

FINAL EXAMINATION

TORTS

HOUSE OF RUSSELL

INSTRUCTIONS:

- DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after 3 pm on Friday, 6 May 2011. You must submit your answers by 6 pm on Monday, 9 May 2011. (I am sorry about Mother's Day.) **If you turn in your answers after 6 pm on 9 May, then you will receive an F for your grade. NO EXCUSES.**
- TURNING IN YOUR ANSWERS:** Turn in your answer by sending the file to registrar@law.du.edu. It's a good idea to send your answer with either a send receipt or a delivery receipt. 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]. If you have technical problems turning in your answer, please contact the registrar. If you have additional difficulties, please contact Ms. Diane Bales at dbales@law.du.edu or at 303-871-6580. **Do NOT contact Professor Russell with exam-related difficulties.**
- 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, 10 May. Be cautious, for example, about posting anything on Facebook that looks like a request for assistance. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 6 pm on 9 May 2011.
- 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 wasting time with 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.

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 Dean of Students immediately after this examination ends.

12. **GOOD LUCK:** Good luck and have an excellent summer.

Aquarium Field Trip

Had the truck not pulled in front of her, Tanya feels certain that there would have been no crash and no injuries. Sure, she was speeding just a bit--40 miles per hour on a street posted for 35--and she picked an unlucky time to manipulate the DVD player for the three kids in her van, but without the truck turning and stopping right in the lane in front of her, she would have driven right through the intersection without a problem. The field trip for SilverThorne daycare would have been a success; instead, the day was a disaster.

That's how she saw it anyway. The dead child was not her fault. Nor were her own injuries and those of the two injured children. The other injuries were even less her fault. The driver of the truck put himself in harm's way. And obviously, she had no role in locking the guy under the cover of the bed of the pickup. Tanya never did understand what sort of prank or crime was happening with the dude locked in the bed of the pickup.

Tanya loved being a professional childcare provider. She loved working with children. She studied early childhood development in college and liked taking care of preschoolers in a school with a sophisticated approach to child development.

She especially liked the field trips. Call it what you will--experiential or expeditionary learning--field trips were simply fun and interesting. The field trips were to zoos, museums, factories, government buildings, restaurants, stores--you name it. The field trip to the aquarium, which took place nearly two years ago in June of 2009, was a sure bet. It was a trip they made every year.

Before each SilverThorne field trip, the teachers asked parents to sign a standard permission slip that the school's administrator wrote after attending a continuing education

session for preschool administrators. The permission slip--the same for each field trip except for the date and destination of the trip--included the following language in the final paragraph:

As the parent or guardian of the child who will attend the SilverThorne field trip, I understand and acknowledge the inherent risks of participating in the activity and hereby release SilverThorne, its successors, representatives, assigns, and employees from any and all claims, demands, and causes of action, whether resulting from inherent risks, negligence, or otherwise, of every nature and in conjunction with a SilverThorne activity.

Apart from this paragraph, no other language in the permission slip concerned risks, liability, or the release of liability.

On the fateful day of the trip to the aquarium, only three children went along. Normally, six to nine children would go on each field trip, with two adults to supervise them. For a variety of reasons including a mini-epidemic of pinkeye at the school, only three children were available for the aquarium field trip. Because there were so few children, Tanya was the only adult with the children that day. Because there were only three children, there was no legal requirement that more than one adult accompany them.

Amber's mother signed the permission slip on the morning of the trip, and Amber died that day.

Billy's father signed the permission slip, but he crossed out the words "negligence, or otherwise," when he sent the form in to school, so the paragraph that purported to release SilverThorne from liability looked as follows:

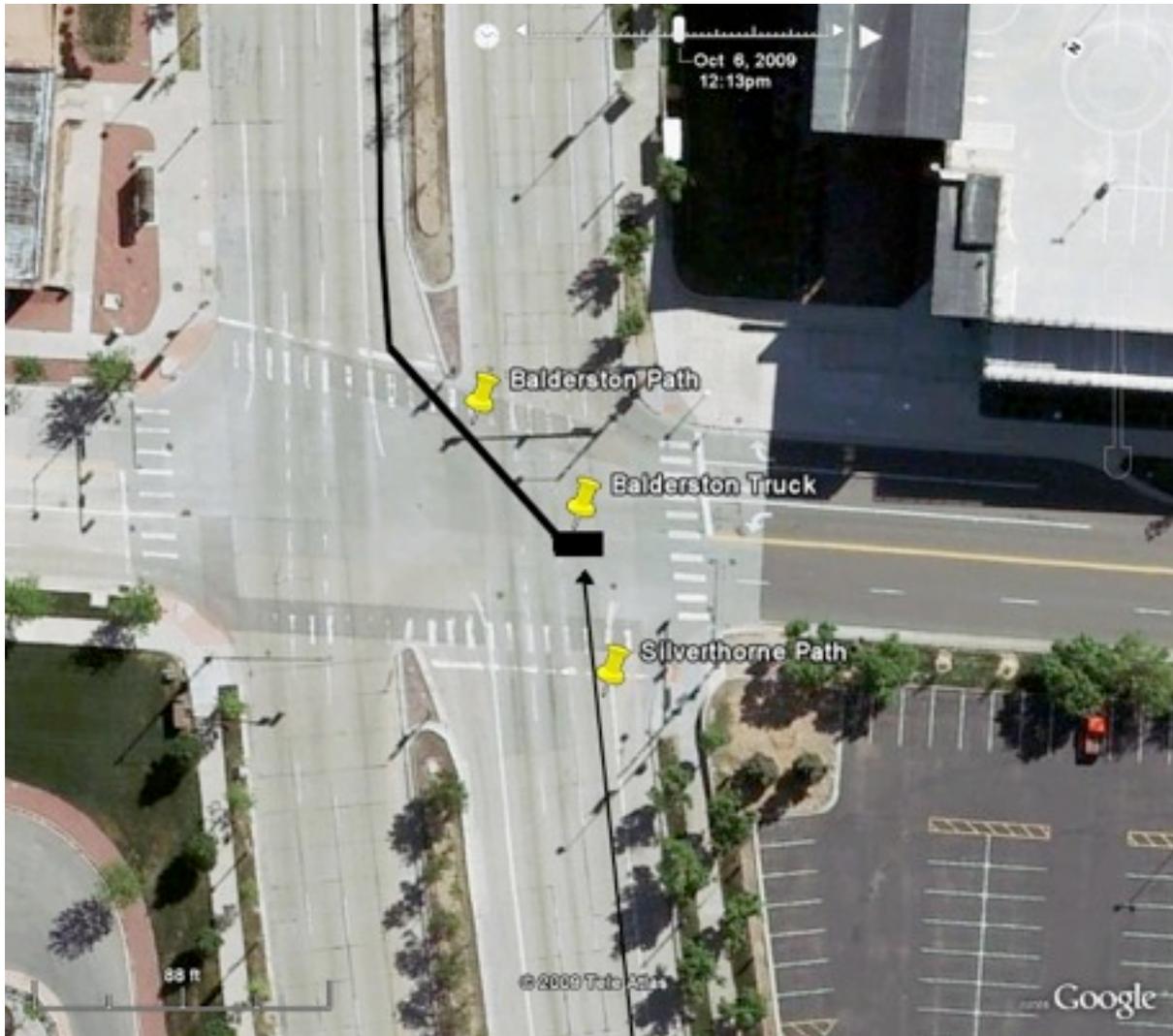
As the parent or guardian of the child who will attend the SilverThorne field trip, I understand and acknowledge the inherent risks of participating in the activity and hereby release SilverThorne, its successors, representatives, assigns, and employees from any and all claims, demands, and causes of action, whether resulting from inherent risks, ~~negligence, or otherwise,~~ of every nature and in conjunction with a SilverThorne activity.

Billy suffered terrible injuries but is still living, albeit with permanent cognitive impairment.

The third child, Crystal, suffered broken bones and spent a week in the hospital. She suffered no cognitive impairment as a result of the crash. Neither of Crystal's parents signed the permission slip; it was sitting on their kitchen table--unread and unsigned--at the time of the crash.

The drive from the SilverThorne facility to the aquarium took 45 minutes. Tanya, who was a fine driver with a spotless driving record, liked to entertain the kids with educational videos on drives of 30 minutes or longer. On this day, she chose a particularly popular video about the Monterey Bay Aquarium. She loved the segment about jellyfish, although the kids--who were four years old--most loved the adorably cute sea otters.

The crash happened at the intersection of Aquarium Parkway with 9th Street--just one-half mile from the aquarium. While approaching the green light at 9th Street, Tanya looked down for not more than one second to push a button on the DVD player to replay the Sea Otter segment because the kids were chanting "Otter, Otter, Otter." When she looked up, she saw a pickup truck in front of her, moving from her left to her right. This was Mike Balderston's truck. He was coming from the opposite direction on Aquarium Way and turning left onto 9th St. Instead of waiting for a green arrow, Mike started the turn through the intersection. Later, he said to a police officer: "I thought I could make it."



(Disregard the date/time stamp at the top of this image.)

Mike stopped his truck in a spot that left the rear end of the truck partly in the lane in which Tanya was driving the SilverThorne van. (see diagram above) He stopped, he later explained, because there were pedestrians in the crosswalk. Pedestrian traffic that day was heavy because of the medical marijuana convention in the nearby convention center. Mike turned when he had a solid green light. When he had a green light, Tanya had a green light, and the pedestrians crossing 9th had a “Walk” signal. Had Mike waited in the turn lane, then his light would have turned red and then the next cycle would start with a green arrow. On the green

arrow, traffic from Tanya's direction had a red light and the pedestrians had a "Don't Walk Signal." However, Mike did not know this as it was his first time turning left at the intersection.

Mike started the turn and then stopped in Tanya's lane. When Tanya looked up, she instinctively swerved to the left to miss him, but Mike was too close for her to avoid him. Had she tried to brake, she would certainly have slammed into him. She hit the right rear wheel of Mike's pickup truck with the right end of the front bumper of the van she was driving. The children started to scream as the van started to roll.

Impact and inertia caused the van to roll over; the children's giggles at the DVD turned to screams. Amber's car seat came loose. Tanya had buckled Amber into the car seat with the car seat's own straps, but she had not seatbelted Amber's car seat into place on the van's seat. That is, Amber was strapped to her car seat, but Amber's car seat was not strapped to the van's seat. That's what allowed Amber to be ejected from the van's broken window as it rolled. The coroner later determined that Amber died just after her car seat hit the pavement.

The van rolled two and one-half times before stopping on its roof. The van came to rest near the crosswalk across 9th St and narrowly avoided hitting a bicyclist who was riding his bicycle across the crosswalk. This near-brush with death has devastated the bicyclist. He has become disabled, unable to sleep, and constantly fearful for his own safety. He no longer feels safe riding his bicycle. Though untouched by the rolling van, the bicyclist is so emotionally devastated that he often wishes he had been killed.

Billy and Crystal lived. Billy's injuries included broken limbs and a closed head injury that required the doctors to induce a comatose state in which they maintained him for two weeks until the swelling subsided. Nonetheless, he suffered permanent brain injury. He's able to walk and talk, but he'll never be able to think or reason at high levels. Stanford University, where his

parents met while undergraduates, is not in his future unless it's for a visit to the Stanford University Hospital for treatment. Billy's parents put off his starting kindergarten until next year.

Crystal's injuries were less severe. Crystal's mom rode a bicycle to SilverThorne every day, and she took her daughter with her on a bicycle seat. Crystal often kept her bicycle helmet on throughout the day. This was a quirk that the SilverThorne staff tolerated. At the time of the crash, then, Crystal was strapped into her car seat, her car seat was securely belted to the van's seat, and she was wearing a bicycle helmet. She broke her right arm and right leg but suffered no brain injuries. After a week in the hospital, she was released to recover at home. Her right leg is a little shorter than the left, and she's faces a likelihood of pain throughout her life in her right leg when the weather changes. This year, she was in kindergarten and her teacher was very impressed with her intelligence.

Tanya was also seriously injured. Her orthopedic injuries included two broken wrists and a broken nose from the airbags, a broken arm, leg, and pelvis. Nearly two years later, she still has a lot of pain and feels that the energy that her body absorbed in the crash is still somehow trapped in her body. Psychologically, she's haunted by the worry she could have prevented the crash.

Mike Balderston's truck was totaled in the collision as was, of course, the SilverThorne van. Balderston suffered a torn rotator cuff in his left shoulder and a broken right index finger. His truck did not roll but it did spin after the van collided with it.

When Balderston's truck stopped spinning, he got out of his truck and heard screaming from the bed of the pickup. Balderston had a lockable, hinged, solid cover for the bed of his pickup truck, which allowed him to securely store equipment or luggage in the bed of his truck.

On this day, however, he was not storing equipment in the bed of his truck, he was securing Wilson, a Certified Public Accountant who Balderston believed was committing adultery with Balderston's wife. Balderston had forced Wilson into the bed of the truck after duct-taping Wilson's hands and legs. Balderston then locked Wilson into the pickup's bed and threw in his briefcase, which contained Wilson's MacBook Pro. Balderston wanted to scare but not hurt Wilson, and his vague idea was that he would drive Wilson around for a while and then let him out of the truck unharmed. After the collision, though, Wilson had a broken arm, multiple confusions, and his MacBook Pro was destroyed. He missed three weeks of work due to the injury.

All of the injured people--except the bicyclist--were transported from the scene by Ambulance to Metro Hospital. The emergency physicians attempted to revive Amber without success. Her parents paid \$7,500 for her funeral and \$2,500 for the catering of the funeral reception.

Your job:

Your job is to analyze the tort claims (along with defenses and damages) of each of the seven people who were injured or killed.

Do not analyze any criminal law issues, products liability claims, claims against any government entity, or any medical malpractice claims. Do not consider any worker compensation claim that Tanya may have with regard to her employer. When analyzing the purported release, you may or may not need to draw upon a tiny bit of Contract law. Keep in mind that this is a Torts exam not a Contracts exam.

Newstate has not passed any statutes concerning the purported release, nor have there been any decisions by the state's Supreme Court. The issues presented by the release are ones of first impression.

The following two appendices set forth medical expenses of six of the injured people and some of Newstate's statutes that may or may not prove to be relevant or useful.

Appendix 1: Medical Bills

The following tables set forth the medical expenses to date of those who were injured (or killed). The exception is the bicyclist, whose bills are unknown. Since the accident, he has been in and out of inpatient psychiatric care facilities.

Amber:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 3,000.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$17,000.00	Emergency care
Apex Emergency Group	\$13,000.00	Emergency physicians
Total Medical Bills	\$33,000.00	

Billy:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 2,000.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$15,000.00	Emergency care
Apex Emergency Group	\$17,000.00	Emergency physicians
Radiology	\$ 5,000.00	Radiologists
Neurosurgery Group	\$54,000.00	Brain Surgery
Metro Inpatient	\$115,000.00	Inpatient stay
Family physician	\$ 4,500.00	Follow-up with physician
Psychologist	\$ 7,000.00	
Physical Therapy	\$14,000.00	
Medication	\$ 9,500.00	
Health Insurance premiums	\$11,500.00	Monthly premium for health insurance (23 months)
Total Medical Bills	\$254,500.00	

Crystal:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 1,200.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$ 6,500.00	Emergency care
Apex Emergency Group	\$ 5,000.00	Emergency physicians
Radiology	\$ 2,500.00	Radiologists
Metro Inpatient	\$ 8,000.00	in-patient stay
Family physician	\$ 2,500.00	follow-up with physician
Psychologist	\$ 2,000.00	
Physical Therapy	\$ 5,000.00	
Medication	\$ 3,500.00	
Health Insurance premiums	\$11,500.00	Monthly premium for health insurance (23 months)
Video Game Console	\$ 300.00	New game to play while convalescing
Total Medical Bills	\$48,000.00	

Tanya:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 1,200.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$ 8,000.00	Emergency care
Apex Emergency Group	\$ 4,500.00	Emergency physicians
Radiology	\$ 3,500.00	Radiologists
Orthopedics	\$15,000.00	Orthopedics group
Metro Inpatient	\$ 3,000.00	In-patient stay
Family physician	\$ 3,250.00	Follow-up with physician
Psychologist	\$ 500.00	
Physical Therapy	\$ 750.00	
Medication	\$ 300.00	
Total Medical Bills	\$40,000.00	

Mike:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 800.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$ 3,500.00	Emergency care
Apex Emergency Group	\$ 4,000.00	Emergency physicians
Radiology	\$ 1,800.00	Radiologists
Metro Inpatient	\$ 3,000.00	In-patient stay
Orthopedic Group	\$20,000.00	Rotator Cuff Surgery
Family physician	\$ 4,500.00	Follow-up with physician
Psychologist	\$ 500.00	
Physical Therapy	\$ 3,400.00	
Medication	\$ 700.00	
Total Medical Bills	\$42,200.00	

Wilson:

Provider	Cost	Treatment
Pridemark Paramedic	\$ 600.00	Ambulance to Metro Hospital
Metro Hospital Emergency	\$ 3,000.00	Emergency care
Apex Emergency Group	\$ 3,500.00	Emergency physicians
Radiology	\$ 1,500.00	Radiologists
Metro Inpatient	\$ 0.00	In-patient stay
Orthopedics	\$ 4,500.00	
Family physician	\$ 1,200.00	Follow-up with physician
Psychologist	\$ 1,300.00	
Physical Therapy	\$ 2,700.00	
Medication	\$ 900.00	
Total Medical Bills	\$19,200.00	

Appendix 2: Statutes

Statute 1. Turning movements and required signals

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety and then only after giving an appropriate signal.

Statute 2. Vehicle turning left

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. Any person who violates any provision of this section commits a class A traffic infraction.

Statute 3. Stop when traffic obstructed

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section commits a class A traffic infraction.

Statute 4. Pedestrians' right-of-way in crosswalks.

When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

Statute 5. Bicyclists on sidewalks.

A person riding or walking a bicycle or electrical assisted bicycle upon and along a sidewalk or pathway or across a roadway upon and along a crosswalk shall have all the rights and duties applicable to a pedestrian under the same circumstances. When using crosswalks, bicyclists shall dismount and walk with their bicycles while crossing the street.

Statute 6. Negligence cases - comparative negligence as measure of damages.

(1) Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was less than or equal to the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made.

(2) In any action to which subsection (1) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

- (a) The amount of the damages which would have been recoverable if there had been no contributory negligence; and
- (b) The degree of negligence of each party, expressed as a percentage.

(3) Upon the making of the finding of fact or the return of a special verdict, as is required by subsection (2) of this section, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made; but, if the said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court shall enter a judgment for the defendant.

Statute 7. Pro rata liability of defendants.

(1) In an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss.

(2) The jury shall return a special verdict, or, in the absence of a jury, the court shall make special findings determining the percentage of negligence or fault attributable to each of the parties and any persons not parties to the action of whom notice has been given pursuant to paragraph (b) of subsection (3) of this section to whom some negligence or fault is found and determining the total amount of damages sustained by each claimant. The entry of judgment shall be made by the court based on the special findings, and no general verdict shall be returned by the jury.

(3) Any provision of the law to the contrary notwithstanding, the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage

of negligence or fault of those persons who are parties to such action. Any finding of a degree or percentage of fault or negligence of a nonparty shall not constitute a presumptive or conclusive finding as to such nonparty for the purposes of a prior or subsequent action involving that nonparty.

Statute 8. General limitation of actions--three years.

The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter:

- (a) Tort actions, including but not limited to actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract.
- (b) All actions involving the operation of motor vehicles;
- (c) All actions, regardless of the theory asserted, against any veterinarian;
- (d) All actions for wrongful death.
- (e) All actions against any public or governmental entity or any employee of a public or governmental entity for which insurance coverage is provided.
- (f) All actions against any public or governmental entity or any employee of a public or governmental entity.
- (g) All other actions of every kind for which no other period of limitation is provided.

Statute 9. General limitations of actions--two years.

The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within two years after the cause of action accrues, and not thereafter:

- (a) The following tort actions: Assault, battery, false imprisonment, false arrest, libel, and slander;
- (b) All actions for escape of prisoners;
- (c) All actions against sheriffs, coroners, police officers, firefighters, national guardsmen, or any other law enforcement authority;
- (d) All actions for any penalty or forfeiture of any penal statutes;
- (e) All actions for negligence, fraud, willful misrepresentation, deceit, or conversion of trust funds.

Statute 9. When action survives death.

If any person entitled to bring any action dies before the expiration of the time limited therefor and if the cause of action does by law survive, the action may be commenced by the personal representative of the deceased person at any time within one year after the date of death and not afterwards.

Statute 10. Damages for Wrongful Death

(1) In every action for wrongful death, the jury may give such damages as they may deem fair and just, with reference to the necessary injury resulting from such death, including damages for noneconomic loss or injury and including within noneconomic loss or injury damages for grief, loss of companionship, pain and suffering, and emotional stress, to the surviving parties who may be entitled to sue.

(2) Notwithstanding anything in this section to the contrary, there shall be no recovery under for noneconomic loss or injury in excess of four hundred thousand dollars, unless the wrongful act, neglect, or default causing death constitutes a felonious killing.

END OF EXAMINATION

Overview of Potential Claims

Although Tanya was the actor and not SilverThorne, under the vicarious liability theory of *respondeat superior*, SilverThorne is responsible for Tanya's negligent actions as an employee acting within the scope of her employment. Any actions against Tanya will include SilverThorne.

Amber, Billy, and Crystal may bring similar, but not identical, claims against Tanya and Mike. Amber will bring a wrongful death claim against both defendants. Amber's estate cannot bring a survival action because Amber's death occurred outside the Newstate statutory requirement that actions must be brought within one year after the date of death.

Billy and Crystal will bring personal injury claims against both defendants.

Tanya and Mike will bring a personal injury claims against each other.

Wilson can bring several intentional tort claims against Mike. However, unless Mike's insurance policy covers intentional torts, Wilson will have to include Mike in his personal injury claim against Tanya in order to recover from both defendants.

Bicyclist did not sustain any physical injuries in the accident; his best potential claim is one for negligent infliction of emotional distress against Tanya and Mike.

Amber, Billy, and Crystal v. Tanya and Mike

Because Tanya and Mike were both substantial factors regarding cause in fact, each of the three Plaintiffs will include both defendants at once in their respective suits.

SilverThorne will argue the release signed by Amber's mother and Crystal's participation, despite signing the release, was an acceptance of the terms. This absolves the center of liability for her death resulting from negligence. However, courts do not favor

exculpatory agreements such as this; especially releases for children. They must spell out the risks and specifically list the possible negligent acts. One cannot waive negligence such as this.

Billy's release was modified; excluding negligence or otherwise. SilverThorne accepted the modified release without question or modification of its own. Therefore, it cannot claim innocence in Billy's case.

DUTY

Tanya had a special relationship with the children. As a person in action and a caregiver, she had a duty to act reasonably and keep the children from harm. The children ceded their ability to protect themselves and their parents relinquished custody temporarily to Tanya. She must act reasonably so not to put them in danger. A reasonable person engaged in the act of driving while transporting children would not shift her focus off the road, especially for a DVD player. Tanya's affirmative act created the injury. The children were positively worse off because of her misfeasance.

Mike, being active, had a duty to other drivers and their passengers to be reasonable and use ordinary caution to avoid causing physical harm to other persons. Mike's scope of duty is limited to foreseeable plaintiffs, like the children.

STANDARE OF CARE

Being a professional childcare provider, Tanya should be held to the standard of care for her profession. Expert testimony will be required to determine what the professional standard of care is. It is likely Tanya did not meet this standard. If she is not labeled as a professional, she

must act as an objectively reasonable person under the circumstances. She must be aware of the hazards involved with driving a van containing three children. She must meet community standards, like the legendary man who takes his magazines at home and mows the lawn in shirtsleeves. Any superior knowledge or skills are irrelevant.

Mike is required to act as an objectively reasonable person under the circumstances. As a driver, he should have been aware of other drivers around him.

BREACH

NEGLIGENCE PER SE

To establish negligence per se, defendants must violate a Newstate statute. Additionally, the statute must be intended to prevent specific harm caused by defendants. The children must fall within the protected class of persons.

Tanya violated Statute 1 by turning the vehicle from a direct course. However, the result may have been the same if she was paying attention and obeying the speed limit. This statute likely intended to prevent accidents with other motorists. As passengers, the children fall within this protected class.

Mike violated statutes 2 and 3 by failing to yield to oncoming traffic (Tanya's van), stopping in the intersection, and obstructing oncoming traffic. This statute likely intended to prevent accidents with other motorists. Therefore, the children fall within this protected class. Mike also violated Statute 4 by failing to yield to a pedestrian in the crosswalk, which caused

him to violate Statute 3. However, statute 3 likely protects pedestrians, which does not describe the children. Therefore, it is irrelevant for this claim.

NEGLIGENCE

Accident: Tanya acted unreasonably because she hit a vehicle in the intersection and injured her passengers. She was not paying attention when she looked at the DVD player while driving. She was also speeding. These negligent acts affected the time she had to react.

Mike acted unreasonably under the circumstances by turning in front of Tanya's van and stopping in the intersection because he failed to identify a pedestrian in the crosswalk prior to turning.

Amber: Tanya failed to secure Amber's car seat.

Mike will argue that Tanya was the last person capable of preventing Amber's injuries. She failed to mitigate the damage by not securing Amber; therefore, she should be responsible for the bulk of Amber's damages.

CAUSE IN FACT

Accident: Mike is certainly a "but for" cause. Although there were two negligent parties, Mike's contribution is indisputable. "But for" Mike stopping in the intersection, the accident and injuries would not have occurred. He stopped directly in the van's path. Deficient of Tanya's negligence, Tanya probably would not have enough time to stop and the accident would still occur.

Amber: Tanya was the direct cause of Amber's death because she failed to secure Amber. There was no superseding intervening force. Amber's death was a foreseeable consequence of driving without proper safety measures. She should have reasonably anticipated the potential for an accident.

The extent of the harm need not be foreseeable, yet her death was typical for the circumstances. The mechanism of the accident was foreseeable.

Mike will argue he was not the direct cause of Amber's death and that Tanya's failure to secure Amber was a superseding intervening force. Although Mike's negligence contributed to Amber's death, he had no control over the safety within the van. According to *Dare v. Sobule*, Mike may not be responsible for Amber's non-pecuniary damages.

DAMAGES

Amber-Compensatory

Pecuniary or special (Past/Future, discount to present value, receipts, not taxed)

Medical Expenses-\$33,000

Funeral Expenses-\$10,000

Wrongful Death

A "close relative" can recover damages. Usually limited to pecuniary losses, value of services provided by the decedent: Hard to determine because Amber was so young. Limited evidence exists to argue her future career paths.

Tanya is not a certain “but for” cause. Even if Tanya focused and did not speeding, the accident and injuries may have still occurred. However, “but for” causation, the gold standard, is not always required. Only defendant’s culpable conduct is required, so long as it was the actual cause of plaintiff’s injuries. The accident, a result of defendants’ negligence, caused the injuries of all three children.

If “but for” causation is required, the substantial factor will be utilized because there was more than one contributor. According to *Summers v. Tice*, this test requires only that a defendant materially contributed to plaintiff’s injury, which both defendants did.

Amber: Tanya is a “but for” cause of Amber’s death because she did not secure Amber. Had the accident occurred devoid of driver negligence, Amber likely would have died because of Tanya’s negligence.

Mike will argue that Tanya was the “but for” cause of Amber’s death.

PROXIMATE CAUSE

Accident: There was no superseding intervening force. There is nothing extraordinary or unlikely about the negligent acts leading up to the accident. The injuries are a foreseeable consequence of driving, driving while distracted, speeding, and stopping in an intersection. They could have reasonably anticipated an accident.

The extent of harm caused by both defendants’ negligence need not be foreseeable. Plaintiffs’ injuries were typical for the circumstances. The mechanism of the two cars colliding was not particularly bizarre or unforeseeable.

*Non-Pecuniary or general (no receipts)**Loss of Society*

Amber's parents can claim loss of society. They must provide factual support, but much is speculation. Education level and career paths of family members are considered. Additionally, any award must consider the cost the parents would incur to support and educate Amber.

Billy-Compensatory*Pecuniary**Diminished earning capacity*

Regarding youths, courts rely on limited evidence, such as intelligence, performance in school and career achievements of family members.

Billy's parents both went to Stanford.

Medical

Bills-\$254,500

Future physical therapy, doctors visits, medication, and assisted living.

Incidentals

Travel

*Non-Pecuniary**Pain and Suffering*

Continual pain from injuries

Hedonic

Loss of enjoyment of life, if he is aware of it

Disability

Permanent mental problems

Crystal-Compensatory

Pecuniary

Medical

Bills-\$48,000

Future physical therapy

Incidentals

Travel

Non-Pecuniary

Pain and Suffering

Continual pain from injuries

Tanya v. Mike/Mike v. Tanya

DUTY

Mike and Tanya were active and had a duty to other drivers to be reasonable avoid causing harm to persons or property. Their scope of duty is limited to foreseeable plaintiffs, like each other.

STANDARD OF CARE

Mike and Tanya are required to act reasonably under the circumstances. As drivers, they should have been aware of other drivers and pedestrians.

BREACH

NEGLIGENCE PER SE

See negligence per se section in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

NEGLIGENCE

See negligence section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

CAUSE IN FACT

See cause in fact section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

PROXIMATE CAUSE

See proximate cause section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

DAMAGES

Both Tanya and Mike's damages will be adjusted accordingly to the percentage of their respective negligent contributions under the comparative fault statute.

Tanya-Compensatory

*Pecuniary**Wages*

Loss of wages while in the hospital

Diminished earning capacity due to physical and mental injuries

Medical

Bills-\$40,000

Future physical therapy

Future psychological visits

Future medication

*Non-Pecuniary**Pain and Suffering*

Residual pain from accident

Hedonic

Plagued by guilt over accident

Property Damage

SilverThorne will seek compensation for totaled van

Mike-Compensatory*Pecuniary**Wages*

Any lost during recovery

Medical

Bills-\$42,000

Any future medical visits or physical therapy

Property Damage

Damage to his truck

Wilson v. Mike and Tanya

Wilson has several intentional tort claims against Mike. Battery: Mike intentionally caused harmful or offensive contact when he tied up Wilson. Assault: Mike's attack caused a fear of imminent physical injury, even if Mike had no intent to injure Wilson. False imprisonment: Mike intentionally confined and restrained Wilson by binding his hand and legs and locking him in Mike's truck. These claims must be filed immediately or, according to Newstate's limitation regarding intentional torts, they will expire.

However, it is unknown if Mike has insurance coverage that includes intentional harm. Therefore, Wilson will also include Mike in his personal injury claim against Tanya in order to ensure recovery.

DUTY

Mike and Tanya were active and had a duty to act reasonably and drive safely. Both had a duty to Mike's "passenger" to be reasonable and avoid causing physical harm to Wilson. Defendants' scope of duty is limited to foreseeable plaintiffs, like Wilson.

STANDARD OF CARE

See standard of care section in claim *Tanya v. Mike/Mike v. Tanya*.

BREACHNEGLIGENCE PER SE

See negligence per se section in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

As a passenger, Wilson falls under the protected class for three of the four statutes violated.

NEGLIGENCE

See negligence section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

CAUSE IN FACT

See cause in fact section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

PROXIMATE CAUSE

See proximate cause section, specifically regarding the accident, in claim *Amber, Billy, and Crystal v. Tanya and Mike*.

DAMAGES**Wilson-Compensatory***Punitive Damages*

Punishment for intentional torts

Pecuniary

Wages

Missed 3 weeks of work

Medical

Bills-\$19,200

Property Damage

New Mac Book Pro

Bicyclist v. Mike and Tanya

Plaintiff's claims depend on what Newstate allows jurisdictionally. Bicyclist is not alleging physical harm in his personal injury claim. He claims negligent infliction of emotional distress. Some jurisdictions require some form of physical impact on plaintiff's person because of defendant's negligence. Most only require plaintiff to be at risk of physical impact, known as being within the zone of danger. Additionally, most jurisdictions require that mental distress be sufficiently severe to cause physical symptoms of distress. The van's near miss of Bicyclist constitutes zone of danger.

If Bicyclist cannot claim negligent infliction of emotional distress due to a lack of contact, he will claim bystander recovery. To do so, he must be within the zone of danger, which he was. However, jurisdictions that do not require zone of impact usually have three requirements of a bystander: 1. must be physically near the accident, 2. must have contemporaneous sensory perception of the accident, and 3. must be closely related to the victim. Physical manifestation of emotional distress is usually required. Bicyclist does not meet the third requirement for jurisdictions that do not require zone of impact.

DUTY

Defendants were active and had a duty to pedestrians to be reasonable avoid causing harm to persons or property. Mike and Tanya's scope of duty is limited to foreseeable plaintiffs like Bicyclist.

STANDARD OF CARE

See section regarding standard of care in claim *Amber, Billy, And Crystal v. Tanya and Mike*.

BREACH

NEGLIGENCE PER SE

Mike and Tanya violated statute 5. They failed to yield to a bicyclist in a crosswalk. This statute was likely enacted to prevent motor-vehicle accidents with bicyclists. Therefore, Bicyclist falls within this protected class.

It is likely that defendants will argue that Bicyclist does not fall within the protected class because he was riding his bike in the crosswalk instead of walking it in accordance with the statute.

Additionally, it is likely that defendants will argue that the accident removed any control over their vehicles necessary to yield to Bicyclist. Essentially, they never had the option to yield. However, the statute does not contain an intent requirement. Failure to yield, regardless of how that occurs violates the statute.

NEGLIGENCE

See negligence section, specifically regarding the accident, in claim *Amber, Billy, And Crystal v. Tanya and Mike*.

Both defendants' negligent actions created the accident that injured plaintiff.

CAUSE IN FACT

See cause in fact section, specifically regarding the accident, in claim *Amber, Billy, And Crystal v. Tanya and Mike*.

"But for" the accident, Plaintiff's injuries would not have occurred.

PROXIMATE CAUSE

See proximate cause section, specifically regarding the accident, in claim *Amber, Billy, And Crystal v. Tanya and Mike*.

DAMAGES

Bicyclist-Compensatory

Non-Pecuniary

Emotional Distress

He was not physically touched, but depending on the jurisdiction, he can claim emotional distress because he was in the "zone of danger."

Additionally, his emotional distress has physical manifestations, which is usually a requirement to recover for emotional distress.

Word Count: 2,500

Aquarium Field Trip Disaster

Notes on strategy;

(1) All claims, except *Wilson v. Balderston II*, are pleaded in negligence only to preserve access to insurance coverage.

(2) Under Newstate Statutes 6(1), 7(1), except as in note (3) below, joint tortfeasors shall be joined whenever possible because several liability will be assigned pro-rata in a special verdict. A plaintiff will recover, reduced in proportion to comparative negligence, if 50%, or less, at fault.

(3) If Balderston has neither personal wealth *nor* insurance, he would *not* be joined with Tanya as a co-defendant, where applicable. In this situation, evidence of his contributory negligence admitted by Tanya under Statute 7(2,3) shall be rebutted to maximize recovery.

(4) When Tanya is a defendant, SilverThorne is vicariously liable for Tanya's negligence by *Respondeat Superior*; Tanya, an employee (not an independent contractor), was driving the van as part of her job.

(5) *Res Ipsa Loquitur* was not required in any claims because breach of duty was established directly.

Tanya v. Balderston

Tanya claims Balderston operated his truck negligently, resulting in damages.

Duty, Standard of Care;

Under *Heaven*, as an active person, Balderston's duty to Tanya (and everyone he encountered) was to uphold a "standard of care" as would a "reasonably prudent person (RPP) in the same or similar circumstances."

Breach; = your bottom. You mean breach

Balderston breached the standard of care by negligently making a left turn into Tanya's path, without first looking to see if he would be able to clear the intersection, as an RPP would have done.

Balderston's breach is also established by *negligence per se*; his violation of Statutes 1-3 resulted in the exact type of harm to Tanya that those statutes purported to prevent.

Cause in Fact;

But-for Balderston's negligent decision to turn left into Tanya's path, and then stop, the accident would not have occurred.

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Proximate Cause;

Under *Palsgraf*, it is appropriate to shift Tanya's losses to Balderston because it was reasonably foreseeable that her injuries would result from his actions.

Compensatory Damages;

Tanya sought medical treatment for her injuries, *mitigating* the extent of her damages;

Tanya's damages	Past;	Future;
Pecuniary/special damages.	\$40,000 Medical, lost wages due medical care.	Need <u>Pacey Economics Group</u> ; <u>Economic appraisal of loss.</u>
General/non-pecuniary damages, Hedonic losses.	Pain, suffering resulting from the accident, subsequent medical procedures.	Pain and suffering resulting from the accident. Loss of enjoyment of life due to future degradation of wrists.
Incidental damages	Property that was destroyed in the accident. Costs associated the completion of tasks subsequently unable to perform. *SilverThorne's van.	

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Defenses;

Balderston will likely argue that Tanya caused the accident by exceeding the speed limit (violating the RPP standard and negligent per se) and recklessly operating a dvd-system while driving.

Balderston must establish that Tanya's was *more* than 50% at fault before completely barring her recovery. Newstate Statute6(1).

No governmental immunity.

No statute of limitations (SOL) (or Repose) issues under Statute8.

In re Amber v. Tanya et al.

Amber's parents shall join Tanya, Balderston, and SilverThorne as joint tortfeasors in a wrongful death action for negligence resulting in Amber's death. Joint liability was created when both Tanya, and Balderston, acted independently to create Amber's indivisible tortious injury. The survival action is time-barred by Statute 9.5.

Duty, Standard of Care;

Balderston's RPP duty in regard to Amber was the same as to Tanya, Billy, and Chrystal. Tanya's duty to the children was *higher*.

A "special relationship" was created when Tanya was entrusted with the safety of the children. Tanya had a duty to protect and to rescue the children if the need arose; a standard of care creating tort liability for *non-feasance*.

Breach;

Tanya breached her duty by negligently failing to secure Amber's car seat, by speeding (also negligent per se,) and by recklessly operating a dvd-player while driving. In sum, Tanya's actions were *grossly* negligent. Balderston's breach is described in *Tanya, supra*.

Cause in Fact;

But-for Tanya's actions of negligently failing to secure Amber's car seat, her exceeding the speed limit, and driving while operating the dvd-player, as well as Balderston's negligence outlined in *Tanya, supra*, the accident would not have occurred and Amber would not have died.

Proximate Cause;

It was foreseeable that failing to secure Amber's car seat would result in injury or death in the event of an accident and that speeding while operating a dvd-player would increase the risk of an accident. See *Tanya, supra*, for Balderston's proximate cause of the accident.

Damages;

Newstate Statute 10(1) authorizes damages for wrongful death. Amber's parents are entitled to recover damages resulting from Amber's death, including;

- a. \$33,000 in medical treatment before her death,
- b. \$10,000 in funeral expenses,
- c. Value of; their loss of companionship of Amber, their grief in losing Amber, their pain and suffering resulting from Amber's death, their emotional stress in losing Amber.

- i. ***Statute10(2) caps non-economic damages to \$400,000
unless a felonious killing is established;

1. Because Amber died during Balderston's kidnapping of Wilson (likely a felony in Newstate,) Balderston is likely guilty of feloniously killing Amber, removing the cap.

Defenses;

(i) The permission slip; express assumption of risk. For an exculpatory release to be valid it must be (1) signed voluntarily and (2) specify the assumed risks. Unlike "Inherent risks" that are foreseeable and predictable, which may be considered and assumed, risks arising from "negligent" actions are not predictable and cannot be thoughtfully assumed. Liability for *Gross* negligence is never waived (Tanya not securing Amber's car seat). In addition, prospective waivers of liability for negligent injury to children are disfavored as contrary to public policy. Rest2nd(Contracts)§178.

Although signed by Amber's mother, SilverThorne's inclusion of *negligence of every nature* renders the liability waiver invalid; risks arising from negligence cannot be assumed and specific assumable risks were not specified.

(ii) It is unlikely that Amber (or any of the children) chanting "otter, otter, otter," represents a violation of the RPP standard for children; modified for intelligence,

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age, and experience. It is, therefore, doubtful that the children were comparatively negligent in distracting Tanya in comparison to the heightened, adult, RPP standard required of Tanya. If comparative negligence is found, Statute6(1) allows recovery when the plaintiff is 50% or less at fault.

(iii) No governmental immunity.

(iv) SOL – Amber’s survival action is barred due to SOL; Statute9.5.

Billy v. Tanya et al.

Billy shall join Tanya, SilverThorne, and Balderston as joint tortfeasors in a negligent injury claim. The relationships between the parties in Billy's suit are identical to those in *In re Amber, supra*. However, Billy's action is for negligent injury rather than wrongful death.

Duty, Standard of Care; See *In re Amber, supra*.

Breach; See *In re Amber, supra*, except, it is unknown whether Billy was securely buckled into a seat.

Cause in Fact; See *In re Amber, supra*.

Proximate Cause; See *In re Amber, supra*.

Damages;

Billy received treatment for his injuries, *mitigating* the extent of his damage;

Billy's damages	Past	Future
Specials	\$254,500 medical expenses.	Need; <u>Pacey Economics Group</u> ; economic appraisal of loss.
General	See <i>Tanya, supra</i> .	Depending on Newstate Law, hedonic loss of his ability to socialize and enjoy his adulthood, learning complicated subjects, finding love.

Incidental	Any in home assistance that was needed due to the high demands of a child with a brain injury.	Any lost wages of parents due to caring for a child with a brain injury, or cost of cleaners needed to maintain the household.
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Defenses;

Defenses to Billy's claim are substantially the same as set out in *In re Amber, supra*, except that Billy's father struck out "negligence, or otherwise," before signing the permission slip, a counter-offer accepted by SilverThorne's performance. Rest2nd(Contracts)§§38,54. Father's action precludes the need for the policy argument stated in *In re Amber, supra*, to negate the prospective waiver of negligent injury to Billy. However, the release *fails anyway* due to its failure to specify risks assumed.

Crystal v. Tanya et al.

The only differences between Crystal's claim and those in *Billy, supra*, are her damages and anticipated defenses.

Damages;

Crystal received medical treatment for her injuries, *mitigating* the extent of her damages;

Crystal's damages	Past;	Future;
Specials	\$47,700 medical costs.	See <i>Billy, supra</i> .
General	See <i>Billy</i> .	See <i>Billy, supra</i> .
Incidental	\$300 video game necessitated by immobility during recovery.	

Defenses; Defenses to Crystal's claim are substantially the same as set out in *In re Amber, supra*, except that, having failed to sign and return the permission slip, no portion of the permission slip is applicable to Crystal.

Balderston v. Tanya

Balderston shall join Tanya and SilverThorne as joint tortfeasors in a negligent injury claim.

Even if Newstate law allowed children as young as Amber, Billy, and Crystal to be legally capable of negligence, they will not be joined as joint tortfeasors by Balderston. Although a cause-in-fact of the accident, the children's negligence in distracting Tanya was not a proximate cause. Tanya's independent, negligent decision to manipulate the dvd-player, while speeding, in response to the distraction (rather than pulling off of the road), was unforeseeable to the children; a superseding intervening event, negating proximate causation.

Duty, Standard of Care;

Tanya's duty toward Balderston was the reciprocal of that which he owed her in *Tanya, supra*.

Breach;

Tanya breached her duty to Balderston by speeding (negligent per se) and negligently attempting to operate a dvd-player while driving; breach of RPP standard.

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Cause in Fact;

But-for Tanya's breach of the RPP standard and speed limit, she would have seen Balderston and been able to stop, preventing the accident.

Proximate Cause;

It was foreseeable that manipulating a dvd-player while speeding would result in an accident.

Damages;

Balderston sought medical treatment for his injuries, *mitigating* the extent of his damages;

Balderston's damages	Past;	Future;
Specials	\$42,200 medical expenses, lost wages due to injury, treatment.	Cost of treatment for degradation of shoulder.
General	See <i>Billy</i>	Value of reduced functionality of left arm and right index finger.
Incidental	His Truck.	

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Defenses;

Contributory negligence by Balderston is likely to be claimed by Tanya; See *Breech* under *Tanya, supra*, for her argument against Balderston.

No governmental immunity.

No SOL issue.

Wilson v. Balderston et al.

Wilson claims that Balderston, Tanya, and SilverThorne jointly caused his injuries by negligently operating both vehicles, causing the accident that resulted in his injuries. Wilson's alternative claim for the intentional torts of battery and false imprisonment follows this negligence claim.

Duty, Standard of Care;

Balderston and Tanya each had the duty and standard of care toward Wilson as described in *Tanya, supra*.

Breach;

For Balderston's breach toward Wilson, see *Breech* under *Tanya, supra*. See *Balderston, supra*, for Tanya's breach.

Cause in Fact;

See *Tanya, supra*, for Balderston's cause in fact of the accident and *Billy, supra*, for Tanya's cause in fact of the accident.

Proximate Cause;

See *Proximate Cause* under *Billy, supra*, for Balderston and Tanya's proximate cause of the accident.

Wilson's injuries are no less foreseeability to Tanya because he was not in a seat; any passenger in Balderston's truck could have been injured by her negligence. Only the *type* of Wilson's injury need be foreseeable, not the *mechanism* or *magnitude*.

Damages;

Wilson sought medical treatment for his injuries, *mitigating* the extent of his damages;

Wilson's damages	Past;	Future;
Pecuniary	\$19,200 medical expenses. 3 weeks of wages.	See <i>Tanya, supra</i> .
Non-pecuniary	See <i>Balderston, supra</i> .	See <i>Balderston, supra</i> .
Incidental	Cost of replacement MacBook Pro.	

Defenses;

Wilson's actions, locked in the bed of Balderston's truck, amount to "sitting quietly doing nothing." As such, Wilson was not active and had no breach-able duty to Balderston or Tanya. Therefore, comparative negligence is not available as a defense to Wilson's suit.

SOL and Government immunity are not applicable to Wilson's claim.

Wilson v. Balderston II

Should Balderston have sufficient personal wealth to satisfy a judgment, Wilson shall bring an intentional tort suit against Balderston for battery and false imprisonment, including a punitive damages claim.

False Imprisonment;

False imprisonment occurs when the defendant acts to intentionally cause confinement or restraint of the victim within a bounded area. Balderston's acts satisfy all the elements of the tort of false imprisonment;

- Intentionality; Balderston intended to physically restrain, confine Wilson.
- Contemporaneous Awareness of Confinement; Wilson was aware of his physical restraint, confinement.
- Bounded area, reasonable means of escape; The locked truck-bed bounded Wilson in all directions; there was no reasonable means of escape.
- Means of Confinement or Restraint; Wilson was physically restrained by duct-tape, locked inside the truck-bed.

Battery;

Battery occurs when the defendant's acts intentionally cause harmful or offensive contact with the victim's person. Balderston satisfied the required elements;

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- Intentionality; (transferable) Balderston intended harmful, offensive contact to Wilson.
- Harmful or Offensive Contact; Society likely considers being bound and forced into a truck-bed offensive contact.
- Causation; Causation is satisfied because Balderston directly, offensively, contacted Wilson.

Compensatory/ Punitive Damages;

Balderston's battery and false imprisonment of Wilson inside the truck were but-for causes of Wilson's damages. It was foreseeable that Wilson would suffer injuries by being bound, confined in the truck-bed, making Balderston's intentional torts a proximate cause of Wilson's injuries.

In addition to "Wilson's damages" in the table, *supra*, Wilson will claim punitive damages in this action; appropriate here because Balderston acted with malice.

Defenses;

SOL; Statute9 will bar this claim in less than one month.

Despite the putative adultery by Wilson, Balderston's actions do not qualify for the following defenses to intentional torts;

1. Consent - Wilson did not consent to being battered or imprisoned.

2. Implied Consent - Wilson did not voluntarily bind himself.
3. Self-defense - No evidence of Wilson attacking Balderston.
4. Defense of others - No evidence of Wilson attacking anyone.
5. Recovery of property - Balderston's wife's sexuality is not Balderston's property.
6. Necessity - Balderston had alternative, legal, remedies.

Bicyclist v. Tanya et al.

Bicyclist claims Tanya and Balderston are jointly responsible for negligent infliction of emotional distress. Although jurisdictionally dependent, this tort is widely recognized when, as here, the plaintiff was not just a bystander, but directly within the “zone of danger,” and suffers physical symptoms of the distress.

Duty, Standard of Care;

Balderston and Tanya owed Bicyclist the same duty and standard of care as in *Tanya, supra*.

Breach;

See Balderston’s breach under *Tanya, supra*, and Tanya’s breach under *Balderston, supra*.

Cause in Fact;

As in *Billy, supra*, Balderston’s and Tanya’s actions were the but-for cause of the accident that resulted in Bicyclist’s tortious injuries.

Proximate Cause;

Emotional distress suffered by Bicyclist, within the zone of danger of the accident, is a foreseeable consequence of Balderston and Tanya’s joint negligence.

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Damages;

There is evidence that Bicyclist sought treatment when symptoms presented.

Bicyclist's damages	Past	Future
Pecuniary	Cost of all psychiatric care and resulting lost wages	Cost of all psychiatric care and associated lost wages.
Non-pecuniary	Pain and suffering	Pain, suffering, hedonic loss.
Incidental	Increased cost of travel by car instead of bicycle.	

Defenses;

Comparative negligence (weak); Bicyclist was negligent per se under Statute 5.

Implied assumption of risk; almost getting hit by cars is common along a busy street.

Proof of damages; Bicyclist will have to prove that the accident is the but-for cause of his physical symptoms.

No SOL, Repose issues.

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