

Health Law Quality & Liability - Professor Pope

Final Exam Scoring Sheet – Fall 2020

Multiple Choice (1½ points each)							
1. C	6. A	11. C	16. C	21. B	26. A	31. E	36. D
2. B	7. A	12. C	17. G	22. D	27. C	32. C	
3. B	8. F	13. D	18. D	23. D	28. D	33. B	
4. B	9. D	14. B	19. D	24. B	29. A	34. B	
5. C	10. C	15. C	20. D	25. C	30. A	35. C	
TOTAL							54

Essay 1 (15 points)		
Tx relationship	No treatment relationship is required to bring a medical malpractice claim in Minnesota. But there was one in any case.	2
Breach	There is no direct evidence of negligence. We do not know what commissions or omissions DEF made. If we cannot even identify them, we cannot assess them as negligent.	2
Res Ipsa	This situation is appropriate for RIL, an alternative to establishing duty, breach, and causation.	2
	There are two elements: (1) This is the sort of injury that probably does not happen unless there was negligence. (2) It was probably DEF negligence.	
	All three experts may be qualified to establish that this sort of injury probably does not happen without negligence.	4
	While the LA expert might not be qualified to testify to the SOC, that does not matter here because that is not the relevant evidence for RIL.	1
	Any negligence must have been by DEF because they controlled the PTF the whole time.	4
TOTAL		15

Essay 2 (15 points)		
Tx relationship	There was a treatment relationship because there was diagnosis and treatment.	2
Duty	No matter the standard for disclosure, it cannot require the impossible. The risk of liver damage was unknown at the time of the physician-patient encounter.	8
	At best, the physician may have had a duty to disclose that alternative remedies are sometimes adulterated. But if the disclosure were this abstract, then it is probably not material information and/or would fall within the general knowledge exception.	
Breach	If there was no duty to disclose, then there is no breach in not disclosing.	2
Injury	PTF is injured.	2
Causation	Had the DEF warned the patient (in the way she alleges), she probably would have avoided that tea and avoided injury.	1
TOTAL		15

Essay 3 (16 points)		
Tx relationship	There was a relationship because there was diagnosis and treatment.	2
Duty	DEF duty is do what the reasonable physician would do. That is to use stethoscope.	3
	School of thought probably does not apply both because stethoscope is the dominant standard and because too few use ultrasounds.	--
	This situation may tempt a court to follow <i>Helling</i> , though that is unlikely.	--
Breach	DEF did the same as the reasonable physician. So, no breach.	3
	In some jurisdictions with a narrower locality rule, the controlling SOC is to use ultrasound.	--
No incentive	The SOC is expert-based rather than evidence-based. That drives physicians to follow the SOC no matter the lack of scientific evidence supporting its effectiveness or safety.	4
Obstacle	The SOC is sticky in that innovation is risky. Deviating from the SOC is malpractice.	4
TOTAL		16