

Spring 1991 Torts Final

Final Examination

Professor Brummer May 8, 1991

Instructions for Essay

(Part I)

1. Read the question carefully. Answer only what is asked.
 2. Discuss every problem that is fairly raised by the question.
 3. Evaluate every argument that can fairly be made.
 4. Organize your answer as clearly and concisely as possible.
(organization and clarity will count).
 5. Write legibly and on alternate lines.
 6. Budget your time wisely. This question represents 50% of your examination grade.
 7. Answer this question in a separate bluebook or on separate sheets of typing paper.
 8. Do not write your name on the exam. Write your number only. Number the exam book to correspond with the question number.
 9. You may not use supplementary sources on this examination.
 10. This portion of the exam will last 90 minutes. The first thirty minutes are reserved to organize your response.
- At the conclusion of the organization period, bluebooks will be given to you. You will then have 60 minutes to write your answer in bluebooks provided to you.

George Steinbrewer, the owner of the Oakdale Athletics baseball team, contracted with the city of Oakdale to build a new stadium as a condition for the Athletics remaining in Oakdale. The city's mayor, Charlie O, convinced a group of wealthy business persons called Baseball Lovers, Inc. to enter into a joint venture with the city which would finance the building of a new stadium-hotel complex in downtown Oakdale. The new stadium, which would be called the Reggie Dome would be as modern as any in major league baseball. The Athletics would lease the stadium from the city during baseball season. The new stadium would include handicap ramps and "smoking decks" where tobacco users would be forced to go in order to indulge their habit.

George Cole and Co., was hired as the general contractor of the project. George Cole and Co. then hired Barnhill and Barnhill as subcontractors to build all stadium ramps and decks. In constructing the smoking decks, Barnhill and Barnhill used newly designed aluminum girders produced by a company called Girders Unlimited. At the time the girders were purchased, the Girders salesman told the buyer from Barnhill and Barnhill that its girders represented the state of the art and were superior to steel girders in all respects. Because of these specific assurances regarding the strength of the girders, they were purchased and used by Barnhill and Barnhill in the construction of the decks.

On opening night, after completion of the new stadium, there was a capacity crowd at the Reggie Dome. Throughout the stadium "no smoking" signs were posted as were notices informing patrons of the location of smoking decks. Each deck posted a capacity limit of fifty (50) persons. There were six smoking decks in a stadium that had a capacity of fifty thousand people. Stadium security employees had been specifically instructed by their employer, the Oakdale Athletics Baseball Organization, not to let more than fifty (50) people on to a smoking deck at a time. These security people, however, were too busy enjoying the game to be concerned about the number of people on the smoking decks. With over two hundred people on one of the smoking decks, the girders separated and the smoking deck collapsed. Among those seriously injured were Harry Kerry and his ten-year-old son Skip. Skip was forced by his father to accompany him to the smoking deck. Harry lost both legs in the incident while Skip died six months later from his injuries. Others injured in the accident included: 1) Seymore Plays, a stadium security guard; 2) Homer Driller, a season ticket-holder; and 3) Stormin Norman, a nonpaying guest of the Athletics.

When quoted an unidentified source as saying that the selection of George Cole and Co. as the general contractor by Mayor Charlie O was the real reason for the accident. The story as written in the Oakdale Democrat states that George Cole and Co. had never built a stadium of this size and kind before and they were therefore incompetent. The article goes on to suggest that the only reason George Cole was selected was that he was the Mayor's cousin. As it turns out, the Mayor does have a cousin whose name is George Cole, but the Mayor's cousin is not associated with George Cole and Co. Identify the various causes of action likely to arise from the preceding facts. Discuss issues affecting liability, damages and defense.