

Quiz Two
Torts – Section Two
Prof. Childs

Name: _____(print)

Clearly circle only one answer per question. **Answers anywhere other than this page will not be counted.**

1. A B C D E

2. A B C D

3. A B C D E

4. A B C D E F

5. A B C D

Ann Pynia and Bob Pynia and their daughters Carol Pynia and Eunice Pynia and their son Fred Pynia attended the Sheep and Wool Festival in Massenota over the weekend. The Festival featured, among other things, the Eighth Annual Punkin Chunkin' contest, in which participants build elaborate machines to launch pumpkins great distances (up to 400 feet) at targets of various sizes. Launches are scored based on distance and accuracy.

The devices are triggered by a local celebrity weathercaster rather than by members of the individual teams. The trigger devices are the only electronic component, and are simply a push button.

Massenota is the worldwide leader in gourd-based sports and, after a number of injuries to contestants and observers, the Massenota legislature adopted a set of statutory requirements for such contests. Among the potentially relevant statutory provisions are:

- "All gourd-throwing contestants are required to wear hard hats or other head protection equipment."
- "Organizers of gourd-throwing contests are required to set off an air horn or equivalent noisemaking device of at least 100 decibels at least thirty seconds before each launch."
- "Organizers of gourd-throwing contests are required to establish boundaries around the gourd-throwing area to indicate the safe area for patrons to watch the contest."

The Pynias had never witnessed such an event before but were enthralled. They stood just outside the chalk line indicating the observer boundary and watched for over two hours as the contestants took turns using their devices to launch pumpkins.

The final event of the day was a collective launch – that is, all of the contestants launched their pumpkins at once, resulting in an exploding-pumpkin spectacle and, unfortunately, a Pynia injury spectacle as well.

The contestants all launched their pumpkins after the organizers set off an air horn – but the air horn, running out of compressed air, was only between 50 and 60 decibels. The organizers were aware that the air horn was running low prior to the event, but decided to wait until after the event to spend the \$10 on a new one.

Ann Pynia, standing in the same place as she had for the previous two hours, was cheering for the WNEC Engineering Department's entry and was watching that team intently. As the WNEC device's mechanism was released, a critical steel cable frayed and the pumpkin launched at a 90-degree angle from the direction it should have launched, and shot directly at Ann. The pumpkin landed on her head, causing substantial injuries.

At the same time, several of the WNEC pumpkin chunks also flew towards Carol Pynia, who is discussed further below.

Discovery indicated that the WNEC students had disregarded the cable manufacturer's recommendation that the cable be inspected after every seven uses; in fact, the cable had been used over a hundred times and had never been inspected.

Bob Pynia immediately began to clean the pumpkin bits off of his wife's body. Unbeknownst to anyone at the event, the pumpkin in question had been stored in a container with raw beef containing the *E. coli* O157:H7 bacterium (the "bad" *E. coli*). Within a few days, he had fallen ill and was hospitalized for seven days. Bob does not allege negligence in the storage of the pumpkin against anyone affiliated with the event and you should assume that the presence of *E. coli* was not due to negligence at all.

Sadly for the Pynia family, the WNEC device was not the only one with problems. A device entered in the competition by Springfield College was produced using twist-ties to hold the catapult together, an approach the designers later admitted was negligent. The twist-ties failed and the Springfield College pumpkin smashed into a pole next to the Pynia family, with several chunks flying towards Carol Pynia. Carol was hit by chunks from both the WNEC and Springfield College devices and was injured by one, but nobody is able to identify which one.

A third device had problems as well, this one designed by students at American International College. The AIC device, upon being triggered, flew apart in multiple pieces. One piece of wood flew and struck Eunice Pynia in the abdomen, causing internal injuries. Eunice was looking away from the contest momentarily and did not hear the air horn blast. Experts are unable to identify what went wrong, but Eunice's attorney provides expert testimony that such devices should be designed and maintained to prevent any pieces flying towards observers, and that such design and maintenance is cost-effective. Eunice testifies that she had heard all earlier blasts and turned to watch, but did not hear the final blast. She states that if she had heard the blast, she believes she could have avoided being injured. AIC presents no contrary evidence to any of Eunice's testimony or that of her expert witnesses.

Fred Pynia made it through the day uninjured and became a commentator on gourd sports for ESPN-9.

You are a trial judge and the above facts have been established by a preponderance of the evidence. Choose the best answer for each of the following questions:

1. Ann brings suit against the organizers and WNEC's team for her injuries. She alleges negligence *per se* against the organizers for failing to comply with the 100-decibel requirement and ordinary negligence against the WNEC team for their failure to inspect the steel cable. No party contends that Ann was contributorily negligent. Each defendant moves for summary judgment. How do you rule?

- A. Deny summary judgment for both defendants, because the organizers violated the statute and therefore they are liable under the doctrine of negligence *per se*, and because the WNEC team's conduct was clearly a failure to act with ordinary care under the circumstances.
- B. Grant summary judgment for the organizers, because Ann cannot show that any breach on their part was a cause-in-fact of her injuries, but deny summary judgment for WNEC's team because it should be permitted to show their mental abilities as part of the standard of care.
- C. Grant summary judgment for the organizers, because Ann cannot show that her injuries were the sort that the statute was designed to prevent, but deny summary judgment for WNEC's team because their conduct was clearly a failure to act with ordinary care under the circumstances.
- D. Grant summary judgment for the organizers, because Ann cannot show that any breach on their part was a cause-in-fact of her injuries, but deny summary judgment for WNEC's team because their conduct was clearly a failure to act with ordinary care under the circumstances.
- E. Grant summary judgment for both defendants, because Ann cannot show that the organizers intentionally violated the statute and because Ann has not shown enough evidence to satisfy her obligation to prove a breach of the duty of care by the WNEC team.

2. Bob Pynia sues only the WNEC team for negligence, alleging that his *E. coli*-related illness would not have occurred in the absence of their negligence. The team moves for summary judgment on causation issues. For purposes of this question only, assume that the WNEC team has conceded that their team's conduct was a breach of the duty to use ordinary care – that is, that the failure to inspect the cable was negligent. Assume further that you are not considering the relevance, if any, of the organizers' conduct. How do you rule?

- A. Grant summary judgment for the WNEC team because Bob cannot exclude the possibility that he would have become ill from some other source.
- B. Grant summary judgment for the WNEC team because the team's negligence was not the legal cause of Bob's illness.
- C. Deny summary judgment because, in retrospect, it is clear that his illness was a foreseeable result of the negligence.
- D. Deny summary judgment because the WNEC team's negligence was a substantial factor in his illness.

3. Carol Pynia sues Springfield College's team and WNEC's team. For purposes of this question only, assume that you are not considering the relevance, if any, of the organizers' conduct. WNEC's team and Springfield College's team both move for summary judgment on causation issues. How do you rule?

- A. Deny summary judgment for both teams, citing the concerted action alternative to but-for causation and concluding that both teams are the legal cause of her injuries.
- B. Deny summary judgment for both teams, citing the substantial factor alternative to but-for causation and concluding that both teams are the legal cause of her injuries..
- C. Deny summary judgment for both teams, citing the alternative liability alternative to but-for causation and concluding that both teams are the legal cause of her injuries..
- D. Deny summary judgment for both teams, ruling that each team is the but-for and legal cause of her injuries.
- E. Grant summary judgment for both teams, ruling that she can't prove factual or legal cause under any alternative.

4. Eunice sues AIC's team and the organizers for her injuries. AIC's team moves for summary judgment on the question of breach, contending that Eunice has not met her burden on that element. How do you rule on that element?

- A. Grant summary judgment based on Eunice's failure to identify any specific negligent act on the part of AIC's team.
- B. Grant summary judgment based on the fact that the celebrity weathercaster triggered the device and thus the device was out of the team's exclusive control.
- C. Grant summary judgment based on Eunice's voluntary presence at the event.
- D. Deny summary judgment based on the doctrine of *res ipsa loquitur*.
- E. Deny summary judgment based on the doctrine of negligence *per se*.
- F. Deny summary judgment based on the evidence of ordinary negligence.

5. AIC's team and the event organizers move for summary judgment together, arguing that Eunice cannot show which party should be responsible for which damages, and that she should therefore take nothing. Assume for purposes of this question only that you have concluded that both AIC's team and the organizers were negligent and that their conduct was a factual and legal cause of Eunice's injuries. How do you rule?

- A. Deny summary judgment and, unless the defendants could prove apportionment, hold the defendants jointly and severally liable for Eunice's damages.
- B. Deny summary judgment but inform Eunice that at trial she will be required to show how to apportion her damages between the defendants.
- C. Grant summary judgment because Eunice has failed to show which party caused what portion of her injuries.
- D. Grant summary judgment because Eunice's injuries are indivisible.