

PRACTICE EXAMINATION - MULTIPLE CHOICE

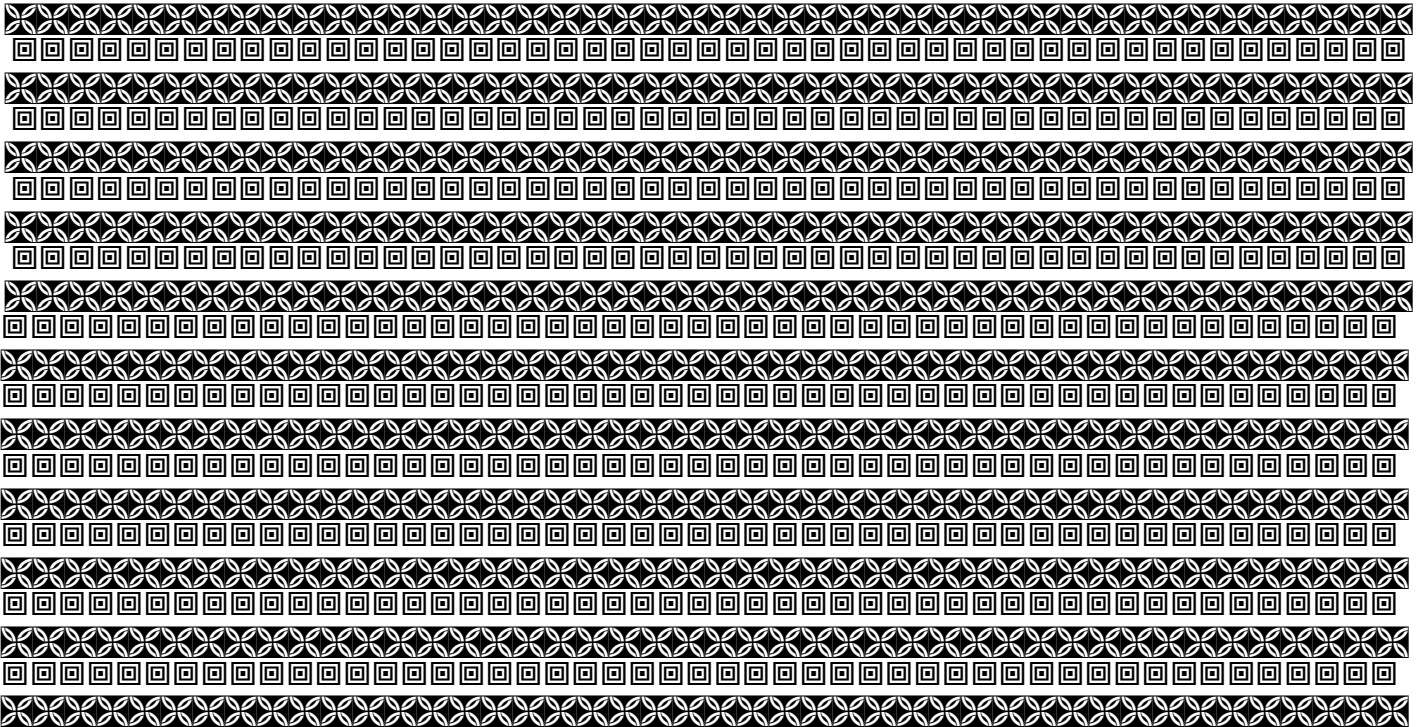
[Below are instructions for a real exam. This practice exam, of course, is publicly released, and it's optional.]

GENERAL INSTRUCTIONS:

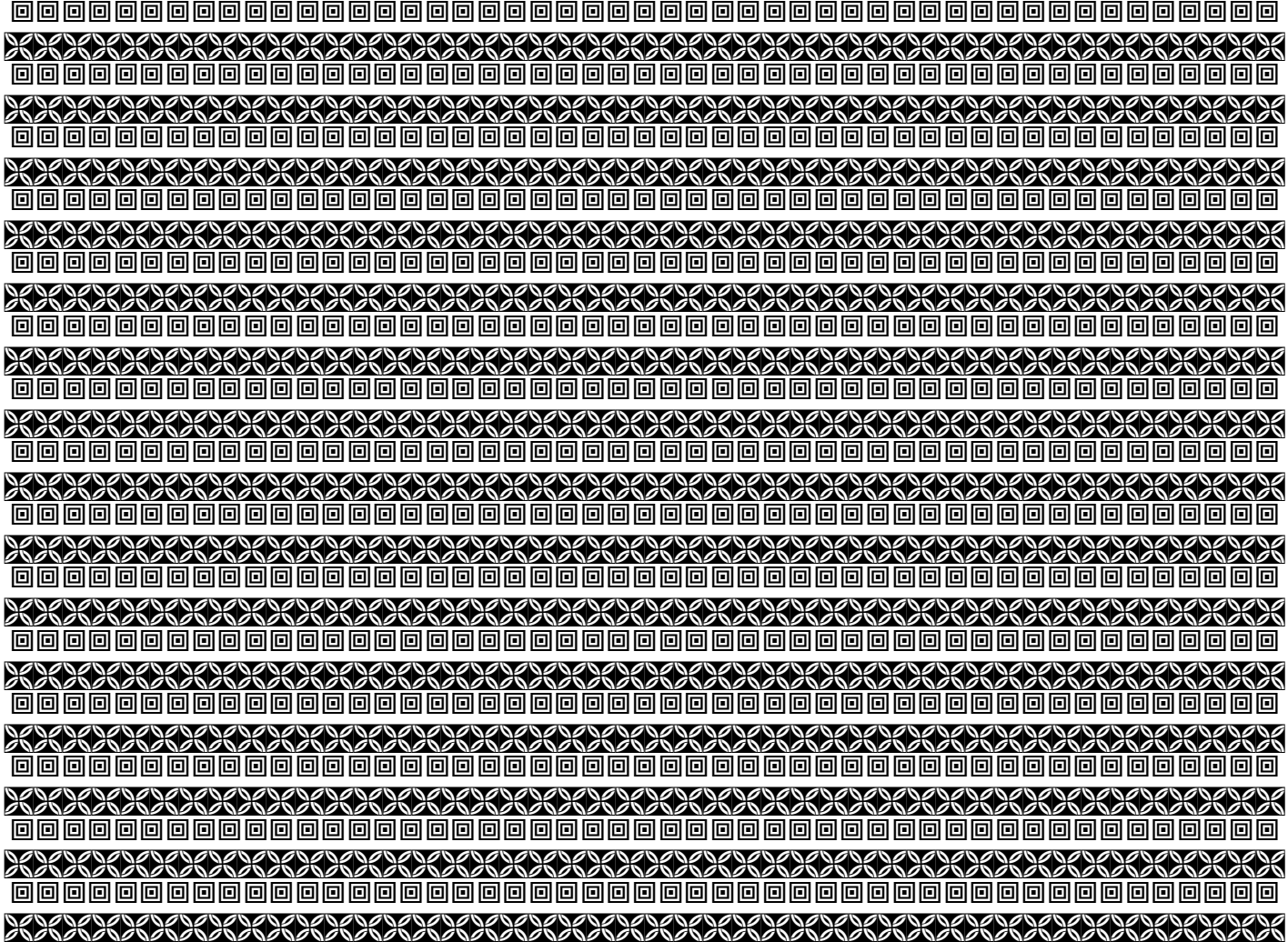
1. Do not turn any page or flip over the booklet until instructed.
2. Failure to follow these instructions, including without limitation instructions 3 through 8, as well as matters of allowed materials, device usage, and time limits, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet and your response) must be turned in at the end of the period **with your exam ID number written in the box above in the upper left. Do not disassemble this booklet, remove the staple, or tear pages.**
4. You may not waive anonymity. Use only your exam ID number on your response.
5. Copying the exam or any portion thereof is prohibited – including making a rough transcription from personal memory after the exam's administration.
6. During the exam: You may not consult with anyone – necessary communications with the administrators/proctors being the exception. You may not view or attempt to view materials other than your own.
7. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
8. You must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells with regard to food, drinks, and otherwise. No unwrapping of food or opening of cans or bottles after the exam period starts. No foods or drinks that smell, crunch, or otherwise make noise or omit odor. No essential oils, perfumes, or colognes. Chew with your mouth closed, and do not allow examination materials to be contaminated with food. Obey the remainder of the details spelled out in the syllabus.
9. You may write anywhere on the examination materials – e.g., for use as scratch paper. But only answers and material recorded in the proper places will be graded.
10. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. This is what you will be graded on.
11. Unless otherwise provided, base your legal analysis on the general common law and typical statutory law in the United States, including all rules, procedures, and cases from the course, plus any hypothetical laws presented in the facts.

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NOTE THE FOLLOWING FACTS FOR QUESTIONS 1, 2, AND 3:

Desmond is a new medical doctor just hired at County General Hospital in Milwaukapolis, Minnesconsin. He just moved there from his native Manhattan (New York City, that is, not Manhattan, Kansas). There have been a lot of new things for Desmond to get used to. The biggest thing, however, has been driving. Having taken buses and trains his whole life, Desmond is a complete novice behind the wheel.

When driving to work on his first day, Desmond came to an intersection where he planned to make a left turn. The lights facing Desmond were regular green lights (solid green circles), along with a red arrow pointing to the left. This pattern of lights, in fact, indicates that drivers headed straight-ahead can move through the intersection, but that drivers planning a left turn must stop and wait. Desmond, however, didn't understand this. He thought - erroneously - that the red arrow indicated that cars on the left were being halted, clearing the way for his vehicle, and that the solid green lights indicated that he had the right-of-way.

Desmond proceeded to make his left turn, and, as a result of him not actually having the right-of-way, he got into a tremendous collision with a car driven by Annette that was carrying Byron and Clarissa as passengers. Desmond, of course, knew how to administer first aid. But instead of stopping to see if his help was needed, he just drove off, concerned that otherwise he might not make it to work on time.

Annette received minor injuries and required stitches. Byron, happily, was unhurt. Clarissa, however, fared badly. She received a concussion and deep lacerations, and because of the amount of blood she lost, she required a long stay in the hospital - something that could have been avoided if Desmond had administered first aid on the spot.

The car, which Annette had purchased just last month, was badly damaged.

1. Suppose Annette sues Desmond for negligence. Consider the following statements that might be made by Desmond's attorney at trial in arguing that Desmond did not breach the duty of due care:
 - I. "Desmond was trying his best while he was driving."
 - II. "Having moved here from New York City, Desmond is new to driving a car. You've got to take that into account."
 - III. "When Desmond made that left turn, he thought, in good faith, that he was doing the right thing and being safe."

Which of the above arguments are proper and relevant on the issue of the breach of the duty of due care?

- (A) I, II, and III
- (B) I only
- (C) I and II only
- (D) II and III only
- (E) Not any of I, II, or III

2. Assuming that a jury finds Desmond breached the duty of care, which plaintiffs can prove all the elements of a negligence case against Desmond?
- (A) Annette, but not Byron or Clarissa
 - (B) Annette and Byron, but not Clarissa
 - (C) Annette and Clarissa, but not Byron
 - (D) Annette, Byron, and Clarissa
 - (E) Not any of Annette, Byron, or Clarissa

ASSUME THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 3:

When the collision happened, Annette, Byron, and Clarissa had been on their way to help their friend Elliot make some house repairs. Elliot had become unstable on her feet recently, and Annette, Byron, and Clarissa planned to install a stair railing that would make Elliot's home safer and bring it up to code. But because of the accident with Desmond, they didn't make it to Elliot's house. The next day, Elliot fell – an event that would have been prevented by the stair railing.

3. Suppose Elliot sues Desmond for physical, personal injuries received from the fall. Which of the following is most likely?
- (A) Elliot's case will fail for lack of proximate causation.
 - (B) Elliot's case will fail for lack of actual causation.
 - (C) Elliot's case will fail for lack of an injury sufficient for the injury element of a negligence case.
 - (D) Elliot's case will fail because Desmond can establish the affirmative defense of consent.
 - (E) Elliot will prevail and be able to recover from Desmond.



4. 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

5. Baylor and Bailey are neighbors. Consider the following three situations in which Baylor lends something to Bailey:
- I. Baylor lends Bailey a FireBreath 5000 at-home propane torch kit so that Bailey can melt a huge block of ice that is blocking access to Baylor's and Bailey's mailboxes, which sit side-by-side on the same post.
 - II. Baylor lends Bailey his pick-up truck so that Bailey can get some plywood that Bailey needs for a shed he's putting up on the Bailey homestead. The shed will store Bailey's large collection of antique gardening implements.
 - III. Baylor lends Bailey a snowblower so that Bailey can clear the snow from Baylor's driveway.

Which of the following orders the above situations from highest duty of care to lowest duty of care owed by Bailey in taking care to avoid damage to the chattel?

- (A) I, II, III
 - (B) I, III, II
 - (C) II, I, III
 - (D) III, I, II
 - (E) III, II, I
6. In which of the following situations is Farmer Fran most likely to be liable on the basis of strict liability?
- (A) Farmer Fran's prize dairy cow escapes and munches on the neighbor's crops.
 - (B) Farmer Fran's prize dairy cow kicks a visitor in the knee.
 - (C) Farmer Fran serves tainted milk to a houseguest.
 - (D) Farmer Fran tells everyone in the county that Rancher Ron has been poisoning her livestock - something that Farmer Fran honestly believes, but which she should have realized was false.
 - (E) Farmer Fran goes downtown in a horse-drawn wagon with large iron jugs of milk for market. When the manager of the Cut'n'Run convenience store refuses to buy the milk, explaining that he doesn't think stores have purchased milk this way in decades, Farmer Fran freaks out, lifting a jug over her head and bashing the manager with it.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 7, 8, AND 9:

Northern BronzeWorks is the most popular tanning salon in town. Daisy is a frequent customer. One day, being unreasonably careless, 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.

7. 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.”
8. 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.

9. 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 or reasonably knowable, concealed dangerous conditions. Northern BronzeWorks knew about the condition with regard to the oil, because Daisy informed the manager. 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.



10. In which of the following situations is Rancher Ron most likely to be liable on the basis of strict liability?
- (A) Rancher Ron's tractor catches fire on the highway. The fire spreads and ends up burning down a neighbor's barn.
 - (B) Rancher Ron is hosting a barbecue at his ranch when an eagle suddenly swoops down from the sky and attacks one of the guests. Ron is subsequently annoyed to find out that the eagle has been nesting on top of one of his grain silos.
 - (C) Rancher Ron interferes with Farmer Fran's livestock operation by telling some of her suppliers that she is near bankruptcy.
 - (D) Rancher Ron sells milk to a dairy. The milk was adulterated with harmful chemicals before it left Ron's possession, and a consumer is subsequently injured by ingesting the chemical-laced milk.
 - (E) Rancher Ron ignores calls for help from a trespasser caught up in barbed wire on Ron's ranch.

11. Though no one would suspect it, the shuttered aircraft maintenance hangar in the sleepy suburban community of Prairie Heights, Minnesota houses a test facility where Hexetron Systems, working under a Department of Defense contract, is developing a weather-control radar device. When operational, the system will, it is hoped, allow on-demand generation of powerful windstorms capable of destroying enemy installations without implicating U.S. involvement. The device uses an experimental nuclear fusion reactor to power a radio-frequency wave generator with a radiated power output equal to millions of TV-broadcast transmitters operating simultaneously. A full-scale test is undertaken, managed by a team of brilliant, well-trained, and well-rested engineers, all of whom diligently cross-check each other's work. All equipment is operated with several redundant safety systems, each of which far exceeds the state-of-the-art in all relevant industrial standards. Despite these precautions, during the test, a freak, undetectable wind-shear condition in the otherwise calm air over the test site deflects the generated energy beam back at the facility. The beam unevenly raises the temperature of the reactor containment vessel, which in turn causes a breach of the vessel wall, which then allows a plume of deadly radioactive material to escape. Earl, out jogging in a park three miles away, breathes in some of the radioactive particulate matter and suffers severe radiation poisoning as a result. He is given only months to live.

Which of the following is most accurate with regard to a possible lawsuit brought by Earl against Hexetron for personal injuries?

- (A) Earl has no claim because Hexetron did not owe him a duty of care.
- (B) Earl has no claim because he cannot establish a relevant standard of care, since the technology is so new.
- (C) Earl has no claim because he cannot establish a breach of the duty of care, since Hexetron took all due precautions and therefore did not act negligently.
- (D) Earl has no claim because he cannot establish that Hexetron's actions were a proximate cause of his injuries.
- (E) Earl has a claim.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 12, 13, AND 14:

Paula, driving through the town of Lake Wazzapamani, spots balloons, flags, and an inflatable beaver at Wazzapamani Boat & RV. Clearly, there is some kind of sales event going on. Paula pulls over and walks into the showroom. When another customer, Raisa, hears her cell phone ringing, she reaches into her purse for it. But trying to take the phone out, Raisa fumbles it, dropping it on the floor. Raisa reaches down to pick it up. As Paula is walking backward around a new catamaran, she does not see Raisa's bent-over form in her path. Paula trips backward, tumbling over Raisa and hitting her head on the hard granite showroom floor. Raisa asks Paula if she is okay. Paula says yes, and Raisa exits the showroom. In the meantime, Paula feels woozier and woozier, collapsing on the floor into unconsciousness. Two sales associates who are on duty see all of this, but they do nothing to help Paula. Eventually, another customer finds Paula and calls an ambulance. Because of the delay in treatment, which could have been avoided if the Wazzapamani Boat & RV staff had immediately called for help, Paula suffers irreversible brain damage. While in the hospital, Dr. Nurvantlyn, a board-certified neurologist (a specialist in treatment of the brain and nervous system) prescribes narcobonisol, a medication which, while once considered generally safe and effective in brain trauma cases, is now no longer state of the art. Neurologists now generally consider narcobonisol to be too dangerous to use in view of the risk of permanent liver damage suffered by a significant number of patients. As it turns out, the narcobonisol causes permanent liver damage in Paula. Another physician, Dr. Hepalton, is assigned to treat Paula's liver condition. Because of Dr. Hepalton's misdiagnosis and subsequent inappropriate course of treatment, Paula ends up suffering permanent kidney damage as well.

12. Which of the following provides the best reasoning and most correct conclusion regarding the likely outcome of a claim by Paula against Wazzapamani Boat & RV?
- (A) Paula might prevail, since negligence law recognizes a general affirmative duty to come to the rescue of people in need.
 - (B) Paula will not prevail, because there is no affirmative duty to come to her rescue.
 - (C) Paula might prevail, since Wazzapamani Boat & RV operates a retail establishment open to the public, therefore excepted from the general rule that there is no affirmative duty to rescue.
 - (D) Paula will not prevail, because the application of *res ipsa loquitor* will bar her claim.
 - (E) Paula will not prevail, because the application of negligence-per-se doctrine will bar her claim.

13. Which of the following is most clearly the best and most accurate counsel an attorney could give Paula regarding a suit against Dr. Nurvantlyn?
- (A) "There is little likelihood of succeeding in a lawsuit against Dr. Nurvantlyn, since the law does not recognize a duty of care, owed by Dr. Nurvantlyn to you, in this situation."
 - (B) "Lake Wazzapamani is a small town. The physicians here are not very good. Several times I've litigated the issue of what constitutes the knowledge, skill and custom of practice among physicians here locally, and let me tell you, it's very low. If you were being treated in Chicago, what Dr. Nurvantlyn did might have constituted negligence. But since this is Lake Wazzapamani, you're gonna lose. Sorry."
 - (C) "There is unlikely to be any good claim against Dr. Nurvantlyn, since prescribing narcobonisol is not an ultrahazardous activity - at least not in the eyes of the law."
 - (D) "You won't succeed in a lawsuit against Dr. Nurvantlyn, since he was not deliberately trying to hurt you."
 - (E) "You may have a good claim against Dr. Nurvantlyn."

14. Paula sues Dr. Hepalton. The jury returns a special verdict form which included the following:

1. Do you, the jury, find that Dr. Hepalton was negligent in rendering care to Paula?
 yes no
2. If your answer to question no. 1 is yes, do you, the jury, find that Dr. Hepalton was wanton, willful, or reckless?
 yes no

Now, consider the following:

- I. compensatory damages for lost wages
- II. compensatory damages for medical bills
- III. punitive damages

Which of the following best identifies the damages Paula could possibly recover against Dr. Hepalton?

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



15. 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.
16. 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.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 17, 18, AND 19:

Having a three-day weekend in the middle of the summer, Janet and her family decided to take a lake trip, driving to Lake of the Waters in the northern reaches of the state of Minnegan. Stopping into a Cut'n'Run convenience store for ice, Janet bought a lottery ticket for that evening's drawing. A mere three hours later, Janet and her husband were millionaires.

The next day the family went on a wild shopping spree, buying up every luxury the small resort town of Lake of the Waters Village had to offer, including a new FlowCraft 8800 XT motorboat. Janet had never driven a boat before, but she spent an hour talking with the sales associate at Lake of the Waters Boat & RV about what to do. And that night she read *The New Boater's Safety Guide* cover to cover. Out on the lake the next day, with Janet at the wheel, the new boat collided with a jetski that Janet didn't see. The accident badly injured Parker, the jetski's rider, causing him to suffer fractured ribs and a broken arm among other injuries.

Parker sued. After a bench trial, a court made findings and rendered 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. Parker undertook the operation of his jetski entirely voluntarily in full knowledge and appreciation of that risk. 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 then using the jetski in this state without submitting the required use tax to the Minnegan 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 done, 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 of the Waters, where the accident occurred, is entirely within the state of Minnegan, and common law tort law applies. At the relevant times, the state of Minnegan had no statutes modifying common law tort doctrine, and at all relevant times, Minnegan was a contributory negligence jurisdiction.

17. 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 loquitur. 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.”

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 18 ONLY:

After Parker's jetski was struck, Janet's 19-year-old son Ryder – who is a trained lifeguard – jumped off the boat and into the water to rescue Parker. In pulling Parker out of the water, Ryder ended up causing soft-tissue problems – tears to cartilaginous tissues – in Parker's shoulder joint. Ryder did as well as a hypothetical reasonable person would in rescuing Parker. But Ryder didn't undertake the rescue up to the lifeguarding standards in which he'd been instructed during his lifeguard training. If Ryder had had the presence of mind to have carried Parker according to what Ryder had been taught by his lifeguard instructors, Parker would still have been rescued, but he would not have suffered the cartilaginous tears and, thus, would not have needed several weeks of physical therapy to regain full motion in his shoulders.

18. Without taking into account defenses, which of the following best analyzes the prospect of a prima facie case of negligence liability against Ryder in a case brought by Parker?
- (A) Ryder likely will not be liable on these facts. Ryder was acting as a good Samaritan; thus he had no duty to Parker, effectively immunizing him from any and all negligence liability.
 - (B) Ryder likely will not be liable on these facts. Since there was no broken bone and no externally perceivable injury (such as one that includes bleeding), there is not a sufficient injury for a prima facie negligence case.
 - (C) Ryder likely will be liable on these facts. Because he had advanced knowledge and training beyond that of the ordinary reasonable person, his failure to use that resulted in a breach of his duty of due care.
 - (D) Ryder likely will be liable on these facts. Ryder had a duty to undertake a rescue because of his special relationship to Janet (since Ryder is Janet's son), and because the accident would not have happened but for Janet's negligent actions. Because Ryder had a duty and because Parker was injured in the carrying out of that duty, Ryder is liable.
 - (E) Ryder likely will be liable on these facts. Ryder had no affirmative duty to jump in and rescue Parker. But once he undertook to act, Ryder then took on liability for anything that could go wrong with the rescue, without regard to whether or not Ryder was exercising objectively reasonable care.

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 19 ONLY:

The controls of the FlowCraft 8800 XT are set up such in a way that operators of the boats have to look at the controls to make the adjustments necessary to steer and operate the boat. This means operators of the FlowCraft 8800 XT must frequently, and on a consistent, repeated basis, take their eyes off of the water ahead for several seconds at a time. This makes the FlowCraft 8800 XT different from all other motorboats on the market, which are easy to operate by feel, such that one need not look down at the controls.

The FlowCraft 8800 XT is a product of FlowCraft, which is the company that engineered and built it.

19. Which of the following provides the most correct analysis for this question: Does Parker likely have a good prima facie case (i.e., not taking into account defenses) for strict products liability against FlowCraft?
- (A) Yes. Parker likely will be able to recover in strict products liability against FlowCraft.
 - (B) No. There is no defect for purposes of strict products liability, because the problem described does not involve any aspect of the product that directly injures a person or property. Stated differently, the problem is not with the product per se, but rather with how humans interact with the product.
 - (C) No. This would indeed likely qualify a *design defect*, but Parker will not be able to prevail in a strict products liability action against FlowCraft because Parker was not the purchaser or owner of the FlowCraft 8800 XT.
 - (D) No. This would indeed likely qualify a *manufacturing defect*, but Parker will not be able to prevail in a strict products liability action against FlowCraft because Parker was not the purchaser or owner of the FlowCraft 8800 XT.
 - (E) No. This would indeed likely qualify a *warning defect*, but Parker will not be able to prevail in a strict products liability action against FlowCraft because Parker was not the purchaser or owner of the FlowCraft 8800 XT.



20. The Faldrich family has had its travails. But nothing beat the scene at the family picnic recently when cousins Athena, Brian, Camden, Dallas, Elijah, and Zachariah were all invited to Elijah's house for grilled food and a friendly game of badminton.

Late, as usual, Zachariah strode over the green grass to the picnic table, and, without saying a word, picked up a full soda can and threw it at Brian, intending to throw it about 12 inches to his left. Instead, he missed his mark wide right and hit Brian square in the face, which startled Athena who, standing to Brian's immediate right, thought she was about to be hit in the face. Brian crumpled to the ground. Until the soda can actually impacted his face, Brian was convinced it would just miss.

"Zachariah, you obviously haven't changed!" yelled Elijah. "Get out of here right now!"

"Screw you!" yelled Zachariah. And with that, Zachariah went over and picked up Camden's prized badminton racket and held it menacingly in front of his lips. Preying upon Camden's germophobia, Zachariah proceeded to slowly lick the badminton racket like an ice cream cone, after which he then bent the aluminum frame over his knee.

"Go home right now, Zachariah!" Elijah called. "I'll call the police if I have to. And I don't care if you are on probation!"

"Just one more thing," Zachariah yelled back. He then grabbed the remote garage-door opener from a table and pressed the button to close the garage, trapping Dallas inside. In fact, Dallas never would have known how to get out if Elijah hadn't installed glow-in-the-dark tape to show the location of the side door.

Who does not appear to have a good cause of action for the tort specified?

- (A) Athena for assault
- (B) Brian for battery
- (C) Camden for trespass to chattels
- (D) Dallas for false imprisonment
- (E) Elijah for trespass to land

21. First-year law student Kirk has fallen asleep at the library, his face buried in his casebook. His classmate Joan sneaks up behind him and, leaning over his chair, puts her forearms on his back and pushes her body weight down on top of him. Disoriented and startled, Kirk wriggles in an unsuccessful attempt to get free, begging to be let go before Joan finally relents. Joan leans into Kirk's ear with a menacing whisper. "You weakling. Before the year is over, I'm going to pound you to a pulp." The episode upsets Kirk so much, he is thinking about missing Wednesday's Torts class in order to file a lawsuit against Joan.

Consider the following possibilities:

- I. Kirk has a claim for conversion.
- II. Kirk has a claim for battery.
- III. Kirk has a claim for false imprisonment.
- IV. Kirk has a claim for outrage (a/k/a intentional infliction of emotional distress).

Based on the facts set forth above, which of the following is most accurate?

- (A) I only
 - (B) II only
 - (C) II and III only
 - (D) I, II, and III only
 - (E) I, II, III, and IV
22. Ajax enjoys frequenting the local Cut'n'Run convenience store. Never a paying customer, he goes only to terrorize the graveyard-shift clerk and otherwise make trouble. Which of the following sets of facts most clearly illustrates an actionable conversion?
- (A) Notwithstanding the posted sign stating a two-minute browsing limit at the magazine rack, Ajax spends 15 minutes browsing through the latest issue of *Muscle'n'Tattoo Monthly*.
 - (B) Finally asked to leave, Ajax storms out of the Cut'n'Run and smashes his 40-ounce bottle of beer against the hood of a parked Toyota Prius, scratching the paint and getting beer and broken glass all over it.
 - (C) Coming back after midnight, Ajax spray paints his name in four-foot-high letters on the side of the Cut'n'Run.
 - (D) Around 2 a.m., Ajax is back in the store, still seething with rage. While a friend distracts the store clerk, Ajax removes Cut'n'Run's Slushee machine from its place next to the roller food and parks it front of the magazine rack.
 - (E) On his way out, Ajax threatens to beat up the store clerk. To emphasize his threat, Ajax grabs a bag of M&M chocolate candies from the store shelves, rips open the wrapper, and tells the store clerk that the candies represents the store clerk's bones. Ajax then chews the M&M candies menacingly with his mouth open.

23. Lilla and Milla are identical twins. Lilla is a well-known thug in the neighborhood. On Monday, Branford was walking to school when he encountered Lilla. She squinted her eyes and said, "I don't like the look of you. Stay out of this neighborhood. The very next time I see you, I'm going to cut you and break every bone in your body. No warning!" That Wednesday, Branford was walking to school when he saw Milla walking up to him. Branford froze. When Milla got very close, Branford punched Milla.

If Milla sues Branford, and if Branford pleads an affirmative defense based on the privilege of self-defense, which of the following best describes the most likely outcome?

- (A) Branford will not prevail with the defense, because Milla was not an aggressor.
 - (B) Branford will not prevail with the defense unless Milla intended to be intimidating and threatening as she walked toward Branford.
 - (C) Branford may prevail, but only if a reasonable person under the circumstances would have believed that Milla was imminently going to attack.
 - (D) The defense will be deemed not procedurally necessary to the resolution of the case because Milla cannot establish a prima facie case for assault.
 - (E) The defense will be deemed not procedurally necessary to the resolution of the case because Milla cannot establish a prima facie case for battery.
24. Roger and Lucas are neighbors. There is no fence separating their backyard lots. One night both of them were sitting on their respective porches drinking beers. Roger, in particular, got quite drunk. Lucas yelled something at Roger that made Roger mad. So Roger walked over and punched Lucas in the face. Lucas, who had had a few drinks himself, saw the punch coming, but he was too slow to get out of the way. Roger did no damage to Lucas's land. Which of the following is most accurate?
- (A) Lucas has a claim against Roger for assault, battery, conversion, and trespass to land.
 - (B) Lucas has a claim against Roger for assault, battery, and conversion, but there's no claim for trespass to land.
 - (C) Lucas has a claim against Roger for battery, but not for assault, conversion, or trespass to land.
 - (D) Lucas has a claim against Roger for assault, battery, and trespass to land, but not conversion.
 - (E) Lucas has no claim against Roger.

25. Pilar won second place in a debate tournament. When she got home, she proudly placed her four-foot-high trophy on her front porch for everyone in the neighborhood to see. Pilar's neighbor and classmate Dina, consumed with jealousy, taunted Pilar from the sidewalk and shot a rubber band at the trophy, which hit the golden winged figure at the top, doing no damage. Note the following:

- I. trespass to land
- II. trespass to chattels
- III. conversion

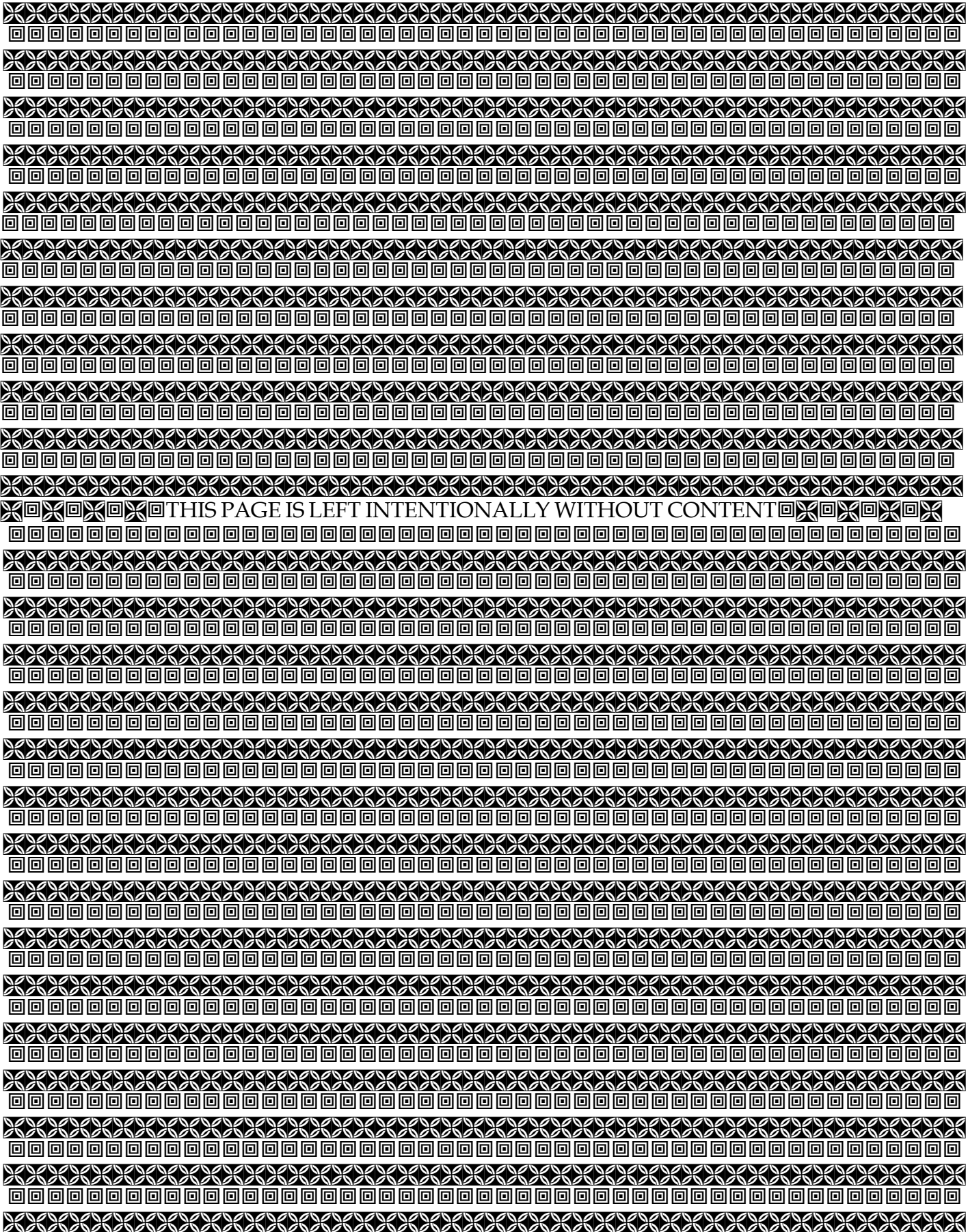
Which answer below identifies each cause of action that lies on these facts?

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



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





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SPECIFICS FOR MULTIPLE CHOICE:

12. You have one hour. For the sake of others, if you finish early, **you cannot leave early**. If necessary, a brief bathroom break is allowable under applicable policies.

[NOTE: The one hour time limit is a suggestion for this practice exam. Check your syllabus for the times for your final.]

13. 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. You may wear a regular watch. Otherwise, any touching, using, accessing, wearing, viewing or listening to electronic devices is prohibited. No smart watches. No phones.

14. Do not put your name on the scantron answer sheet. Use only your exam ID.

15. Each question has one correct answer, worth one point. There is no penalty for incorrect answers. So if you don't know, guess.

16. If any error or irregularity is discovered after the exam, then in the instructor's discretion any affected question may be tossed out or alternative answers given credit.

Pacing chart: To finish all questions and have five minutes left over, then:				
At this time since starting:	15 min	30 min	45 min	55 min
Be done with question no.:	7	14	20	25

[NOTE: For the answers, see the answers to "Midwest Mishaps" in the Exam Archive.]

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