

## TORTS QUESTION

---

One year ago, a man was injured when the car in which he and a woman were traveling slid off an icy highway during a winter storm and overturned. At the time of the accident, the woman was driving the car. The man was sitting in the front passenger seat, wearing his seat belt. The woman was driving 40 mph at the time of the accident, although the posted speed limit was 50 mph.

The man and the woman were rushed to a local hospital in its ambulance. There, hospital surgeons performed emergency surgery on the man. The man remained in the hospital for 10 days following his admission. Numerous medical instruments were used during his surgery and subsequent hospitalization, including needles, clamps, and surgical tools. However, he did not receive a blood transfusion or any blood products.

Three days after the man was released from the hospital, he developed a fever and visited his personal physician, who is not affiliated with the hospital. The physician ordered routine blood tests. The tests revealed that the man had a serious infection that is transmitted in nearly all cases through exposure to either contaminated blood products or improperly sterilized medical instruments (needles, clamps, surgical tools, etc.) that come into contact with a patient's blood. There are, however, other possible sources of the infection in a hospital environment, such as a failure of staff to follow proper handwashing techniques to avoid transmitting infection from one patient to another and staff failure to properly identify and discard certain used medical instruments that cannot safely be sterilized.

Infections occurring in individuals who have not received a blood product and have not been hospitalized during the period of likely exposure are possible but rare. The physician told the man that he "must have contracted this infection at the hospital" because the period between infection and symptom development is 10 to 13 days and the man was a patient at the hospital during the entire relevant period. The physician also stated that "at hospitals that have adopted medical-instrument sterilization procedures recommended by experts, cases of this infection have been almost completely eliminated." The man has no history of intravenous drug use, and he did not receive any medical treatment for several months before his hospital stay. All sterilization procedures at the hospital are performed by hospital employees. However, the particular sterilization procedure used while the man was hospitalized cannot be determined because, while the hospital now uses the sterilization procedure recommended by experts, there is no record of when it started using that procedure.

The man has sued the woman and the hospital, alleging negligence. Neither defendant is judgment-proof, and this jurisdiction has no automobile-guest statute. The parties have stipulated that the man's damages for the injuries he suffered in the accident are \$100,000 and his damages from the infection he contracted are \$250,000.

1. Could a court properly find that the woman was negligent even though she was driving below the posted speed limit? Explain.
2. Could a court properly find that the woman is liable for the man's damages resulting from the infection? Explain.

## Torts Question

3. Could a court properly find that the hospital is liable for the man's damages resulting from the infection? Explain.
4. If a court found that both the woman's negligence and the hospital's negligence caused the man's infection, could the woman's liability be limited to \$100,000 for injuries the man suffered in the accident? Explain.