

Multiple Choice: _____ correct x 4 =

Student No. _____

Essay Question # 1

____ 5 Prowse v. Jones—Malpractice (Negl. prescribing) Elements

____ 5 Duty doctor-patient rel. with 15,000 I-patients? Disclaimer says info is “supp.” for pt’s doc. E-scrip bus is not about estab. a doc-pt rel. v. diagnostic questionnaire

____ 10 Std of care for cyber-doc? Vergara Compare only to others who diagnose over i-net? Held to reas. careful, skillful, prudent practitioner std. under similar circes. in same or similar or national comm., but prob. not locality std., Holmes. Since diff. skills required for internet med., distinct specialty or gen. prac.? Jones is licensed in 28 states. Bd cert. in forensic path. irrel. to std for this negl. Can drug pkg insert set standard?

____ 5 Breach: diet pills to anorexic. Proof of breach of i-prescribing and consultings stds req. expert testimony, Walski; drug scrips outside common know, but gross negl.? Prescrib. based solely on ques. with no phone calls (no pt exam, med. records, or interaction) violate std prac? Most pts don’t need calls

____ 5 Breach: If Jones spends 5% of his time on I-prescribing, even if he works 80 hr wks, he would spend 208 hrs approving 15,000 scrips, or 72 scrips per hr (time to read ques.?). Even if Prowse telling truth, wt of 146 is overwt, but not obese—is X approp?

____ 5 Causation—but for X, cdn’t have lost 17 pounds; foresee. that anorexics wd lie about wt (VMG only sells non-narcotics, can foresee misuse); pre-exist anorexia, Kelly, but shd screen for v. self-inflicted diet + OD interv. supers. causes; call wdn’t reveal wt

____ 5 Damages: heart attack, self-esteem (pre-exist), fears v. reduced for noncompliance

____ 5 Prowse v. Jones—Malpractice—RIL 15,000 scrips, poor screening + possible anorexia = common knowledge? Salathiel Was KP or MJ in control of instrument? Kelly Injury doesn’t ord. occur without negl., but whose—Prowse or Jones?

____ 5 Prowse v. Jones—Malpractice/Negl. Design (screening mechanism)—can’t filter out liars

____ 10 Prowse v. Jones/VMG—Inf. Consent (fail disclose risks of Xenical): material info wd reas. pt. want to know, Harnish v. info docs custom. disclose, Woolley. Info on how drug works, side effects, precautions, gen. warning “it may not be approp. for you” v. detailed ques. + fact of prescript. indicates approp. Drug info inadeq. warning re risks. Witthoef: KP in “best position” to know risks. No duty to tell other treatments Matthies

____ 5 Causation test problematic—neither KP nor a RP would have consented to hrt attack, but if risks (dangerous thinness) known, P might have welcomed, Truman; Ashe

____ 5 Nonfeasance defense (didn’t call), Yania, but like Newton, he affirm. prescribed

____ 5 Contributory negl./AOR Prowse for giving misinformation, Brown v. Dibbell v. part of illness is not recognizing one is dangerously thin; clicked that she read disclaimer

____ 5 Prowse v. Jones/Graham/VMG—NIED—Elements: negl. fore. risk emot. injury; drugs=physical impact, like Mitchell; phys. cons. & fear heart attacks; since Prowse is in therapy with self-esteem problems, SED is med. diagnosable and signif., Ford v. Aldi

____ 5 Prowse v. Jones etc.—Toxic Exp. Fear Future Harm (2nd attack) Unlike Potter, KP has present phys injury, so shdn’t have to show more likely not or stat. sig., just reas. fear

____ 5 Prowse v. Jones etc.—↑ risk: actual exposure, has ↑ risk, phys. manifest. In 1st hrt attack v. shdn’t convert drug claims to toxic torts; exposure over, Hartwig; Med. monitor

____ 5 Eggshell psyche defense, and under Rest. view, Jones did not know of her prior mental problems, but Miley v. Landry allows recovery for aggravation of mental cond.

___ 5 Prowse v. Graham—Clin. Malp.—clin. rev med. records prob. not held to prof. std. (no evid. of lic., train, spec. educ., degree after B.S., indus. reg.) v. analog to nurse, Hiatt

___ 5 Prowse v. Graham—Negl. (screen, failure to report)—had concerns re Jones v. did as trained (BMI + reviewed ques.); no causation, since MJ formed questionnaire and prescribed. Negl perf. of undertaking services ↑ risk, Rest. § 324A. Able to report dangerous emp’ee, Marquay, but no supervis. auth. No spec. rel., KP did not know EG

___ 5 Prowse v. VMG/Jones—Contort: promise to screen for correct drugs=physical risk, Mobil v. no ↑ risk, Paz; like buy-sell, Delanney; cts don’t convert med mal to K claims

___ 5 Prowse v. VMG—Malp. (practice med. through quest.) std akin to hospitals—care commen. w/pt needs—or reas. web scrip mill? Negl. sys. (\$ incent. docs to write scrips)

___ 5 Prowse v. VMG—Negl. hire/train of Graham: 20 yr. old w/ internet degree v. cum laude (what does job require?). Negl. hire/train Jones: 95% of Jones’ time is not direct patient care and VMG let him develop questionnaire v. licensed in over half of the states

___ 5 Prowse v. Vizar/VMG—Negl. superv./failure to control dang. Jones: finally set limit of 100 scrips per day (but had been previously writing about 40 per day = little grasp of problem) Darling, Dudley, Rosales

___ 5 Prowse v. VMG—Resp. Sup.—Jones & Graham: both acting in scope of emp.

___ 10 Jones v. Graham—Libel (“one man scrip mill”; “don’t mean to call him quack”) Elements. Concerns Jones, Bindrim, intentionally published to Vizar, subjects to contempt or ridicule—expresses concern, but still damages prof. rep. since alleges prof. incomp. Not saying he’s quack actually says just that, expression of disbelief that Jones is a bad doc won’t help v. name-calling or comment on manner of scrip-writing rather than person, Chastain. E-mails in writing and a perm. form of communication, so not slander.

___ 5 Is it false? Jones will need to prove falsity. “One man scrip mill” supportable opinion under Moldea, but Graham isn’t a book critic, less const. breathing space. Arguably true, Jones writes more than one scrip per min. & Vizar later put a limit on him

___ 5 Under Gertz, for private-private defamation, was there negl. re falsity. Is Jones ltd. purpose public figure, because he writes so many scrips, so that NYT malice std. (reckless) applies? No: unknown, no access to media (other than internet) to rebut.

___ 5 At com law, wd be libel (in print) with presumed damages, Cassidy. After Gertz, Jones would have to prove actual damages—only emp. conseq. is SV limit to more than 2x the no. of scrips he’d formerly been writing=no damage; egregious behav. punitives?

___ 5 Intracorporate pub. or privileged commun. defense, Blake v. May Dept. St.: priv. comm. or no pub. at all: co. talking to itself. Fair comment + public interest defenses

___ 5 Jones v. Graham—False Light—while “quack,” “scrip mill” highly off to RP, MJ not before public in FL (2 workers, intra-co.), no reck. disregard re falsity (accurate)

___ 5 Jones v. Graham—Public Discl. Private Facts: not suff. publ., since only to Vizar; facts not private v-a-v Vizar who needs to know them; no reckless re embarrassment

___ 5 Jones v. Vizar—Intrusion on Seclusion (review prescribing hist.)—no reas. expect. of keeping prescrib. hist. private from supervisor, PETA, and useful purpose Diaz

___ 10 Thorough analysis/Innovative arguments

___ 10 Use of cases

___ 10 Quality of writing (incl. care taken and complete, grammatical sentences)

___ 5 Organization; captions = 210

Essay Question # 2

___ 5 Scarano v. AF/Grace—Landowner Negl. + Failure to warn: Scarano is a business visitor—an invitee, there for possible pecuniary benefit of AF, park may also be open to public, and owed ordinary care. Injured on a natural condition (rock ledge overhanging trail). Deviated from area of invit. and thus lic/tres, Gladon v. stayed on path

___ 5 Open and obvious danger, esp. to exp. hiker v. dark (not obv.), O’Sullivan v. Shaw, but LO may still owe duty to warn if antic. invitee can’t reas. protect himself, Harris

___ 10 Scarano v. AF—Contort liability—agreement to evaluate with view toward marketing is valid K, Thorne, risk of phys. injury on adventure hikes foreseeable, Mobil v. not a contract promise re S’s safety, Leavitt, a reciprocal buy-sell, like Delanney. Was guide even part of the deal? K just says equipment and expenses. Is guide to protect from risks of rock overhang? Coyle, Palka

Dmgs not limited to K. DCR v. Peak. Hendrix fulfilling promise for AF, Rest. § 324A

___ 5 Scarano v. AF/Hendrix—Special relationship—like employer-employee or custodian-ward, caretaking like Farwell; just walked away for a minute=no breach

___ 5 Scarano v. AF—Negl. Train (don’t leave troubled teens)/Superv. Marquay, Dudley Entrust.: applies to dang. instrum., but extend to advent.? LeCave v. Hardy

___ 5 Scarano v. Hendrix—Negl. undertaking (abandon): Hendrix was guide, S relied + left S in a worse position, Paz, Rest. § 324A v. H did not ↑ risks re rock overhang

___ 5 Nonfeas. defense: no general duty to care for others, Yania; AF no duty to protect against dangers state didn’t create (S not in custody). DeShaney v. aff. action, Newton

___ 5 Scarano v. AF—Resp. Sup.: is Hendrix walking away within scope of emp., a frolic or detour; personal necessary activities still within scope of emp.

___ 5 Contrib. negl./AOR—S. agreed to night hike and, as an expert outdoor adventurer, knew better than to follow rapidly in dim light; S as superseding cause

___ 10 Gov’t immunity—AF is arm of state, but acting proprietary cap. to generate revenue by taking in kids not convicted of crimes to hike salaries and hiring private marketer to compete in private sector (like camp) v. policy or discretionary decisions re public safety, allocation of resources (paint warnings on rocks? more guides?), Lockett, or econ. decisions, Maas, immunized v. but duty owed to single individual, Riss; Dube—any conscious discretion? v. Gaubert, area of trad. gov’t function

___ 5 Hendrix individual immunity—decision to use particular path or walk quickly is discretionary, like Tippet v. operational, Harry Stoller, or professional child management decision a la Griffin; Alou decision to let Brown explore resource opp. & her explor. & making Hendrix guide discret., Thompson, similar to legislative function, Penthouse, Inc.

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___ 5 Organization; captions