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- B. **Question 1** is worth about 70%, has a **word limit** of 3,000 words (14 bluebook pages), and a recommended time of 130 minutes. On **Question 1**, I will **deduct** 1 point for **each unique** incorrect statement of the law. For other mistakes—*viz.*, irrelevant, unreasonable, or repetitive text—I will not deduct points but you will earn no points and will have wasted time and space.

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- D. **Question 1** will present you with the facts. Additional facts and inferences drawn from your common sense or common knowledge are permitted and expected, but you must explain what you believe the common sense or knowledge to be. If you find that you need facts or information beyond those given in the exam or what stems from common sense or knowledge, state the facts or information you believe are needed and how they would affect your analysis and conclusion. Do not presume, infer, or speculate about the existence of a statute not mentioned in the exam, no matter how common. If the statute is not mentioned on the exam, it does not exist. Your answer does not have to be Shakespeare-level prose but please do **not** present your answer in skeletal or bullet-point form. It should read like ordinary prose. Make sure to consider all sides in your analysis. Predict whether you think a claim or affirmative defense will succeed or not. If your analysis of an issue or statement of law has already been undertaken earlier, simply refer back to it rather than repeat it. Manage your time with care.

- E. **Question 1** will ask you to discuss “relevant tort claims and affirmative defenses.” If a claim or a defense is definitely a winner, make sure to walk through all the elements of that prima-facie case or affirmative defense. If the facts on the exam suggest a claim or defense that is actually definitely a loser then only discuss the element(s) of the prima-facie case or affirmative defense that demonstrate it is a loser. Where the likelihood of success of a claim or defense falls somewhere between the two aforementioned extremes, then, in an abundance of caution, make sure to walk through all the elements. You will also need to decide how to prioritize and organize your discussion of claims and affirmative defenses. For example, if a claim is definitely a loser, I would **not** prioritize discussing an otherwise meritorious affirmative defense to that claim. And do not discuss definite loser claims or affirmative defenses that are **not suggested by** the exam—those claims and defenses are irrelevant. Stated another way, I do not want **you** setting up a straw man so that you can knock it down. I, on the other hand, can set up straw men. So if the **facts of the exam suggest or mention** a definite loser claim—a straw man—then I do want you to knock it down as discussed above. Lastly, do **not** discuss **policy** in your answer to **Question 1**. In other words, do not talk about what the rule should be or why a

rule exists. In your analysis, use the law as it currently stands, based on the rules we have learned.

QUESTION 1: Essay Question

Alex Bodwin is an American actor and film producer, aged 63. He has worked in the film and television industry since the 1980s and has appeared in countless films and television programs. In May 2020, industry trade magazines announced that Bodwin would produce and star in *Rust*, a Western film based on a character named Harland Rust, an outlaw on the run from the law in Kansas in the 1880s. During an interview about the upcoming production in the *Hollywood Reporter* in June 2020, Bodwin was asked:

How are your gun slinging and horse-riding skills?

They're always at the ready. I'm an actor of the old school. So if you read my resume—my motorcycle riding, my French, juggling, my horseback riding, my gunplay—is all right at my fingertips at all times.

Bodwin did have experience with firearms on movie sets, but despite stating the above, he had not handled a firearm on set (or off in his personal life) since his film *The Edge* in 1997. He had also never used any antique firearms on or off a set.

The budget for *Rust* was approximately \$6 million, a low budget for a feature film intended for wide release. Because of the budget, the production had relatively limited resources and a tight filming schedule of 21 days.

As with other film productions, a company was specially formed to produce the film, called Rust Movie Productions, LLC. Rust Movie Productions was run by a board of advisors, made up of all the producers on the movie. Rust had five producers, one of whom was Bodwin. In their capacity as board members, any act of a majority of the board was an act of Rust Movie Productions itself. The board was responsible for hiring, on behalf of Rust Movie Productions, the “above-the-line” personnel on the film, that is to say, the script writer, the principal actors, the director, the cinematographer (also known as the director of photography), and the line producer. All of those personnel, including the producers themselves, worked as independent contractors (and qualified as such under Oregon law) for Rust Movie Productions. The line producer, in turn, was responsible for hiring everyone else who worked on the movie “below the line,” including the first assistant director (first AD), the gaffer, and the armorer, among others. These below-the-line personnel were all hired as employees (and qualified as such under Oregon law) of Rust Movie Productions.

The difference between a director and a first AD is that a director handles all creative decisions on the set, while the first AD is the person who actually manages and coordinates the cast and crew. A first AD must have a basic knowledge of every single job held by others on the set. An armorer is a person responsible for acquiring, storing, loading, and supervising

the use of all firearms on the set, along with instructing all actors and stunt performers on how to safely use the firearms. A gaffer is the chief lighting technician responsible for the lighting on a film production and works very closely with the cinematographer to get the lighting just right for filming a scene.

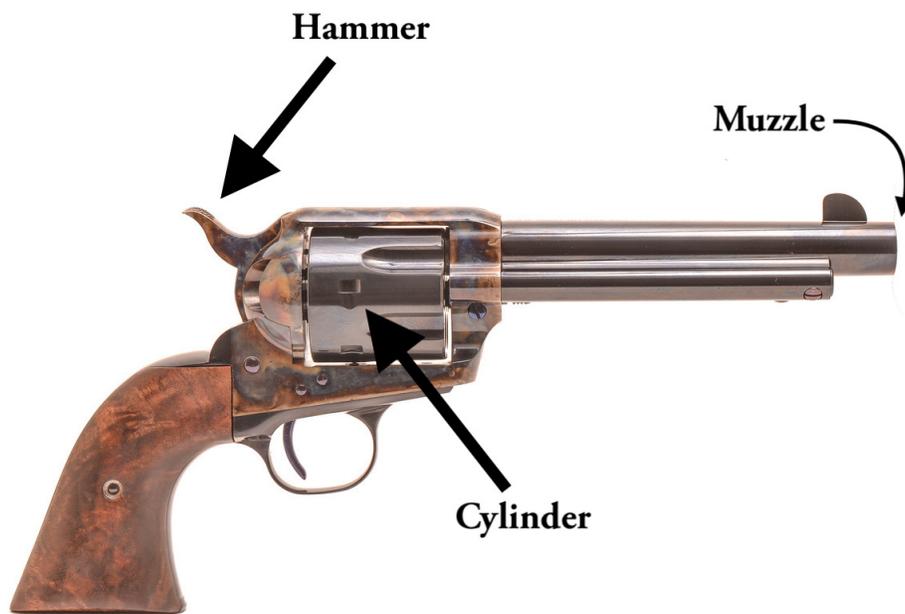
The board members of Rust Movie Productions unanimously voted to hire Larry Lines as their line producer. Larry was very experienced, with over 25 years as a line producer on numerous films, and with connections throughout the industry.

As an actor on the film, Bodwin's job was to act out the lines, expressions, and directions of the script given to him, and to follow any instructions of the director on the film that might modify or amend the written script. Bodwin was well known for not improvising.

Filming began in Oreglorida on October 7, 2021. The first two weeks went smoothly. Numerous scenes were filmed involving gunslinger characters without incident.

On October 21, tragedy struck.

The production team was preparing to film a scene in a church. According to the script, the scene called for Bodwin, who was to be seated in a pew, to use his right hand and reach across his chest to draw a late 19th-century .45 Colt revolver from a shoulder holster, and to then point the gun in the general direction of the camera. The script did not call for the gun to be fired, or for the hammer to be cocked back, in this scene. (See image below). Bodwin was simply to point the gun in the general direction of the camera, with his finger on the trigger, and say "My name is Harland Rust, you killed my father, prepare to die."



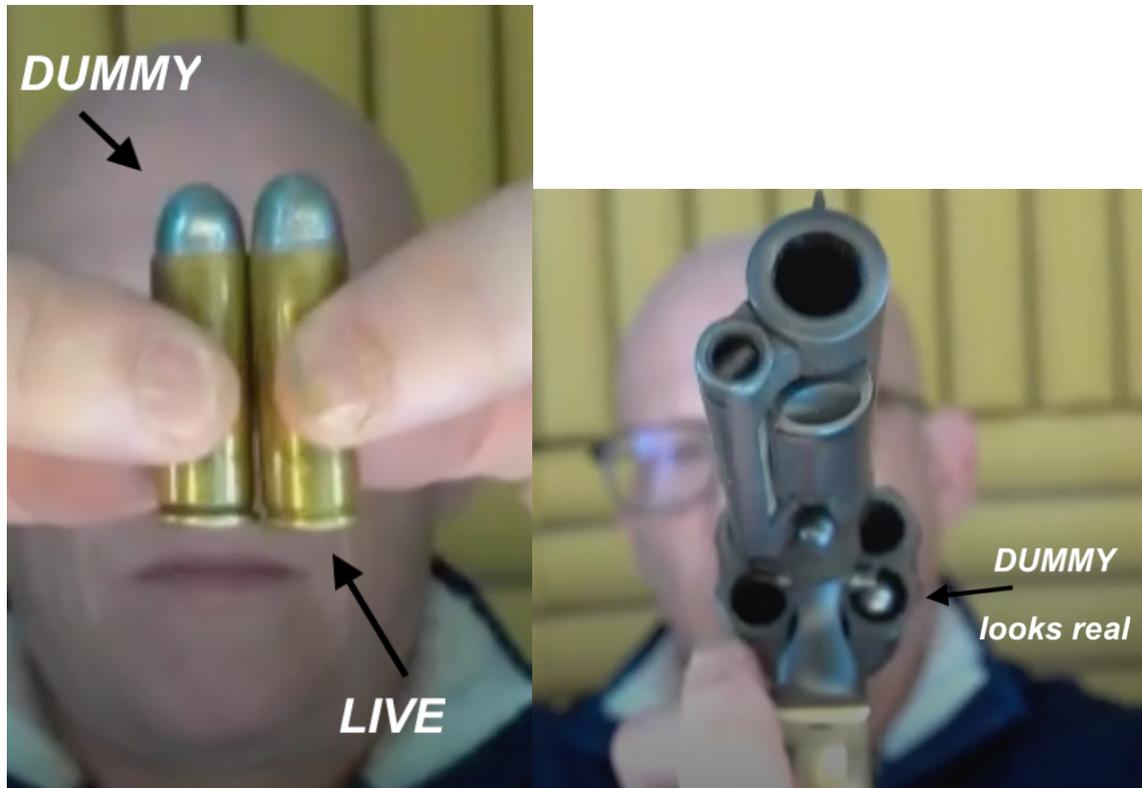
Standing very near and behind the camera was the director Dan Director, the cinematographer Cindy Cinema, and the gaffer Garry Gaffer. Garry was working with Dan and Cindy to set up the camera angles and the lighting for the scene, which would feature the movement of Bodwin's arm, and end (as noted before) with the gun pointing toward the camera. Dan, Cindy, and Gary, and the camera itself, were all about five (5) feet away from Bodwin at the time. No one was wearing any protective gear, like noise-canceling headphones or safety goggles, and there was no protective barrier shielding the crew.

The first AD on the film, Frank Frist, walked onto the set. Frank had about 15 years' experience as a first AD on many other films. Frank handed Bodwin the Colt firearm and declared loudly on the set "cold gun!," which in industry lingo meant that the gun was only loaded with dummy rounds.

Dummy rounds are cartridges that are inert, with no gunpowder, and are thus simply designed to fill the chambers of the revolver, so that it looks to the camera, on a close-up view, that the gun is fully loaded with real bullets. On the outside, a dummy cartridge looks a lot like a live cartridge, with the exception that the primer end (*i.e.*, the back of the bullet that is struck by the hammer of the gun) looks slightly different because it has an indentation. (See images below and on next page). A dummy also emits a rattling sound when moved around, because it has a few very small metal balls inside. A live bullet is silent when shaken because it is filled with gunpowder. The dummy rounds used on the film were manufactured by Dummy Bullets, Inc., but all dummy rounds are made and appear the same way, regardless of the manufacturer, so as to keep things consistent.

A dummy is not a blank. A blank round is a cartridge that has gunpowder in it, but no metal projectile at the dangerous end. Blanks are used when a gun is to be fired, and the director wants the muzzle flash and gun recoil to appear on camera.





Bodwin sat at the pew in his designated spot and rehearsed the move. He pulled the Colt out of the holster several times, to get the move just right, and aimed it in the general direction of the camera. He heard some subtle rattling, which the armorer had told him was characteristic of a dummy round. Dan saw Bodwin rehearsing and instructed him that he did not think the dialogue was menacing enough on its own, so he directed Bodwin to cock the hammer of the gun back before delivering the line. Cindy agreed that the script change was an improvement. Gary did not hear the change to the script because he was too busy giving instructions to another lighting person. Bodwin later recalled, “I pointed the gun where Dan told me to hold it, which ended up being aimed right below Cindy’s armpit.” Bodwin rehearsed the move again—he pointed the gun in the direction of the camera, cocked the hammer back, when, unexpectedly and very loudly, the Colt discharged.

Gary felt a strange and terrifying whoosh of what felt like pressurized air. He also felt something very lightly strike the right side of his face, which he later learned was residual gunpowder. He instinctively turned away from Bodwin and saw that Cindy was on the ground, grabbing her lower torso. Dan Director yelled, “what the hell was that!?” and Bodwin yelled “Oh my God, what happened!? Was there a blank in that gun?”

Gary went to Cindy and positioned his hands behind her head and back to help comfort her. He tried to keep her calm, alert, and conscious, while trying to figure out what was wrong. As he held her, Gary noticed that the hand he placed behind her back was becoming wet with blood. In that moment, he and the others realized she had been shot.

The film had an on-site medic, Mandy Medic, who was on the set within a minute. First thing she did was call the paramedics, who were dispatched immediately from the nearest city. Mandy tried to stop the bleeding to no avail. The bullet had entered through Cindy's right armpit, cut through part of a major artery, without fully severing it, and exited out her back. There was nowhere to place a tourniquet to help stop the internal bleeding. Mandy had the film-industry standard amount of 5 universal blood units on hand for typical film productions, which she administered to Cindy, but it was not enough given how long it took the paramedics to arrive. Because the film location was in the middle of the mountains, a location selected by the line producer, Larry, it took 30 minutes for the ambulance to arrive. The paramedics could not have driven more quickly, and a helicopter ambulance was unavailable in that region of Oreglorida. Had the paramedics arrived 10 minutes sooner, they could have picked up the transfusions where Mandy left off, with the many more units of blood and other blood products they carried in their ambulance, and likely saved Cindy's life until the artery could be repaired in a hospital. As it stood, when the paramedics arrived, they could not revive her, as she had lost too much blood. They pronounced her dead.

Gary walked out of the church, suddenly processing what had just happened. Overcome with emotion, shock, and trauma, he broke down and wept.

The police arrived not long after, and a preliminary investigation has revealed the following.

The Colt had five dummy rounds in it, and one live bullet, which is what discharged and struck Cindy. A police study of the Colt has been unable to discover any fault or defect in its firing mechanism.

For his part, Bodwin says he is not sure if he pulled the trigger or not. The gun blast was so loud in the small church, that he immediately felt disoriented. The entire episode was very traumatic for him, as he himself was close to Cindy. Bodwin said that he either misunderstood the director, thinking Dan asked him to also pull the trigger, and so he did, or he did not pull the trigger at all and the gun simply fired after he cocked the hammer back. Perhaps the hammer slipped from his thumb before it locked back in the cocked position. The police inspection of the Colt demonstrated that either option was possible. Although modern guns will not fire if the hammer is released midway through cocking the gun, the Colt was an antique firearm and had no safety ratchets to prevent the hammer slipping before it locked all the way back.

Because of the limited budget, the line producer on the movie, Larry, had hired Amy Armor, aged 24, as the production's armorer. The daughter of a legendary armorer in the movie industry, Anders Armor, aged 78, she had served as an assistant armorer in four other films previously, but as the lead armorer in only one film previously. Although she did not have a lot of experience, her father Anders recommended her for the job to Larry, saying that "I've taught her everything I know. So you'll get the legendary Armor name and knowledge for a discounted price."

Amy told the police that she had supplied the antique Colt and other firearms to the production, along with the dummy rounds (purchased from Dummy Bullets, Inc.) and blank rounds that she expected would be used during filming, according to the script. She was very proud to have acquired genuine 19th-century firearms for the production, as they would add authenticity to the film. On October 21, Amy had loaded the Colt herself with what she believed were dummy rounds. She then handed the gun to Frank Frist, telling him that it was ready for the scene. She has no idea how a live bullet ended up in the gun.

After taking custody of the gun, Frank left it unattended on a cart for about an hour. He then retrieved it for the scene, but admits that he did not check every round of the revolver before handing it to Bodwin. He did briefly turn the revolver cylinder and could hear some rattling.

Asked why she was not on the set when the accident happened, Amy said that she was outside covering some work that another employee would normally do. The employee had to run into town for supplies, and the movie was on a tight filming schedule.

Police found approximately 200 rounds on the *Rust* set, consisting mostly of blanks and dummy rounds, but a few suspected live rounds. There are rumors that some crew members had brought their own live ammunition to the production location so that they could shoot targets during their off time with the film-production's firearms and their own firearms. Apparently, they wanted to compare how a 19th-century handgun fired to a modern one. It is undisputed that Bodwin, Amy, Larry, Dan, Frank, and Cindy did not know of the target practice, nor is there any indication that any of them brought live ammunition to the set.

It is the job of an armorer to always initially check a firearm for safety before using the gun on set. But there was no custom in the film or television industry as to whether an additional check was always necessary before handing a gun to an actor or stunt performer. In some instances, the armorer is the first and only check, in other instances, the first AD might conduct a final check, and sometimes the actor using the firearm does a final check. Some armorers prefer that the actors not re-check the firearms themselves.

Rust Movie Productions had rented the church for the movie production.

Rust Movie Productions stopped production of the film the day after Cindy died, and then canceled the movie entirely, thereby losing \$3 million.

Gary was very close friends with Cindy, as they had worked together on many movies before. He has had difficulty working and concentrating since her death. He has also said he feels like Bodwin assaulted and battered him when the gun fired.

Bodwin has been very traumatized by the event as well, having shot and killed a colleague and friend of many years. He wakes up every night in a sweat, thinking about that day. He also suspects his otherwise lucrative career as an actor and producer is now over.

Cindy leaves behind a husband of seven years, Harry Husband, and their five-year old child, Karli Kid.

Statutes/Rules:

Here are some statutes and rules in Oreglorida of which you should be aware and which may or may not be relevant:

1. Oreglorida continues to adhere to the traditional doctrine of contributory negligence and all the other doctrines usually associated with it.
2. Oreglorida follows the traditional rules and exceptions of premises liability.
3. Oreglorida rejects the notion, adopted in many jurisdictions, that defendants owe no duty to protect potential plaintiffs from the acts of third persons in instances of misfeasance. Oreglorida's main no-duty rules apply only in cases where the defendant's conduct can be characterized properly as nonfeasance.
4. Oreglorida has a survival statute. It also has a wrongful-death statute whose only beneficiaries are immediate blood relatives; it permits recovery for loss of consortium, loss of financial support, and emotional distress.

Directions:

1. Assume all of the above facts and persons are now known to all parties. Despite its resemblance to recent real-world events, these exam facts differ, so do not import any additional facts about the incident from what you may have read in the press.
2. Discuss relevant tort claims and affirmative defenses, except:
 - a. Do not discuss any contribution or indemnity claims that one tortfeasor could bring against another.
 - b. Do not discuss any claims that could be brought against the paramedics.
3. Do not discuss the remedies that would be available to a plaintiff.

END of QUESTION 1