Health Law Quality & Liability - Professor Pope
Final Exam Scoring Sheet – Fall 2018

Multiple Choice (2 points each)

1. D	3. D	5. C	7. B	9. C	
2. C	4. A	6. A	8. B	10. C	
TOTAL					**20**

Short Answer 1

Statute of Limitations	The SOL begins to run upon PTF's discovery of the claim.	**1**
	PTF probably discovered the claim by October 2016, because PTF told a physician that the damage for which he sought treatment was "caused by Cyber-Knife."	**1**
	If PTF discovered (or should have discovered) the claim in October 2016, then the SOL ran by October 2017, 1 year before PTF filed the claim.	**1**
	Note: Even if PTF establishes that he did not discover the claim until later (like July 2017), that would still be more than 1 year before PTF filed the claim.	**--**
	PTF's claims concern the side effects of Cyber-Knife, not its effectiveness. If PTF were suing over the effectiveness, then the SOL might not bar the claim. PTF did not discover that he still had cancer until October 2017. That may be within 1 year of when PTF filed the claim.	**--**
Statute of Repose	The SOR begins to run on the date of malpractice.	**1**
	Since this is an informed consent claim, the malpractice (negligent non-disclosure) occurred on or before the date of the Cyber-Knife treatments in November 2015.	**1**
	Therefore, the SOR ran by November 2017, 2 years after the malpractice.	**1**
Continuous course of treatment	While the SOR normally starts to run on the date of malpractice, the SOR does not begin to run until the end of the entire course of treatment.	**1**
	Plaintiff saw Peaches in November 2015 and in January 2017 for the same condition. Therefore, the SOR did not run until (at least) 2 years later, in January 2019. Therefore, the plaintiff filed the claim (in Oct. 2018) before the SOR ran.	**2**
Either/Or SOL - SOR	Even if the SOR does not bar the claim, the SOL still bars the claim.	**1**
TOTAL		**10**

Short Answer 2

Top Claims	Section 1557	This is the heart of the issue. There is an explicit duty to provide a qualified interpreter for a patient with Limited English Proficiency. That was not done. 1557 supports both a private cause of action and agency penalties.	**3**
	Direct liability: negligent policies	Perhaps because of 1557, it is now the custom and standard of care to have and use interpreter services.	**2**
	Vicarious liability for malpractice	The clinician did not comply with the standard of care. Since this is an ED clinician, the hospital is likely vicariously liable.	**2**
Other Claims	Vicarious liability for informed consent	The clinician's quality of communication was so low, that he likely breached duties of informed consent.	**3**
	Battery	The patient may not have consented at all to the treatment.	
	EMTALA screening	The hospital screened for the wrong condition, the condition it thought the patient had. But its misunderstanding was due to its own 1557 violation.	
	EMTALA stabilization	Since the hospital was not aware of the aneurysm, it had no duty to stabilize that EMC.	
	Hospital board	The state licensing entity may discipline the hospital.	
TOTAL			**10**

Essay 1			
ADA 1557	Disabled	PTF has a disability, because his extreme obesity is a condition that limits a major life activity.	**3**
	"Because of"	Hospital denied PTF a service (the MRI) because of his disability (i.e. because he would not fit).	**3**
	Qualified	PTF otherwise had the capacity to benefit from the MRI, as the scan at the other hospital demonstrates.	**3**
Informed Consent	Duty	The reasonable patient in PTF's position would want to know about the importance of an MRI scan and its availability elsewhere. After all, even the treating clinician thought this was an indicated diagnostic tool.	**2**
	Breach	Clinician did not disclose either the risks of omitting the MRI or the option of getting it elsewhere.	**2**
	Injury	PTF is now paraplegic.	**2**
	Causation	If PTF knew this information, he probably would have sought the MRI elsewhere.	**2**
		If the reasonable patient knew this information, he probably would have sought the MRI elsewhere.	**2**
		If PTF sought the MRI elsewhere, he would have discovered his condition when it was still treatable and when his injury probably could have been avoided.	**2**
	Vicarious	Obtaining informed consent is a duty of the individual clinician. But the hospital can be vicariously liable for this negligence. Since this was an ED situation, even if the physician is not an employee, the hospital is likely vicariously liable through ostensible agency or the non-delegable duty doctrine.	**2**
EMTALA Screening	PTF has arrived on hospital property. It appears the standard procedure (at least at this hospital) for someone with PTF's conditions is to do an MRI. Therefore, hospital must provide that screening for everyone uniformly. That was not done.		**5**
Tort claims	Since physician deliberately discharged patient before completing treatment, it may constitute abandonment.		**2**
	Without an expert witness to establish a standard of care, it seems impossible to bring claims for direct liability for negligent equipment or for (2) vicarious liability for malpractice		**--**
TOTAL			**30**

Essay 2			
Church?	Note that the analysis fundamentally turns on whether PTF's employer is a church.		**2**
ERISA	Private employer	If the employer is not a church, then PTF has her CIGNA coverage as a employee benefit from a private employer. That is covered by ERISA.	**3**
	Benefits owed	PTF's claim is fundamentally about benefits owed (i.e. coverage for chemo).	**3**
	Merits of 502	We do not have the contract language. But PTF must prove that she was entitled to coverage. This will be difficult given ERISA's deferential standard of review. On the other hand, it seems odd that another CIGNA plan approved the very coverage that the first plan denied.	**3**
	Damages	Even if she is the prevailing party, PTF is only entitled to the benefits that were denied.	**3**
Negligent UR	Church	If the employer is a church, then PTF's coverage under CIGNA is not an EBP covered by ERISA.	**3**
	Merits	Again, we do not have the contract language. But PTF will have an easier time proving entitlement to coverage without the ERISA standards.	**3**
	Damages	If she is the prevailing party, PTF can recover consequential damages such as the medical harm from not getting the chemo in a timely manner. These likely exceed the ERISA remedy.	**3**
	Causation	Proving medical harm may be tough given the pre-existing bad odds. Yet, if allowed in this context (not medical malpractice), lost chance causation could offer a remedy.	**4**
Breach of Contract	Same as the merits of 502 except that the standard of review is less deferential to CIGNA.		**3**
TOTAL			**30**

Note: *I use the above tables to tally scores. Your answer should be structured to address these issues and should include some macro organization with headings and paragraphs. But your answers should be written in the format of a memo or brief and not in a table.*