SANTA CLARA UNIVERSITY
SCHOOL OF LAW
MIDTERM EXAMINATION

Torts  December 10, 1996
Professor Leslie Griffin, Fall, 1996

3 Questions

THE EXAMINATION RULES AS STATED IN THE CURRENT STUDENT HANDBOOK
GOVERN THIS EXAMINATION.

INSTRUCTIONS

The examination consists of three essay questions, all of
which you should answer. THE QUESTIONS DIFFER IN POINT VALUE.
Question One is worth 50 points; Question Two is worth 20 points;
Question Three is worth 30 points. I recommend that you spend 90
minutes on question one, 30 minutes on question two, and 60 minutes
on question three.

If you believe you need to know more information about a
case in order to resolve an issue raised by the facts given, tell
me what you need to know and how it would affect your legal
analysis. But do not add facts to create new issues. Be sure to
address all issues raised by the facts even if you think a single
issue is dispositive of the case.

Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of irrelevancies and filler all count in your favor.

The examination is closed book. You may not consult any materials or another person.

If you write your exam, use one side of a page only, and skip lines. If you type, double space, and leave wide margins.

Good luck, and happy holidays.
QUESTION I (90 minutes; 50 points)

Fires, either intentionally set or started by accident, are common occurrences in grasslands in the farm State of Oz. The State of Oz has a state-wide burning ban. However, in Oz, farmers and ranchers have a right to set controlled fires on their property for agricultural purposes and will not be liable for damages resulting if the fire is set and managed with ordinary care and prudence, depending on the conditions present.

On the morning of April 7, 1996, Alan Seidel was putting out hay and cattle feed in pastures owned and operated by Buck Ferrin. As Seidel was dispensing hay in what was known as the Kominska pasture, he saw smoke rising from a smoldering patch of grass. After dropping off all the hay, Seidel drove over to the area where he had seen the smoke and proceeded to put out the fire. Seidel kicked the smoldering debris to the middle of the burning patch and kicked or pushed loose dirt over the debris. Seidel stated that he remained for about 15 minutes and after seeing no more smoke, left the area to complete his work. As Seidel was driving home, about 10:30 A.M., after completing his deliveries, he looked over toward the place he had found the fire and, observing no sign of smoke, continued home.

Shortly after noon on that same day, Buck Ferrin received a
call from a neighboring rancher, Roger, who said he had seen smoke coming from the Kominska pasture. After looking out his door and seeing smoke coming from the pasture, Ferrin called the fire department. Ferrin then drove to Seidel's house and told him about the fire. Seidel took a water truck, drove to the pasture, and started fighting the fire. Seidel was unable to control the fire, and by the time the fire department arrived, it was out of control. The fire eventually spread to Roger's ranch. Before being brought under control, the fire burned an area approximately 23 miles long and 7 miles wide, in all approximately 30,000 acres. The fire destroyed pasture, fences, baled hay, railroad ties, and bridges. The extent of the fire and the severity of the damage were caused by the extreme dry conditions and high winds that occur when a farm state is in a drought.

What tort claims or theories will Roger allege in his lawsuit? Will he succeed?
QUESTION II (30 minutes, 20 points)

Mary Lamb’s mother committed suicide while a resident of a Nursing Home owned and operated by Heritage Manor Care Center. Mary brought an action contending that defendant Nursing Home was guilty of negligence in causing her mother’s death. Mary also claimed that she suffered intentional and negligent infliction of emotional distress. She asked for compensatory and punitive damages. Mary contends that her emotional distress resulted from statements made by an employee of the nursing home on Tuesday afternoon, that Mother caused herself to vomit at the table. Mary contends that Mother’s vomiting was involuntary. The nursing home employee suggested Mother’s behavior might be modified if Mary restricted her visits. Mary accepted the suggestion. Mary contends that these statements caused her to withhold visits from her mother, which caused Mother to attempt suicide. She also claims emotional distress from the same employee’s statements on Wednesday that the employee did not know why Mother wanted to hurt Mary.

The record shows that Mary was very attentive to her mother’s needs and was making every attempt to help make her content and happy. Mary visited her mother frequently (three times a week, on average) and was consistently called by the home when her mother
had problems or disputes. The evidence at trial indicated that Mother was in ill health, and had a life expectancy of 9.71 more years.

At trial defendant Nursing Home asked for a directed verdict on the intentional infliction of emotional distress claim. The judge denied the motion. The jury awarded $400,000 for loss of consortium and $2,000,000 in punitive damages. The trial judge reduced the award to $125,000 compensatory and $500,000 punitive damages.

On appeal, Mary asks for reinstatement of the jury's award. Nursing Home argues that the trial judge erred in not granting a directed verdict on the intentional infliction of emotional

How should the appeals court rule on these issues?
QUESTION III (60 minutes; 30 points)

In Carroll Towing, Judge Learned Hand observed that it "may be that the custom" in New York Harbor was not to have bargees on board ships at night and that, if so, it may be that "the situation is one where custom should control."

However, in T.J. Hooper (the tug without a radio case), Judge Hand observed that "a whole calling may have unduly lagged in the adoption of new and available devices. It never may set its own tests, however persuasive be its usages. Courts must in the end say what is required; there are precauti courts said what is required? What IS the standard of care for doctors, lawyers and psychotherapists? What should it be?