

QUESTION 1 – ONE HOUR

Al's cardiologist, Dr. Smith, was very clear about the level of exercise Al now was to pursue post-surgery: "Wear a good heart rate monitor and keep your pulse above 100 but below 110 for 20 minutes for the three months. Do not let the rate go over 150 at any time or your new valves will probably fail."

Al's research revealed that the best heart rate monitor was the Model 5, manufactured by RaTech. Al purchased a Model 5 from his local sports shop, All Sport. Although the box had been opened and the operating instructions were missing, the saleswoman assured Al that he could download the instructions from the RaTech website. Al printed the instructions the RaTech site had listed for the Model 5 but RaTech employee Paul, in a fit of drunken vengeance over a promotion he had been denied, had switched the website instructions for the Model 5 and the old Model 3, which looked identical but were very different. The switched instructions caused Al to calibrate his Model 5 incorrectly, showing a reading of 40 beats below the actual rate. RaTech had fired Paul for committing similar acts last year but recently rehired him when no one else could be found to work for the very low salary RaTech was willing to pay.

Enjoying the benefits of his new gym membership at Fit Now, Al consulted Nora, Fit Now's top personal trainer. When told of Dr. Smith's explicit prescription for Al's exercise, Nora scoffed, "Dr. Smith means well, but he's not competent because he doesn't keep up with current cardio research. He was disciplined by the state medical board, you know." The medical board did issue Dr. Smith a letter of reprimand 25 years ago for not promptly registering the change of name of his clinic.

Nora told Al the only effective re-strengthening of his heart required exertion producing a heart rate of 130 beats per minute. Al set his Model 5 monitor to an indicated 130, which was actually 170 beats due to the switched instructions he had downloaded, and began jogging on the treadmill. Al was panting rapidly within minutes. Observing the reading on his monitor to be only 120, Nora stood before Al and shouted "Faster! Faster, or you're going to die." Al struggled to increase his heart rate, which was actually already over 160. Forty seconds later he collapsed when one of his new heart valves failed from the pressure of the excessive heart rate. Nora grabbed the cell phone from a bystander who was trying to call 911. "He's fine. Get up, slacker; nobody stops a session but me." Getting no response, Nora began to slap Al's face. "I think he's dead" opined another trainer. "No!" shrieked Nora. "Does anyone know CPR?"

Nurse Jim was already kneeling beside Al to assess him when Don, hoping to impress Nora, pushed Jim aside and falsely claimed "I know CPR. I'll save him." Don began an ineffective mimicry of CPR he'd seen paramedics perform on television. Nurse Jim went to the gym's café, drank a beer, and then called the paramedics.

As now deceased Al was carted off by the paramedics, reporter Kim pocketed Al's heart monitor, believing it could figure in her first big story. Kim quoted Nora's comments about Dr. Smith that Kim had overheard exactly in the story her newspaper published the next day, headlined: "LOCAL DOCTOR'S ERROR PROVES FATAL—Former Discipline Insufficient."

Discuss the incidents above in light of the principles of tort law you've learned this year.

QUESTION 2 – ONE HOUR

Liz and Tom own a small deli in Midtown. Liz was opening the deli for her busy breakfast trade at 6 a.m. when Joe, her regular chef, threw down his apron and said, “I quit. Give me my pay so I can leave town.” Liz asked him to stay until Tom could come in at noon but Joe was insistent. “Joe, please,” Liz implored, “I can’t stop right now to calculate the taxes and write a check.” Joe growled that he wanted his money; Liz ignored him as she poured coffee and tried to prepare breakfast orders. Joe walked to the back of the deli to get his coat and decided to take what he was owed in goods. He picked up the expensive chef’s knives he had used so often at the deli and put them in his jacket pocket as he walked out the back door.

Liz unsuccessfully attempted to reach Tom and her other part time employees by telephone. Her friend Jen walked in and saw Liz was frantically trying to keep up with customer orders. Hearing the story, Jen told Liz she had to be at work soon but, because all the teachers for his junior high school were on strike, her son Luke could help. Liz gratefully agreed.

Luke arrived in minutes and carefully followed Liz’s directions for serving customers. When the breakfast rush slowed, Liz told Luke to prepare 10 pounds of potato salad, following the recipe posted on the kitchen wall. Unable to find the salt, he used the contents of an unmarked container which he thought held baking soda, which he knew to be a salt-like substance. It was actually lye, a highly caustic material.

The first few lunch customers who ordered the potato salad began to choke and cry out as Tom, just getting Liz’s message, hurried in. Never having met Luke, Tom thought the boy walking behind the counter as Liz’s back was turned was attempting to steal something. He rushed at Luke, oblivious to the increasing distress of the poisoned patrons. Luke ran from this aggressive stranger, bursting through the back door and colliding with Joe, who had decided to try again to collect his pay and if so, to return the knives he had taken.

Deputy Sheriff Nan, in plain clothes, was working her new assignment posing as a prostitute when she saw Joe and Luke collide and fall to the street. Running over, she saw the large shining knife in Joe’s hand. She pulled her revolver and pointed it first at Joe, then at Tom, just running through the door. Tom stopped abruptly, but was hurled toward Nan by the rush of panicked poisoned customers seeking relief from the terrible pain. Nan believed she was being attacked and fired, barely missing Tom. Joe, thinking Nan was in league with the crazy kid who had just collided with him, threw the heavy knife at Nan’s gun hand. It struck Nan in the neck, fatally severing her carotid artery.

The state in which Midtown is located had some years ago enacted Public Law 18, which reads: “In order to prevent the impairment of normal childhood occasioned by child labor and to ensure responsible and competent employees in the businesses of this state, no person may employ any minor under the age of 16.”

Discuss the incidents above in light of the principles of tort law you’ve learned this year.