

SECTION # _____ EXAM # _____

PART II – ESSAY
(65% of Exam – Approximately 2 Hours)

One sunny Saturday afternoon in San Diego, Ben and his son, Jerry, were sitting in a café along the water at a popular park and shopping area along San Diego Bay. Ben and Jerry were enjoying watching the two owners of “Flying High,” a nearby kite store, setting up a large kite display on a large, crowded, grassy area near the water. The wind had been gusty that day and the Flying High owners struggled to get and keep the large kites airborne, as some of the kites were as large as a parachute, ranging from 20 to 30 feet across. Once the kites were up, Ben and Jerry walked over to the grassy area and sat down on the grass under the kites to enjoy the views of the Bay and the kite display above them.

At the same time, Disco Stu was rollerblading on the waterfront boardwalk immediately adjacent to the grassy area. Due to the heavy pedestrian traffic along the boardwalk on weekends, a local ordinance prohibited rollerblading, biking and skateboarding on the boardwalk at speeds in excess of 5 miles per hour. However, Stu enjoyed going fast and fancied himself an excellent skater. Thus, just like any other Saturday, Stu cruised down the boardwalk at top speeds of up to 12 miles per hour, having fun weaving among the pedestrians as he went. It was not uncommon on weekends to see rollerbladers skating along the boardwalk at speeds of greater than 5 miles per hour.

As Stu approached the grassy area near the Flying High kite display, the wind began gusting once again. The Flying High owners struggled with the large 30-foot-long dragon kite and lost control of it as it careened toward the ground. Ben was watching the scene and jumped out of the way of the kite just in time, yelling to Jerry, “watch out, son!!!” Unfortunately, Jerry was enjoying the view of the Bay and watching the passersby and did not see the kite approaching from the side nor did he hear Ben’s warning. Consequently, a pointed corner of the kite hit Jerry in the eye, causing profuse bleeding. Unfortunately for Ben, in avoiding the kite Ben jumped from the grassy area onto the boardwalk and right into the path of Stu. Stu was moving at top speed and was unable to stop quickly enough to avoid hitting Ben and Patti, another pedestrian walking along the boardwalk. Patti screamed as Stu swerved toward her. Stu crashed into both Ben and Patti, causing Ben to suffer a minor scrape on his knee, and Patti to fall off the boardwalk and into the water unconscious.

Bluto, who was cruising the San Diego Bay in a power boat, saw Patti fall into the water and decided to assist. Bluto motored over to Patti, saw that she was unconscious, and pulled her out of the water. Although Bluto had no first aid training, he quickly checked his boat owner’s first aid manual, which included a reference to cardiopulmonary resuscitation (CPR) and properly described how to conduct CPR. Unfortunately, Bluto did not read the top of the page, which detailed the necessary steps to determine if CPR is appropriate, such as checking for a pulse and looking and listening for breathing. Consequently, Bluto conducted CPR on Patti, even though she was breathing and had a strong pulse. In performing CPR, Bluto broke one of Patti’s ribs, a not uncommon occurrence even when CPR is performed properly. When Patti resumed consciousness, she demanded that Bluto take her to the nearest dock immediately. Thinking that he knew better, Bluto ignored Patti’s demands and raced to a first-aid station across the bay. At the first-aid station, Patti received appropriate medical treatment for her broken rib and made a full recovery.

Analyze the tort claims and defenses that may be raised by the parties.

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