

WRITE YOUR
EXAM ID
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UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

Torts
Fall 2018

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Associate Professor of Law

PART
1

PRACTICE EXAMINATION - MULTIPLE CHOICE

Closed-book.

One hour

Write your exam number in the box in the upper-left corner!

[Below are instructions for a real exam. This practice exam, of course, is publicly released, and it's optional.]

GENERAL INSTRUCTIONS:

1. All exam materials (including this booklet and your response) must be turned in at the end of the period. **You will not receive credit unless you return this booklet with your exam ID number written in the box above.**
2. You may not waive anonymity. Use only your exam ID number on your response. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action. Do not turn the page until instructed to begin.
3. Assume that today's date is the regularly scheduled date for the exam administration.
4. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
5. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
6. During the exam: You may not consult with anyone — necessary communications with proctors or College of Law staff being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
7. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
8. Base your exam responses on the general state of the common law and typical statutory law in

the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class, plus any hypothetical laws presented in the facts.

SPECIFICS FOR MULTIPLE CHOICE:

9. You have a total of 1 hour. *[The real final in Fall 2018 will have 2 hours for multiple choice.]*
10. This portion of the examination is **"closed book."** You may not use any materials at all, other than pencils, the answer sheet, and this examination booklet.
11. Do not put your name on the scantron answer sheet. Use only your exam ID number.
12. You may not disassemble this examination booklet. Leave it stapled and intact.
13. A reference to "can sue," "can bring an action," "has a claim," etc., refers to a plaintiff's ability to properly allege and plead a claim with some substantial promise of success on the merits.
14. Each question has one correct answer. Choose the correct answer based on the materials assigned and information presented in class.
15. Each correct answer is worth one point. There is no penalty for incorrect answers.
16. Subsequent to the exam's administration, in the sole discretion of the instructor, if error or irregularity is discovered, any affected question may be thrown out, or alternative answers may be given credit.
17. Good luck!

Pacing chart: To finish all questions and have 5 minutes left over, then:

at this time since starting	10 minutes	15 minutes	0.5 hour	45 minutes	55 minutes
be done with question no.	5	7	14	20	25

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1. Peabody and Dalton walked into the Rusty Knob Tavern and sat on stools at the bar. After a few drinks, Dalton and Peabody got into an argument. Dalton said, "Peabody, you're a bucket of slime, and I hope you die a painful, horrible death." Peabody left to use the restroom, and while he was gone, Dalton noticed that another bar patron, Tatiana, left a lit cigarette on Peabody's stool. When Peabody came back from the restroom, Dalton thought about warning Peabody, but Dalton decided against it. Peabody sat on the lit cigarette and received painful burns. Peabody sued Dalton for negligence.

Which of the following statements is most correct regarding Peabody's negligence case against Dalton?

- (A) Peabody cannot recover because he cannot establish that Dalton had a duty to act, and duty is a necessary element of a negligence case.
 - (B) Peabody cannot recover because he cannot establish that Dalton's failure to warn Peabody of the cigarette is a but-for cause of Peabody's injury, and actual causation is a necessary element of a negligence case.
 - (C) Peabody cannot recover because he cannot establish damages flowing from having sat on the cigarette, since merely "painful" injuries are not sufficient to establish damages in a negligence case.
 - (D) Peabody cannot recover because he cannot establish *res ipsa loquitor*.
 - (E) Peabody can recover.
2. Elmer and Susan were both operating motor vehicles involved in a collision in the state of North Carolina. Elmer sustained physical injuries and sued Susan for negligence. The jury returned this special verdict form:

What percentage, if any, was Elmer's negligence responsible for his own injuries? 10%

What percentage, if any, was Susan's negligence responsible for Elmer's injuries? 90%

What dollar amount represents the total damages incurred by Elmer, regardless of responsibility? \$100,000

North Carolina is a contributory negligence jurisdiction.

Which of the following statements is most correct?

- (A) Elmer will be awarded \$110,000 in damages, to be paid by Susan.
- (B) Elmer will be awarded \$100,000 in damages, to be paid by Susan.
- (C) Elmer will be awarded \$10,000 in damages, to be paid by Susan.
- (D) Elmer will be awarded \$90,000 in damages, to be paid by Susan.
- (E) Elmer will be awarded no damages.

3. In which of these situations is Randall most clearly liable in negligence?
- (A) At half past midnight, hoping to impress his girlfriend who is waiting in a parked car, Jared hops a 10-foot chain-link fence onto Randall's property to pick some roses out of Randall's garden. Feeling his way through the darkness, Jared trips over a tangled clump of thick electrical cord and falls into a koi pond. The cord is more than 75 years old and has visibly broken insulation. When it contacts the water, the cord shoots 240 volts of alternating current into the pond and through Jared's body. Jared is unable to escape the pond as the electrical current locks his muscles in a continuous state of contraction. The electricity does not cut out, since Randall previously circumvented the circuit breakers to the garden outlets. Jared suffers severe, lasting, and permanent damage to multiple internal organs.
 - (B) Lord Marbury has accepted Randall's invitation for a game of croquet in the garden on a Sunday afternoon. While walking to the fourth wicket, Lord Marbury suddenly disappears through the ground in a spray of dust and mulched grass clippings. Peering through the resulting hole, Randall sees Lord Marbury 20 feet below, writhing in agony from two broken tibias, surrounded by rotting wooden wine barrels. "I'm so sorry!" Randall calls down to Marbury, "I had no idea!" Then Randall whispers to himself under his breath, "I should have inspected this property for abandoned underground wine cellars before inviting people to play on the lawn."
 - (C) Down below Randall's house and gardens, next to an elementary school, is an unimproved tract of land with a glen of trees in a steep ravine. As Randall knows, the creek at the bottom of the ravine is prone to flash flooding in winter. This is where Randall decides to stow his collection of 15-foot-tall statues of the Care Bears. Able to see a glimpse of Funshine Bear from the four-square courts, more than a dozen kindergartners climb on to Randall's property and down into the ravine, where a sudden deluge drowns three children and injures nine more.
 - (D) Following the injuries to Jared, Lord Marbury, and the kindergartners, Randall hires the very reputable Slayton Engineering Group to thoroughly investigate his entire estate for any hazards that might injure anyone. The firm gives Randall's property a clean bill of health. The next week, at the bed-and-breakfast that Randall operates on the far corner of his property, a just-married couple staying in the honeymoon suite is killed when carbon-dioxide from volcanic activity under the property (never previously known in the area) seeps out and smothers the newlyweds overnight.
 - (E) Extremely upset about the undiscovered volcanic-gas condition, Randall calls up Slayton Engineering Group and leaves a voice mail: "Could you please come out to the bed-and-breakfast and re-inspect that portion of the property as soon as possible? Thanks." While on site hours later, two SEG engineers are overcome by the gas and die.

4. The HexSync 3000 is a sensitive hand-held instrument for calibrating still other sensitive hand-held instruments. Who owes the highest duty of care with regard to the HexSync 3000?
- (A) a bailee, who borrowed the HexSync 3000 for a purpose solely benefiting the bailor
 - (B) a bailee, who borrowed the HexSync 3000 for a purpose mutually benefiting the bailor and bailee
 - (C) a bailee, who borrowed the HexSync 3000 for a purpose solely benefiting himself (i.e., the bailee)
 - (D) a two-year-old boy, who is playing with the HexSync 3000
 - (E) a farmer, who lived 125 years ago and is the great-great-great grandfather of the inventor of the HexSync 3000.
5. Kjell was walking along in the city. Nearby, Josephine was juggling knives for a crowd of astonished onlookers. Unfortunately for Kjell, just as he was walking by, Josephine lost control of the knives and they went flying at Kjell. Consider the following allegations:
- I. Kjell received a knife wound to his forearm.
 - II. Kjell's \$2,000 suit jacket was slashed and ruined by the knives.
 - III. Kjell was left upset and angry at seeing Josephine lose control of the knives.

Which allegations are sufficient by themselves to meet the injury or damages requirement of a negligence case?

- (A) I, but neither II nor III
- (B) II, but neither I nor III
- (C) I and II, but not III
- (D) I and III, but not II
- (E) Not any of I, II, or III

6. Ulena owns a very large country estate in the mountains of Virtucky. Note the following:
- I. Jill is a hiker who is trespassing on Ulena's land. Ulena does not know about Jill in particular, but Ulena is aware that hikers sometimes trespass on her land.
 - II. Kelton is a tourist who is going horseback riding on Ulena's property. Kelton is a customer of the riding stables that Ulena operates for a profit.
 - III. Liam is Ulena's friend. He is at Ulena's house for a birthday party to which he was invited.

Which of the following correctly orders the above situations from most expansive to least expansive in terms of the standard of care owed by Ulena?

- (A) I, II, III
- (B) II, III, I
- (C) II, I, III
- (D) III, I, II
- (E) III, II, I



*FIG 1:
Ulena's
riding
stables
welcomed
adorable
baby
horses
this year.*

NOTE THE FOLLOWING FACTS FOR QUESTIONS 7 AND 8:

Patricia had a bad week. First, a cat named Maximilian, the household pet of Patricia's neighbor, trespassed into Patricia's backyard and killed her prize goldfish, which Patricia kept in an outdoor aquarium.

The next day, Patricia was injured by a ladder because of a design defect that caused the ladder to collapse. The ladder was designed and manufactured by Glaretram Mfg Co. In fact, Glaretram Mfg Co knew about the dangerous defect with their ladders even before they made their first shipments, but the company decided that it was cheaper to spend money to defend personal injury claims in litigation – even though they knew deaths and serious injury were almost sure to result – rather than to redesign the ladder. Patricia bought the ladder from HexMart, a retailer that competes with Walmart and Target.

Then, when Patricia went to the hospital to be treated for her injuries, she was given stitches (sutures) and a prescription for Rodrupol. Because of a manufacturing defect, the suture thread broke apart within hours after being placed, causing Patricia's wound to open up and get infected. She will need a course of antibiotics and will suffer a permanent scar as a result. Also, the Rodrupol interacted with Patricia's extremely common asthma medication, causing Patricia to suffer internal bleeding, for which she will need a week's hospitalization. The lack of a warning about Rodrupol's interaction problem constituted a warning defect.

7. Against whom is Patricia least likely to be able to prevail in a claim for strict liability?
- (A) Patricia's neighbor, owner of Maximilian
 - (B) Glaretram Mfg Co
 - (C) HexMart
 - (D) The manufacturer of the suture thread
 - (E) The manufacturer of Rodrupol
8. Will Patricia be able to recover punitive damages against Glaretram Mfg Co?
- (A) Maybe – there is a good chance of an award of punitive damages because Glaretram Mfg Co knew deaths and serious injury were almost sure to result from the defective ladders.
 - (B) Maybe – there is a good chance of an award of punitive damages because the injury from the Rodrupol interaction constitutes an additional injury, which is a factor favoring punitive damages.
 - (C) No, because no death resulted in this case.
 - (D) No, because the underlying claim is based on a design defect.
 - (E) No, because compensatory damages would be an adequate legal remedy, in this case, to make the plaintiff whole.



9. A plaintiff has sued for assault, battery, and false imprisonment. In order to be awarded at least something in this lawsuit, what is the minimum the plaintiff must do?
- (A) Prove all the elements of all causes of action by a preponderance of the evidence.
 - (B) Prove all the elements of one cause of action by a preponderance of the evidence.
 - (C) Prove a preponderance of the elements of all causes of action beyond a reasonable doubt.
 - (D) Prove a preponderance of the elements of one cause of action beyond a reasonable doubt.
 - (E) Prove all the elements of all causes of action by clear and convincing evidence.
10. Sonia and Adrienne spent the day in Spiny Spires National Park. It was Adrienne's idea. (Sonia hates nature almost as much as she hates not having good data reception on her phone.) They took a hike to the top of a hill where a brief rainstorm created a vivid double rainbow. "Rain makes mud, and I hate mud," Sonia complained. At the visitor's center, they saw a third-grader, who won a national essay contest, give a presentation about President Ulysses S. Grant, who signed legislation in 1876 creating Spiny Spires National Park. President Grant was instrumental in overcoming a Congressional push to have the land sold off as private property. "Most boring fact ever," Sonia grumbled. But the drive home was even worse. Another car came across the double-yellow line and crashed into Sonia and Adrienne's SUV. Sonia suffered bruised ribs and a torn fingernail. "I'm going to sue Ulysses S. Grant for getting Spiny Spires National Park created," Sonia muttered through gritted teeth. "Without his boneheaded move, I never would have gotten hurt." Given that Sonia was hurt, Adrienne didn't want to argue. But if Adrienne had answered back, which of the following would be most accurate?
- (A) "Well, that case would be a non-starter for a lot of reasons. But among them is a lack of actual causation."
 - (B) "Well, that case would be a non-starter for a lot of reasons. But among them is a lack of proximate causation."
 - (C) "Well, that case would be a non-starter for a lot of reasons. But among them is the lack of an injury sufficient for a claim in tort."
 - (D) "Well, that case would be a non-starter for a lot of reasons. But you could sue the driver who hit us. No matter how careful she was being, she is absolutely liable for accidents she has caused as a driver."
 - (E) "Well, if he were still alive, then yes, you would have a case in negligence against Ulysses S. Grant."

NOTE THE FOLLOWING FACTS FOR QUESTIONS 11, 12, AND 13:

Northern BronzeWorks is the most popular tanning salon in town. Daisy is a frequent customer. One day Daisy spilled a bottle of slippery tanning oil on the floor. In the dimly lit salon, the clear oil was virtually invisible on the floor. Daisy told the manager about the spilled oil, but the manager, who was frazzled from a busy day dealing with several malfunctioning tanning beds, neglected to clean it up or do anything about it. An hour or so later, Parker, a new customer, came along. He slipped on the oil and fell, leaving him with a broken arm and serious back injuries.

11. Suppose Parker goes to see a personal-injury attorney about the possibility of suing. Which of the following statements constitutes the wisest counsel from that attorney?
- (A) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you tried to sue both, then either one could point to the other and escape liability. That is what is known as *Summers v. Tice* doctrine."
 - (B) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you tried to sue both, then either one could point to the other and escape liability. That is part of the duty-of-care element of a negligence case: Only one party can be said to have the duty of care."
 - (C) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you sue both, then the culpability standard cannot be met, because then each party will be only 50% responsible. And a defendant must be more than 50% responsible to be held liable in negligence."
 - (D) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. It's a question of proximate causation: Only one party can be the proximate cause of your injuries."
 - (E) "You can sue both Daisy and Northern BronzeWorks at the same time."
12. Assume Parker sues Daisy for negligence. Which of the following is the most correct analysis regarding actual causation in this case?
- (A) The element is met because, but for Daisy having spilled the tanning oil, Parker would not have been injured.
 - (B) The element is met because the spilled oil is the only cause of Parker's injuries.
 - (C) The element is met because Daisy can be construed to have intended to injure Parker.
 - (D) The element is met because Parker was a foreseeable plaintiff.
 - (E) The element is not met.

13. Assume Parker sues Northern BronzeWorks for negligence. Which of the following is the most correct analysis regarding the element of breach of the duty of care in this case?
- (A) The element is met because the injury took place on Northern BronzeWorks' premises, and companies are responsible for all injuries that happen on their premises.
 - (B) The element is met because Parker was an invitee, and Northern BronzeWorks has a duty to warn of or make safe any known, concealed dangerous condition, plus a duty to inspect. Northern BronzeWorks knew about the condition, because Daisy informed the manager. And even if Northern BronzeWorks hadn't known, they had a duty to inspect, which would have uncovered it. The condition was dangerous because it could hurt someone (as it did). And it was concealed because with dim lights, the clear oil was virtually invisible.
 - (C) The element is met because the spilled oil is the only cause of Parker's injuries.
 - (D) The element is not met because Northern BronzeWorks owed Parker no duty.
 - (E) The element is not met because, but for Daisy having spilled the tanning oil, Parker would not have been injured.



14. Who among the following has a duty to perform according to the knowledge, skill, and custom of practice that exists nationwide in her field?
- (A) A general practitioner physician in a very small town.
 - (B) A general practitioner physician in one of the largest cities in America.
 - (C) An internist (i.e., a physician specializing in internal medicine) in a rural area.
 - (D) A general practitioner dentist.
 - (E) A truck driver on an intercity route that crosses state boundaries.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 15 AND 16:

Garth is smitten with Jill, and he invites her over to his house for dinner. To Garth's delight, Jill accepts. They have a pleasant dinner and then sit together on the couch enjoying a drink. Jill asks Garth if he would excuse her for a few moments, as she needs to make a private phone call. She suggests that she go into the backyard to make her call so that she can enjoy the crisp, early winter air and crystalline starry sky. Garth says that would be fine, but, he warns, "Watch out for the gigantic naturally occurring quicksand pit. It's way back past the shed. As long as you stay between the house and the shed, you'll be fine." Jill thanks Garth and excuses herself.

While wandering around the backyard talking to her mother, Jill becomes absent-minded and walks past the shed. She soon comes upon the quicksand pit, and GLURP! Jill is sucked under.

Meanwhile, Wolfgang, who is looking for his lost cat in the town's nature preserve, wanders into Garth's backyard. Wolfgang has no reason to suspect that there is a quicksand pit, and, in fact, Wolfgang is not even aware that he has wandered out of the bounds of the nature preserve and on to Garth's private property. Wolfgang walks slowly, listening for faint meows, and GLURP! Wolfgang falls in.

Garth, waiting for Jill, is somewhat worried. Has he done something to offend Jill? Did she simply invent the phone call as a reason to leave without saying good-bye? Suffering a panic attack, Garth passes out.

At some point in the middle of the night, Rafaella, who is in her own backyard, hears Wolfgang's and Jill's cries for help. Rafaella has never heard of the quicksand pit either. She enters Garth's backyard to investigate. Rafaella calls out as she approaches, "Is someone in trouble?"

"Yes! Help us! Help us!" Wolfgang and Jill yell.

Rafaella picks up her pace as she steps through the dark and GLURP! Rafaella sinks into the pit.

Jill, Wolfgang, and Rafaella all end up spending several hours in the quicksand pit, during which they receive severe injuries from cold and exposure.

15. Which of the following statements is most correct regarding Garth's liability?

- (A) Garth is liable in negligence for Jill's injuries, but not Wolfgang's.
- (B) Garth is liable in negligence for Wolfgang's injuries, but not Jill's.
- (C) Garth is liable in negligence for Jill's injuries and Wolfgang's injuries.
- (D) Garth is not liable in negligence for either Jill's injuries or Wolfgang's injuries.
- (E) Garth's negligence liability is unclear, but it is clear that he is liable for the tort of implied consent.

16. Which of the following statements is most correct regarding the liability of Jill?
- (A) Jill is liable for Rafaella's injuries.
 - (B) Jill is not liable for Rafaella's injuries because Wolfgang is liable.
 - (C) Jill is not liable for Rafaella's injuries because Garth is liable.
 - (D) Jill is not liable for Rafaella's injuries because Rafaella, herself, is liable.
 - (E) Jill is not liable for Rafaella's injuries because Rafaella had no affirmative duty to help.



17. In the state of Nevaho, the vehicular code, at N.V.C. § 27001, defines as a traffic infraction, punishable by an \$83 fine, the failure to yield when merging on to a freeway. Richard is driving his friend Marcia to the auto-repair shop to pick up her Toyota Prius, which is in for a windshield replacement. Because Richard fails to yield when merging on to the interstate, his vintage 1965 Chevrolet Corvette Stingray collides with a Mack truck. Marcia is badly injured, losing an arm because of the accident. Which of the following is most accurate?
- (A) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing negligence-per-se doctrine.
 - (B) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing res ipsa loquitor doctrine.
 - (C) Marcia can use an elevated standard of care in a negligence suit because she is an unanticipated licensee.
 - (D) Richard can require the use of a lowered standard of care in a negligence suit because Richard is only a common carrier.
 - (E) Richard can require the use of a lowered standard of care if Marcia has current and adequate health insurance coverage.



*FIG 2:
Richard's 1965
Corvette
Stingray.*

NOTE THE FOLLOWING FACTS FOR QUESTION 18:

Janet and her family are going to Lake Wazzapamani for the weekend. Stopping into the Cut'n'Run convenience store for ice, Janet buys a lottery ticket for that evening's drawing. A mere three hours later, Janet and her husband are millionaires. The next day, the family goes on a shopping spree, buying up every luxury that the town of Lake Wazzapamani has to offer, including a new motorboat. Janet has never driven a boat before, but she spends an hour talking with the sales associate at Wazzapamani Boat & RV about what to do, and, that night, she reads *The New Boater's Safety Guide* cover to cover. Out on the lake the next day, with Janet at the wheel, the boat collides with a jetski that Janet didn't see. The accident badly injures Parker, the jetski's rider. After a bench trial, the court makes findings of fact and renders judgment as follows:

Based on Parker's testimony, it is clear that Parker, in undertaking to ride a jetski, knew there was some chance he could be involved in a collision with a larger watercraft. Moreover, the evidence establishes that Parker violated this state's use-tax laws by purchasing the jetski in a neighboring state, one without sales tax, and using the jetski in this state without submitting the required use tax to the Minnesota Department of Revenue. ... Janet was extremely diligent in attempting to learn all she could about the proper operation of a motorboat before undertaking to drive the boat. Moreover, at all times during her operation of the boat, she was extremely cautious. Unfortunately, despite Janet doing her personal best, her operation of the boat caused serious bodily injury to Parker. If Janet had been operating the boat in the manner that the theoretical reasonable person (one who was not so inexperienced) would have been, this accident would not have occurred. Nonetheless, because Janet was doing her best, this court renders judgment for Janet on the negligence claim brought by Parker.

Lake Wazzapamani is in the state of Minnesota. Currently, Minnesota is a contributory negligence jurisdiction.

18. Which of the following is the best example of how an appeals court should analyze and rule on the case on an appeal from the judgment?
- (A) "The trial court committed clear error because the relevant standard of care for negligence is an objective standard of care, not a subjective one. Therefore, it is irrelevant that Janet was 'doing her personal best[.]' Reversed and remanded."
 - (B) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker violated this state's use-tax laws, he was negligent per se. Thus, because this state follows the doctrine of contributory negligence, no claim for negligence will lie under these facts. Affirmed."
 - (C) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker violated this state's use-tax laws, he was negligent under the doctrine of res ipsa loquitor. Thus, because this state follows the doctrine of contributory negligence, no claim for negligence will lie under these facts. Affirmed."
 - (D) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker "knew there was some chance he could be involved in a collision with a larger watercraft," he expressly assumed the risk. Express assumption of risk is a complete defense to negligence. Thus, no claim for negligence will lie under these facts. Affirmed."
 - (E) "The trial court's analysis and judgment are correct. Affirmed."



19. On which of the following facts is it most likely that a court would not require the plaintiff to prove specific facts showing of breach of duty?
- (A) Andrew was riding his motorcycle when he was hit by a tanker truck operated by Hexetron Dental Amalgams LLC, whose driver was goofing off and not paying attention. Andrew suffered severe injuries. He sues Hexetron Dental Amalgams LLC for negligence.
 - (B) Bartholomew had an appendectomy at Nashlanta Regional Medical Center. It is the only surgery he has ever had. Three years later, an x-ray reveals a stainless steel surgical instrument inside his abdomen. The instrument has caused minor injuries and will require surgery to remove. Bartholomew sues Nashlanta Regional Medical Center for the injuries.
 - (C) Carolyn was shopping at Cut'n'Run convenience store when a portion of the roof collapsed, causing Carolyn to be injured. Carolyn sues Cut'n'Run for the injuries.
 - (D) Daria took Voralex (vlithiarid voralide) as prescribed by her physician. The Voralex caused severe liver damage. Daria sues her physician for her injuries.
 - (E) Elwood was injured in a crash of an airliner operated by Oceanic Airlines, a major international airline. Elwood sues Oceanic for the injuries he sustained in the crash.
20. Note the following:
- I. A broken thigh bone (femur).
 - II. A tear to the fibrocartilaginous band that spans the lateral side of the interior of the knee joint (said band, the lateral meniscus).
 - III. A lower-leg contusion (denoting a region of tissue with torn capillaries).
 - IV. Torn vinyl siding on a house.

Which of the foregoing are sufficient injuries for bringing a claim in negligence?

- (A) I only
- (B) I and II only
- (C) I, II, and III only
- (D) I, II, III, and IV
- (E) None of I, II, III, or IV

NOTE THE FOLLOWING FACTS FOR QUESTIONS 21, 22, AND 23:

It's just after sunset in the city. Looking at the skyline from afar, watching the lights come on, you could never guess at the human drama that is unfolding.

On a noisy, crowded, uptown-bound subway train, Greta intentionally taps an inattentive stranger on the shoulder. She's trying to get his attention to ask which station she should get off at. But the stranger is badly startled. He panics and needs several puffs of an inhaler to regain his breath.

At a law firm downtown, Willa is angry after hearing what Madge has been saying about her behind her back. Willa walks up to Madge and confronts her, saying, "I thought you were my best friend." Willa then slaps Madge across the face. Madge, chastened, immediately responds, "I deserved that."

In a bar on the waterfront, bartender Miyako has murder on her mind. She is determined to kill Cavan, a customer she dislikes, and so she poisons his martini. Yet before Cavan can drink it, his boyfriend Jarvis, who has had a bad day at work, grabs it and downs it. Jarvis is sickened, but after days of hospitalization, he will pull through.

21. Which best describes those defendants who have a prima facie case against them for assault?
- (A) None
 - (B) Greta only
 - (C) Willa only
 - (D) Greta and Willa, but not Miyako
 - (E) Each of Greta, Willa, and Miyako
22. Which best describes those defendants who have a prima facie case against them for battery?
- (A) Greta only
 - (B) Greta and Willa, but not Miyako
 - (C) Greta and Miyako, but not Willa
 - (D) Willa and Miyako, but not Greta
 - (E) Each of Greta, Willa, and Miyako
23. Which best describes those defendants who have a prima facie case against them for false imprisonment?
- (A) None
 - (B) Greta only
 - (C) Willa only
 - (D) Greta and Willa, but not Miyako
 - (E) Greta and Miyako, but not Willa



24. Ed is Head of Security and Surveillance at the glittering, sun-drenched Montenella Hotel Casino. With a temper as hot as his Mojave Desert surroundings, Ed's past as a CIA operative leads him to break the rules here and there to protect his employer from the city's endless parade of scum. In which of these situations is Ed least likely to be found liable for false imprisonment?
- (A) Bursting into the hotel's interrogation room where Erica is being held after getting caught counting cards, Ed flashes a police detective badge recovered from the hotel lost and found and tells Erica that she is under arrest. She must remain seated, he says, for the next hour – until he has decided whether to book her or offer her a deal. Ed leaves the door open on his way out.
 - (B) Laird is a valet parker who shows up to work so drunk, he passes out. His co-workers laugh as they push him upright into his own locker. They then walk away. Disgusted, Ed goes to the locker room and closes the door on Laird, securing it with a padlock. After Ed's shift is over, Danny, who is Ed's no. 2, takes the padlock off the locker and opens the door to find Laird still passed out. Danny sets a liter of Gatorade and two tablets of aspirin on a nearby bench for Laird to find when he wakes up.
 - (C) Jessica, a Montenella guest and self-proclaimed blackjack novice, complains to Ed about a dealer named Rodney. She says that Rodney used a filthy word to refer to her when she asked for a hit on an ace and king. Hotly angry, Ed locks Rodney in room where, as he explains to Rodney, his only means of escape is to climb up a chimney and get down from the roof. Rodney climbs up the two-story chimney, getting covered with soot in the process, and then climbs down the pitched roof, jumping off into a hedge to break his fall.
 - (D) Mike, a computer whiz who works under Ed, is concerned that Rodney has been unjustly accused. He has the surveillance staff comb through hours of video footage. When he finds the relevant footage, he tries to use lip-reading software to decipher what Rodney said, but the footage is too blurry to be conclusive. Ed, coming up behind Mike, examines the monitor. "Enhance," he orders. Mike punches a button and the critical portion of the video footage instantly sharpens. Within seconds, a luminescent green grid flickers over the contours of Rodney's mouth and the computer reveals that he said nothing inappropriate. A follow-up check of databases shows that Jessica is Rodney's jealous sister, who was cut out of her mother's modest inheritance. Ed is incensed. He finds Jessica in the parking lot. "I'm going to explain to you the meaning of family," Ed growls. "You're going to stand here patiently while I give you some insight into your own pathetic life, or I'm going to break your face." Jessica tearfully complies.
 - (E) When Ed finds out that Jacques, a long-time nemesis from Ed's CIA days, is staying at the hotel, Ed goes berserk. He puts a hood over Jacques's head, ties him up, shoves him into the backseat of his Aston Martin, and drives him out to the desert. Ed then pushes him out of the car and strands him without water or a cell phone. He tells Jacques to have fun walking back to town.

25. The state of New Merizona has a statute, at NMRS § 787.12, allowing recovery in a negligence suit despite the plaintiff's negligence, so long as the plaintiff's recovery is reduced in proportion to the plaintiff's negligence. Which of the following best describes this New Merizona law?
- (A) This is an example of a statute mandating application of the substantial-factor test.
 - (B) This is an example of a pure contributory negligence statute.
 - (C) This is an example of a partial contributory negligence statute.
 - (D) This is an example of a pure comparative negligence statute.
 - (E) This is an example of a partial comparative negligence statute.



**THIS IS THE END OF THE MULTIPLE-CHOICE QUESTIONS.
IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK.**



CREDITS AND NOTES

These credits and notes are not part of the questions or hypothetical facts of the practice exam.

Images: Fig. 1 photo "Horse Barns at Iowa State 3" by Eric E. Johnson; Fig. 2, General Motors.

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