SANTA CLARA UNIVERSITY SCHOOL OF LAW – FALL 2008

4-DIGIT EXAM ID: _____ COURSE: ______________ PROFESSOR___________

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

TORTS
PROFESSOR MANASTER
3 ESSAY QUESTIONS

DECEMBER 11, 2008
3 ½ HOURS
CLOSED BOOK

PROFESSOR’S INSTRUCTIONS

This is a closed book examination.

The suggested time for Question I is 1 ½ hours, and the suggested time for Question II and Question III is 1 hour each.

The total examination time is 3 ½ hours.

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 ½ hours)

Joe Pringle was driving his car last Saturday in Santa Clara, California while talking to a friend on the cell phone he bought a few days earlier. He was holding the phone in his hand, despite a state law which requires drivers to use only hands-free devices for phone calls while driving. Suddenly the phone violently broke apart, causing serious burns and injuries on his hand and elsewhere on his body. Subsequent investigation showed that the battery inside the cell phone had exploded.

The cell phone was manufactured by Callwell Telephones, Inc. (CTI) Pringle bought it directly from CTI. The purchase price of the phone did not include a battery, though for an additional, separate price CTI also offered a battery it made. Pringle chose not to buy the battery from CTI because he wanted to try using the battery from his old phone instead and save the cost of buying a new battery. The old battery was not made or sold by CTI.

The User’s Manual which came with Pringle’s new CTI phone included the following statement on the cover of the manual: “Always use a CTI battery in this phone. Our batteries are the best and safest.” Although Pringle read this statement, he inserted his old battery. It fit into the phone, and the phone worked normally until last Saturday’s incident.

Over the past five years or so, there have been just a few incidents of cell phone batteries exploding and causing injuries. Almost all of these incidents have involved lithium-ion batteries, so some manufacturers have changed their phones to run only on other types of batteries, such as nickel metal hydride or nickel cadmium. CTI continues to rely on lithium-ion batteries. Lithium-ion batteries have long been used widely in cell phones because they are smaller and more durable than the other types, cause less environmental damage because they don’t contain toxic materials, and retain power longer. However, lithium-ion batteries are more fragile and prone to malfunction if exposed to heat or direct sunlight.

Many of the incidents also have involved the user’s choice to insert a battery that did not come with the phone, was not made by the same manufacturer, and ultimately exploded because of incompatibility with the phone. In response to these incidents, one other manufacturer has built into its phone a security mechanism which will prevent the use of other manufacturers’ batteries.

Please evaluate the strengths and weaknesses of any tort causes of action available to Pringle against CTI, 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)

The Mountain Super Marathon (MSM) is a foot race which has been held annually for the past 40 years in a mountainous area in a western state. The area is privately owned by various
people, who all have agreed to allow the race to be held there. Each year about 2000 runners participate, attempting to cover 100 miles of rugged terrain as quickly as possible over two days. Many of the runners carry sleeping bags, tents, and other outdoor equipment. The race is organized by the MSM Company (MSMCo), which charges runners a fee to participate.

The day before this year’s MSM was to begin, MSMCo personnel made their customary check of the weather forecast for the area. The forecast stated that unusually heavy rains, high winds, and flooding of some parts of the course were about 85% likely to occur. Recognizing that all the runners had already paid their participant fees, almost all of them had already traveled to the vicinity of the race, some coming from far away, and many runners carry equipment suitable for adverse weather, MSMCo decided not to postpone or cancel the race despite the weather forecast.

At the start of the race in the morning, the weather was cloudy, with some drizzle and light winds. By noon, however, the rain was coming down extremely hard, the winds were very strong, and the temperature had dropped to nearly the freezing level. The combination of intense rain and strong winds created flash floods at many points along the race course, as creeks and small rivers suddenly were filled with swiftly moving, high water.

At five o’clock in the evening, MSMCo terminated the race, but by that time some runners had run into trouble. One of the runners, Ruth Ritter, was seriously injured during the afternoon when she slipped and fell while trying to run on a section of the course which had become very muddy. Running next to Ruth when she fell was her brother, Rob Ritter, who saw her fall and became extremely upset about what had happened to her.

Stan Samson was hurt when he fell while running in the same muddy area. Samson fell when Terry Thomas, while was still racing very fast despite the storm, briefly lost his footing and bumped hard into Samson.

Please evaluate the strengths and weaknesses of any tort causes of action available to Ruth Ritter, Rob Ritter, and Stan Samson against MSMCo and Terry Thomas, explaining how these claims should be resolved. If you believe it necessary to obtain additional facts, indicate their legal significance.

QUESTION III
(Suggested time: 1 hour)

Although the race described in Question II was terminated at 5:00 PM, many runners were still stranded out on the race course while the disastrous weather conditions continued. Among them was Ursula Uggams, who tried for a few hours to find a way to get out of the race area to a safe location, but was unable to do so because of the horrible weather and poor visibility. She spent the night huddled beside a large rock, but suffered no adverse health effects or injuries from the ordeal.
Victor Vaughn’s effort to find a safe place seemed more successful at first. He found a small cabin on land in the race area which was owned and occupied by Don Davids. Vaughn begged Davids to let him stay in the cabin with him, but Davids refused, even though there was more than enough room for both of them to ride out the storm there. Vaughn suffered adverse health effects, as well as psychological trauma, from staying outside throughout the stormy night.

Shortly after Vaughn was refused entry to the cabin, another stranded runner, Walt Whitaker, also was refused permission by Davids to stay in the cabin. Whitaker, however, took matters into his own hands. He kicked down the door of the cabin, entered it, and forcibly tied Davids to a chair for three hours until Davids agreed to let Whitaker stay in the cabin.

In the early evening, as news traveled about the runners stranded in the storm, volunteers from surrounding areas came to try to rescue them. While attempting to rescue a runner perched on a rock in a raging river, Yale Yorty suffered a broken leg when debris in the river crashed into him.

Please evaluate the strengths and weaknesses of any tort causes of action arising among Uggams, Vaughn, Davids, Whitaker, Yorty, and MSMCo, explaining how these claims should be resolved. Be sure to specify the parties to each cause of action you identify. If you believe it necessary to obtain additional facts, indicate their legal significance.

(Questions II and III are loosely based on an article entitled “‘We have come within inches of turning Lake District into a morgue’: Recriminations fly after huge operation to rescue hundreds of marathon runners stranded by torrential rain in the Lake District,” The Independent (London), October 27, 2008.)

END OF EXAMINATION