Torts Fall 2010 ESSAY QUESTION: This question is worth 300 points for approximately 60% of the exam grade.

James and Michelle Dawson reside in rural Madison County on property abutting a gravel road. During the early summer, they purchased a Trampoline from Trampsco for their children. After three months, the trampoline was so worn out they disassembled it and placed its component parts on their yard approximately forty feet from the road. Intending to dispose of them at a later time, Dawson did not secure the parts in place. He planned to return it to the store where he purchased it to complain of its shoddy construction so he had not disposed of it yet. A few weeks later, a severe thunderstorm moved through the area overnight. Wind gusts from the storm displaced the top of the trampoline from the yard to the surface of the road.

Later that morning, while driving to work, Charles Payne approached the defendants’ property. When he swerved to avoid the obstruction on the road, Payne lost control of his vehicle. His car entered the ditch and rolled several times. The Dawson’s were awakened by Payne’s screams at about 9:00 a.m., shortly after the accident. When they went outside to investigate, they discovered the trampoline base lying on the roadway. Michelle dragged the object back into the yard while Dawson assisted Payne.

The road where the Dawson’s live is on a State list of roadways that needed to be paved. A few accidents had occurred on that portion of the road in recent years but because it was not very heavily travelled, the State had delayed paving it.

Payne has come to your law firm for advice. He wants to pursue tort actions to recover for his injuries. The senior partner has asked you to evaluate the following tort actions: negligence action against the Dawson’s, negligence action against the State, and a strict products liability action against Trampsco.

Your preliminary research has discovered the following statutes in this jurisdiction.

Traffic Safety § 320 provides a person “shall not place, or cause to be placed, an obstruction within any highway right-of-way.” An “obstruction” is defined as “an obstacle in the highway right-of-way or an impediment or hindrance which impedes, opposes, or interferes with free passage along the highway right-of-way.”

Governmental Immunity § 515 provides: A cause of action against the State exists for money damages for injury or loss of property caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of his office or employment except for the following:

1. Any claim based on the act or omission of an employee that is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a State agency or employee unless the discretion involved is abused.
2. Discretion shall be considered abused only if the Board of Claims finds, without a jury, that no reasonable official in the same circumstances would have made the same determination.

**Comparative Fault Act.** The Uniform Comparative Fault Act is applicable.

You have also discovered that your jurisdiction has adopted the Restatement (Second) of Torts § 402A on strict products liability. Your jurisdiction does not have a clear preference regarding duty or proximate cause doctrines. You know that Payne is injured seriously so you need not explore damages.