EXAM ID _____

Torts 2

Professor Selbst

Fall 2024

Friday, December 13
9:00am – 12:00pm
A-H: WCC 1019 & J-Z: WCC 1023

The exam mode is OPEN.

This exam is five pages long. Please check to see that you have all five pages. The exam contains a fact pattern and four short answer questions—two 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.

Approved Additional Materials – Digital and Paper.

☒ ALL (books, notes and digital materials)

☐ NONE (no digital or paper materials of any kind)

☐ ONLY THE FOLLOWING: _____

By submitting your exam answer(s), you acknowledge the above instructions, and certify that the work you are submitting is your own, that you have not received unauthorized assistance on the exam, including use of AI (such as ChatGPT and other large language models) unless explicitly permitted by your instructor, and that you have followed applicable rules, including rules for accessing reference and other materials during the exam.

Exam4 will automatically print your Anonymous ID and word count on the exam.

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! Good luck!

DO NOT TURN PAGE UNTIL THE PROCTOR SAYS TO BEGIN

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General Information

The state of Wasserstein is a new state in the United States. Because the events described in Questions 1-4 all take place in Wasserstein, assume the law of Wasserstein applies. Wasserstein has not yet developed a state common law, and therefore the common law of all other states and England is persuasive authority. The Wasserstein legislature has adopted the Wasserstein Comparative Fault Act, which provides for pure comparative fault and merges the implied assumption of the risk defense.

The legislature has also passed Wasserstein Criminal Code § 1122-20e, which states:

> The operators of any public event or gathering in excess of 1000 people, in which alcohol is to be sold, must implement policies to prevent the overserving of intoxicated individuals or individuals who otherwise pose a danger to themselves, staff, or other participants of the event or gathering. Failure to implement adequate policies or otherwise use reasonable safety measures to ensure the safe consumption of alcohol will result in a $5000 fine per violation.

A Messy Day at the Ballpark (Facts for Questions 1 & 2)

On a mild, breezy, summer evening, an enthusiastic crowd gathered to watch a long-awaited match between the hometown Wasserstein Scarlet Stockings and the rival Hauser Striped Pins. Among the spectators was Alex, a 22-year-old college student and long-time Stockings fan, along with three friends. Throughout the game, Alex consumed several beers sold by the stadium vendors, which are known for serving large portions at high prices. As the game progressed, he became visibly intoxicated.

The Scarlet Stockings play at Langdell Park, which is managed by Big League Events LLC. Big League Events has an official policy of cutting off alcohol service to patrons who are deemed overly intoxicated. There is no clear record of whether Alex was cut off, as the servers were not trained to monitor alcohol consumption in a precise or consistent manner or to document refusals to serve under the policy. It has also been reported in the past that some vendors continue serving drinks even after patrons show signs of being drunk.

On this particular evening, the Stockings were not playing particularly well, and some fans begin leaving in the middle of the game. Seeing this, Alex and his friends moved away from their ticketed seats to the front of their section, where there was a set of four empty seats. As they attempted to squeeze past other seated fans, Alex lost his balance and grabbed hold of the railing

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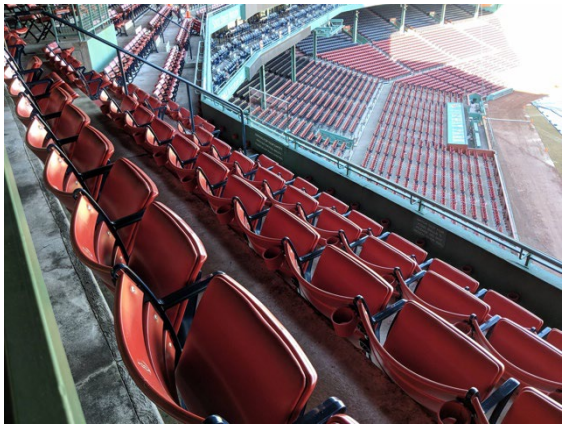

Exhibit 1: Seats that Alex and friends moved to mid-game. The railing has been repaired and repainted since the night in question.

at the front of the section (see Exhibit 1). Alex felt a small twinge of pain in his right hand as he grabbed the railing. Alex saw that a piece of the railing had rusted over where the paint had chipped. He noticed that hand was bleeding, but suddenly, there was a big play on the field, and the four friends stopped moving to watch the play unfold. Eventually, two Striped Pins players scored, to audible shouts and jeers across the stadium, and Alex forgot about the pain in his hand.

In the next half hour, Alex began behaving in an increasingly unruly manner, yelling expletives at the umpires, standing in his seat, and threatening other fans when they asked him to sit down. When he eventually dared a 12-year-old kid to fight him, security decided to eject Alex, and escorted him from the stadium. Alex's friends continued to watch the game.

After leaving the ballpark, Alex attempted to walk to the nearby subway stop. As he stumbled onto the street, he once again noticed his dirty, bleeding hand, and distracted, he tripped into the path of an oncoming car. The car was driven by Charlene, another fervent Stockings fan who was watching the game at a nearby bar, where she consumed a couple drinks, and then left early in disgust. As she saw Alex suddenly appear in her path, Charlene swerved hard, crashing into a lamppost. This caused the airbag to deploy, striking Charlene in the face, resulting in severe burns and a concussion. Alex, for his part, successfully dove out of the way, but he landed with his right hand on a broken beer bottle that dug right into the open cut.

Over the following week, Alex's jaw began to tighten and he began suffering painful muscle spasms in his neck. When he went to the doctor, he discovered that he had tetanus, a disease that can be life threatening, and can occur through a contaminated cut. (Perhaps unsurprisingly, given his state at the time, he failed to thoroughly wash his hands after suffering his injuries.) The symptoms lasted several weeks and full muscle recovery took about six months, including painful rehab and $5000 in medical bills.

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Scarlet Stockings tickets include the following language, printed on the back side of the physical ticket, and available on the website where digital tickets are purchased:

> The holder of this ticket ("Holder") agrees to the terms and conditions on this ticket and the rules and policies of the Scarlet Stockings Baseball Club LP ("Club").
>
> Holder voluntarily assumes all risk and danger of property loss and personal injury incidental to the game of baseball and related activities at the Ballpark, including specifically (but not exclusively) those relating to the structure and conditions of the Ballpark, and the danger of being injured by thrown or flying objects including bats and balls. To the extent permitted by law, the Holder irrevocably waives all claims of any nature against the Club or Big League Events LLC (collectively, the "Released Parties"), and releases and discharges the Released Parties from all claims, liability, costs, expenses, damages or losses (whether direct or consequential and whether arising under statute, from negligence, personal injury, death, property damage or otherwise) arising from or in connection with the game or event for which this ticket grants admission and the Ballpark or any service provided or anything sold there, notwithstanding that it may have been caused by the negligent act or omission on the part of such Released Party or Parties.
>
> Additional convenience, handling and transaction fees may be added to ticket price. This Ticket cannot be replaced if lost, stolen or destroyed. Valid only for the Event and seat for which it is issued.

Question 1 (30 percent)

You are an associate at a Wasserstein law firm, and Big League Events is one of your clients. You have received a litigation hold from Charlene's attorney—a letter that gives you notice of a pending lawsuit and requires that you preserve all documents. In the letter, Charlene stated that she believes you are liable for her accident due to overserving Alex. To determine whether you should settle the case, the partner you report to has asked you to write a memo evaluating Charlene's chances of success. Please write the memo.

Question 2 (30 percent)

Now you're a plaintiff-side lawyer in Wasserstein. Alex has approached you because he would like to sue Big League Events to recover damages related to his tetanus. To do decide whether to take the case, you decide to write a memo evaluating his chances of success. Please write the memo.

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Question 3 (20 percent)

Diego buys a blender manufactured by ElixirMixer, Inc., which is advertised as safe and easy to use for home cooks. The blender has a sleek, modern design and powerful blades capable of blending tough ingredients like frozen fruit and ice. However, the blender's lid lacks a locking mechanism, allowing the blender to be activated even when the lid is not securely in place.

While using the blender to make a smoothie, Diego inadvertently started the machine without fully securing the lid. The spinning blades created pressure that caused the lid to fly off, spilling the contents and injuring Diego's hand as he instinctively tried to stop the mess.

You are in-house counsel at ElixirMixer. Diego has filed a products liability lawsuit in Wasserstein state court. He claims that the blender's design is defective because it does not include an interlocking safety feature to prevent operation without the lid being properly secured, a feature present in some competitors' models. As far as ElixirMixer knows, the blender's design meets all applicable safety standards and the user manual clearly instructs consumers to secure the lid before use. You know from internal documents that the choice to forgo the interlocking safety feature was made mostly to support a new aesthetic design that the company believed would allow them to capture significant market share because "no one wants old, clunky blenders clogging up their kitchen counters." The documents also contain a memo about a focus group that voiced complaints about the mechanism's tendency to be finicky and cause the blender to sometimes take several tries to turn on.

The company executives want to know whether to settle the suit. Please analyze ElixirMixer's overall liability exposure, by evaluating the likely success of Diego's claims under any applicable products liability theories.

Question 4 (20 percent)

In 2023, the state of Iowa passed H.F. 161, a tort reform bill that limits noneconomic damages that can be awarded against health care providers to $250,000. Using the deontological and utilitarian theories of tort that we have studied this semester, please provide the best arguments for and against this bill. Please provide and evaluate at least one deontological argument and one utilitarian argument for each position, identifying them properly and explaining why they are arguments of the relevant type.

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END OF EXAM

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

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