On November 9, 2004, a deadly accident occurred in Walnut Creek, California. Five construction workers were killed, others were injured, and some residences were destroyed. The accident occurred when heavy construction excavating equipment—a backhoe—punctured an underground petroleum pipeline. The backhoe was operated by an employee of Mountain Cascade Company (MCC) who was digging a 12 foot deep trench for a new, large (70 inch diameter) water pipe project under MCC’s contract with a local water agency. The backhoe punctured a nearby, small (12 inch diameter) petroleum pipeline owned by Kinder Morgan, Inc. (KMI).

The puncture caused petroleum to flow down into the trench and petroleum vapors to enter a portion of the new water pipe. Other MCC workers were inside the pipe, welding together sections of it. The vapors were ignited by a welding torch, producing a series of large explosions and fires.

The site of this incident is close to Las Lomas High School, whose football coach is Doug Longero. When Longero heard the first explosion, he rushed outside and heard cries of help from the vicinity of the trench. He saw severely injured workers staggering toward him, and he ran forward and assisted them. While he was doing so, another explosion occurred, causing him to be seriously burned over much of his body.

Please evaluate the strengths and weaknesses of any tort causes of action available to Longero against MCC. Be sure to include evaluation of any available defenses, and to explain how the claims should be resolved. If you believe it necessary to obtain additional facts, indicate their legal significance. You also should consider the following information:

- MCC’s contract with the local water agency required MCC to “verify the location” of the petroleum pipeline before digging the trench.

- An experienced industrial accident investigator has stated that “the first rule of excavation projects near petroleum pipelines is to know where they are down to the inch.”

- MCC asserts that although KMI had posted signs on the surface to mark the location of the underground pipeline, MCC now believes that the signs mismarked the location by five feet. The signs also displayed KMI’s toll-free telephone number for further information. KMI responds that the pipeline’s location was accurately marked, but that MCC violated its own usual practice of hand-digging to confirm the location of underground pipelines before excavating with a backhoe.
QUESTION II
(Suggested time: 1 hour)

Olivia Keys is a 14 year old freshman at Dodge Academy, a private high school. She has been a skilled swimmer since she was very young, but she has always had a fear of diving.

In September, the day before the school year began, Dodge Academy hired Mike Andrews as a physical education teacher and coach for the swim team. Andrews had been a competitive swimmer in high school and college, but had never before held a job as a swim coach. Nonetheless, on his resume and application for this job, he falsely stated that he had been a swimming and diving coach for a total of eight years at various schools and swimming organizations. He also falsely stated that he has a teacher’s license, as required by state statute for anyone teaching or coaching in a public or private school.

Soon after Olivia joined the swim team, she told Andrews that she was deeply afraid of hurting herself diving into the pool. She begged him to let her always begin races as the starting member of the 4-person relay team, for in that role she could begin each race already in the pool, rather than having to dive in from the raised platforms (the starting blocks) above the pool. (In a relay race, each swimmer swims part of the distance and is then followed by another swimmer who swims the next segment.) Andrews agreed to her request. He told her, however, that he wanted her to begin to try to learn more about diving. At one practice session, he demonstrated for her some of the body positions she would need to use in diving into a race. He also used his hands to try to put her head, arms, and legs into position for diving. During this brief practice session, Olivia did not actually have to dive into the water and did not do so.

In October, Dodge Academy’s Athletic Director, Susan Ogle, learned of the falsehoods in Andrews’s resume and job application. She decided not to tell anyone about them or do anything else about them.

Ten minutes before the start of a race in November, Andrews told Olivia that she would have to swim as the second member of the relay team. This meant she would have to dive in from the starting blocks. Olivia told Andrews she was scared, and she tearfully begged him to reconsider and let her swim first and start the race from inside the pool. He told her that her only choice was to dive in as the second swimmer or to be off the team entirely for the rest of the year. Olivia, although extremely upset, then went off with two teammates to practice diving into the pool before her race began. On her first attempt, her head hit the bottom of the pool, breaking her neck.

Please evaluate the strengths and weaknesses of any tort causes of action available to Olivia Keys against Mike Andrews and Susan Ogle. Be sure to identify the parties to each claim you consider, to include evaluation of any available defenses, and to explain how the claims should be resolved. If you believe it necessary to obtain additional facts, indicate their legal significance.