NOTE: This Grading Outline presents the professor’s notes to which he referred as he graded students’ answers to this examination. This outline is not a comprehensive statement of all possible issues that could be addressed in response to this examination, nor should this outline be understood as indicating the only possible sequence in which claims or issues could have been addressed effectively.

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**Pringle v. CTI – Question I**

**Negligence:** For harm caused by product design.

Foreseeable risks of harm from use of lithium-ion batteries create duty of care to foreseeable users.

Breach of this duty? Evaluation of burden of changing battery type, relative to low probability, large damage events.

Custom of evidentiary weight in D’s favor, as lithium-ion batteries widely used.

Foreseeable risks of harm from insertion of noncompatible batteries made by other manufacturers.

Breach of this duty? Evaluation of burden of installing security mechanism, or including battery with phone, to prevent use of non-CTI batteries, relative to low probability, large damage events.

Res ipsa loquitur available for P? Probably not, as P chose to use a non-CTI battery, so condition of phone not in D’s exclusive control and P actively involved.

No causation issues indicated, but even if D’s battery used, still would have exploded as a lithium-ion type?

Defense of pure comparative contributory negligence, per Li in California:

Contributory negligence per se for violation of hands-free law? Law aimed at harm from inattention to driving, not harm from exploding phones, so no negligence per se presumption against P.
Contributory negligence in failing to follow instruction to use a CTI battery? Depends on appraisal of how adequate the warning was. If warning inadequate, P not careless in using old battery, unless widespread public information about other incidents should have alerted P to unwisdom of doing so. If warning adequate, and did mention safety, then careless for disregarding it. A degree of reduction in liability.

Implied warranty of merchantability.

Strict liability: For harm caused by product design.

Consumer expectations re danger exceeded, as ordinary user does not expect phone to explode.

Risk-utility analysis: D can show benefits of use of lithium-ion batteries outweigh risks, as few incidents have occurred.

With regard to failure to include security mechanism, can D show that benefits of not having security mechanism outweigh risks?

Defense of pure comparative contributory negligence, per Daly in California:

Same analysis as above re negligence claim.

Insertion of other manufacturer’s battery a foreseeable misuse, so product design needs to include consideration of this; defectiveness still can be shown relative to foreseeable misuse, and causation between defect and harm can be shown. Not sufficient specific information known to P to create primary assumption of risk in sense of relieving D of obligation to design phone with reference to such misuse.

Strict liability: For harm caused by inadequate instructions or warnings:
Negligence: Same allegation and analysis, as both theories based on foreseeable risks and need for information re safe use. Five years of incidents as basis for knowledge re risks of incompatible battery insertion.

P argues user’s manual statement, though directed at user as correct audience, fails to include adequate information. Statement arguably sounds more like advertising, self-promotion, than a warning of need to restrict battery to one made by same manufacturer. No indication of specific safety hazards to be avoided by proper battery choice. Per Restatement Second terminology in Comment j, product unreasonably dangerous because of failure to include adequate warning.
**Mountain Super Marathon -- Question II**

**Ruth Ritter v. MSMCo**

Negligence for physical injury from holding race despite dire weather forecast: Duty of care arises from foreseeable risks of holding event in bad weather. Ruth arguably a business invited, owed duty of reasonable care, if MSMCo seen as occupier of race land.

Breach determined by balancing burden of postponement or cancellation against risk of serious physical harm from exposure to weather and high probability of harm. Risk diminished as many runners have protective gear.

Actual cause per but for test, as no injuries if race had not been held during the storm.

Legal cause met as foreseeable risk was of harm related to storm conditions, such as muddy terrain. Under direct causation test, arguably the harm occurred in the race area while the storm was occurring, and no separate factors were at work.

Defense of assumption of risk: Under primary meaning, D argues that P understood that muddy conditions arise in mountainous areas normally, even without a storm, and had no basis for expecting D to make the course any safer than it obviously was. Similarly, P may have had equal access to weather forecast information.

Under secondary meaning, P arguably contributorily negligent in running in muddy, slippery conditions. Recovery reduced if in a comparative negligence jurisdiction.

**Rob Ritter v. MSMCo**

Negligent infliction of emotional distress: Also was in the zone of physical danger as a runner in the muddy area, so NIED claim established on that basis.

Even apart from zone of danger basis, Dillon factors met through location at scene, direct and contemporaneous observance, and close family relationship.

**Stan Samson v. MSMCo**

Same negligence claim as Ruth Ritter.

Indivisible injury caused by MSMCo’s negligence plus the foreseeable (intervening cause) negligence of Terry Thomas. Joint and several liability imposed.
Stan Samson v. Terry Thomas

Negligence in running fast despite the rain and mud, creating foreseeable risks to other runners. Indivisible injury caused by his negligence plus the negligence of MSMCo in holding the event under these conditions. Joint and several liability imposed.
**Mountain Super Marathon – Question III**

**Ursula Uggams v. MSMCo**

Negligence claim for holding the race despite dire forecast, but no harm suffered by her so claim fails. Negligent confinement claim similarly fails because no tangible harm suffered.

False imprisonment in being confined to race area fails for lack of intent based on either purpose of knowledge to substantial certainty that the confinement would result.

**Victor Vaughn v. MSMCo**

Same negligence claim as Uggams, but with harm resulting. Inaction of Davids not an intervening, superseding cause because made Vaughn’s harm no greater than it would have been without the unsuccessful effort of Vaughn to seek shelter there.

**Victor Vaughn v. Don Davids**

Negligence in failing to allow Vaughn to stay in cabin: No affirmative duty to take action to help stranger in peril, so claim fails. Vaughn’s best argument would be that by agreeing to allow the race to be held on his land, Davids was involved in the race and a duty to assist arose out of that relationship. On that basis, Vaughn argues Davids owed a duty to assist.

Vaughn arguably a licensee, or an invitee depending on financial arrangements for use of land. But no indication of dangerous conditions on the land, other than natural weather, which would create affirmative duty to warn or assist.

Intentional infliction of emotional distress for psychological trauma: Arguably outrageous conduct in denying access to cabin during storm; severe emotional distress resulted; intentional or at least reckless by Davids as highly probable that exposure through the night would be very upsetting.

**Don Davids v. Walt Whitaker**

Trespass in entering cabin, with property damage. Intentional, purposeful, intrusion into Davids’ real property. Damages to cover entire period Whitaker present because later consent for him to stay was given under duress, as the price for untying Davids from the chair.

Defense of necessity: Whitaker’s need to protect his own safety justifies entry, but privilege only partial so compensation for harm done must be paid.

False imprisonment in tying to chair: Intent based on purpose; physical act; confinement. Battery through contact in forcibly tying to chair.

Defense of necessity: Should Whitaker’s need to protect his own safety justify physical restraint of Davids? A policy judgment re competing interests; arguably not a good
defense, since Davids had no obligation to allow entry, physical restraint is a severe infringement of personal liberty, and Davids did not create Whitaker’s peril.

Yale Yorty v. MSMCo

Negligence claim for rescuer as foreseeable victim suffering foreseeable harm.