

SAMPLE EXAMINATION QUESTION:

Please complete your answer to this problem in one hour. Take enough time to read and analyze the problem, to think, and to plan and organize your answer. The legal conclusions you reach are of minor importance compared to your identification of the issues and discussion of the relevant arguments. Consider the facts carefully, and use them when needed in your discussion. You should not need any additional facts. If you do, tell me what facts you're assuming.

This problem arises out of a car accident that occurred one morning at about 9:30 a.m. on a Tuesday in the State of California. Peter was headed to work in his vanpool from his home in Concord into San Francisco. He had been commuting in the van pool, with the same 8 passengers, for three years now, and he enjoyed not having to drive and being able to read the paper on his way to work (he started at 10 a.m.). The vanpool was a paid service run by a non-profit, Environmental Alternatives, Inc. (EAI). The van driver was driving carefully and within the speed limit when the van was broadsided by a small car. The driver of the small car, Simon, according to the evidence, slammed into the van. Simon has fled the jurisdiction and your initial investigation shows that he has no known assets.

The van spun out of control and flipped, coming to rest on its left side. Peter, who was sitting against the left-side window, suffered internal injuries and cuts. The seat belts in the van had been removed to allow one more passenger to ride. A state statute reads: "All passenger cars must be equipped with seat belts. These must be kept in good working order. This section shall not apply to utility vehicles such as public buses, ambulances or road crew vehicles."

Dr. Dave Dedson was a co-passenger in the van. This morning he was particularly agitated, as he was scheduled to interview for a promotion to head of thoracic surgery that morning, the most important move of his medical career. He was sitting on the right side of the van, and, luckily, was not hurt in the crash, although he did lose his cellphone. He managed to crawl out the right-side window of the van, flagged down a passing motorist, and sped away. He asked the driver who had picked him up to stop at the nearest emergency phone, notified the CHP and the police of the location of the accident, and continued on into the city. He arrived at his interview only 5 minutes late.

The CHP and ambulance arrived at the scene of the accident some 10 minutes later and immediately took Peter to the hospital. All parties agree that he received excellent care from the ambulance crew and the hospital. Nonetheless, there is evidence that had he gotten immediate medical attention to his internal injuries, he would have made an almost complete recovery from them. As it is, he will suffer permanent disabilities and constant pain for the rest of his life.

Unbeknownst to anyone, Peter's daughter Paula was driving along right behind the van in her Geo Metro. When Simon's car hit the van, she swerved and, thanks to her new anti-lock brakes, was able to avoid a collision. Nonetheless, she was so shaken she pulled over to the side of the freeway, where she saw the medics pulling the injured passengers out of the van. As she saw them pull Peter out she exclaimed "that's my Dad!" and fainted away. As she fell she hit her head on a sharp rock. Ever since the accident she has suffered depression and fainting spells.

What negligence causes of action could be brought on these facts? Discuss.