Santa Clara University School of Law – Fall 2007

4-DIGIT EXAM ID:_______ COURSE: Torts  PROFESSOR: Manaster

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION. 
THE STANDARD EXAMINATION RULES GOVERN THIS EXAMINATION.

TORTS
PROFESSOR MANASTER
2 ESSAY QUESTIONS
DECEMBER 7, 2007 
2 HOURS
CLOSED BOOK

PROFESSOR'S INSTRUCTIONS

This is a closed book examination.

The suggested time for each question is one hour. Each question will count equally in the grading of this examination.

Your answers should be organized clearly. The use of headings and subheadings for this purpose is encouraged.

STOP! DO NOT FLIP THIS COVER PAGE UNTIL TOLD TO DO SO BY THE PROCTOR!
QUESTION I
(Suggested time: 1 hour)

Chuck & Bob's Delivery Service (CBDS) owns a few small trucks which it uses in its package delivery service in a Midwestern city. Chuck and Bob are brothers, but dislike each other even though they are related and are co-owners of CBDS. Among other disagreements they have, Bob thinks that Chuck is not a careful driver. Bob has already told Chuck that he plans very soon to leave CBDS and start his own separate business.

Last week, after making a delivery, Chuck used his cell phone to call Bob at the office to find out where he should drive to next to pick up another package. A state statute makes it a crime to use a cell phone while driving a vehicle. Common practice in the package delivery business, however, is to rely on cell phone calls for drivers to keep in touch with their offices and find out where they need to go for pickups.

Chuck asked Bob, "Where to next?" At that moment, Chuck saw a 12 year old bicyclist named Joe suddenly riding down a driveway toward the street. Although Joe was about to turn right and go in the same direction as Chuck close to the side of the street, Chuck mistakenly thought that Joe was trying to cross the street in front of him. Chuck immediately reacted by swerving his car to the left to avoid Joe. He crossed the center line of the street and crashed into a car going the other way driven by Oscar, who was injured in the crash. Chuck also was injured and knocked unconscious.

Through the phone, Bob heard Chuck scream and then heard the noise of the crash. Bob immediately became very upset, and he continues to feel quite anxious and nervous.

Please evaluate the strengths and weaknesses of any tort causes of action available to Oscar and Bob against Chuck, explaining how these claims should be resolved. If you believe it necessary to obtain additional facts, indicate their legal significance.

QUESTION II
(Suggested time: 1 hour)

Sue Smith went with a group of friends to a large amusement park owned by Thrill Rides, Inc. (TRI). Toward the end of the day, her friends decided to leave, but Sue told them she would stay to go on one last ride, the "Pirates of the Antarctic." Her friends left, and Sue entered the Pirates ride, seating herself in one of the individual compartments which travel through the cold, damp tunnel of this ride.
Because the ride has sharp turns and steep dips, each rider is secured in her seat by a metal safety bar which automatically snaps into place over the rider's lap. When Sue's bar snapped into position, she found that it was too tight and very uncomfortable. She called out to a nearby TRI employee, but he just yelled back at her, "Be quiet or I'll make that thing even tighter."

When the ride was over, Sue tried to leave her compartment but was unable to do so because the metal bar did not move away from her body, either automatically or when she pushed on it. She tried unsuccessfully to get an employee's attention. Although she could not see them, she overheard two employees calling to each other. One said, "Is everyone out?" The other responded, "Maybe. I don't know, and I don't care. I just need to get another beer now."

Another passenger, Beth Barnes, heard Sue calling for assistance and began walking toward Sue's compartment to see what the problem was. As she was walking, her friend yelled to her, "Come on. Let's go home." Beth turned around and left.

Within a couple of minutes, everyone had left but Sue, who was stuck in her seat. Three hours later, a janitorial worker found her and released her. By that time she was sick and very upset because the dampness and cold of the Pirates ride had left her wet and chilled. Ever since this incident, she becomes nervous, shaky, and tearful whenever she sits down in a chair of any type.

TRI employees had not serviced the seats and safety bars in the Pirates ride for six months, even though TRI's equipment manual states that it should be done monthly.

Please evaluate the strengths and weaknesses of any tort causes of action available to Sue against TRI and Beth, explaining how these claims should be resolved. If you believe it necessary to obtain additional facts, indicate their legal significance.

END OF EXAMINATION