the exemption provided in division (F)(1)(b) of this section does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply:

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the chief of the division of wildlife of the department of natural resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

(i) While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(ii) In the direction of a street, highway, or other public or private property used by the public for vehicular traffic or parking;

(iii) At or into an occupied structure that is a permanent or temporary habitation;

(iv) In the commission of any violation of law, including, but not limited to, a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

## **Statute 2. Civil action for wrongful death**

When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the person who would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it aggravated murder, murder, or manslaughter. When the action is against such administrator or executor, the damages recovered shall be a valid claim against the estate of such deceased person.

When death is caused by a wrongful act, neglect, or default in another state or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state or foreign country. The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance of such cause of action.

**Statute 3. Proceedings; damages allowable; limitation of actions; statute of repose for product liability claims.**

(A)(1) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division.

(2) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries described in division (A) (1) of this section by reason of the wrongful death and may award the reasonable funeral and burial expenses incurred as a result of the wrongful death. In its verdict, the jury or court shall set forth separately the amount, if any, awarded for the reasonable funeral and burial expenses incurred as a result of the wrongful death.

(3)(a) The date of the decedent's death fixes, subject to division (A)(3)(b)(iii) of this section, the status of all beneficiaries of the civil action for wrongful death for purposes of determining the damages suffered by them and the amount of damages to be awarded. A person who is conceived prior to the decedent's death and who is born alive after the decedent's death is a beneficiary of the action.

(b)(i) In determining the amount of damages to be awarded, the jury or court may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death.

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in division (A)(3)(b)(i) of this section and, if applicable, division (A)(3) (b)(iii) of this section, the jury or court may consider that evidence in determining the future damages suffered by reason of the wrongful death. If that evidence is presented, the present value in dollars of an annuity is its cost.

(iii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence that the surviving spouse of the decedent is remarried. If that evidence is presented, then, in addition to the factors described in divisions (A)(3)(b)(i) and (ii) of this section, the jury or court may consider that evidence in determining the damages suffered by the surviving spouse by reason of the wrongful death.

(B) Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

(1) Loss of support from the reasonably expected earning capacity of the decedent;

(2) Loss of services of the decedent;

(3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the decedent;

(4) Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death;

(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

(C) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

(D) (1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.

(2)(a) Except as otherwise provided in divisions (D)(2)(b), (c), (d), (e), (f), and (g) of this section, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(b) Division (D)(2)(a) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(c) Division (D)(2)(a) of this section does not bar a civil action for wrongful death involving a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death, has not expired in accordance with the terms of that warranty.

(d) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section but less than two years prior to the expiration of that period, a civil action for wrongful death involving a product liability claim may be commenced within two years after the decedent's death.

(e) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section and the claimant cannot commence an action during that period due

to a disability, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

(f) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product. If division (D)(2)(g) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(g) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

#### **Statute 4. Contributory fault not bar to recovery of damages**

The contributory fault of a person does not bar the person as plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery in this action and of all other persons from whom the plaintiff does not seek recovery in this action. The court shall diminish any compensatory damages recoverable by the plaintiff by an amount that is proportionately equal to the percentage of tortious conduct of the plaintiff.

#### **Statute 5. Requirements when contributory fault established as affirmative defense**

If contributory fault is asserted and established as an affirmative defense to a tort claim, the court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories, that shall specify the following:

(A) The total amount of the compensatory damages that would have been recoverable on that tort claim but for the tortious conduct of the plaintiff;

(B) The portion of the compensatory damages specified under division (A) of this section that represents economic loss;

(C) The portion of the compensatory damages specified under division (A) of this section that represents noneconomic loss;

**Statute 6. Reduction of compensatory damages based on percentage of tortious conduct attributable to plaintiff**

After the court makes its findings of fact or after the jury returns its general verdict accompanied by answers to interrogatories as described in Statute 5, the court shall diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of tortious conduct that is attributable to the plaintiff. If the percentage of the tortious conduct determined to be attributable to the plaintiff is greater than the sum of the percentages of the tortious conduct determined to be attributable to all parties to the tort action from whom the plaintiff seeks recovery plus all persons from whom the plaintiff does not seek recovery in this action, the court shall enter judgment in favor of the defendants.

**Statute 7. Seat belt requirements; exceptions; fines**

(A) As used in this section:

(1) "Automobile" means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States secretary of transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.

(2) "Occupant restraining device" means a seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum federal vehicle safety standards established by the United States department of transportation.

(3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(4) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" does not include a civil action for damages for breach of contract or another agreement between persons.

(B) No person shall do any of the following:

(1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted;

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device;



(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device;

(D) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(E) All fines collected for violations of division (B) of this section, or for violations of any ordinance or resolution of a political subdivision that is substantively comparable to that division, shall be forwarded to the treasurer of state for deposit into the state treasury to the credit of the trauma and emergency medical services fund, which is hereby created. The director of budget and management may transfer excess money from the trauma and emergency medical services fund to the state highway safety fund if the director of public safety determines that the amount of money in the trauma and emergency medical services fund exceeds the amount required to cover such costs incurred by the emergency medical services agency and the grants made by the state board of emergency medical, fire, and transportation services and requests the director of budget and management to make the transfer.

(F)(1) Subject to division (F)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(1) or (3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(2) of this section shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But, the trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents noneconomic loss in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

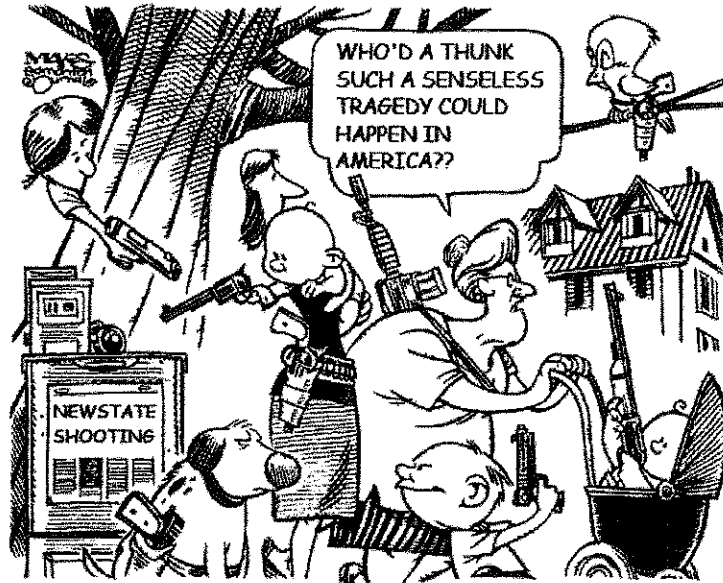
(2) If, at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available occupant restraining device, was not wearing all of the

available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, the fact that the occupant was not wearing the available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

- (a) It seeks to recover damages for injury or death to the occupant.
- (b) The defendant in question is the manufacturer, designer, distributor, or seller of the passenger car.
- (c) The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not crashworthy.

- (G)(1) Whoever violates division (B)(1) of this section shall be fined thirty dollars.
- (2) Whoever violates division (B)(3) of this section shall be fined twenty dollars.
- (3) Except as otherwise provided in this division, whoever violates division (B)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation of division (B)(4) of this section, whoever violates division (B)(4) of this section is guilty of a misdemeanor of the third degree.

**END OF EXAMINATION**



### Miscellaneous

Generally, intentional torts (IT) are not covered by insurance but if the defendant has deep pockets, it is wise to make a claim for both IT and negligence. ✓

If insurance is involved, the insurer has a duty to defend, indemnify and settle claims. It is unknown whether parties are insured, but presumably Clint has insurance related to his gun shop and Funder has auto insurance.

Newstate has adopted a modified comparative fault version of comparative negligence (Statute 4), specifically, their version allows a plaintiff to recover damages so long as his or her fault is "not greater than the combined tortious conduct of all other persons."

Basically, a plaintiff can be up to 50% responsible for his or her injuries and still collect 50% of the damages.

As long as wrongful death action is brought within 2 years of death, the Statute of Limitation defense is not available here. We do not have sufficient knowledge regarding Newstate's other statutes of limitation.

Res Ipsa Loquitur is not required in this analysis.

MAMMA V. FUNDER / CAMPBELL JR'S ESTATE / CLINT

Mamma will sue Funder, Campbell Jr.'s Estate (the "Estate"), and Clint as joint and several tortfeasors. Though each party acted separately, their actions caused a single indivisible injury to Mamma. Though the injury itself is directly related to the accident, the accident would not have occurred without Campbell Jr.'s negligent handling of the gun, which wouldn't have occurred without Clint's negligent turnover of the loaded gun.

*Apparent  
Fault*

Mamma v. Funder

Mamma claims that Funder acted negligently through misfeasance.

**Duty**

When active, there is a duty (Heaven v. Pender) to be reasonable like the man mowing the lawn in his shirtsleeves. Funder was driving and had a duty to do so reasonably.

**Standard of Care (SOC)**

To behave as a reasonably prudent person (RPP) would under the circumstances. That is, Funder should have operated his vehicle as an RPP would (no loaded gun in cab, eyes on road, hands on wheel).

**Breach of SOC**

Funder took his hands off the steering wheel and looked away from the road – his conduct while operating the vehicle was unreasonable. The burden of taking precautions

(keeping hands on wheel, eyes on road) was far less than the gravity of loss and probability of an accident (Learned Hand Theory). Risky activities cause injury.

**Negligence Per Se (NPS) (Belt & Suspenders)**

Funder breached SOC by violating Newstate Statute 1(B) and (C) when he transported a loaded firearm in the cab. If Funder had not violated the statute, then he would not have been distracted by his girlfriend pointing the gun at him.

**Cause in Fact (CIF)**

Rewind the videotape of life: but-for Funder breaching the SOC by failing to maintain reasonable care while driving, Mamma would not have been injured.

**Proximate Cause (PC)**

Proximate Cause requires that the injuries be (i) a foreseeable consequence, and (b) reasonably anticipated (Palsgraf). A car accident that causes injuries is a foreseeable consequence of driving with one's hands off the wheel and eyes off the road. The extent of injuries need not be foreseeable, only that an injury would likely occur.

**Damages (Compensatory)**

Mamma will sue Funder for the injuries caused by the accident, as well as negligent infliction of emotional distress caused by her injuries (if any). Mamma's age may have exacerbated her injuries, but she is taken as-is (Eggshell Plaintiff). Mamma received prompt medical care, thus mitigating the extent of damages. Mamma's low out of pocket expenses do not matter. She can sue for all damages and then Medicare can seek re-payment after settlement.

	Past	Future
Special	Medical Expenses Include all costs: surgery, X-Rays, hospital, PT, prescriptions, etc... Lost Wages If any Property Clothing Incidentals	All Future Medical Expenses Continued PT arm Plastic surgery on cheekbone Lost Wages / Diminished Earning Capacity Incidentals
General	Pain and Suffering <sup>1</sup> Accident Medical Procedures	Loss of Enjoyment of Life Disfigured cheekbone No more badminton, etc...

**Defenses**

Comparative Negligence

Defense will likely argue that Mamma was responsible for her injuries because she did not wear her seatbelt. However, according to Newstate's Statute 7(B)(3), only passengers in the front seat must wear their seatbelts. Even if Mamma should have been wearing a seatbelt, Statute 7(F)(1) states that a person's failure to wear a seatbelt cannot be used as "evidence of negligence or contributory negligence." At most, the defense may be able to claim that Mamma's injuries were worsened which may "diminish recovery of compensatory damages."

However, not wearing the seatbelt did not cause the accident; Funder's reckless driving caused the accident.

---

<sup>1</sup> In some states, a person waives the ability to collect for pain and suffering if he or she failed to wear a seatbelt. Newstate's statutes aren't specific.

A good strategy for her attorneys: "Mamma Campbell may have been partly responsible, but if that's true, she isn't more than 5% responsible." ✓

Negligent Assumption of Risk

Defense may claim that Mamma failed to avoid consequences by remaining in the vehicle after knowing that her daughter was brandishing a weapon and distracting the driver. ✓

Mamma v. Clint

**Duty**

As an owner/operator of a gun shop, Clint was active and therefore had a duty to be reasonable. Clint had a duty *not* to supply a "potentially dangerous instrumentality" a.k.a a loaded gun (negligent entrustment). *Potential Duties:* (1) Business Duty to Protect from the foreseeable risk of harm that could be caused by handing a loaded weapon to the passenger of a car. Clint's negligence created the foreseeable risk. (2) Campbell Jr. and Funder were invitees so Clint may have owed them the highest degree of duty in maintaining reasonable care in activities on his property. Clint (land possessor) knew or should have known of the danger of loading a gun (on his property) and then handing it to the passenger of a car.

**SOC**

Clint should not have entrusted a loaded gun to a first-time gun owner who was also a passenger in a vehicle. Clint should have exercised reasonable care in activities taking place in his gun shop/parking lot.

### **Breach of SOC**

Clint loading the weapon and knowingly handing it to a passenger of a car was a breach of reasonable SOC. He also breached the SOC via negligent entrustment.

### **NPS**

We do not know Newstate's rules regarding gun sales, but chances are high that Clint violated one or more statutes. Though he didn't personally violate a Newstate statute, he played a substantial role in Campbell Jr. and Funder's violation.

### **CIF**

But-for Clint breaching the SOC by failing to act reasonably in the sale and subsequent handling of the gun, Funder would not have been distracted and Mamma would not have been injured.

### **Proximate Cause**

The foreseeability of Mamma's injuries may not be as strong with Clint's actions as it was with Funder's, but Clint should have been able to foresee that handing a loaded gun to a passenger in a car could end up causing harm/accident. (Chain of Causation) The mechanism need not be foreseeable, just the injury (Rat Flambé!).

### **Damages (Compensatory and Punitive)**

*See above.* Identical but punitive damages may also be awarded to punish Clint.

Loading a gun and handing it to a giddy first-time gun owner after she gets inside of a vehicle is a bad, bad thing. Such negligence should be discouraged by any means possible (including punitive damages).



**Defenses**

*See above.*

Mamma v. the Estate ✓

**Duty**

Campbell Jr. was active and had a duty to be reasonable.

**SOC**

To act as an RPP would (no loaded weapon in cab of vehicle, no brandishing loaded weapon, etc...)

**Breach of SOC**

Campbell Jr. was not reasonable in her actions.

**NPS**

Campbell Jr. breached Newstate's statutes by carrying and discharging a loaded gun in the cab of a car.

**CIF**

But-for Campbell Jr. breaching the reasonable SOC and holding/brandishing a loaded gun in the car, the accident would not have occurred (unless Mamma's version of events is correct).

**Proximate Cause**

It was foreseeable that waving and pointing a loaded gun at the driver of a car would cause an accident.

**Damages, Defenses**

*See Mamma v. Funder.*

ESTATE OF CAMPBELL Jr. (the "Estate") v. FUNDER / CLINT

The Estate will sue Funder and Clint as joint and several tortfeasors for the same reasons set forth in *Mamma v. Parties*. ✓

Pursuant to Newstate Statute 3(A)(1), the civil action for wrongful death will be brought for the benefit of the surviving spouse, children, and parents of the decedent. We do not know if Campbell Jr. had children. Funder was Campbell Jr.'s boyfriend, not spouse, so unless other Newstate provisions apply, Funder will not be included. The primary beneficiary here, given available information, is Mamma Campbell.

Estate v. Funder

**Duty**

See *Mamma v. Funder*. If Funder actually pulled the trigger, then in addition to having a duty to drive reasonably, he had a duty to not recklessly brandish the weapon (and not pull the trigger). He explicitly admitted to knowing "not to point a weapon at another person unless you intend to shoot that person." This could lead to a possible intentional tort claim if he "intended" to shoot Campbell Jr. ]

**SOC, Breach of SOC, NPS:** See *Mamma v. Funder*.

**CIF**

But for Funder breaching the SOC by failing to maintain reasonable care while driving, the impact would not have occurred and caused Campbell Jr. to shoot herself in the head.<sup>2</sup>

---

<sup>2</sup> If Mamma Campbell's rendition is correct and Funder actually shot Campbell Jr. before the crash, then this changes because the accident did not cause the gun to go off – Funder's accidental or intentional pulling of the trigger is what caused the bullet to enter Campbell Jr.'s head.

Analyze.

### **Proximate Cause**

It is reasonably foreseeable that a loaded gun may go off and injure someone in a car if the driver is driving recklessly.<sup>3</sup>

### **Damages (Compensatory)**

**Wrongful Death (Statutory):** Per Newstate Statute 3, any recoverable post-death losses are covered in the wrongful death claim. Funeral and burial expenses, loss of support (Mamma received \$200/month from daughter and may have relied more heavily on her as she aged), loss of services, loss of companionship, consortium, care, and assistance. Newstate Statute (3)(B)(5) allows recovery for mental anguish. Mamma experienced significant mental anguish because of the loss of her daughter and witnessing her daughter shot in the head.

**Survival Claim (Statutory):** Campbell Jr. suffered a bullet to the head as well as a broken leg, arm, and sternum. Campbell Jr. was conscious when Funder dialed 9-1-1 and looked "terrified" as she bled "a lot" before losing consciousness. The Estate can potentially collect for medical expenses (ambulance fees, ER costs, etc...), lost wages, and pain and suffering.

### **Defenses**

#### Comparative Negligence

Campbell Jr.'s percentage of responsibility will most likely be higher than Mamma's because she was recklessly brandishing a loaded gun inside a moving

---

<sup>3</sup> If Mamma Campbell's rendition is correct, it is also reasonably foreseeable that if Funder took the loaded weapon from the passenger and in turn pointed at her, injury may occur. Chain of causation is also relevant here as (a) the gun would most likely not have gone off if the accident wouldn't have occurred or (b) the gun would most likely not have gone off if Funder wouldn't have pulled the trigger.

Why is this a duty?

vehicle. The argument against this would be that the gun would not have gone off without the force of impact (if Funder's rendition is correct). As long as her fault is at or below 50%, the Estate can collect.

Assumption of Risk:

Funder may argue that Campbell Jr. understood and knowingly partook in the risk.

Estate of Campbell Jr. v. Clint

**Duty, SOC, Breach of SOC, NPS, CIF, PC:** *See Mamma v. Clint.*

**Damages:** *See Estate v. Funder.*

**Defenses:** *See Estate v. Funder.* The same except re: Comparative Negligence, the Estate can argue that Campbell Jr.'s negligence would not have happened if not for Clint breaching the reasonable SOC and giving her a loaded weapon (this may reduce her percentage of fault).

PRIMUS V. FUNDER / THE ESTATE / CLINT

EBERT V. FUNDER / THE ESTATE / CLINT

Primus and Ebert will each bring a lawsuit against Funder, the Estate, and Clint as joint and several tortfeasors for the same reasons stated in previous lawsuits. They will *not* be joined as plaintiffs because, if pleading negligence, there will be a conflict of interest as they may both be trying to collect from the same pot of cash (potential insurance cap).

The following analyses apply in all Primus and Ebert Lawsuits, each relating to former lawsuits.

**Duty / SOC / Breach of SOC / NPS:** *See Mamma v. Funder, v. Clint, v. the Estate, respectively.*

**CIF:** See *Mamma v. Funder, v. Clint, v. the Estate, respectively*. Identical except that but-for each defendant's negligence, neither Funder nor Ebert would have been injured.

**Proximate Cause:** See *Mamma v. Funder, v. Clint, v. the Estate, respectively*. Identical except the foreseeable consequence is that people in an outside car would be injured.

**Primus's Damages**

	Past	Future
Special	Medical Expenses Include all costs: surgery, hospital, X-Rays, MRI, PT, prescriptions, etc... Lost Wages (if any) Property Case of Akvavit (if his) Clothing Incidentals	All Future Medical Expenses Continued PT for cervical strain Diminished Earning Capacity Minimal considering limited extent of injury Incidentals
General	Pain and Suffering Accident	Loss of Enjoyment of Life Minimal considering limited extent of injury

**Ebert's Damages**

	Past	Future
Special	See Primus' damages	Medical Expenses Rehabilitation Facility Lost Wages / Diminished Earning Capacity Substantial given extent of injury
General	Pain and Suffering Accident Medical Procedures Embarrassment from C. diff.	Pain and Suffering Substantial given extent of injury Emotional Distress Embarrassment from C. Diff Loss of Enjoyment Substantial because of extent of injury (broken hip) and illness (C. diff)

### **Miscellaneous Ebert**

Though we don't know Newstate's statutes regarding intervening cause, the Defendants are most likely on the hook for Ebert's C. Diff because he wouldn't have been in the hospital if not for the initial accident (intervening cause).

Everyone knows that if you break your hip, you die and recovery for fear of future physical harm/shortened life span is recoverable. Further, Ebert can sue for mental anguish and embarrassment from C. Diff because in Torts, "We compensate you for diarrhea." *Professor Russell, 2014.*

### **Defenses**

Both were wearing seatbelts, did not assume risk (related to this accident), nor were they comparatively negligent. Though defense will bring up Plaintiffs' undocumented statuses, their citizenship is not relevant to this case, nor is their drunken state because neither contributed to the accident or made it worse.

### **FUNDER v. ANY POTENTIAL PARTY**

It is unlikely that any attorney will take on a lawsuit brought by Funder against any of the parties because Funder (a) assumed the risk, (b) was also negligent and will likely be found more than 50% responsible so the ruling would be in Defendant's favor per Newstate's statutes. There may have been a potential assault intentional tort claim against Campbell Jr. because she pointed the weapon at Funder and he believed that he was in danger, but we need more information.

**Word Count: 2,495**

**Handguns. Necessary for Self Defense...Whoops!**

**Show Me the Money!**

The goal is to tell a simple story that allows our clients to obtain pre-injury condition by "reaching into the bucket of money" that is insurance. The insurance companies send "woman and men in suits" whose responsibilities are: 1) Defend, 2) Indemnify, and 3) Settle on insured's behalf. Thus, when determining the course of action with relation to the November 21<sup>st</sup> events, availability of insurance from possible defendants will be a major point of emphasis.

*Collateral Source Rule – Outside Insurance/payment sources cannot be taken into account when determining damages*

*Subrogation- Insurance companies of those involved in the tragedy have the right to collect funds from liable parties for \$ they have pre-paid to their insured*

**Claims Against Guns R' Us/Clint**

**Claimants (See Appendix A For Damages)**

( Estate of Becca Campbell (Survival/Wrongful Death)  
Funder (Negligence)  
Mother of Campbell (Negligence)  
Primus (Negligence)  
Ebert (Negligence)

**a. Duty/Standard of Care-**

Duty is to be reasonable when active (RWA-Heaven v. Pender). Guns R' Us/Clint have a general duty to act as a reasonable prudent person (RPP). While expertise in

WST

guns does not require Clint to meet a professional standard of care, his expertise will be considered when determining the reasonableness of his actions.

*Negligent Entrustment-*

No general duty to protect another (nonfeasance). There can be liability (due to misfeasance) for supplying someone who should not be trusted with a potentially dangerous item. One could say Clint exercised misfeasance when he handed over the gun, unsecured and loaded, to Campbell while she was seated, buckled, and prepared to travel down the road.

**b. Breach-**

Yes. 1) Non-adherence to custom is evidence of unreasonable conduct. It is doubtful that Clint's actions, including loading the gun while in the store and handing the loaded gun to Campbell (outside of box) while she was seated/buckled, is custom. 2) The Hand Formula: The burden of placing the gun, preferably unloaded, in the trunk of the car is far less than the probability and extent of possible harm caused by handing the loaded gun to a passenger. 3) Statute 1 is clear in stating that one may not carry a loaded gun in a vehicle unless it is not accessible to the driver or any passenger without leaving the vehicle. Being in the firearms industry, Clint should be aware that his actions were in opposition of said law. This is further evidence that conduct was unreasonable.



**c. Cause In-Fact-**

Yes. But for Guns R' Us/Clint handing the loaded gun to Campbell, without the box, while she was a passenger, the injuries/losses would not have occurred.

**d. Proximate Cause-**

Yes. Proximate cause can be established under the foreseeability test. That is, it is foreseeable that a passenger, in a moving car, with a loaded gun, and limited experience, could lead to the injury and/or death of not only the occupants in said car, but also other commuters on the road.

 *Stretch*

**e. Damages-**

**See Appendix A**

**f. Defenses**

*Assumption of Risk-*

Express- If any contract regarding safety, etc. was signed by Campbell at the time of the gun purchase, Clint/Guns R' Us could potentially bring this up as an assumption of risk defense.

Implied- If there was not a formal contract signed by Campbell, the store could claim defense under an implied assumption of risk (you were told and should have known that guns are dangerous). This likely would fall under comparative negligence, however.

*Comparative Negligence (Modified >50%)-*

If the combined negligence of the defendants is greater than that of the plaintiff, than the plaintiff is entitled to damages. Thus, defendant will attempt to divert as much fault as possible back onto the plaintiff(s) (i.e. Becca, Funder, Mother).

Appropriate

*Other Defensive Claims/Challenges:*

1. If a claim of negative entrustment were brought, it would certainly be challenged. Specifically, Guns R' Us/Clint would argue that they did not have the right to control the gun once the sale took place.
2. Guns R' Us would likely challenge the notion of what constitutes custom when it comes to delivering a weapon.
3. Guns R' Us would likely challenge the assertion of Statute 1 as evidence of their unreasonableness. That is, they would state that the statute related the driver and holder of the gun, not them as the dealer.
4. Guns R' Us would claim that the actions of Campbell and Funder were unforeseeable, and thus, superseding intervening causes of the tragedy. If correct, this could free them of liability.

Fault of others

5. Mitigation Doctrine- Guns R' Us may attempt to use the mitigation doctrine as defense against the injuries to Campbell's mother. Statute 7, however, dictates that this defense can only be used to diminish recovery if injured were in the front seats.

### Claims Against Ben Funder

#### Claimants (See Appendix A For Damages)

Estate of Becca Campbell (Survival Claim/Wrongful Death)  
Mother (Negligence)  
Primus (Negligence)  
Ebert (Negligence)

#### **a. Duty/Standard of Care-**

RWA. Ben Funder has a general duty to act as a RPP.

#### *Intentional Tort:*

According to Campbell's mother, it is possible that Funder intentionally shot Campbell. If so, a battery claim is possible. <sup>if</sup> Unless Funder is independently wealthy, this would ~~not~~ make sense, as insurance money is not available for intentional tort claims.

#### **b. Breach-**

Yes. 1) The jury will likely find that the actions of Funder were not reasonable.

Allowing a passenger to waive and point a loaded gun while moving down the road is generally not reasonable by any standard. Taking one's hands off the wheel and eyes off the road while traveling is equally as unreasonable. 2) The Hand Formula:

GS  
The burden of taking steps to stop the actions of his passenger (stopping the car, requested the gun be placed in trunk, etc.) is much less than the probability and extent of possible harm caused by allowing the passengers reckless actions to continue. 3) Statute 1 states "No person shall knowingly transport or have a loaded NPS  
firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle." Funder was knowingly "transporting" the gun by driving the automobile. A jury could determine that: 1) the harm suffered by plaintiff was what the statute was meant to prevent, 2) the plaintiff is in the class of people the statute is meant to protect, 3) the statute established a standard of conduct. Depending on the jurisdictional rules, this could fall under negligence per se. At very least, it is evidence of unreasonableness.

**c. Cause In-Fact-**

Yes. But for Funder allowing the actions of Campbell to continue, the injuries/losses would not have occurred. Funder could have stopped the vehicle and made arrangements for a safer situation.

But for Funder taking his hands off the wheel and eyes off the road, the injuries/losses would not have occurred.

**d. Proximate Cause-**

Yes. Proximate cause can be established under the foreseeability test. That is, it is foreseeable that allowing a passenger in your automobile to carry, recklessly waive, and point a loaded gun risks injury/death, not only the occupants in said car, but also to other commuters on the road. It is also foreseeable that driving without your hands on the wheel can lead to injuries/loss to not only those in your own vehicle, but those around you.

**e. Damages-**

**See Appendix A**

**f. Defenses**

*Comparative Negligence (Modified >50%)-*

If the combined negligence of the defendants is greater than that of the plaintiff, than the plaintiff is entitled to damages. Thus, defendants will attempt to divert as much fault as possible back onto the plaintiff(s). *↳ onto car of*

*Other Defensive Claims/Challenges:*

1. Emergency- Funder may claim that his duty/standard of care should be that of a person in an emergency situation. His argument would be that he was startled by the notion that he thought he was about to get shot.
2. Superseding Intervening Cause- Like Guns R' Us, Funder could claim that the actions of Campbell where a superseding intervening cause of the events. That said, I think he is fighting an uphill battle as the events from his perspective where not unforeseeable.

Claims Against the Estate of Becca Campbell

Claimants (See Appendix A For Damages)

Mother  
Funder  
Primus  
Ebert

**a. Duty/Standard of Care-**

RWA. Becca Campbell had a general duty to act as a RPP.

**b. Breach-**

Yes. 1) The jury will likely find that the actions of Becca Campbell were not reasonable. Pointing a loaded gun at your surroundings while a passenger in a moving vehicle is not likely to be seen as reasonable. 2) Statute 1 states "No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle." Campbell had physical (in hand) possession of the loaded gun while a passenger in the automobile. A jury could determine that: 1) the harm suffered by plaintiff was what the statute was meant to prevent, 2) the plaintiff is in the class of people the statute is meant to protect, 3) the statute established a standard of conduct. Depending on the jurisdictional rules, this could fall under negligence per se. Again, it is evidence of unreasonableness.

**c. Cause In-Fact-**

Yes. But for Becca Campbell traveling while holding a loaded gun, waiving it around, and pointing it at surroundings, the injuries/losses sustained during the events of November 21<sup>st</sup> would not have occurred.

**d. Proximate Cause-**

Yes. Proximate cause can be established under the foreseeability test. It is foreseeable that carrying, waiving, and pointing a loaded gun risks injury/death, not only the occupants in the vehicle you occupy, but also to other commuters on the road.

**e. Damages-**

**See Appendix A**

*Comparative Negligence (Modified >50%)-*

If the combined negligence of the defendants is greater than that of the plaintiff, than the plaintiff is entitled to damages. Thus, defendants will attempt to divert as much fault as possible back onto the plaintiff(s) (Guns R' Us/Clint, Funder).

Possible Claims Against Orthopedic Surgeons/Hospital

Possible Claimants (See Appendix A for Damages):

Ebert

**a. Duty-**

Professional Standard of Care for Orthopedic Surgeons

RWA for Hospital and other support staff.

**b. Standard of Care-**

Orthopedic Surgeons: Must meet the profession's customary practice. Specifically, they must meet the customs of Dr.'s with comparable expertise (Orthopedic) and resources.

Hospital/Support Staff: General Duty to act as a RPP.

**c. Breach-**

Based on what we know, it is impossible to determine whether the orthopedic surgeons or the hospital breached the standard of care. Research would have to be conducted as to their policies, procedures, etc. Evaluation of their cleaning/sanitizing procedures during Ebert's stay will be especially important as the claim is for C-Diff.

**d. Cause In-Fact-**

Need more information regarding their actions compared to the standard.

**e. Proximate Cause-**

Need more information regarding their actions compared to the standard.



**f. Damages-**

**See Appendix A**

**g. Defenses**

*Assumption of Risk-*

Express and Implied assumptions of risk usually apply in med malpractice cases. Dr.'s do have a responsibility to make patients aware of the material risks (patient rule) associated with the procedure/care. Even if not informed, plaintiffs must prove that they would not have proceeded if they where told to have a successful claim. Furthermore, medical malpractice cases require expert testimony. This can be difficult to locate, as a wide range of "alternative methods" are acceptable by the field.

*Comparative Negligence (Modified >50%)-*

If the combined negligence of the defendants is greater than that of the plaintiff, than the plaintiff is entitled to damages. Thus, defendants will attempt to divert as much fault as possible back onto the plaintiff (i.e. Something the patient did put them at higher risk, etc)

APPENDIX A

## NOTE ON DAMAGES:

All damages claimed are compensatory. While there is an outside chance that Guns R' Us could face punitive damage (to punish) claims, is relatively doubtful. While they were negligent, it would be hard to show that they did a "Bad, Bad" thing.

Estate of Becca Campbell Potential Damages - Survival

	Pre-Death	Post-Death
<b>Special</b>	<b>Medical Bills-</b> <b>Paramedics: \$25,670.00</b> <b>Hospital: \$35,890.00</b>  <b>Property-</b> <b>Clothes, Gun: \$725.00</b>	N/A
<b>General</b>	<b>-Pain and Suffering (Resulting from Accident)</b>	N/A

Estate of Becca Campbell Potential Damages - Wrongful Death

	Pre-Death	Post-Death
<b>Special</b>	N/A	<b>-Burial Costs: \$17,000.00</b> <b>-Autopsy Cost: <del>\$4,500.00</del></b> <b>-Earning Capacity (\$ for Mom's Rent - (Reduced for time value \$)</b>
<b>General</b>	N/A	<b>-Loss of society Companionship Assistance Attention, etc. -Mental Anguish from loss</b>

Tort Claims

*Estate of Becca Campbell v. Guns R' Us/Clint and Funder*

APPENDIX A (Cont.)Funder's Potential Damages

	Past	Future
<b>Special</b>	-Damages to Automobile (Dep. Value unless total)  -Other Property Damage Clothes, Phone, etc.	N/A
<b>General</b>	N/A	N/A

Tort Claims

N/A

Funder is not a very good plaintiff. His damages are minimal and he likely will be found to have some contributory fault. Thus, I would not recommend that he bring any tort claims.

APPENDIX A (Cont.)Campbell's Mother Potential Damages

	Past	Future
<b>Special</b>	<b>Medical Bills:</b> <b>Medicare,</b>  <b>Out-of-Pocket: \$475.00</b>  <b>-Property</b> <b>Clothes, etc.</b>  <b>-Lost Wages (If Applic)</b> <b>DOA to Present</b>	<b>-Future Medical Costs</b> <b>Checks ups, future</b> <b>procedures, medical</b> <b>incidentals, medical related</b> <b>travel, rehab</b>  <b>-Future Earning Capacity</b> <b>(Reduced for time value \$)</b> <b>(If Applic) Career</b>
<b>General</b>	<b>-Pain and Suffering</b> <b>(Resulting from Accident)</b> <b>+ P/S from Procedures</b> <b>Stress of Procedure, etc</b>  <b>Witnessing Daughter's</b> <b>Injuries</b>	<b>-Hedonic Losses</b> <b>Insecurities (scars, etc)</b> <b>Loss of Activities</b> <b>Future P/S due to injury</b>

Tort Claims***Mother v. Guns R' Us/Clint and Funder and Becca Campbell***

NOTE: Earning related damages and Hedonic losses are unknowns based on the information given. However, if applicable, they are valid claims.

APPENDIX A (Cont.)Primus' Potential Damages

	Past	Future
<b>Special</b>	<b>Medical Bills:</b> <b>Paramedics: \$12,000</b> <b>Hospital: \$43,789</b>  <b>-Property</b> <b>Car: \$17,500</b> <b>Akvavit</b> <b>Etc.</b>  <b>-Lost Wages (If Applic)</b> <b>DOA to Present</b>	<b>-Future Medical Costs</b> <b>Checks ups,</b> <b>Physical Therapy</b> <b>Future procedures</b> <b>Incidentals</b> <b>Travel</b>  <b>-Future Earning Capacity</b> <b>(Reduced for time value \$)</b> <b>Time Off of Work</b>
<b>General</b>	<b>-Pain and Suffering</b> <b>(Resulting from Accident)</b> <b>+ P/S from Treatment</b>	<b>-Hedonic Losses</b> <b>Loss of Activities, etc.</b> <b>-Future P/S Due to Injuries</b>

Tort Claims

*Primus v. Guns R' Us/Clint and Funder and Becca Campbell*

## APPENDIX A (cont.)

Ebert's Potential Damages – Auto Accident

	Past	Future
<b>Special</b>	<b>Medical Bills:</b> <b>Hospital/Surgeons:</b> <b>\$82,000.00</b>  <b>-Property</b> <b>Clothes, etc.</b>  <b>-Lost Wages (If Applic)</b> <b>DOA to Present</b>	<b>-Future Medical Costs</b> <b>Checks ups,</b> <b>Physical Therapy</b> <b>Future procedures</b> <b>Incidentals</b> <b>Travel</b>  <b>-Future Earning Capacity</b> <b>(Reduced for time value \$)</b> <b>Career/Time Off</b>
<b>General</b>	<b>-Pain and Suffering</b> <b>(Resulting from Accident)</b> <b>+ P/S from Treatment</b>	<b>-Hedonic Losses</b> <b>Loss of Activities, etc.</b> <b>Dizziness, Vision, etc.</b> <b>Future P/S Due to Injuries</b>

Ebert's Potential Damages - Hospital

	Past	Future
<b>Special</b>	<b>Medical Bills:</b> <b>After Re-Entry to Hospital</b> <b>To Current</b>  <b>-Lost Wages (If Applic)</b> <b>Re-Entry to Present</b>	<b>-Future Medical Costs</b> <b>Checks ups, etc</b>  <b>-Future Earning Capacity</b> <b>(Reduced for time value \$)</b> <b>Time Off of Work</b>
<b>General</b>	<b>-Pain and Suffering</b> <b>(From C.Diff)</b> <b>+ P/S from Treatment</b>	<b>-Hedonic Losses</b> <b>Loss of Activities,</b> <b>Depression, etc.</b>  <b>Future P/S – Soreness, etc.</b>

Tort Claims*Ebert v. Guns R' Us/Clint and Funder and Becca Campbell**Ebert v. Surgeons/Hospital*

### Overall strategy

1. It's all about the clients, and getting the most money available for them. Goal = to make the clients whole.
2. Damages: Past damages = damages from date of the accident to date of trial. Although Newstate position is unclear, many jurisdictions have statutes that give plaintiffs interest on past damages. Future damages = damages from the date of trial, for the rest of plaintiff's projected life. Future damages need expert testimony and are reduced to present value.
3. Show Plaintiff is less than 50.1% liable. Under Newstate's Statute 4, a plaintiff is barred from recovery if his share of tortious conduct is proportionally 50.1% or more.
4. Prove each element by a preponderance of evidence (50.1%).
5. None of these claims are presently barred by a statute of limitations.
6. Concerted Action: Clint, Campbell, and Funder all were a part of encouraging the tortious action of allowing a passenger of a motor vehicle access to a loaded handgun. By using joint and several liability, we can collect from whichever defendant has the most money. If concerted action doesn't work, then the plaintiffs can bring claims against each individual defendant. Although Newstate's position is unclear, probably each defendant would be liable for his percentage of tortious conduct. The plaintiff could collect from each defendant as long as he had insurance or lots of money.

WOT

Exam number 809

7. Vicarious liability: Guns-R-Us most likely has the deep pockets, so we want to use vicarious liability: An employer is on the hook for an employee's negligence (Clint) when the employee is acting within the scope of employment. Plaintiffs might also consider bringing a negligence claim against Clint himself, if he has insurance or a lot of money (Same prima facie case as Campbell's Estate v. Guns-R-Us).

8. Punitive Damages: The defendant has to do "very bad, bad thing." It will plead us out of insurance, but if the defendant has deep enough pockets, it might be worthwhile to ask for punitive damages.

---

### **Campbell's Estate v. Guns-R-Us (Survival Action)**

Although we want to use concerted action, for clarity's sake, Campbell's claim against Guns-R-Us and Funder are analyzed separately.

*Apparent But each was negligent*

**Duty:** When active there is a duty. Heaven v. Pender. When Clint sells guns, he has a duty to the customers (Campbell). Businesses have a duty of UTMOST care to their customers.

**Standard of Care:** To maintain reasonable care in activities on the premises of Guns-R-Us.

**Breach of Standard of Care:** Clint breached the S.O.C. by failing to maintain reasonable care in the activities on its premises. Clint was unreasonable when he loaded the handgun and gave it to Campbell. He knew she was unfamiliar with handguns, evidenced by her asking Clint to load it properly. In addition, he gave a loaded handgun to Campbell without giving her any instructions on how to safely use it. Clint handed the loaded gun to her while she was in the car=concerted action between Funder, Campbell, and Clint.



Exam number 809

**Cause in Fact:** Rewinding the videotape of life, Campbell would not have died but for Clint breaching the S.O.C. If that doesn't work, use substantial factor.

**Proximate Cause:** It is reasonable to foresee someone getting shot when a person unfamiliar with handguns is handed a loaded handgun without any prior instruction on gun safety. There is no superseding intervening cause.

Defense would say: "Whodathunk?" Campbell's response: "Rat-Flambé, Mechanism doesn't matter."

### **Damages**

Economic

The Glock \$725

Paramedics \$25,670

Hospital Costs \$35,890

Burial Costs \$17,000

Autopsy \$4,500 <sup>~</sup>

Non-economic

Pain and suffering from the time Campbell was shot and conscious until she was unconscious.

### **Defenses**

1. Comparative Fault: Defendants push as much comparative fault on Campbell as they can. Under Statute 6, plaintiff's damages are reduced to the proportion of her tortious conduct, hoping to push her percentage to 50.1%. They will claim that Campbell violated the Reasonable Prudent Person (RPP) by getting into a car with a

✓  
finder

Exam number 809

loaded handgun and waving it around. They may also use Negligence Per Se (N.P.S.), as Campbell violated Statute 1(B).

2. Assumption of the Risk: Defendants may argue that Campbell knowingly and voluntarily assumed the implied risk of injury when she bought a handgun without knowing how to use it safely.

3. Party at fault: Clint may claim that Funder's negligent actions contributed to Campbell's death (RPP and NPS Statute 1B) and therefore Guns-R-Us comparative fault should be reduced. However, if using concerted<sup>?</sup> action works, this won't help Guns-R-Us, as they with probably the deep pockets, will pay for the team's fault.

4. Intentional Tort: Guns-R-Us might try to use the story from Campbell's mother, characterizing Funder as committing an intentional tort. This could nullify concerted action, as courts are often reluctant to make other defendants liable for an intentional tort. *more*

5. Vicarious Liability: Guns-R-Us will try to dispute vicarious liability by saying Clint was acting outside the scope of employment. He is only supposed to sell the products, not load guns for customers.

### **Campbell's Estate v. Funder (Survival Action)**

There might be a possible intentional tort claim here based on the story from Campbell's mother. This could nullify concerted action and get Guns-R-Us off the hook. (See above defense 4). In addition, this would plead us out of any insurance that Funder would have, so unless he has a lot of money, then it is better to plead it as negligence. Both will be analyzed below. *us*

Exam number 809

## **Negligence**

See 6-7 of overall strategy.

**Duty:** When active there is a duty. When Funder is driving he has a duty to his passengers and to others on the road.

**S.O.C:** RPP. This is an objective standard. "Like the man who mows the lawn in his shirt sleeves."

**Breach of S.O.C.** Funder didn't act as a RPP as he allowed Campbell to play with a loaded handgun while he was driving.

N.P.S (Belt and suspenders)

1. Statute 1(B)

2. Funder violated the above statute.

3. Campbell, as a passenger is most likely in the class of persons that the statute protects.

4. The statute most likely protects passengers from getting shot, like Campbell did.

**C.I.F** When rewinding the videotape of life, but for Funder allowing Campbell to play with a loaded handgun while driving, Campbell would not have been killed. Show concerted action with Clint (and therefore Guns-R-Us). If that doesn't work, use substantial factor.

**P.C.** See Campbell's Estate v. Guns-R-Us.

**Damages:** See Campbell's Estate v. Guns-R-Us.

**Defenses:** See 1-2 defenses of Campbell's Estate v. Guns-R-Us.

1. Party at fault: Funder should try to push more comparative fault onto Guns-R-Us  
so as to lower his own. ✓

Exam number 809

### **Intentional Tort (Battery)**

We only have to prove that Funder intentionally touched the gun. Whether he intentionally or accidentally pulled the trigger doesn't matter. Only the touching has to be intentional. It doesn't require the intent to harm. We could also show trespass to chattel. Funder intentionally interfered with Campbell's right to her gun.

*not 2 in the.*

**Duty:** Funder was actively driving and interacting with Campbell concerning the gun. Therefore he had a duty towards her.

### **S.O.C RPP**

**Breach of S.O.C.:** A RPP would not try to take control of a passenger's loaded gun while driving.

**C.I.F.** But for Funder trying to wrest control of the gun from Campbell, Campbell would not have died.

**P.C.** It is reasonable to foresee, that by trying to wrest control of the gun from Campbell, Funder would have accidentally or intentionally shot her. No superseding intervening cause.

**Damages:** See Campbell's Estate v. Guns-R-Us.

**Defenses:** Self Defense: Funder used reasonable force because he reasonably believed such force was necessary to protect himself from immediate harm.

**Campbell's Mother (CM) v. Guns-R-Us, Clint, Funder, and Campbell's Estate**

1. CM can bring a wrongful death claim for the death of her daughter, and for her other damages from the car accident.

2. See 6-7 of overall strategy.

3. Family immunity. Although Newstate's position is unclear, most jurisdictions have recognized that it is about insurance and have discarded family immunities.

5. Collateral Source Rule: Newstate's position is unclear. However, in most jurisdictions, CM can still collect the full amount of her damages, even though Medicare paid most of her medical bills.

**Duty.** When active, there is a duty. Guns-R-Us is running a business and they (including Clint) have a duty towards those who are on their premises (including the parking lot). Funder has a duty towards those in his car and others on the road. As a person wielding a loaded gun, Campbell has a duty to the people around her.

**S.O.C. RPP**

**Breach of S.O.C.:** All defendants were a part of allowing a passenger access to a loaded handgun in a motor vehicle. They didn't act like RPPs, and therefore breached the S.O.C.

**B<PL:** The burden to prevent (take the bullets out) was lower than the probability of someone getting shot, and the likely extent of high damages. Therefore, the defendants were unreasonable.

**C.I.F.** In rewinding the videotape of life, if the defendants did not allow a passenger access to a loaded handgun, Campbell would not have died. In addition, Funder would not have crashed his car, additionally injuring CM.

Exam number 809

**P.C.** It is reasonably foreseeable that when a person who has zero experience with handguns, is handed a loaded handgun while in a car, someone will get shot. It is also reasonable to foresee a driver getting distracted because of the loaded handgun and as a result crashing the car. There is no superseding intervening cause.

Defense would say: "Whodathunk?" CM's response: "Rat-Flambe, Mechanism doesn't matter."

### Damages

	Past	Future
Economic	Medical bills \$200/month Lost wages (if any)	Medical bills Medical Incidentals Physical Therapy \$200/month Lost earning capacity (if any)
Non-economic	Pain and Suffering Loss of enjoyment of life? (Eating now painful) Loss of society/care/companionship /assistance/protection/advice (Campbell) Mental Anguish	Grief Therapy Pain and Suffering LOE (Eating now painful) Loss of society/care/companionship /assistance/protection/advice (Campbell) Mental Anguish

Exam number 809

**Defense:** See 4-5 defense of Campbell's Estate v. Guns-R-U.s.

1.Assumption of the risk: Defense will argue the CM assumed the implied risk when she road in a car while the passenger had a loaded handgun. They may also push this into comparative fault, saying that CM herself was negligent in assuming this risk.

2.Party at fault: If consorted action doesn't work, each defendant will try to push comparative fault on the other defendants, thus lowering their own.

3.Failure to avoid consequences: Mrs. Campbell wasn't wearing her seatbelt.

Mrs. Campbell's Rebuttal: Eggshell Plaintiff, you take me as you find me; Not wearing a seatbelt in the back is legal and therefore I wasn't doing anything illegal; I should not be punished for not anticipating your negligence; Not wearing a seatbelt is not a C.I.F. of the injury.

**Ebert v. Guns-R-U.s, Funder, Estate of Campbell** ✓

**Primus v. Guns-R-U.s, Funder, Estate of Campbell**

The Swedes would want to each separately bring claims against these defendants.

See 6-7 of overall strategy. As their prima facie case would be pretty much the same, both are analyzed below, with separate damages.

**Duty, S.O.C., Breach of S.O.C.,** see Campbell's Mother v. Guns-R-U.s, et al.

**C.I.F.** In rewinding the videotape of life, if the defendants did not allow a passenger access to a loaded handgun, the Swedes would not have been harmed.

**P.C.** See Campbell's Mother v. Guns-R-U.s, et al.

**Damages-Ebert**

	Past	Future
Economic	Paramedic Bill Orthopedic Surgeon \$82,000 Other medical Bills Lost Wages Incidentals	Rehab Medical Bills Medical Incidentals Physical Therapy Lost Earning Capacity (from his impaired vision)
Non-economic	Pain and suffering LOE (damaged vision)	Pain and suffering LOE

Ebert may also be able to recover under the Lost Opportunity doctrine as he contracted CDIFF at the hospital, and his chances of surviving were reduced to 30%. Some jurisdictions you cannot recover unless the reduced chance of surviving was 50% or greater. Newstate's law on this is unclear, so he may or may not be able to recover under this doctrine.

Ebert contracting CDIFF at the hospital doesn't count as a superseding intervening event (P.C.). The original tortfeasors are still on the hook. Ebert however, might consider suing the hospital as well. He might have to use Res Ipsa Loquitur as the hospital would have exclusive information concerning the causes of his injury.



**Primus Damages**

	Past	Future
Economic	Akvavit Ford Taurus \$17,500 Paramedics \$12,000 Hospital \$43,789 Lost wages	Medical Bills Medical Incidentals Physical Therapy
Non-economic	Pain and Suffering LOE?	Pain and suffering LOE?

**Defenses:** See defenses 4-5 of Campbell's Estate v. Guns-R-Us and defense 2 of Campbell's Mom v. Guns-R-Us et al.

1. Defendants will probably also try to use the fact that the Swedes were undocumented and Primus was drunk. These facts however are not a C.I.F. of the injuries.

**Funder v. Estate of Campbell, Clint, Guns-R-Us**



See 6-7 of overall strategy.

We have sparse details on the damages Funder suffered. If he suffered pure economic loss (his car), there is still a duty as the touching is related to the harm (Testbank). If he also suffered negligent infliction of emotional distress, he probably still has a claim as he fits in the zone of danger rule. If he had some kind of personal injury, then this would be easiest claim to bring and we could add the economic and emotional distress to the same claim with the "when active there is a duty."

Exam number 809

**Duty:** see above discussion

**S.O.C, Breach of S.O.C.** See Campbell's Mother v. Guns-R-Us et al.

**C.I.F.** But for the defendants breaching the standard of care, Funder would not have been harmed.

**P.C.** See Campbell's Mother v. Guns-R-Us et al.

**Speculated Damages**

	Past	Future
Economic	Car Medical Bills Lost Wages	Medical Bills Physical Therapy Lost earning capacity
Non economic	Pain and suffering Trauma Loss of Consortium LOE	Counseling LOC LOE

**Defense** See defenses 4-5 of Campbell's Estate v. Guns-R-Us, et al.

1. Comparative Fault: Defendants will try to push fault onto Funder, saying that he did not act as RPP. They might also use N.P.S. as he violated Statute 1(B). They hope to push his fault greater than 50%.

2. Assumption of the risk: Funder assumed the risk of driving with Campbell while she had a loaded handgun. Defense will say that assuming this risk was negligent.

3. Party at fault: If consorted action doesn't work, each defendant will try to push comparative fault on the other defendants, thus lowering their own. ✓

Exam number 809

### **Funder v. Estate of Campbell (Intentional Tort)**

Assault=an intentional act that causes apprehension. See Campbell's Estate v.

Funder for risks associated with bringing the claim as an intentional tort rather than negligence.

**Duty** When active there is a duty. Campbell had a duty as she was actively waving a loaded gun around while in a car.

**S.O.C RPP**

**Breach of S.O.C:** Pointing a loaded gun at Funder while he was driving.

**C.I.F** But for Campbell pointing a loaded gun at Funder, he would not have been worried about getting shot and subsequently crashed his car.

**P.C.** It is reasonable to foresee that someone will become psychologically distressed when another person points a loaded gun at him. It is also reasonable to foresee a driver crashing a car from distraction because he is worried that he might be shot.

No superseding intervening cause.

**Speculated Damages** see above

**Defenses:**

Funder's response was unreasonable and in the end, Campbell suffered more harm.

Words: 2500