

# Torts I & II

Eric E. Johnson  
Associate Professor of Law, University of North Dakota

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## AMALGAMATED RELEASED MULTIPLE-CHOICE QUESTIONS

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### Special Study Set for Torts II (Spring)

This document is a subset of released multiple-choice questions for Torts designed to be useful in studying for the Torts II Spring 2017 final exam. Included here are questions concerning subjects covered in Torts II Spring 2017. Among those excluded are questions concerning negligence, health-care torts, and intentional torts.

These are questions from past semesters, and they don't all work perfectly for this semester. Thus, **some of these questions go beyond our Spring 2017 subject-matter coverage**. I have sought to err on the side of being over- rather than under-inclusive, and so there are many questions in this study set that I wouldn't use for this semester's exam. Bottom line, if you are thinking, "That's not fair, because we really didn't cover that," you're probably right. Among other things, this tends to be the case in questions below involving remedies and implied rights of action.

Answers are available in a separate document in the Exam Archive at [ericejohnson.com](http://ericejohnson.com).

This document was released in April 2017. There are no questions in this document that have not also been released as part of the full set of amalgamated released questions available in the Exam Archive.

#### *Some Typical Notes and Instructions:*

1. Answer the questions based 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 the course, as well as, where appropriate, the theory, history, and skills covered in the course. Your goal is to show your mastery of the course material and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. All facts take place in the United States, unless otherwise noted. Assume that today's date is *[today's date]*, unless indicated otherwise.
3. Each question has one correct answer. Choose the correct answer based on the materials assigned and information presented in the course.
4. Each correct answer is worth one point. There is no penalty for incorrect answers.
5. 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.

25. Which of the following best describes the firefighter rule?
- (A) Firefighting organizations, such as municipal fire departments, are immune from suit for negligence for fire fighting activities.
  - (B) Firefighters are immune from suit for negligence for firefighting activities.
  - (C) Firefighters are precluded from suing homeowners and others in negligence for injuries sustained while fighting a fire.
  - (D) Firefighting is *per se* excluded as an abnormally dangerous activity giving rise to strict liability.
  - (E) The lack of warning labels does not constitute a product defect for purposes of strict products liability where the product is one sold exclusively for the use of highly trained professionals and is to be used in the course of their work, where such work includes engaging in dangerous activities as a matter of course.
26. At common law, without modification by statute, which of the following will result in the least liability for Matthew?
- (A) Matthew intentionally throws a spear at Lawrence, hitting and killing him.
  - (B) Matthew intentionally throws a spear at Lawrence, hitting him and causing him to lose his left leg.
  - (C) Matthew intentionally throws a spear at Lawrence, missing him narrowly, since Lawrence ducks.
  - (D) Matthew intentionally throws a spear at Lawrence, missing him by such a wide margin that Lawrence never apprehends being hit; the spear ends up hitting a car, shattering the windshield.
  - (E) Matthew intentionally throws a spear at Lawrence, missing him by such a wide margin that Lawrence never apprehends being hit; the spear ends up hitting William, a passer-by, who is injured.

NOTE THE FOLLOWING FACTS FOR QUESTIONS NOS. 27, 30, AND 31:

Everything was going according to plan for Brynn. Using an assumed name, she rented a gray Ford Taurus sedan from Y-Pay-Mor Car Rental, signing a standard rental agreement, and then Brynn drove the car to a municipal parking lot next-door to the First Eastern Midwest Savings & Loan Bank on Maple Road. The next day, carrying an unloaded 9mm pistol, she entered the bank, withdrew the pistol, bobbling it slightly, and pointed it at Trevor, a bank teller. Throwing a canvas shopping bag on the counter, Brynn said, "Fill it, or die." Brynn then shifted the gun's aim to Cassius, another teller. She then threw a bag into the air at Cassius and said, "You too, big guy. Bag it or bite it."

Cassius passed out just before the bag hit him harmlessly on the forehead, after which he fell like a sack of rocks. Trevor complied, albeit with cocked eyebrows indicating a nonchalant "whatever" attitude. When the bag was filled, he tossed it to Brynn. She dashed from the bank, hopped in the Taurus, and peeled out of the parking lot. As planned, she drove the car off the Route 261 bridge into the river, escaping the car as it sank. She then swam to a drainage pipe where she crawled 200 feet underground to an abandoned farmhouse, owned by Fergus.

That's when things stopped going according to plan. Entering the farmhouse where Brynn had stashed a motorcycle, she tripped over a wire that triggered a rifle supported just one inch off the floor and aimed parallel to the ground. The spring gun fired and shot Brynn in the foot.

It turns out that Brynn's prior trips to the farmhouse, staking it out and setting it up with her getaway motorcycle, had alerted Fergus to the presence of trespassers. It was in Fergus's zeal to catch the miscreant that Fergus had set up the trip-wired spring gun.

Brynn was able to hobble to her motorcycle, and she took off down the road. When she got to a used car lot, she used some of the cash from the bag to buy a beautifully restored 1972 Chevrolet El Camino. With the motorcycle in the back, continued down the road.

Eventually Brynn came to an antique store. There she used some of the cash to buy an ax that, according to the antique dealer, once belonged to Abraham Lincoln. It was expensive, but, for a piece of American history, Brynn figured, it was worth it.

After driving for another hour or so, Brynn was feeling light-headed from the loss of blood. She determined she couldn't go on, so she stopped at an emergency room to obtain care for her injured foot. Her refusal of pain medication aroused the suspicion of doctors and nurses, who started asking her how it was that she got injured. Brynn then passed out.



**FIG 2: The 1972 Chevy El Camino, America's original hybrid: half car, half pick-up truck.**

When Brynn came to, she felt the cold sensation of steel handcuffs around her wrists. Blinking her eyes open, she saw Trevor, the teller from the bank. It turned out that Trevor was an undercover FBI agent.

Agent Trevor explained to Brynn that as an expert in firearms, he recognized, by the way she bobbed the pistol, that it was unloaded. He also noticed immediately that the safety was welded in the on position and the barrel was filled with resin, rendering the firearm unusable. And since he had placed a GPS-enabled tracking device in the bag with the money, he was happy to let Brynn make her escape – at least initially.

Brynn vowed to herself she'd never again rob a bank with a gun stolen from the prop department of her community theatre group. And, she figured, wincing in pain as Trevor smirked at her, that if she ever checked into an ER on a getaway again, she might as well take all the pain killers they had to offer.

In the days after the robbery, a new movie debuted – *Charlie the Chimp and the El Camino*. The wild success of the film instantly caused the price of El Caminos on the classic car market to skyrocket.

27. What cause of action or remedy would best serve Y-Pay-Mor against Brynn from among the following?
- (A) Replevin
  - (B) Trespass to chattels
  - (C) Conversion
  - (D) Trespass to land
  - (E) Constructive lien on the Taurus
30. Which of the following would be the best advice for a lawyer to give First Eastern Midwest Savings & Loan Bank?
- (A) Pursue an injunction against Brynn.
  - (B) Pursue an equitable lien on the El Camino.
  - (C) Pursue a constructive trust on the El Camino.
  - (D) Pursue an ejectment action against Brynn.
  - (E) Pursue equitable damages against Brynn.
31. Let's say Brynn is lucky enough to win an acquittal at her criminal trial the next month, and when she is released from jail she finds out that the ax she bought never belonged to Abraham Lincoln. If she sues the antique dealer in equity, which of the following might be a good defense?
- (A) Statute of limitations
  - (B) Laches
  - (C) Equitable estoppel
  - (D) Private necessity
  - (E) Unclean hands

**[Note: Two questions, concerning non-Torts-II subject matter, were omitted from this set.]**



NOTE THE FOLLOWING FACTS FOR QUESTIONS 32, 33, AND 34:

Vayaphonic Industries manufactures the series-5 Touch-E smartphone. The Touch-E is the slimmest, most powerful smartphone yet. With its abnormally large power consumption and its diminutive design, Vayaphonic knew that overheating could be a problem. Some engineers at Vayaphonic argued that the Touch-E should come with an automatic power-off function, a feature that is standard in other smartphones with similar power-consumption/thermodynamic parameters. The engineers thought this was especially needed since, if it overheated, potentially dangerous chemicals used in the phone's next-generation battery could give off toxic fumes, thus causing serious injuries. Vayaphonic balked at the engineers' suggestions because re-engineering the phone to include an automatic power-off function would have delayed the product's launch by weeks. To cover all bases, Vayaphonic conducted a cost-benefit analysis. After consideration of the likelihood of being able to settle most lawsuits for pennies on the dollar, the bottom-line conclusion was that Vayaphonic's profit potential was best served by manufacturing the Touch-E without the automatic power-off function.

Roscoe purchased a Touch-E at the local Electro Harbor store the first day it was available and gave it to his girlfriend Thalia, a judicial clerk. Thalia excitedly left the courthouse and walked across the street to Grounds For A Peel, a local coffee house famous for its banana muffins. Sitting and sipping coffee, Thalia talked on the phone for nearly an hour straight. At that point, the phone overheated, causing the battery to partially melt and release toxic fumes. Thalia's lungs were severely damaged. Thalia was just one of hundreds of people similarly injured that day. The next day, sales of the phones were stopped.

32. Which one of the following is most correct?
- (A) Thalia has a good claim for a manufacturing defect under products-liability doctrine.
  - (B) Thalia has a good claim for a design defect under products-liability doctrine.
  - (C) Thalia has a good claim for a warning defect under products-liability doctrine.
  - (D) Thalia has a good claim for an ultrahazard under products-liability doctrine.
  - (E) Thalia has a good claim, but not in the manner described in any of (A)–(D).
33. Which best describes from whom Thalia can recover under a theory of products liability?
- (A) Vayaphonic
  - (B) Either Vayaphonic or Electro Harbor, or both
  - (C) Either Vayaphonic or Electro Harbor, but not both
  - (D) Any one (and only one) of Vayaphonic, Electro Harbor, or Grounds For A Peel
  - (E) Either Vayaphonic, Electro Harbor, or Grounds For A Peel, or all of them, or any combination of them

34. Which one of the following is most correct?
- (A) Thalia may receive compensatory damages in the amount of her pain and suffering, lost wages, and medical expenses. Thalia may also be awarded punitive damages.
  - (B) Thalia may receive compensatory damages in the amount of her pain and suffering, lost wages, and medical expenses. Thalia will not be permitted to seek punitive damages.
  - (C) Thalia may receive compensatory damages in the amount of her lost wages and medical expenses, but she may not receive compensatory damages for pain and suffering. Punitive damages, however, may be recoverable.
  - (D) Thalia may receive compensatory damages in the amount of her lost wages and medical expenses, but she may not receive compensatory damages for pain and suffering. Punitive damages will not be recoverable.
  - (E) Thalia may receive compensatory damages in the amount of her medical expenses, but she may not receive compensatory damages for pain and suffering or lost wages.



36. Though no one would suspect it, the shuttered aircraft maintenance hangar in the sleepy suburban community of Farapolis, Minnekota 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.

38. In which of the following situations is the defendant least likely to be found liable on a strict-liability basis?
- (A) Annabeth's polar bear escapes her basement and mauls to death her next-door neighbor.
  - (B) Bivens Air Services, while crop dusting a plot of corn on a vacant lot on the west side of downtown San Frangeles, accidentally douses a bicycle messenger with pesticide, causing acute pulmonary edema.
  - (C) While packing the parachute for first-time skydiver Cathy, Chuck's attention is diverted by a tense *American Idol* results show. As a consequence, Chuck crosses the shroud lines, the parachute malfunctions on deployment, and Cathy is rendered permanently paralyzed after hitting the ground at high speed.
  - (D) Reaching into the refrigerator at the Cut'n'Run convenience store, Donald grabs a bottle of cherry vanilla soda pop, which suddenly explodes, propelling a glass shard into Donald's left eye, puncturing his cornea and detaching more than half of the retina.
  - (E) Emily's prize-winning dairy cow, who has always been mild-mannered, leaves Emily's farm through a gap in a barbed-wire fence, then tumbles down an embankment and through the living-room window of a neighbor's home.



**FIG 3:**  
*The worst way in town to earn minimum wage: The Cut'n'Run convenience store.*

NOTE THE FOLLOWING FACTS FOR QUESTIONS. 39 THROUGH 43:

Olaf is employed by Blastodyne Corporation as a forklift operator at Blastodyne’s Plant No. 8 in Reedy County, Floribama. Plant No. 8 manufactures nitropentathane, a chemical component of explosives, which, by itself, is a stable, non-volatile compound, not capable of producing any explosive reaction. At a separate plant, hundreds of miles away in Missiana, nitropentathane produced at Plant No. 8 is mixed with tetramethylenediamine to form finished explosive compounds. Shalini is Land Commissioner for Reedy County. As part of Shalini’s duties, Shalini must decide whether to grant or deny applications for land use in accordance with Floribama Land Use Code § 900-36, which provides, in pertinent part:

A county Land Commissioner shall grant an application for activities which, though extremely dangerous, are not abnormally dangerous, considering the nearness of residences and the commonality and suitability of the activity for the area.

Pursuant to F.L.U.C. § 900-36, Shalini granted Blastodyne’ permit for production of nitropentathane at the site of Plant No 8. Nearly two years later, a tanker truck owned by the Cyanamid Carbide Chemical Corporation carrying 120,000 pounds of tetramethylenediamine left the highway when the driver, MacKenzie, fell asleep. The truck crashed through the chain-link fence and hit the tanks and pipe structure of Plant No. 8, instantly uniting the 120,000 pounds of tetramethylenediamine with a very large volume of nitropentathane. The resulting explosion killed MacKenzie and 13 others. Olaf and a bystander, Nina, received severe blast-compression injuries and burns.

Later investigation determined that supervisors at Plant No. 8 were aware that Cyanamid Carbide Corporation was shipping large amounts of tetramethylenediamine on the adjacent highway. A subsequent judicial decision determined that the land-use permit had been “wrongly granted” under F.L.U.C. § 900-36 because Plant No. 8’s activities were “abnormally dangerous” based on the “relative density of residential dwellings and the sparsity of industrial activity such as that conducted at Plant No. 8.”

Interviewed from his hospital bed live on the WRC-TV news, Olaf said MacKenzie was “a vicious homicidal maniac who used the truck as a means to deliberately maim and kill.”

39. Note the following statements:

- I. Olaf can likely recover in tort against Shalini under a theory of battery.
- II. Olaf can likely recover in tort against Shalini under a theory of strict liability for ultrahazardous activities.
- III. Olaf can likely recover in tort against Shalini under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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



40. Note the following statements:

- I. Olaf can likely recover in tort against Blastodyne under a theory of battery.
- II. Olaf can likely recover in tort against Blastodyne under a theory of strict liability for ultrahazardous activities.
- III. Olaf can likely recover in tort against Blastodyne under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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



*FIG 4: At Blastodyne Corporation, workplace safety is always priority no. 1.*

41. Note the following statements:

- I. Nina can likely recover in tort against Blastodyne under a theory of battery.
- II. Nina can likely recover in tort against Blastodyne under a theory of strict liability for ultrahazardous activities.
- III. Nina can likely recover in tort against Blastodyne under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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

42. Assume that Nina wins a judgment against Blastodyne and Cyanamid Carbide for her injuries on the basis of negligence. Now, note the following statements:

- I. Nina could choose to recover all of the judgment from Blastodyne. Alternatively, she could recover all of the judgment from Cyanamid Carbide if she so chose.
- II. Nina can recover from each of Blastodyne and Cyanamid Carbide only that portion of the judgment that corresponds to that defendant's proportionate share of fault.
- III. In a later litigation, Blastodyne could sue Cyanamid Carbide under a theory of contribution.

Which answer below identifies each accurate statement from the above?

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

43. Which of the following is most accurate?

- (A) F.L.U.C. § 900-36 likely provides a private right of action against Blastodyne by those who were injured.
- (B) Olaf can likely recover against MacKenzie's estate for battery.
- (C) MacKenzie's estate can likely recover against Olaf for defamation.
- (D) MacKenzie's estate can likely recover against WRC-TV for libel.
- (E) MacKenzie's survivors have absolutely no chance of getting punitive damages through a workers compensation claim.

44. Jolene is an employee of Landattle Grace Hospital, where she works in the billing department. One day, while operating the Hexetron Docuspew 5000 photocopier, Jolene encounters a paper jam. Following the instructions on the machine, Jolene opens a door and places her hand inside to remove the jammed piece of paper. Without warning, the Docuspew 5000 suddenly starts up and the fuser clamp-arm comes down on Jolene's hand, giving Jolene burns and lacerations. It turns out that this particular Docuspew 5000 was manufactured with a door-latch interlock that failed to function correctly because of a problem with the plastic-injection molding used to fabricate the door-latch. Ordinarily, the door-latch interlock would have prevented the fuser clamp-arm from operating when the door was open. Because of the faulty part, however, the interlock system failed to prevent the Docuspew 5000 from injuring Jolene. Sadly, Landattle Grace Hospital actually knew about this problem with the photocopier, since another office worker was hurt the same way earlier in the week. At that time, however, Landattle Grace Hospital management decided not to take the machine out of service, even temporarily, because doing so would have delayed end-of-the-month patient billing tasks.

Assume that Landattle Grace Hospital was negligent and that Landattle Grace Hospital has liability insurance that indemnifies it against all claims for negligence.

Note the following statements:

- I. Jolene can recover from Landattle Grace Hospital in tort for negligence.
- II. Jolene can recover from Hexetron in tort for strict products liability on the basis of a design defect.
- III. Jolene can recover from Hexetron in tort for strict products liability on the basis of a manufacturing defect.

Which answer below identifies each and every correct statement of the above-numbered list?

- (A) II only
  - (B) III only
  - (C) I and II only
  - (D) I and III only
  - (E) Neither I, II, nor III
45. Which of the following situations is least likely to give rise to strict liability?
- (A) A nuclear reactor at a power plant melts down.
  - (B) A fireworks factory in a residential area explodes.
  - (C) A roller coaster at an amusement park collapses.
  - (D) A snake escapes from a zoo and bites someone.
  - (E) One of a herd of sheep escapes its pen, breaks down a neighbor's garden fence, and proceeds to eat all the flowers.

46. Which of the following statements is not accurate?
- (A) Restitutionary remedies offer an alternative to compensatory damages in some cases.
  - (B) Restitutionary remedies center around a notion of “unjust enrichment.”
  - (C) Restitutionary remedies may be either legal or equitable.
  - (D) Restitutionary remedies are typically measured by the amount of harm suffered by the plaintiff.
  - (E) Examples of restitutionary remedies are replevin, ejectment, constructive trust, equitable lien, and quasi-contract.
47. 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.



**FIG 5:**  
*Farmer Fran's boys are  
 always up early in the  
 morning milking the cows.*

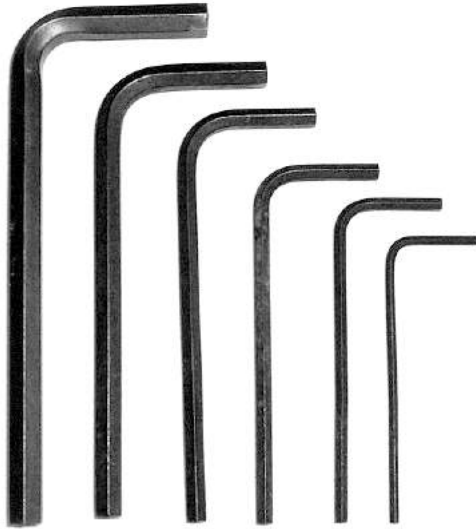
NOTE THE FOLLOWING FACTS FOR QUESTIONS 55 AND 56:

Wyatt never signed up for the Hexetron Tool-of-the-Month Club. But that didn't stop Hexetron from signing Wyatt up. The company sent Wyatt a set of hex wrenches via the U.S. Mail, along with a bill for \$25 and a letter welcoming him as a member. Wyatt called up Hexetron and explained that he never ordered the tools or enrolled in the club. He also explained that under 39 U.S.C. § 3009(b), he had the right to keep the merchandise without paying for it. (He's correct on that law, by the way.) The Hexetron representative on the phone agreed, and told Wyatt to go ahead and keep the hex wrenches. She assured Wyatt that the Hexetron database would be revised to reflect that Wyatt owed nothing and that he was not an enrolled member of the Hexetron Tool-of-the-Month Club.

Several months later, Wyatt was using one of the hex wrenches to tighten a bolt on his lawn mower when the wrench snapped into jagged pieces, one of which badly gashed Wyatt's hand, requiring stitches and physical therapy. Then, a month or so after that, Wyatt received a bill from Hexetron Debt Collection Services for \$25 in past due amounts for tools, \$563 in interest charges and late fees, plus a \$300 early-termination fee for canceling membership in the Tool-of-the-Month Club before one year. The next day, Wyatt sent Hexetron a letter patiently explaining the error. The following week, he heard a loud knock on the door. He opened the door to find Hannah, a debt collector for Hexetron, dressed in a bright yellow radiation suit. Hannah raised an electronic bullhorn to her mouth and announced, "Wyatt is a deadbeat who doesn't pay his bills!"

Wyatt slammed the door on Hannah. The door struck the rim of the bullhorn and propelled it back into Hannah's face where it knocked out several of her teeth. Wyatt then collapsed on the floor suffering a mild heart attack, an event that was picked up by a portable EKG machine that Wyatt was wearing at the time.

55. If Wyatt sues for the injuries to his hand, will his claim succeed?
- (A) Yes, because Hexetron is absolutely liable for any injuries suffered through the use of their products.
  - (B) Yes, because the reasonable consumer would expect the wrench not to break under the circumstances in which Wyatt used it.
  - (C) No, because of a lack of privity.
  - (D) No, unless it can be shown there was a mental component to Wyatt's injury.
  - (E) No, because the utility outweighs the risk.



*FIG 7:  
The hex wrenches Wyatt  
received from the Hexetron  
Tool-of-the-Month Club.*

56. If Wyatt sues for defamation, will his claim succeed?
- (A) Yes, because the conduct of Hannah and Hexetron was extreme and outrageous.
  - (B) Yes, if Hannah's remarks were overheard by at least one neighbor.
  - (C) No, unless Wyatt can prove special damages stemming from the reputational harm.
  - (D) No, because Wyatt would come to the court with unclean hands.
  - (E) No, because Hexetron has qualified immunity, and the scope of the privilege was not exceeded.

◆ ◆ ◆

57. Which of the following is most likely not to occasion an action for strict liability in favor of Harold?
- (A) A thoroughbred horse, owned by Ned, walked on to Harold's property through a broken section of fence and ate apples right off Harold's apple tree. The apple tree was cultivated as part of a personal garden, not as part of a commercial orchard.
  - (B) An axle on a wheelbarrow snapped, causing Harold, who was pushing the wheelbarrow, to stumble, fall, and sprain his ankle. The axle was manufactured with small cracks - missed in the quality control process - that eventually enlarged to cause the break.
  - (C) Harold slipped on a puddle of silicone-based lubricant in the aisle of Depew's Home Improvement Store, causing him to break his wrist. The store was open to the public and operated for a profit.
  - (D) Harold returned from the state meeting of the Rose Gardening Association to find his yardbarn burned to the ground. His neighbor, Ned, saw the whole thing: The fire was started by a block of burning rocket propellant that fell from the sky. It was later established that the propellant block came from the failed test of a new intercontinental ballistic missile. The test was conducted by Hexetron Aerospace and Defense Systems, Inc.
  - (E) Visiting at Ned's house, Harold suffered internal injuries when he was kicked by Ned's zebra - part of Ned's exotic wild animal collection. The zebra had never previously exhibited any aggressive or harmful behavior and was, in fact, certified by a veterinarian prior to the incident as having "a docile, agreeable, and nonthreatening disposition."

**NOTE THE FOLLOWING FACTS FOR QUESTIONS 59 AND 60:**

Congress has just established Nataqua as the 51st state. Nataqua exists on land previously governed as a U.S. territory. The legislature of Nataqua has yet to pass any laws, and the newly established courts are operating solely on the basis of Anglo-American common law.

Today is the first session of the Nataqua Court of Appeals. Here's a rundown of what's on the docket:

*Jorden v. J-Mart Corporation:* The defendant J-Mart Corporation intentionally swindled plaintiff Justine Jorden out of \$100,000 in a loan scam that used fake but realistic-looking documents promising to pay Jorden interest of \$60,000 over the term of the promissory note. J-Mart represented itself as a new business. The interest rate is on the high side of rates for promissory notes for new businesses, although it's not unheard of.

*Kalia v. Kantzel:* The defendant, Kevin Kantzel, was negligently driving his Cadillac CTS when he hit pedestrian Kathy Kalia, who died in the ambulance on the way to hospital. Kalia, 35 years old, was earning \$200,000 a year as a management consultant and was expected to earn at least that much for the next 30 years. The action is brought by her estate.

*Lourdell v. Lindenfeld Laboratories, LLC:* The defendant Lindenfeld Laboratories supplied intravenous medications that were tainted with *Aspergillus fumigatus*, a fungus capable of infecting humans. The jury found that the fungal contamination was due to Lindenfeld Laboratories' "recklessly and wantonly" deficient laboratory practices. Lorelei Lourdell received intravenous administration of the tainted medication and exhibited some ill effects, but she was treated quickly and made a full recovery. The jury awarded \$1,000 in compensatory damages and \$2.9 million in punitive damages.

59. Consider the total monetary recovery for the plaintiff likely to be upheld on appeal in each of the cases. Which answer below correctly orders the cases from greatest to smallest in terms of monetary value?
- (A) *Jorden v. J-Mart Corporation; Lourdell v. Lindenfeld Laboratories, LLC; Kalia v. Kantzel*
  - (B) *Kalia v. Kantzel; Jorden v. J-Mart Corporation; Lourdell v. Lindenfeld Laboratories, LLC*
  - (C) *Kalia v. Kantzel; Lourdell v. Lindenfeld Laboratories, LLC; Jorden v. J-Mart Corporation*
  - (D) *Lourdell v. Lindenfeld Laboratories, LLC; Jorden v. J-Mart Corporation; Kalia v. Kantzel*
  - (E) *Lourdell v. Lindenfeld Laboratories, LLC; Kalia v. Kantzel; Jorden v. J-Mart Corporation*
60. Which of the following are causes of action that are likely to be upheld on appeal in the case of *Jorden v. J-Mart Corporation* based on the facts stated?
- (A) breach of confidence, but not fraud or intentional interference with contract
  - (B) fraud, but not intentional interference with contract or breach of confidence
  - (C) intentional interference with contract, but not fraud or breach of confidence
  - (D) fraud and intentional interference with contract, but not breach of confidence
  - (E) breach of confidence, fraud, and intentional interference with contract



61. It was a bad week for Paavali Paanenen. He set out to drive from his home in Green Bay to his dad's house in a retirement community in the desert Southwest. His plan was to see a little bit of America and arrive in time for his dad's 75th birthday.

On Monday, Officer Abby Akutagawa of the Ansvenson City Police Department in Ansvenson City, South Dakota pulled over Paavali for a traffic stop. It was purely out of undirected spite – with no probable cause whatsoever. Abby, in blatant violation of the U.S. Constitution, then seized \$300 worth of birthday gifts from the trunk.

On Tuesday, in Nebraska, Paavali had the misfortune to cross paths with Special Agent Benton Burrell, a out-of-control rogue law enforcement officer with the U.S. Department of Transportation National Highway Traffic and Safety Administration's Office of Odometer Fraud Investigation. Entirely without probable cause, and in blatant violation of the U.S. Constitution, Benton used a plasma torch to cut into the side of Paavali's 1979 Chevy Impala to access Paavali's odometer from behind the dashboard.

Which of the following is most accurate?

- (A) Paavali has a plausible claim under 42 U.S.C. §1983 for the incident with Officer Abby Akutagawa and for the incident with Special Agent Benton Burrell.
  - (B) Paavali has a plausible *Bivens* action claim for the incident with Officer Abby Akutagawa and for the incident with Special Agent Benton Burrell.
  - (C) Paavali has a plausible claim under 42 U.S.C. §1983 for the incident with Officer Abby Akutagawa and a plausible *Bivens* action for the incident with Special Agent Benton Burrell.
  - (D) Paavali has a plausible *Bivens* action for the incident with Officer Abby Akutagawa and a plausible claim under 42 U.S.C. §1983 for the incident with Special Agent Benton Burrell.
  - (E) Paavali has no plausible claim under 42 U.S.C. §1983, nor does he have a plausible *Bivens* action claim.
62. On Wednesday night, Paavali was camping in the Rocky Mountain foothills. Having had a few beers while trying to unwind after a very stressful Monday and Tuesday, Paavali got a little careless: He negligently set fire to his RV trailer. Municipal firefighter Charlie Carson, who responded to the blaze, was injured while entering the trailer to make sure everyone was out.

Based on these facts, which of the following is true?

- (A) Paavali will be liable to Charlie by way of a statutory cause of action, assuming this state has a statute similar to the Federal Tort Claims Act.
- (B) Paavali will be liable to Charlie through an implied right of action.
- (C) Paavali will be liable to Charlie through an action for contribution.
- (D) Paavali will not be liable to Charlie because Charlie will be barred from suing Paavali.
- (E) Paavali will not be liable to Charlie because application of the doctrine of indemnification means that compensatory damages will be zero.

63. On Thursday, while visiting Canyon Reef National Park, Paavali was attacked by a Mexican spotted owl. Although Paavali stayed on the hiking trail, it seems the owl determined Paavali was a threat to her nest. Paavali was badly slashed up and needed 32 stitches. No one from the National Park Service showed any compassion for Paavali. In fact, they seemed to silently blame him for his run-in with the owl.

On Friday, in the late afternoon, Paavali got stuck in a massive traffic jam on the freeway. The jam was caused by a collapsed construction crane. The cause of the collapse was the negligence of the crane's owner, Everstan Equipment. Paavali's car was mired on the freeway for four hours, and as a result he missed out on a once-in-a-lifetime family reunion dinner.

On Saturday, Paavali was there for his dad's birthday. He got to sing happy birthday and give his dad a hug. But shortly after the party, Paavali was struck with terrible food poisoning. It was the ice cream – Abbingdale Acres Strawberry Surprise. Paavali spent an excruciating Saturday night in the hospital.

Based on these facts, which of the following is true?

- (A) Paavali can recover from the National Park Service for strict liability, but he does not have a good claim against Everstan Equipment for missing the dinner.
- (B) Paavali has no good claim against the National Park Service, but he does have a good claim against Everstan Equipment for missing the dinner.
- (C) Paavali does not have a good claim against Everstan Equipment for missing the dinner, but he does have a good claim against Abbingdale Acres.
- (D) Paavali has good claims against the National Park Service, Everstan Equipment, and Abbingdale Acres.
- (E) Paavali does not have a good claim against the National Park Service, Everstan Equipment, or Abbingdale Acres.

66. 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 when 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.
67. Darla intentionally communicated to third persons a defamatory statement that she knew to be false explicitly concerning Pam. Which of the following, if proved, would not be sufficient to permit Pam to maintain a defamation suit?
- (A) As a result, Pam suffered lost wages in a provably certain amount.
  - (B) The statement asserted that Pam was incompetent at her job.
  - (C) The statement asserted that Pam was born out of wedlock.
  - (D) The statement was published via printed paper.
  - (E) The statement asserted that Pam had a sexually transmitted bacterial disease.

**NOTE THE FOLLOWING FACTS FOR QUESTIONS 68 AND 69:**

Andrew files a claim against the United States Army for negligence. He was injured in Afghanistan when artillery fire was mistakenly and carelessly directed toward his location as part of a combat operation.

Brett files a claim for battery against the Bureau of Reclamation (an agency of the United States Department of the Interior). Brett suffered several broken fingers when a government worker, acting pursuant to an informal policy to discourage environmentalist protestors, purposely slammed Brett's fingers in a doorjamb when Brett tried to obtain a permit to stage a rally in support of environmental legislation. Brett had a right to obtain the permit under the First Amendment.

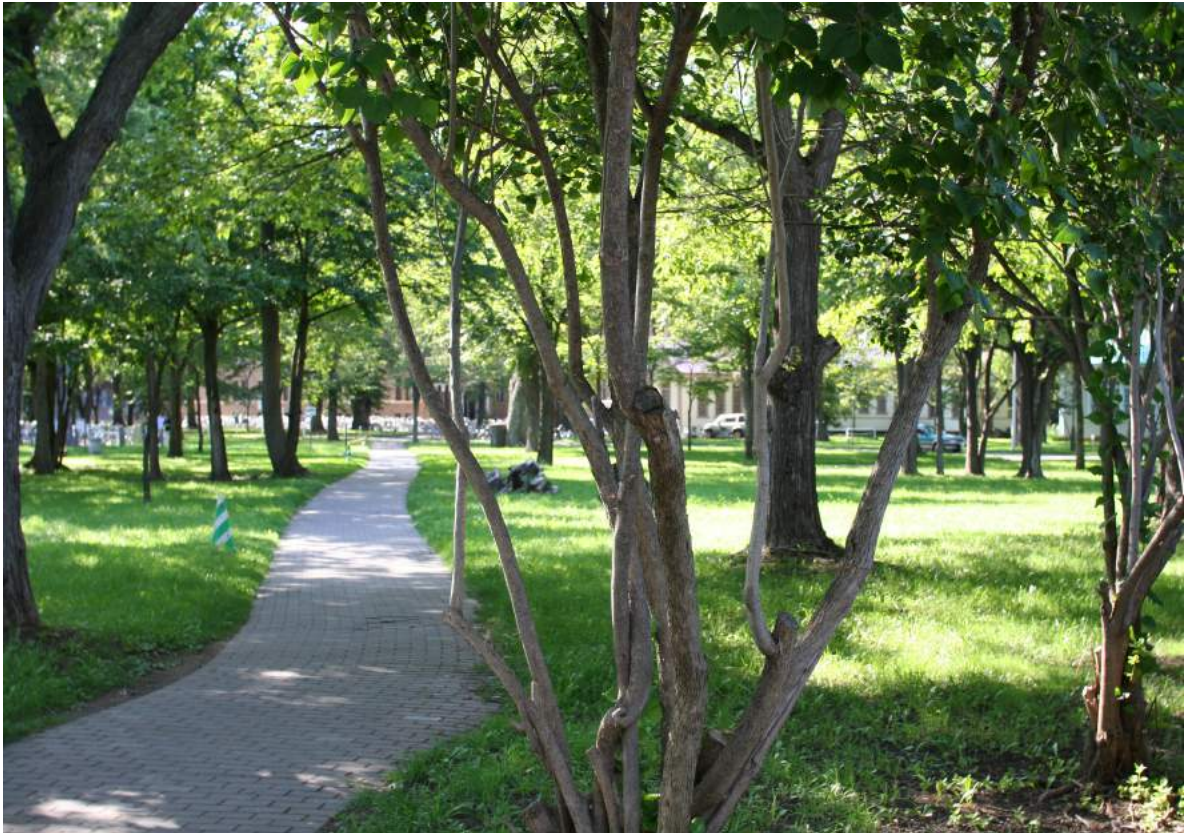
Candace files a claim for fraud against the sitting president of the United States, claiming an executive order the president signed regarding the detention of undocumented immigrants was not in keeping with campaign promises.

Doris files a claim for negligence against the Defense Advanced Research Projects Agency (an agency of the United States Department of Defense). While visiting the agency's offices, she was struck and injured by a ceiling lighting fixture that had been incompetently installed by a government worker. It turns out that the government worker installed one of the screws into the wrong hole.

Ethan files a claim for strict liability against the United States Department of Energy. Ethan was injured when an experimental plutonium breeder reactor suffered a partial meltdown.

68. Who has filed the claim that is most likely to be compensable under the Federal Tort Claims Act?
- (A) Andrew
  - (B) Brett
  - (C) Candace
  - (D) Doris
  - (E) Ethan
69. Based on the facts disclosed, who would be in the best position to allege and maintain a *Bivens* action, that is, an action under the precedent of *Bivens v. Six Unknown Agents* and its progeny?
- (A) Andrew
  - (B) Brett
  - (C) Candace
  - (D) Doris
  - (E) Ethan

70. Wanting to spy on some unsuspecting people, Leonard waited in the bushes late at night behind a bench in a secluded section of the park. Walter and Judith, who are married, came to the park bench, sat down, made out, and whispered a simple conversation to each other about the weather. That night, Leonard wrote about the conversation on his blog, identifying Walter and Judith and publishing the substance of what they said. On these facts, which of the following is most accurate?
- (A) Walter and Judith have claims for false light, intrusion, and disclosure.
  - (B) Walter and Judith have claims for false light and intrusion, but not disclosure.
  - (C) Walter and Judith have claims for intrusion and disclosure, but not false light.
  - (D) Walter and Judith have a claim for intrusion, but not for false light or for disclosure.
  - (E) Walter and Judith have no claim for false light, intrusion, or disclosure.



*FIG 9: A day-time view of a different park.*

71. Which of the following is most likely not to occasion an action for strict liability in favor of Harold?
- (A) A thoroughbred horse, owned by Ned, walked on to Harold's property through a broken section of fence and ate apples right off Harold's apple tree. The apple tree was cultivated as part of a personal garden, not as part of a commercial orchard.
  - (B) An axel on a wheelbarrow snapped, causing Harold, who was pushing the wheelbarrow, to stumble, fall, and sprain his ankle. The axel was manufactured with small cracks - missed in the quality control process - that eventually enlarged to cause the break.
  - (C) Harold slipped on a puddle of silicone-based lubricant in the aisle of Depew's Home Improvement Store, causing him to break his wrist. The store was open to the public and operated for a profit.
  - (D) Harold returned from the state meeting of the Rose Gardening Association to find his yardbarn burned to the ground. His neighbor, Ned, saw the whole thing: The fire was started by a block of burning rocket propellant that fell from the sky. It was later established that the propellant block came from the failed test of a new intercontinental ballistic missile. The test was conducted by Hexetron Aerospace and Defense Systems, Inc.
  - (E) Visiting at Ned's house, Harold suffered internal injuries when he was kicked by Ned's zebra - part of Ned's exotic wild animal collection. The zebra had never previously exhibited any aggressive or harmful behavior and was in fact certified by a veterinarian prior to the incident as having "a docile, agreeable, and nonthreatening disposition."
72. Josiah is employed as a truck driver for Carellingdale's department stores. One day on the job, Josiah failed to yield as required at an intersection and hit a car carrying Nadine, causing her personal injuries. After a trial, a jury found Josiah and Carellingdale's each liable in negligence and assessed compensatory damages at \$1 million. The court entered judgment on this verdict. Which of the following is accurate?
- (A) Nadine can collect from Josiah, but she cannot collect from Carellingdale's. The reason for this is the doctrine of respondeat superior.
  - (B) Nadine can collect from Carellingdale's, but she cannot collect from Josiah. The reason for this is the doctrine of respondeat superior.
  - (C) Nadine can collect from Carellingdale's, but she cannot collect from Josiah. The reason for this is the doctrine of indemnification.
  - (D) Nadine can collect no more than half the judgment from Josiah and no more than half from Carellingdale's.
  - (E) Nadine can elect to collect the entire judgment from Josiah and none from Carellingdale's.

**NOTE THE FOLLOWING FACTS FOR QUESTIONS 73 AND 74:**

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.

73. 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
74. 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.

**THIS IS THE END OF THE AMALGAMATED QUESTIONS.**

### CREDITS

Images: Figs. 1 & 2, General Motors; Fig. 3, photo and alterations by Eric E. Johnson; Fig. 4, photo by Sgt. Jacob H. Smith, U.S. Army; Fig. 5, photo by the U.S. Department of Agriculture; Fig. 6, photo by the New York Federal Reserve, altered by Eric E. Johnson; Fig. 7, photo from pdclipart.org; Fig. 8, photo from NASA, altered by Eric E. Johnson; Fig. 9 photo "Hokkaido University campus walkways no. 1445" by Eric E. Johnson.

Text: All text by Eric E. Johnson. Questions nos. 52, 53, 54, and 56 were patterned off of released MBE questions nos. 89 and 475-477. Those released MBE questions were found at: [http://www.ncbex.org/uploads/user\\_docrepos/MBEQuestions1992\\_011310.pdf](http://www.ncbex.org/uploads/user_docrepos/MBEQuestions1992_011310.pdf).

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