

**WESTERN NEW ENGLAND COLLEGE
SPRINGFIELD, MASSACHUSETTS**

**TORTS (Section 01)
Professor William Childs**

Fall 2004

Final Examination Instructions

This is a 3 1/2 hour (210 minute) exam with no separate reading period.

I suggest you spend roughly the first half-hour reading the fact pattern, two hours outlining and writing your first answer, and one hour outlining and writing your second answer. That said, you can spend the time as you see fit.

This is a closed-book and closed-notes exam, with one exception: You may have one 8 1/2 by 11 piece of paper with anything you wish written or typed on both sides.

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Final Exam

Four siblings – Andrew Plaintiff (age 32), Barbara Plaintiff (28), Corey Plaintiff (21), and Dana Plaintiff (17) – love Halloween. They especially enjoy attending haunted houses and other spooky attractions, and have each attended over three dozen of the events. Andrew and Barbara have worked as paid “scare actors” at such events in the past, dressing in costume and jumping out of dark corners at patrons. Andrew was particularly effective as a scare actor, as his almost complete hearing loss rendered him unconcerned about the screams of patrons.

This year they all decided to attend “Spooky Scary World” at Eight Banners Over Massenota, a regional theme park owned by Eight Banners Inc. (“EBI”) in the fictional state of Massenota. None of the Plaintiff siblings were employed at the event, and they attended solely as patrons.

Spooky Scary World was an event that ran for four weeks in the fall every year. It was operated as a benefit by the Center to Cure Mild Irritability and Crankiness (“CCMIC”). The CCMIC hired over two hundred short-term employees to staff the half-dozen haunted houses as scare actors and operators of the various technologies involved in the attractions.

The CCMIC rented ten acres from EBI for the four-week period that Spooky Scary World was open and EBI charged its own admission fee for Spooky Scary World. In order to enter Spooky Scary World, patrons were required to pay admission for both Eight Banners Over Massenota and Spooky Scary World.

The full Eight Banners Over Massenota theme park was open during Spooky Scary World. EBI, seeking to add to the Halloween atmosphere, had several dozen of its employees performing as scare actors throughout the park. Due to difficulties recruiting scare actors, EBI shifted approximately twenty-five percent of its ride operators into positions as scare actors but continued to operate its rides at full capacity.

When the Plaintiffs arrived at the park, they each paid admission to Eight Banners Over Massenota and for Spooky Scary World. As in past years, Andrew and Barbara wanted to work their way up to the haunted attractions at Spooky Scary World by starting out on the Eight Banners rides, while Corey and Dana liked to go straight to the scares at Spooky Scary World.

Andrew and Barbara started off riding an indoor spinning ride called “Kaos,” a ride that EBI purchased from Wacky Rides, Inc. (“WRI”) in late 2003. On Kaos, a

maximum of thirty-six riders sit on a large circle of seats suspended about a foot above the floor of the building. The circle spins as well as bouncing up and down. The speed of the ride creates significant centripetal force. Accordingly, each seat has over-the-shoulder restraints.

Kaos is ordinarily operated by two ride operators, though WRI's ride manual does not provide a minimum number of operators. One ride operator ordinarily sits at the control panel and starts and stops the ride as well as acting as a DJ, playing music to add to the mood. The other ride operator checks each rider's restraints by tugging on them and ensures that the ride area is clear before giving the first operator a "thumbs-up," indicating the ride can be dispatched.

The ride system itself, like most (but not all) rides of a similar sort, does not have any means for electronically confirming that all restraints are in place. During the ride's operation, the second ride operator observes the ride from the opposite side of the ride from the first ride operator so that all parts of the ride are in sight of one operator at any given time. The second rider operator's station has an "emergency stop" button that can stop the ride's operation if pressed.

During the Halloween season, EBI decided that Kaos could be operated by one ride operator so that the second ride operator could be used as a scare actor. On the night of the Plaintiffs' visit, that operator was Annie Operator. EBI instructed Operator that she should do the second ride operator's work herself, checking the restraints and the ride area prior to walking back to the booth containing the control panel and starting the ride. During the ride's operation, only one-half of the ride was visible to the sole ride operator.

Operator had been the lead ride operator for Kaos all summer long and had never seen a restraint fail. For the Halloween season, she had developed her own method of checking restraints that did not include getting up out of her chair: She would instruct riders over the loudspeakers (which were also playing Halloween-themed heavy metal music) that they should check their own restraints.

Andrew and Barbara entered the building containing Kaos and watched one cycle of passengers go through the process of entering, riding, and exiting the ride. Andrew could not hear Operator's announcements and Barbara did not listen to them. Once the gates in front of the line opened, Andrew and Barbara entered the ride area and got into two seats next to each other, both on the opposite side of the ride from Operator's station (and thus out of her line of sight). After all riders were seated, Operator used the loudspeakers to tell the riders to check their restraints. She also announced that riders were to remain seated until the ride came to "a complete and final stop."

Andrew and Barbara had ridden Kaos before (when there were two operators) and did not check their restraints when they sat down. Unfortunately, although

they pulled the restraints down, neither Plaintiff's restraint was locked in place, which they could have discovered if they pushed up on the restraints.

As the lights on the ride came on, Barbara realized that no operator was going to be checking her restraint and discovered that hers was not locked in place. She quickly got out of her seat and hopped to the floor of the building, trying to get clear of the ride. Operator's view of Barbara was blocked by the ride itself, and Operator started the ride at full speed.

Barbara was unable to get out of the way of the ride and was severely injured when she was struck by one of the seats moving at over thirty miles per hour. She underwent extensive and painful months of physical therapy to recover from her multiple broken bones, and had multiple surgeries to resolve her internal injuries.

Andrew, after viewing his sister's injury, was thrown from his seat when his restraint flew up, and he smashed into the wall immediately next to his (still-conscious) sister and was instantly struck unconscious. He remains in a coma today.

Since the day of their injuries, Barbara has been severely depressed, suffering from regular bouts of nausea and headaches, and has been diagnosed as having post-traumatic stress syndrome. The psychologists who have treated her have been unable to separate the cause of these emotional and psychological problems between the stress of her own physical injuries from the stress of witnessing her brother's injuries.

Corey and Dana, meanwhile, had entered Spooky Scary World. As they entered, they passed by a sign with "RULES AND REGULATIONS" written at the top and many lines of small print below. They did not stop to read it. Among the items listed was: "Our scare actors have been instructed not to touch our patrons, but our attractions are high-intensity and low-visibility, and many of the scare actors work in close proximity to where you will be. Some contact is inevitable. You are not allowed to make contact with the scare actors; if you do contact any scare actor you may be ejected without refund."

The siblings considered their options, choosing between an almost entirely vacant warehouse "spook zone" entitled "Britney's Brain" (featuring one actor performing as a "thought" roughly every twenty minutes) and "Intensity," which was identified on Corey and Dana's "Guest Guide," provided by the park, as a long set of narrow interconnected tunnels heavily populated with actors leaping out of dark and foggy areas. Based on the description, they chose "Intensity."

After being in the maze for about ten minutes, Corey and Dana turned a corner and entered an extremely foggy area. Cameron Foggy, the fog machine

operator, had left his post to smoke a cigarette with the operator of the “Vomiting Guy” device, and had simply left the fog machine running.

Bobby Actor, a third-year scare actor, was hidden in the fog wearing a terrifying mask of Johnny Damon. He hid in a nook beside the main trail and waited for Corey and Dana to approach. Once they were nearby, he leapt out, shaking a very loud noisemaker. He was unaware of Corey’s enormous feet, however, and could not see them because of the fog, and he landed directly on Corey’s feet. Corey shrieked out in pain and surprise and pushed Actor backwards, off of Corey’s feet. Dana, angry about her brother being hurt, punched Actor in the face. Actor then punched Dana in the stomach. Actor was uninjured but angry.

At that point, a nearby actor dressed as Zell Miller separated the parties and Corey, limping, went through the rest of the attraction with Dana. As they left the maze, a furious Bobby Actor was waiting and broke both Corey and Dana’s pinkies.

Corey found out the next day that three toes were broken from Actor landing on them. Dana had to undergo surgery to resolve digestive problems caused by being punched by Actor. And both Corey and Dana required casts and physical therapy for their broken pinkies.

You are a plaintiff’s lawyer in Massenota. The Plaintiffs come to your office and describe the facts above.

Massenota law provides (as posted by each ride in the park, including Kaos): “Amusement park patrons must obey all warnings and directions regarding this ride and behave in a manner that will not cause or contribute to injury to themselves or others. Failure to comply is a misdemeanor.”

Do not take into consideration any charitable immunities with which you may be familiar.

Massenota common law provides for “modified comparative negligence,” in which a plaintiff is barred from recovery in a negligence suit if found to have been over 50% negligent.

If you are considering any other issue as to which states vary in their approaches, discuss both the majority and minority views. If you would need additional information to resolve an issue, identify what information you would need and why it is necessary. If you are making assumptions regarding the facts, identify those assumptions clearly and indicate their importance.

Feel free to identify the parties by their initials.

Question 1 (2/3 of your grade):

Evaluate the potential causes of action that could be brought by Andrew and/or Barbara Plaintiff against any potential defendant. Your discussion should include, but should not be limited to, an identification of the potential claims, defenses, counterclaims, factual and legal issues, potential defendants, and your view of the strength of each claim, including, if appropriate, a discussion of any issues regarding damages.

Question 2 (1/3 of your grade)

Evaluate the potential causes of action that could be brought by Corey and/or Dana Plaintiff against any potential defendant. Your discussion should include, but should not be limited to, an identification of the potential claims, defenses, counterclaims, factual and legal issues, potential defendants, and your view of the strength of each claim, including, if appropriate, a discussion of any issues regarding damages.

END OF EXAM