

**FINAL EXAMINATION
TORTS
HOUSE OF RUSSELL**

INSTRUCTIONS:

- 1. DEADLINE:** This is a 24-hour examination. You may download the exam beginning at **6 a.m. on December 1, 2023**. Once you download the exam, you have 24 hours to complete and turn in your answer. You have only a 24-hour window within the 36 hours between 6 a.m. on December 1 and 6 p.m. on December 2 to complete and submit your answer. You must turn in your answer no later than 24 hours after downloading the exam and in no case after 6 p.m. on December 2, 2023. Therefore, if you download the exam after 6 p.m. on December 1, 2023, you will have less than 24 hours to write and submit your answer.
- 2. EXAM NUMBER:** Please put your exam number on each page within the header. **Do not put your name or Gator ID number anywhere on any page of your answer.** Name the file Torts-Russell-[Exam Number]. Email your exam answer to yourself to provide evidence of when you finished the exam.
- 3. TURNING IN YOUR ANSWER:** The ExamSoft web portal is <https://ei.examssoft.com/GKWeb/login/uflaw> Submit your answer by uploading your document into the portal. You may upload a .pdf or a Word document, but please upload a .pdf. You can find instructions on how to upload through the portal at <https://help.examssoft.com/s/article/Legacy-Portal-Upload-Performance-Assessment> You can confirm the submission of your answer in the portal. Student Affairs will contact you if they do not receive your submission. You are responsible for keeping track of time and ensuring you turn in your answer within 24 hours of

downloading the exam. **DO NOT SEND YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND YOUR ANSWER TO PROFESSOR RUSSELL.**

4. **Do NOT contact Professor Russell with difficulties related to exam submission.** If you have difficulty uploading your answer, then email your exam answer to **student.svc@law.ufl.edu**

5. **OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish and consult any written material you wish. However, you violate the Honor Code if you discuss, show, or distribute this examination or your answer to anyone before the exam ends at 6 p.m. on December 2, 2023. Be cautious, for example, about posting anything on TikTok, Instagram, Twitter, Facebook, or any other site that anyone might think is a request for assistance. Once the exam starts, you may not discuss it with anyone at all before the examination ends at 6 p.m. on December 2, 2023.

6. **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit may be one of the challenges of this examination. Do not feel that you must write 2,500 words. **Include the word count at the end of your answer.**

7. **SPACING AND FONTS:** Please double-space your answer. Avoid miniature fonts, okay?

8. **HOW TO ANSWER:** In answering, use judgment and common sense. Be organized. Emphasize the most important issues. Do not spend too much time on easy or trivial matters at the expense of harder ones. If you do not know relevant facts, relevant statutes, or relevant legal doctrine, indicate what you do not know and why you need to know it.

You must connect your knowledge of law with the facts before you. Avoid wasting time with lengthy or abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think a court would resolve an ambiguous question one way rather than another.

- 9. JURISDICTION:** The laws of the 51st state, called Newstate, apply to all the issues in this examination. The laws of Newcounty, Newcity, and Newtown apply, too. The appendices include statutes and a jury instruction, which you must analyze. Newstate is NOT Florida and NOT Colorado.
- 10. CONCISION:** Professor Russell looks for quality not quantity. Unnecessary words and discussion weaken your answer. You have time to write and edit. Think before you begin to write. Think through your answer again after you have written. You will earn a better grade by being thorough and concise. The best answers will be well-organized.
- 11. EXPERTISE:** Sometimes, House of Russell exams deal with subject matter about which some of you may have expertise or outside knowledge. You must accept the exam's presentation as true. For example, if there is lava in the exam, and the exam indicates that lava is 2,500 degrees Fahrenheit, but you happen to know that lava is not typically that hot, you should put aside your superior knowledge and accept the lava as being the temperature that the exam says. Typically, House of Russell exams try to simplify some issues by mashing down the science just a bit.
- 12. KEEP A COPY:** You should, of course, feel free to keep a copy of the exam. Please keep your answer also.

13. **CHEATING:** If, in preparing for this examination, you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.

14. **EXAM MEMO:** Professor Russell typically issues a memo or video for your review after he completes the grading. Do not ask to review your exam until you have reviewed the exam memo. By faculty policy, you may never argue to a higher grade.

15. **GOOD LUCK:** Good luck, and have a safe, healthy break. Teaching you has been my honor and a career highlight. You are terrific students. Please keep in touch with me!

Charcuterie with Friends

Foodies is a food store in the heart of the bustling town of Newcity, a medium-sized city in Newstate. Foodies cultivates foodies as customers with its gourmet offerings. Foodies was Helen Pfaller's favorite store.

Mrs. Pfaller liked to shop for Italian food at the store. Foodies' specialties were Italian cheeses, deli meats, olives, pasta, biscotti, and wine. Foodies has Southeast Asian items and delicacies from the Middle East, but the focus within the store is on Europe, especially Italy. The savory aromas of cheeses, olives, and cured meats fill the air at the store, drawing locals and tourists alike to the lively store.

Foodies is an important commercial presence in Newstate. The company is a family business that has prospered for more than 50 years. There are ten different Foodies stores in Newstate. The annual combined revenue is \$25 million.

Mrs. Pfaller last shopped there on December 19, 2020—the Saturday before Christmas—a holiday that she celebrated. That was the day that she fell. She was 66 years old at the time and never got the chance to buy the panettone or Torrone nougat candy, which were her reasons for going to the store that fateful day.

Modena, Inc. makes and sells prosciutto. Prosciutto is aged, dry-cured pork made only from the rear legs of pigs. Prosciutto is salty. One eats prosciutto in thin slices, often as an appetizer—antipasto in Italian. The worldwide market for prosciutto is very competitive.

Modena, the prosciutto seller, contracted with Italian Brands, Inc. Italian Brands is a company that provides brand ambassadors to stores to represent and promote products, in this instance, Modena's prosciutto. Modena's contract with Italian Brands specified that Italian Brands would send brand ambassadors to Foodies (with Foodies' agreement, of course) to give out free samples of Modena prosciutto to build demand and increase sales of Modena prosciutto.

Stated grandly, the role of a brand ambassador is to create awareness, generate interest, and build a positive image of the brand among the target audience. The hiring managers at Italian Brands, Inc. seek to hire individuals based on their enthusiasm, communication skills, and alignment with the brand's values.

Stated less grandly, brand ambassadors give out free samples to shoppers.

Italian Brands, Inc. has many full-time employees. Many of these full-time employees started work with the company by giving away free samples in grocery and other food stores and then moved into other sales, research, office, or work-from-home jobs. Many people work less than full-time for the company. These part-time ambassadors pick up shifts when they need a little extra cash. Some, but not all, aspire to work full-time for Italian Brands.

To simplify the bookkeeping and reduce costs, Italian Brands, Inc. treats the part-time brand ambassadors as independent contractors and pays them as 1099s. Paying them as 1099s means that the company does not make contributions to either social security or unemployment insurance on their behalf; does not withhold taxes from their pay so the independent contractors are responsible for setting aside money to cover

their tax obligations; and does not offer the part-time ambassadors any benefits such as health insurance or retirement contributions.

Italian Brands, Inc.'s independent contractors work under the direct supervision and control of the company's ambassador field managers. These field managers provide checklists of responsibilities to each ambassador. The checklists start with clothing: Italian Brands provides polo shirts with the company logo and requires the ambassadors to wear the shirt with black pants and black, closed-toe shoes. The managers specify the hours the ambassador must appear at a particular store. The managers provide the product, in this instance, prosciutto, and specify how the ambassador should display the product. Italian Brands provides a table or tables for the ambassadors to set up and use. Italian Brands' marketing department has written scripts that the independent contractors learn in order to speak with customers. When the ambassadors use toothpicks to give out samples—with cheeses or olives, for example—the Italian Brands operations manual requires that the toothpicks be round, never flat.

On the fateful Saturday, Olive Frei was the ambassador whom the Italian Brands ambassador assigned to the Newcity Foodies store. The store opened for business at 9:00 a.m. Ms. Frei's manager instructed her to arrive at Foodies by 8:30 a.m., which she did. Ms. Frei's instructions were to check in with the store manager, Said Storey. Ms. Frei was to get from Mr. Storey a Foodies apron to wear over her black Italian Brands shirt and then set up a table near the deli case where she would distribute prosciutto. She placed the thinly sliced prosciutto in piles on the table and provided round toothpicks for customers to use to pick up the delicious Italian meat. Italian Brands did not provide her with nor instruct her to use plates or napkins. When the store opened at

9:00 a.m., Ms. Frei was ready with a table laden with platters on which she displayed prosciutto and toothpicks aplenty.

Though 9:00 a.m. on a Saturday was a bit early to eat salty, Italian, dry-cured pork, the customers were enthusiastic about the free samples.

Delia Abruzzo, a first-generation Newstater who traveled often back to Italy to visit her family, ate her free sample of prosciutto at about 9:30 a.m. She circled back for seconds.

Ms. Abruzzo suggested to Mr. Storey, the Foodies manager, that serving the prosciutto with cut cantaloupe would be very popular and might make the prosciutto an even bigger hit with customers. She explained that *prosciutto e melone* was the name of the Italian dish or antipasto that combined bite-sized pieces of cantaloupe with a slice of prosciutto, typically wrapped around the fruit. She said that the appeal of *prosciutto e melone* is the harmonious combination of flavors: the cured ham's saltiness contrasts with the ripe melon's sweetness and juiciness. With only two ingredients, the dish's simplicity allows the natural flavors of the



A photo from a food blog of assembled Prosciutto e Melone with added basil. This photo is NOT from Foodies.

prosciutto and melon to shine. Ms. Abruzzo further offered that the balance of salt and sweetness has long been a palate-pleaser.

Mr. Storey, the Foodies manager, liked the idea of combining the prosciutto with freshly cut cantaloupe. The Foodies' produce section was on the other side of the store, so Mr. Storey used his walkie-talkie to call his produce captain, Henry Mellen. Mr. Storey directed Mr. Mellen to cut a dozen cantaloupes into bite-sized pieces. Mr. Storey told Mr. Mellen to put the cantaloupe pieces into plastic stands covered with domes into which customers could reach (with toothpicks) to get cantaloupe.

Mr. Mellen set up the stands with cantaloupe pieces next to the whole cantaloupes in the produce section. Setting out samples near the for-sale fruit was customary when Foodies offered cut fruit samples. Mr. Mellen did not provide either plates or napkins. Usually, customers eat the fruit samples on the spot. The simple idea was that customers would sample a piece of cut fruit—watermelon or apple, for example—and then put some of the fruit in their carts for purchase.

Mr. Mellen encouraged his customers to pair the juicy fruit with the delectable prosciutto. He encouraged customers who took cantaloupe samples to walk to the deli section on the other side of the store and pair the cantaloupe with some savory prosciutto. Likewise, in the deli section, Ambassador Frei enthusiastically suggested that customers get prosciutto samples and walk over to produce for cantaloupe pieces to create the antipasto.

Once customers had both cantaloupe and prosciutto, Ms. Frei and Mr. Mellen taught them to wrap the thinly sliced prosciutto around the cantaloupe piece to have proper, Italian-style *prosciutto e melone*. The concept proved to be a hit, as shoppers

collected samples of cantaloupe and carried them across the store on toothpicks to the deli section, where they then got prosciutto and, in reverse, shoppers with prosciutto walked over for cantaloupe. Feeling that they were learning about a different culture's food practices excited Foodies customers about the store.

The self-serve nature of the prosciutto and cantaloupe stations had drawbacks. Perhaps inevitably, shoppers walking or maybe hurrying from one side of the store to the other while carrying sliced meat and cut cantaloupe dropped meat and fruit on Foodies' floors.

Jason Meckee was, at the time, a part-time employee of Foodies. He was a stocker; that is, he stocked shelves with goods. He worked part-time while a graduate student in Mechanical Engineering at Newstate University, which the Wall Street Journal has rated as the number one public university in the nation. In aisle 7, where he was stocking jars of pasta sauce onto the shelves, Mr. Meckee noticed a piece of prosciutto on the floor.

Using his engineering mind, Mr. Meckee thought about the friction coefficient of prosciutto. A friction coefficient quantifies the degree of resistance to sliding or rolling motion between two objects in contact—a measure of slipperiness, in other words. Because prosciutto is a slice of dried meat, Meckee deduced that the friction coefficient would be higher than for, say, salami, mortadella, or American-style baloney, which were oilier or wetter than prosciutto and, therefore, more slippery.

Mr. Meckee always kept a small notebook in the breast pocket of his shirt. He pulled out the notebook and a sharpened Ticonderoga No. 2 pencil. In his notebook, he wrote:

Prosciutto
Friction coefficient?
Compared to:
Salami
Mortadella
Guanciale
Oscar Mayer baloney, etc.
Mozzarella
Possible dissertation topic?

Mr. Meckee put the notebook back in his pocket. Two minutes later, according to the video that recorded his actions in the aisle and that captured Mrs. Pfaller's fall, Mr. Meckee pulled his little notebook out again and added: Charcuterie with friends?

Mr. Meckee did not, however, clean the food items from the floor. Nor did he alert anyone to the problem. Mr. Meckee was engaged in what some call "quiet quitting." He worked narrowly to the requirements of his job and did not feel that his employer merited broader emotional engagement. Mr. Meckee also resented the cheerful tone of brand ambassadors, whom he believed should handle their own messes.

Mr. Meckee had completed his work in aisle 7 when Mrs. Pfaller fell. Mrs. Pfaller was looking for her favorite organic puttanesca pasta sauce when her left foot went out from underneath her. The video of the incident shows Mr. Meckee leaving the aisle eight minutes before the fall. The video shows prosciutto on the floor near the shelves with jars of pasta sauce. After the ambulance took Mrs. Pfaller away, the store manager photographed and picked up a piece of prosciutto with what looked to him to be the imprint of the heel of a woman's shoe.

There are many video cameras in every Foodies store. Video from other parts of the Newcity store on the day that Mrs. Pfaller fell shows many bits of prosciutto and cantaloupe on the floor, especially along the routes between the produce and deli sections.

Mrs. Pfaller's physician had diagnosed her with osteoporosis when she was 58 years old. Osteoporosis is a medical condition characterized by the weakening of bones, leading to an increased risk of fractures. Osteoporosis occurs when the creation of new bone doesn't keep up with the removal of old bone. This imbalance makes bones porous, brittle, and prone to fractures, especially in the hip, spine, and wrist. The word "osteoporosis" literally means "porous bones."

In the moments between when she slipped and when she hit aisle 7's floor, Mrs. Pfaller knew her injuries would be bad. She felt her pelvis break as she hit the floor. She broke both bones in her right arm below the elbow, too. The pain was searing. She had puttanesca sauce all over her clothing and some minor cuts from the bottle's broken glass.

Alerted by a stocker (not Mr. Meckee) that someone had fallen, Mr. Storey called 9-1-1 from his cell phone and went to aid Mrs. Pfaller. An ambulance swiftly arrived, rushing Mrs. Pfaller to Newcity Hospital.

Upon arrival in the Emergency Department, the medical team conducted a thorough examination and diagnostic tests. The X-rays revealed the harsh reality of Mrs. Pfaller's fall—her hip had fractured in three places. The fractures were intricate, a network of fine lines snaking through the bone, compromising its integrity.

The orthopedic surgeon, Dr. Sawbones, explained the severity of Mrs. Pfaller's injuries to her and her husband. (The couple had no children.) The fractures required immediate surgical intervention. Mrs. Pfaller faced a complex procedure to realign and stabilize her hip with the help of screws and a metal plate.

As the Newcity Hospital medical staff wheeled Mrs. Pfaller into the operating room, her mind swirled with fear and hope. The surgical team skillfully worked to repair the fractures, bringing stability back to her hip. The procedure, though successful, left behind an internal metal scaffold supporting her weakened bone and a landscape of surgical scars.

Post-surgery, Mrs. Pfaller's journey to recovery began. The hospital room became her temporary haven, where physical therapists guided her through gentle exercises to regain strength and mobility. Initially sharp and all-encompassing, the pain gradually transformed into a persistent ache, a constant companion in Mrs. Pfaller's quest for healing.

Six days after the surgery—on the day after Christmas—Mrs. Pfaller's surgeons discharged her to a skilled nursing facility (SNF) for intensive rehabilitation. After three weeks, the SNF discharged her to home, where she would remain primarily bedridden for several weeks while receiving physical therapy along with visits from other home healthcare providers.

After her discharge from the hospital, Newcity Hospital mailed a bill to Mrs. Pfaller at home. Her husband, whom she had married just after they graduated high school nearly 50 years before, opened the bill. At first, he thought he might have a heart attack when he saw the bill.

Expense	Billed Cost
Ambulance Services	\$ 6,500
Emergency Department	\$ 14,750
Initial Assessments and Tests	\$ 4,300
Diagnostic Tests and blood work	\$ 3,700
Medical Imaging (X-rays, CT)	\$ 7,600
Surgery (including surgeon fees)	\$ 53,000
Pre-operative testing	\$ 2,500
Anesthesia and Surgical Team	\$ 14,500
Hospitalization--room, nursing care, and other associated services	\$ 45,500
In-hospital Physical Therapy	\$ 4,300
Medications	\$ 3,900
Medical and assistive devices	\$ 2,700
TOTAL	\$ 163,250

Mr. Pfaller then realized that because his wife had Medicare, paying for the medical costs of the surgery, procedures, and rehab would be covered by taxpayers. He knew, too, that there would be many additional bills for the rehabilitative care that his wife would need at home, plus all the follow-up medical visits and medication. He hoped that Medicare would cover all those costs.

Mr. Pfaller wondered whether his wife would recover sufficiently to resume the Sunday pickleball tournaments at a local lawyer's house, which they had enjoyed over the previous year.

Physical therapists dedicated to Mrs. Pfaller's recovery provided in-home care after she returned home. They helped her out of bed and worked to help her regain skill and balance with walking. Visiting nurses stopped by daily to change the bandages on her surgical wounds until the wounds had healed.

Three weeks after Mrs. Pfaller returned home for rehabilitation, tragedy again struck. Mr. Jason Fiamma, a physical therapist who worked for Newcity Therapy, Inc.,

visited the house for an appointment. He had been to see Mrs. Pfaller several times, and they had a good working relationship. She liked that he was strong enough to lift her easily.

Mr. Fiamma grimaced the first few times that he entered the Pfaller home. He frowned because the smell of "old people" was so strong in the house. The odor was a mixture of wintergreen, vegetable oil, body odor, dust, and urine. Mr. Fiamma decided to bring a scented candle to the house and, without asking permission from the Pfallers, lit the scented candle and tucked it out of sight onto a shelf in the kitchen. He then conducted his scheduled therapy session with Mrs. Pfaller. Fiamma left the house without blowing out the candle.

Fire struck later that night. The house's smoke alarm alerted Mr. Pfaller to the danger, and he was able to escape from the second-floor main bedroom down the stairs and out of the house. The fire marshal has determined that the candle caused the fire.

The flames trapped Mrs. Pfaller, who had been sleeping in a hospital bed set up in the dining room next to the kitchen. She had not yet been strong enough or agile enough to get out of bed by herself or navigate the stairs, so she and Mr. Pfaller slept separately. Unable to get out of bed to safety, Mrs. Pfaller died in the fire.

The Pfaller's home and personal property were a total loss.

The death of his wife has devastated Mr. Pfaller. They had a long, happy marriage and were an active couple. Mrs. Pfaller had a successful part-time business working as a business coach, which left her ample time to travel with her husband.

Since the fire, Mr. Pfaller filed an insurance claim with Newcity Insurance, their homeowner's insurance carrier. They paid him \$450,000 for the value of his home (minus a \$5,000 deductible) and \$85,000 for the lost contents. Mr. Pfaller has no complaints about the amount his insurer paid him for this lost property.

Mr. Pfaller has not yet taken any legal action regarding the injuries and death of his wife nor regarding any property or other claims that he may have. He has been too devastated to think about doing so, as no amount of money will bring his dear wife back.

Your job: Evaluate the negligence claims stemming from the injuries to and death of Mrs. Pfaller. Include any property claims. Be attentive to defenses and any insurance or subrogation issues that may exist.

Note: there is no intentional tort claim, no need to look for one, and no reason for you to analyze an intentional tort claim as negligence.

Your answer may not be longer than 2,500 words. Be sure to include the word count at the end of your answer.

An Appendix with some Newstate laws and a jury instruction follows

Appendix

Newstate statutes and jury instruction.

Statute 1. Damages recoverable when comparative negligence or assumption of risk is established.

The defenses of comparative negligence and assumption of risk are, in all cases, a question of fact and shall be left to the jury at all times. In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or the decedent, including comparative negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion that the culpable conduct attributable to the claimant or decedent bears to the culpable conduct that caused the damages.

Statute 2. Civil liability cases--Pro rata liability of defendants--Joint and several liability of defendants in tort actions, allocation of responsibility for judgment--defendants several liability for punitive damages.

(1) In an action brought as a result of a death or an injury to a person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss, except as provided in subsection (4) of this section.

(2) Any provision of the law to the contrary notwithstanding, the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage of negligence or fault of those persons who are parties to such action. Any finding of a degree or percentage of fault or negligence of a nonparty shall not constitute a presumptive or conclusive finding as to such nonparty for a prior or subsequent action involving that nonparty.

(3) The jury shall return a special verdict, or, in the absence of a jury, the court shall make special findings determining the percentage of negligence or fault attributable to each of the parties and any persons not parties to the action of whom notice has been given pursuant to [a statute that is not in this appendix] to whom some negligence or fault is found and determining the total amount of damages sustained by each claimant.

The entry of judgment shall be made by the court based on the special findings, and no general verdict shall be returned by the jury.

(4) Joint liability shall be imposed on two or more persons who deliberately pursue a common plan or design to commit a tortious act. Any person held jointly liable under this subsection (4) shall have a right of contribution from his fellow defendants acting in concert. A defendant shall be held responsible under this subsection (4) only for the degree or percentage of fault assessed to those persons who are held jointly liable pursuant to this subsection (4).

Statute 3. Food safety—prevention of bacterial growth.

Except during preparation, cooking, or cooling, temperature control for food for wholesale or retail sale shall be maintained at 57°C (135°F) or higher or at 5°C (41°F) or lower.

Statute 4. Actions; surviving death of party.

No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law.

Statute 5. Limitations other than for the recovery of real property.

Actions other than for recovery of real property shall be commenced as follows:

(1) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(2) WITHIN FOUR YEARS.—

(a) An action founded on negligence.

(b) An action founded on the design, planning, or construction of an improvement to real property.

(c) An action for trespass on real property.

(d) An action for taking, detaining, or injuring personal property.

(e) An action to recover specific personal property.

(3) WITHIN TWO YEARS.—

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

(b) An action for medical malpractice shall be commenced within two years from the time the incident giving rise to the action occurred or within two years from the time the incident is discovered or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than four years from the date of the incident or occurrence out of which the cause of action accrued, except that this 4-year period shall not bar an action brought on behalf of a minor on or before the child's eighth birthday.

(c) An action for wrongful death.

(d) An action for libel or slander.

(4) WITHIN ONE YEAR.—

(a) An action for specific performance of a contract.

(5) FOR INTENTIONAL TORTS BASED ON ABUSE.— An action founded on alleged abuse or incest may be commenced at any time within seven years after the age of majority or within four years after the injured person leaves the dependency of the abuser or within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

Jury Instruction 1. Wrongful death damages.

Plaintiff, (*name*), has the burden of proving, by a preponderance of the evidence, the nature and extent of (his) (her) damages (and the damages of those the plaintiff represents). If you find in favor of the plaintiff, you must determine the total dollar amount of the damages, if any, of plaintiff (and those that plaintiff represents), that were caused by the (*insert appropriate description, e.g., "negligence"*) of the defendant(s), (*name[s]*), (and) (,) (the [*insert appropriate description, e.g., "negligence"*], if any, of [*name of decedent*]), (and) (the [*insert appropriate description, e.g., "negligence"*], if any, of any designated nonparties).

In determining such damages, you shall consider the following:

- (1. Any noneconomic losses, including grief, loss of companionship, impairment of the quality of life, inconvenience, pain and suffering, and emotional stress the plaintiff [and those the plaintiff represents] [has] [have] had to the present, and any grief, loss of companionship, impairment of the quality of life, inconvenience, pain and suffering, and emotional stress the plaintiff [and those the plaintiff represents] will have in the future;) (and)
- (2. Any economic losses, including reasonable funeral, burial, internment, or cremation expenses, and any net financial loss which the plaintiff has [and those the plaintiff represents have] had because of the death of [*name of decedent*]. The net financial loss is the same as the financial benefit the plaintiff [and those the plaintiff represents] might reasonably have expected to receive from [*name of decedent*] had [he] [she] lived.)

In determining these damages, if any, you should consider the age, health, and life expectancy of (*name of decedent*), the age, health, and life expectancy of the plaintiff (and those the plaintiff represents), the (*name of decedent's*) industriousness, ability to earn money, willingness to assist the plaintiff (and those the plaintiff represents), and the nature of the relationship between (*name of decedent*) and the plaintiff (and between [*name of decedent*] and those the plaintiff represents).

End of Appendix

END OF EXAM