

**FINAL EXAM
REMEDIES
PROF. LOIS SCHWARTZ
GOLDEN GATE LAW SCHOOL
SUMMER 2009**

Instructions

1. You have three (3) hours to complete this exam.
2. This exam is closed book.
3. The exam consists of thirty multiple choice questions, and an essay question. The two sections are weighted equally in your final exam score.
4. Mark multiple-choice answers on the separate ParScore form. Use pencil or blue or black pen. To change an answer, place a clear 'X' through the wrong answer and mark the correct answer. A machine will score the exam, and any ambiguities will be counted as wrong answers. Note that answers marked in this packet but not on the ParScore form will not be considered.
5. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the "ParSCORE TEST FORM." Do not use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. DO NOT seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

PART TWO: ESSAY QUESTION

This essay question is two pages in length and has five interrogatories.

It is October 2009 and California schools are in session. Unfortunately, the H1N1 virus (also called “Swine Flu”) is in full swing and is causing an epidemic in this state (as well as the country). California government officials, recognizing that the virus heavily affects children and young adults, decide to implement a state-sponsored vaccination program at both public and private schools and day-care centers to combat further spread of the disease.

The State Department of Education enters into an agreement with three prominent drug companies – Adventia, Blaxon, and Covartis – who rush a vaccine into production and quickly deliver the necessary doses to the state. Unfortunately, the State of California is still in a budget crunch and lacks the funds to pay for the medication. It insists that the drug companies take IOUs (promissory notes to make a future payment) instead of actual payment. The companies reluctantly agree. State officials claim they will pay off the IOUs in three months. Wells Fargo Bank agrees to accept the IOUs and advance the amount owed to the drug companies on the IOUs in the interim. The companies, in need of the cash, accept the offer.

Deerfield Public High School is one of the California schools participating in the vaccination program. It is located in a wealthy suburb. Parents or guardians of the students must sign a consent form agreeing to allow their children to receive the inoculation (a shot of the vaccine). If parents decline to submit this form, they must show proof that the child has received an H1N1 vaccination from another health care provider. Failure to show such proof allows officials to refuse to allow the child to attend school. Parents are asked to contribute \$3.00 per child who receives a shot to offset the expenses of the program.

In addition to the vaccination program, school administrators order custodial staff to clean and disinfect water fountains, door handles, handrails, eating surfaces, telephones, and computer keyboards at Deerfield High. This will help to curb the spread of the virus and to protect the value of this expensive piece of State of California property.

The vaccinations are administered on October 21, 2009. While the students are receiving their shots, Mrs. Marsh, the school principal, starts to feel ill. Doc, one of the health care providers on site, rushes to assist. Mrs. Marsh, who believes in a religion that does not allow Western medical treatment, pushes him away. Then she loses consciousness. At that point, Doc administers CPR (cardio-pulmonary resuscitation), saving Mrs. Marsh’s life. Later, the doctor sends Mrs. Marsh a \$500 bill for emergency services. Mrs. Marsh refuses to pay.

On the evening of October 21, a large number of the Deerfield High pupils who received the vaccine in the school program that day begin to develop symptoms of illness, including fever, fatigue, headache, swelling, muscle aches, itching, nausea, vomiting, and skin rash. Among them, fifteen of the twenty students enrolled in the senior English honors class are hospitalized for approximately five nights. On average, the students are able to return to school in about two weeks. Medical expenses per child come to about \$20,000. Upset parents discuss rumors that the vaccine was defective. Drug company representatives deny liability.

1. If the State never pays on the IOUs, what remedies, if any, do the drug companies have against the State of California?
2. If the State never pays on the IOUs, what remedies, if any, does Wells Fargo Bank have to recover the money it has advanced to the drug companies?
3. What remedies, if any, does Doc have against Mrs. Marsh?
4. What remedies, if any, are available to the students and their families for the injuries suffered following the vaccination program?
5. Assume for purposes of this question only that Pamela, a student in the English honors class, is 4 weeks pregnant at the time she receives the vaccine but does not realize it. Pamela has the baby and names her Pansy. Pamela is a very good mother to Pansy, who is a happy, healthy child. But when Pansy turns 15, she suddenly develops leukemia. While taking Pansy's history, the pediatrician asks Pamela if Pansy was ever exposed to the H1N1 vaccine, since some serious long-term negative effects have recently begun to surface. If Pamela decides to file a claim on behalf of Pansy against the drug manufacturers, what must she show?

END OF ESSAY QUESTION

END OF EXAM

You have been a great class!
Enjoy the rest of your summer!