

Final Examination

GRADE POSTING: If you do not wish to have your grade posted (by exam number) in this course, please place an X by your number on the exam and on your answer sheet.

DIRECTIONS

1. This examination is "open universe." Any materials may be used. However, if you quote directly from any supplemental source, e.g. Chemerinsky, you must cite your quoted language.
2. Three hours will be allotted for the examination. No blue books will be passed out for the first 1/2 hour. This time should be spent reading the question and outlining your response on the scratch paper provided. You may begin writing in your blue books as soon as you receive them.
3. In answering the essay questions, you should rely upon case law from the class materials and our class discussions.
4. **DO NOT CITE A CASE WITHOUT FURTHER DISCUSSION!** There is no presumption that use of a case name demonstrates knowledge of its contents. Discuss and analyze any case law you plan to use in your answer.

GOOD LUCK!

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The Terre Haute Mental Health Facility, which is owned and operated by the state of Indiana, hired Jason Holt as an orderly in May, 2000. Jason has been fired from two previous hospital jobs for sexually abusing patients. His previous supervisors were not hesitant to discuss his employment record. However, the Terre Haute personnel director never called any of Jason's references prior to hiring him.

One month later, Sarah Seay came to visit her mother at the facility. The mother was heavily medicated, and appeared to be uncomfortable. After watching her mother repeatedly pull at her hospital gown and grimace with pain, Sarah examined her, thinking she might have bedsores. Sarah was shocked to discover a bite mark on her mother's breast, and bruises on her inner thighs.

Sarah consulted an attorney, and filed a lawsuit on her mother's behalf in state court. She alleged breach of contract and negligence claims against the hospital and its Board of Directors. Her negligence claim included a count of negligence per se. Her attorney had established that the hospital was in violation of staffing regulations promulgated by the federal government, since it used too few professionally trained staff members on the night shifts. Failure to follow the federal regulations meant that the hospital could lose eligibility for Medicare/Medicaid reimbursement. The Medicare and Medicaid statutes do not authorize a private cause of action, however, they do authorize suits by the federal government. The federal statutes further provide that any hospital that receives Medicare/Medicaid funds for patient care waives its sovereign immunity for suits arising out of the hospital's failure to follow the federal regulations.

Attorneys for the hospital filed a timely petition to remove Sarah's suit to federal court, and then sought to dismiss all counts because of the Eleventh Amendment and/or qualified immunity. The hospital also began an internal investigation. The long-delayed reference calls were made regarding Jason, and the hospital learned about Jason's employment history. The hospital shared this information with the state prosecutor, who called a grand jury investigation to determine whether there was probable cause to charge Jason with the rape or sexual assault of Sarah's mother. The grand jury recessed without determining whether or not an indictment should issue; the prosecutor intends to convene a second grand jury to resolve the matter.

Sarah and her attorney learned of these developments, and amended their complaint (post removal) to add Jason as a defendant, and to add several new claims. Sarah added a claim under 42 USC § 1983, which alleged that the hospital and Jason had violated her mother's right to bodily integrity, and that the hospital had breached a duty to keep the mother safe from harm. She also alleged that the hospital's failure to perform a background check on Jason had proximately caused her mother to suffer harm under the fourteenth amendment. She added several tort claims (assault, battery and intentional infliction of emotional distress) against Jason. Sarah's attorney also moved the federal court for an injunction to halt any further state criminal

proceedings against Jason, pending completion of the federal case, to avoid possible preclusion problems. The attorneys for the hospital responded with a motion asking the federal court, in the alternative, to abstain from hearing Sarah's case until the state courts had an opportunity to determine whether or not Jason was criminally culpable for the harm to Sarah's mother.

The federal court refused to enjoin any state proceedings, and also denied the hospital's motion for abstention. The federal court expressed concern that the removal had been improper, but found that it need not address that issue since Sarah had presented a federal question with her §1983 claims. The federal court granted the hospital's motion to dismiss all claims against it and the Board of Directors based on the Eleventh Amendment and/or qualified immunity. The tort claims against Jason were remanded back to state court.

Jason's lawyer moved to dismiss the tort claims as untimely. The Indiana statute of limitations for all tort claims is one year. The remand occurred fourteen months after Sarah's mother was abused.

You may assume that the hospital is a state actor, and that all persons and entities in the problem are citizens of Indiana. The Indiana Constitution provides as follows: "The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver." There is no Indiana statute that appears to waive the state's sovereign immunity for the claims raised in Sarah's suit.

Discuss and resolve all issues.