

UNIVERSITY OF CALIFORNIA  
LOS ANGELES  
SCHOOL OF LAW

Prof. Selbst

Law 140. §7/8 Torts

December 2, 2022 PM

**Final Examination**  
**OPEN BOOK**  
**PARTIALLY SECURE**  
(4 hours)

*Be sure to avoid making any remarks that will jeopardize your (or anyone else's) anonymity either on the exam or in any other context, before the exam grades are posted. Any questions during or after the exam should be addressed to the Records Office or Dean Martí.*

1. Please type your blind ID in the top right corner of your answer document.
2. This is an open book, open note examination. You may use your casebook, assigned course materials, class PowerPoints, and any notes and outlines you have prepared. You may not watch the recorded lectures or search the internet for answers.
3. The exam has a fact pattern and five short answer questions—three relate to the fact pattern and two are self-contained. Each question is accompanied by a percentage that reflects my estimate of the relative difficulty and time demands. These will be close to the final relative point totals, but those are subject to adjustments as necessary.
4. There is no page limit, but the word limit for the entire exam is **4000** words. I will not read past that number of words. Do not waste words restating the facts!
5. Your answers will be evaluated according to responsiveness to the question, intelligent and imaginative marshaling of the facts and drawing of inferences, familiarity with doctrine, clear expression of your analysis, discussion of policy considerations (where appropriate), and grasp of the relative importance of issues and strength of arguments.
6. If you seek to reuse an identical analysis from one part of a question in a later part, you should incorporate it by reference, rather than spend the time and words retyping it. If you can group claims for an identical analysis in parts, that's fine too, as long as you label is clearly.
7. If you need to address an issue in which different jurisdictions have different approaches, evaluate the law and facts under all applicable approaches unless otherwise directed. The general information in the beginning of the exam contains some relevant direction.
8. I have tried to include all necessary facts in the questions. If, however, you discover that a material fact is omitted or ambiguous, state how the omission or ambiguity affects your argument. Similarly, if you feel that there has been a typographical error or other mistake on the exam, identify the error and answer the question as you think it should be corrected to read.

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# Exemplify Features

**Exam Name:** Verify you are in the correct exam.

**Exam Policies**

**Submit Exam** (See more information below)

**Select your answer choice** by clicking on the answer choice bar.

Click the **cross-out icon** to narrow down answers

1 OF 20 QUESTIONS VERSION 2M.8.0

**Flag a question to return to before you submit your exam.**

**Formatting tools**

**Word count:** Click on page icon for word count

**Click Toolkit to Access:**

**Calculator**

**Timer:** Create timers for yourself. Note - the alarm does not make any sound.

**Adjust Text Size**

**Navigate between questions** by clicking "Previous" or "Next"

11 OF 20 QUESTIONS VERSION 2M.8.0

## Submitting Your Exam:

- Click "Exam Controls" then "Submit Exam"
- Your computer will reconnect to the internet. *Note: If your computer has trouble reconnecting, try manually connecting to the UCLA\_WEB wireless network.*
- Make sure you receive a green confirmation screen before you leave the exam room.

### General Information

The state of Hilgard is a new state in the United States. Because the events described below all take place in Hilgard, assume the law of Hilgard applies to all questions. Hilgard has not yet developed a state common law, and therefore the common law of all other states and England is persuasive authority. The Hilgard legislature has adopted the Hilgard Comparative Fault Act, which provides for modified comparative fault and preserves the implied assumption of the risk defense. The recent Hilgard Supreme Court case of *Wilson v. Metcalf* held that following Restatement (Second) of Torts §506, bees are domesticated animals for the purposes of tort liability.

### Bee Careful Out There (Facts for Questions 1–3)

Ana Alvarez runs a honey bee business. On September 21, 2019, Alvarez agreed to buy two honeybee hives from a hobbyist beekeeper named Brian Braunfeld. Each hive weighed about 200 pounds and contained thousands of bees, so she decided she needed help to move them. She recruited a friend, Chris Cobbs, to help move the beehives. Alvarez gave Cobbs a protective suit, and he put it on.



Cobbs in his protective beekeeper's suit and veil

After stopping at Braunfeld's house to pick up one hive, the three of them went to the property where additional hives were kept. The property was located in a remote area of Wilshire County, behind three locked gates and miles from a paved road. Braunfeld did not own the land but had permission from the landowner, Dan Driskill, to store the hives there. Driskill does not have any knowledge of bees or involvement with Braunfeld's hobby.

After Alvarez and Cobbs loaded one hive onto their truck, Cobbs took a break, jogging quickly over to the brush, some yards away from the truck and the hives, to relieve himself. He soon returned yelling for help and staggering. The veil on his suit was open. Alvarez could see that Cobbs had sustained several bee stings. Cobbs suffered an anaphylactic shock reaction and died before an ambulance could reach him.

An autopsy revealed that Cobbs was stung by Africanized honey bees, a different species of from the western honey bee that Braunfeld was selling to Alvarez. In the United States, Africanized honey bees are not commonly used for commercial beekeeping because they tend to swarm and be more defensive than their European counterparts. Nonetheless, they are commonly found in the US, and are the dominant species in other countries' commercial beekeeping industries, especially in Central and South America, because they are more resilient to disease and many beekeepers believe that they are superior honey producers.

Six months after the accident, Cobbs's widow, Emily Easterly, filed suit both as Cobbs's heir and representative of his estate. She raised negligence claims against Alvarez and Braunfeld under the following theories:

- Claim 1: Failure to ensure Cobbs was tested for bee sting allergy
- Claim 2: Failure to warn Cobbs of the dangerousness of western honey bees and Africanized honey bees
- Claim 3: Failure provide proper protective equipment and instructions on how to use such equipment
- Claim 4: Failure to provide Cobbs with proper and timely medical attention

Easterly also raised a negligence claim against Braunfeld and Driskill:

- Claim 5: Failure to provide a reasonably safe premises

### **Question 1 (30 percent)**

You are an attorney at a small personal injury firm in Hilgard City that Braunfeld has retained for his defense. Braunfeld is a particularly cost-sensitive client, so the partner you work for is weighing whether it makes sense to try to settle the case quickly, or at least try a motion to dismiss in order to get a better settlement. The partner asks you for a memo evaluating the legal issues that you could raise in a motion to dismiss, including an analysis of which claims you are likely able to have dismissed and why. Please write the memo.

(As you no doubt recall, when considering a motion to dismiss, a court will accept the complaint's allegations as true and will dismiss claims on which the plaintiff is nonetheless not entitled to relief. This usually implies legal and not factual issues, unless the plaintiff fails to plead favorable enough facts.)

### **Question 2 (30 percent)**

The court denied your motion to dismiss. (Note: Do not assume this is the correct outcome for Question 1. We have courts of appeal for a reason!)

Now Easterly doesn't seem to want to settle. How frustrating! She insists it's not even about money—she just wants justice for her husband. So you proceed to discovery, where both you and plaintiffs' counsel take a series of depositions. Dr. Foster, a pathologist who conducted the autopsy of Cobbs, states as follows in his deposition:

[T]here are a few people, who when they get stung by a bee, have a violent allergic reaction, which is called anaphylaxis. The bee sting causes a chain reaction of allergic symptoms in the body which leads to massive release all over the body of compounds that cause severe damage and collapse of the blood pressure. Some symptoms can include feeling lightheaded, breathing difficulties, nausea, clammy skin, a sudden urge to defecate, confusion, anxiety, and loss of consciousness. . . . Anaphylaxis can be fatal if untreated. It's not terribly common, but by no means rare. It's frequently seen in hospital emergency rooms and in doctors' offices.

\*\*\* Question 2 Continued on Next Page\*\*\*

Dr. Green is the plaintiff's other expert witness. She is a physician and states the following:

Bees are probably the number one cause of insect-related deaths. You don't have to be an expert to know that in any way, form, or fashion. It's a medical fact that bee stings are the number one cause of death, followed second by fire ants, . . . we know it's potentially a hazard for anyone working with bees.

When you follow up to ask about the number of patients that she has treated in an attempt to reduce their likelihood of anaphylactic shock from a bee sting, Dr. Green responds: "I have probably treated several hundred over my career."

At plaintiffs' deposition of Braunfeld, he states that he understands insects well, with a degree in entomology. He testifies that at the time of this incident, he had owned beehives for about five years and was a member of the Wilshire County Beekeepers Association. Braunfeld also admits that he has more knowledge concerning bees than the average person. He states that he knew that a certain percentage of the population is allergic to bee stings, and that most people who die from bee stings are not aware that they can suffer anaphylactic shock from the sting. He also states that he does keep Africanized bees on the property, in hives about 500 yards from the bushes where Cobbs was stung.

You have also retained an expert, Henry Hong, a state entomologist and chief apiary inspector. At his deposition, he testifies that while protective beekeeping suits are necessary equipment, used by nearly all beekeepers, they were not one hundred percent effective, and that a bee could sting through a suit. He also observes that while Africanized bees are not commonly kept in a commercial beekeeping in the US, they "are still around in places." Finally, he notes that commercial beekeepers tend to separate different bee species from each other, but he believes that is "mostly for ease in tracking them."

At her deposition, Alvarez notes that Cobbs was not knowledgeable about bees and had no relationship to the business. She also observed that everything seemed to be going fine with the pickup before he went into the brush, but that before he ran off, Cobbs did complain of mild nausea. It is undisputed that neither Alvarez nor Braunfeld provided any warning to Cobbs regarding the dangers associated with bee stings.

Your partner asks for a memo summarizing what you learned from the depositions. How does this evidence help or hurt your case? Please write the memo. In doing so, be specific. If a piece of evidence helps or hurts a particular issue in your case, explain what the issue is, why the evidence is relevant, how it will affect the outcome, and what the likely outcome is after all the evidence is presented.

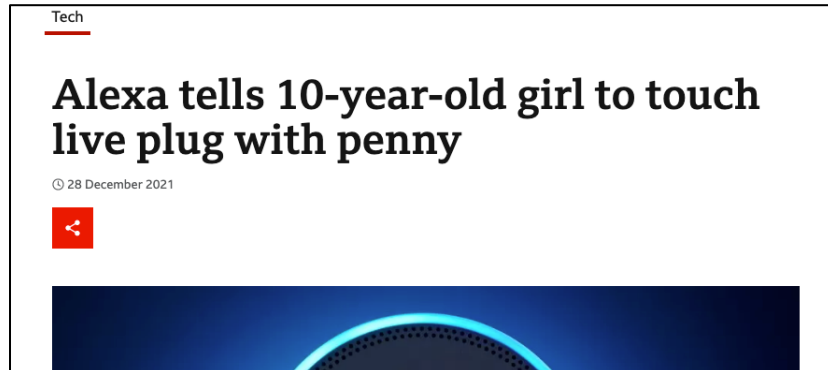
### **Question 3 (10 percent)**

The plaintiffs' complaint seeks \$1 million in compensatory damages based on Cobbs's pain and suffering, funeral expenses, loss of future income, Easterly's loss of comfort and society, and her mental and emotional anguish at losing her husband. In an affidavit, Easterly stated that she is unemployed and entirely dependent on Cobbs's income. The complaint also seeks \$3 million in punitive damages, alleging that as Braunfel is an entomologist who knew about the risk of allergic reactions to bee stings, it was at least grossly negligent to take no precautions at all to prevent Cobbs from being stung.

Before trial, your partner asks you to evaluate your client's exposure for each type of damages. He understands that exact numbers are uncertain, but assuming the plaintiffs can establish liability, he's wondering if there are any guidelines or limitations that mean the plaintiffs will not be entitled to all that they're asking for. Please write a memo explaining any relevant limitations.

**Question 4 (15 percent)**

Last December, this happened:



Screenshot of newspaper headlines that reads:  
"Alexa tells 10-year-old girl to touch live plug with penny"

The girl's mother described the incident on Twitter: "We were doing some physical challenges, like laying down and rolling over holding a shoe on your foot, from a [physical education] teacher on YouTube earlier." When the girl asked for another challenge, the smart speaker replied: "Plug in a phone charger about halfway into a wall outlet, then touch a penny to the exposed prongs."

It is well-known that metals conduct electricity and inserting them into live electrical sockets can cause electric shocks, fires and other damage. According to the article, the Echo speaker suggested partaking in the dangerous challenge that it had "found on the web." The so-called "penny challenge" had been circulating on TikTok and other social media websites about a year prior.

Thankfully, the girl in question did not, in fact, electrocute herself. The girl's mother noted that her daughter was "too smart to do something like that." But suppose she had inserted the penny at Alexa's instruction and burned down her house. If her mother sought to sue Amazon under a products liability theory, please explain how the three different tests for design defect (consumer expectations, Wade Factors/NY risk-utility, Restatement 3d risk-utility) would treat the question of whether Alexa's design was defective. In your answer, please make sure to explain the differences between each test, and for each, what evidence would be useful or required to establish whether a court should hold Amazon's design to be defective and why.

\*\*\* Exam Continued on Next Page\*\*\*

**Question 5 (15 percent)**

**Part A (10 percent).** As we have discussed this semester, in professional malpractice cases, the breach standard is defined by the practices of the profession itself. Professional custom is dispositive of what constitutes breach and experts are required to testify as to the standard in all but the most obvious breaches. How does this deference to professional custom support the goals of tort law or stand in the way of them? Does this rule make sense, or should the *TJ Hooper* rule apply? Explain with references to the prevailing theoretical approaches to tort law that we have studied this semester, including individual fairness and the economic approach.

**Part B (5 percent).** Racial and gender bias is prevalent in medical care, just as it is elsewhere in society. There are implicit biases in how doctors assess patients, and studies show that case outcomes in many different areas of medicine differ by race and gender in ways that can only be explained by persistent biases: explicit, implicit, or structural. What does a consideration of medical biases suggest for the question in Part A? Should we prefer the *TJ Hooper* rule more or less in light of these biases, and does your overall answer change? Why?

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**END**

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**Have a safe and happy winter break! You earned it!**

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