EXAM INSTRUCTIONS

Note to student: This midterm exam is for section 1Sep15, Fall 2015 Term. If you are not in 1Sep15, Fall 2015 Term, please contact Administration immediately (310-689-3200).

1. This is a three (3) hour examination.

2. The exam is to be completed on your computer and submitted in the same fashion as you did during the school year. The exam file must be submitted by the time indicated in the exam schedule. The interface that allows submissions will close fifteen minutes after the ending time of the exam, as indicated in the exam schedule. If your exam is not received or we are not contacted before the deadline, your exam will be subject to penalties up to and including non-acceptance of the entire exam. As a precaution, you must have immediate access to a fax machine while taking your exam to ensure your ability to submit your essay in time. Concord Law School of Kaplan University’s fax number is 310-496-2746. Please contact Administration if you have any questions about your exam by telephone at (310) 689-3200 or email administration@concord.kaplan.edu. The Tech Center can be reached at 866-577-0436.
Sam wished to buy a used recent model sports car and went to a number of used car dealers to shop for one but without success. During his search he met a car enthusiast named Joe who belonged to several sports car clubs and had many friends who owned sports cars. Sam asked Joe as soon as possible to find Sam a low mileage silvered colored sports car in excellent mechanical condition priced at no more than $30,000. After a long search, Joe acquired a silver low mileage Porsche sports car. Joe called Sam on the telephone and told Sam that this car was “available” for $30,000 and that the car’s history was that it had ever only been driven by an elderly woman who had taken the car to church on Sundays and had kept the car garaged and in mint condition. Unknown to Joe (and Sam) the car had instead been used by an amateur racer who had raced the car very aggressively every weekend for the last two years at amateur race events. Sam said, “Bring the car to my house tomorrow and if it checks out, we have a deal.”

On the next day, Joe drove up to Sam’s home with the car. Sam looked the car over, and handed $30,000 cash over to Joe and Joe handed over the keys and car to Sam. The very next week, the transmission fell out of the bottom of the car due to the aggressive road racing history of the previous owner. The car was a total loss. Sam brought suit against Joe claiming no enforceable contract existed and seeking the return of his $30,000.

Will Sam prevail in this suit against Joe? Discuss.
Bob and Jim, two eighteen-year old high school students had a habit of engaging in a contest of speed as they drove home from school. This high speed racing annoyed Sam, Bob’s neighbor who worked the night shift and who slept in the afternoon. Sam complained to Bob and threatened to put oil in the street in front of his home to force Bob and Jim to slow down. Despite the threat, Bob and Jim continued to race each other home from school.

One morning Sam did coat the road in front of his house with oil. Bob noticed the oil in the street as he drove to school. That same afternoon Bob and Jim raced home in excess of the posted speed limit. When they got to Bob’s street they stopped racing and began to reduce their speed. Just as they approached Sam’s house a dog suddenly ran out in front of Bob’s car. Bob braked suddenly to avoid striking the dog but due to his still high rate of speed and the oil-slick road, his car swerved and collided with Jim’s car. Jim died as a result of the collision.

An applicable state criminal statute penalizes “drag racing” as a felony. The statute defined drag racing as “two or more cars engaged in a race on a public way at a speed greater than the posted speed limit.”

May Bob reasonably be charged with murder and if so what degree? Discuss.

(Exam continues on next page)
Pat had a headache that would not stop, so he went in to see Doctor Will (Doc). After a head scan, Doc told Pat that he had a benign tumor inside his head that required an operation. Pat met with a surgeon and signed an informed consent form that listed the risks for the surgical operation, including risk of loss of eyesight and infection. The operation to remove the tumor was a success.

One week later, Pat went back to Doc for post-operation follow up and Doc told Pat he had developed an infection on his scalp at the surgical site. Doc also told Pat that the scalp cultures Doc had taken during his surgery were misplaced by the lab. Doc explained that without the culture test results Doc could not identify the exact nature of the scalp infection Pat experienced. Instead of ordering a second scalp culture test, Doc started Pat on a course of general antibiotics. Doc told Pat to avoid any strenuous outdoor activities and to assist in his own recovery with fluids and bed rest. Instead, Pat immediately left for a two-week hiking vacation.

Two days later while out hiking with minimal hydration, Pat’s scalp infection worsened and caused Pat to pass out. Pat was immediately taken to the emergency room of a different hospital. There he was given a second scalp culture test which correctly identified the type of infection. Pat was released and given the proper medication for his infection. Unfortunately, the emergency room doctor at the second hospital administered too small a dose of the medication and Pat’s scalp infection worsened overnight resulting in permanent blindness in one eye.

What is the likelihood Pat will recover if he asserts a personal injury claim against Doc? Discuss.

(END OF EXAM)

SAVE ALL ESSAYS AS A SINGLE DOCUMENT