

PART II: ESSAY QUESTION (50%)

Polly was a student at Arcadia High School in Los Angeles County. In September 2002, when she was a 16-year old junior, she entered into a sexual relationship with Mr. Daniels, a popular teacher at Arcadia, who was in his thirties. The relationship was preceded by several months of sexually provocative email communication. All their physical encounters occurred in Mr. Daniels' classroom, during school hours, usually at lunchtime. The School District equipped all of its classrooms with telephones, window blinds, and a couch.

The School District knew Mr. Daniels had used e-mail to communicate with female students in the past and had warned him to stop prior to the events with Polly. In 2001, parents of at least one other female student had complained to the school regarding excessive and late night e-mail communications between Mr. Daniels and their daughter. The School District did not follow up or monitor Mr. Daniels' activities.

At no time during her minority did Polly disclose her relationship with Mr. Daniels to her parents. During her senior year, in December 2003, Polly turned 18 years of age.

In July 2004, after graduation, Mr. Daniels told Polly he was stopping their relationship immediately because his wife had found out about it. Polly was distraught and revealed everything to her mother, including her misery at being rejected by Mr. Daniels. Polly's mother saw it differently and wanted to bring charges against Mr. Daniels but feared that Polly would commit suicide if she did. Polly agreed to undergo counseling in exchange for her mother's promise not to report Mr. Daniels' conduct to the police. Four months later, Polly's mother reconsidered and reported Mr. Daniels to law enforcement. He was arrested in November 2004.

Mr. Daniels pled guilty and was sentenced to 12 years in prison. Polly continued to believe he was her true love, but she also stayed in counseling. In July 2008, she finally realized that she had been victimized by Mr. Daniels. Two months after that realization, in September 2008, Polly filed an unlimited civil suit in Los Angeles County Superior Court against the School District. The complaint simply alleged negligent supervision of Mr. Daniels by the School District.

With regard to the following motions, did the court rule properly? Discuss. **There are five interrogatories.**

1. Polly's complaint presented an ultimate fact for each element of a cause of action for negligent supervision of an employee by a school district. School District filed an answer under CCP § 431.30(b), alleging as an affirmative defense that the three-year statute of limitations for negligence had expired. The court rejected School District's defense, citing California Code of Civil Procedure § 340.1 [see Appendix A at the end of this exam for the relevant text].

2. Polly and School District commenced discovery. Polly demanded Mr. Daniels' personnel file. The School District refused. Pursuant to CCP § 2031.320, the court granted Polly's request for an order compelling production.
3. When discovery was complete, the School District moved for summary judgment under CCP § 437c on the theory that Polly had raised no triable issue of material fact showing that the School District had any responsibility for Mr. Daniels' intentional criminal conduct.
4. At trial, Polly's attorney exercised six peremptory challenges under CCP § 231 against potential jurors. Two were teachers, two were college professors, and two were school administrators. When the petit jury was completely assembled, the School District objected to the absence of any such group members. The court overruled its objections.
5. The jury found in favor of Polly, and awarded her \$20 million in damages. The School District attorney immediately moved for JNOV under CCP § 629 and for a new trial under CCP § 657. The judge denied both motions and told the School District to appeal the judgment if it did not like the outcome.

The relevant text of California Code of Civil Procedure § 340.1 follows.
It is not included in the Code Book.

Spring 2009 Final Exam – Appendix A

California Code of Civil Procedure § 340.1 (effective 2003)

Childhood sexual abuse; certificates of merit executed by attorney; violations; failure to file; name designation of defendant; periods of limitation; legislative intent.

(a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

- (1) An action against any person for committing an act of childhood sexual abuse.
- (2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.
- (3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(b)

- (1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.
- (2) This subdivision does not apply if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

END OF EXAM