

# Torts II, Spring 2018

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## SPECIAL STUDY SET OF *LESS USEFUL* RELEASED MULTIPLE-CHOICE QUESTIONS

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### IMPORTANT NOTES:

This document contains a subset of the publicly released amalgamated multiple-choice questions for Torts I & II.<sup>1</sup> Released in April 2018, **this document is intended to contain the multiple-choice questions I judged to be potentially useful, but also potentially problematic**. (See the set marked "Most Useful" for the most useful questions.)

You will note that the questions in this set conspicuously include material we didn't cover this semester. Why would I have such questions? It's because in past semesters the topics were distributed differently between Torts I and Torts II. For instance – as just one example – products liability was previously taught in the same semester as intentional torts. Thus, here you will find questions that mix products liability and intentional torts. Obviously, the inclusion of negligence, products liability, strict liability, or other Torts I topics in the questions below is not indicative of the subject-matter coverage for your exam!

**Regarding subject-matter scope and emphasis of your exam, consult your semester's Syllabus and, when issued, the current semester's Exam Prospectus.**

The numbering in this subset has been retained from the numbering of the amalgamated questions. Thus, the questions in this document are not numbered continuously.

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

### *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.

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<sup>1</sup> The full amalgamated question bank from which this document was derived is available in the Exam Archive at [ericejohnson.com](http://ericejohnson.com). Here is the direct URL:

[http://www.ericejohnson.com/exam\\_archive/Torts\\_I\\_and\\_II\\_amalgamated\\_released\\_multiple-choice\\_questions.pdf](http://www.ericejohnson.com/exam_archive/Torts_I_and_II_amalgamated_released_multiple-choice_questions.pdf)

**NOTE THE FOLLOWING FACTS FOR QUESTIONS NOS. 27 THROUGH 29:**

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.

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.



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

Agent Trevor explained to Brynn that as an expert in firearms, he recognized, by the way she bobbled 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
28. Who will likely be able to recover against Brynn for battery?
- (A) Trevor only
  - (B) Cassius only
  - (C) Trevor and Cassius
  - (D) Trevor, Cassius, and Fergus
  - (E) None of Trevor, Cassius, or Fergus
29. Who will likely be able to recover against Brynn for assault?
- (A) Trevor only
  - (B) Cassius only
  - (C) Trevor and Cassius
  - (D) Trevor, Cassius, and Fergus
  - (E) None of Trevor, Cassius, or Fergus

37. 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) Walking out of the Cut'n'Run store at 2 a.m., Ajax, angry that Cut'n'Run did not have the latest issue of Muscle'n'Tattoo Monthly to browse through, smashes his 40-ounce bottle of beer through the windshield of a parked Toyota Prius.
  - (B) Ajax spray paints his name in four-foot-high letters on the side of the Cut'n'Run.
  - (C) While a friend distracts the store clerk, Ajax removes Cut'n'Run's Slushee machine to use at a party, returning it to the alley behind the store the next day.
  - (D) Threatening to beat up the store clerk, Ajax reaches into the gumball jar, extracts a gumball, and tells the store clerk that the gumball represents the store clerk's head. Ajax then chews the gumball menacingly with his mouth open.
  - (E) Each day on his way to his buddy's house, nearly every day for an entire year, Ajax takes a shortcut by walking into the Cut'n'Run and exiting the store through a door marked "private - employees only."



**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's 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





*FIG 8: Hexetron Nuclear Systems' Rivercrest Assembly Plant is proud to have spent nearly half as much on safety as it has on painting its name and slogan on the side of its buildings.*

58. Eleanor is an assembly-line worker at Hexetron Nuclear Systems' Rivercrest Assembly Plant. Eleanor was at her station installing wiring harnesses for the control-rod assembly of a nuclear reactor when she was clipped by an electric cart being negligently driven by Harvey. Harvey is Hexetron's Senior Vice President for International Sales. Trying to land a huge sale to a foreign government, Harvey had gotten drunk with a foreign official before giving him a factory tour. Had Harvey not been drunk, or had he been watching where he was going, he would not have injured Eleanor. The accident left Eleanor with a sprained ankle and a concussion. She needed medical care and missed three days of work.

Note the following:

- I. An action in negligence.
- II. An action in strict liability.
- III. A claim for worker's compensation.

Which of the following identifies each likely successful avenue for recovery in favor of Eleanor against Hexetron Nuclear Systems?

- (A) II, but not I or III
- (B) III, but not I or II
- (C) I and II, but not III
- (D) All of I, II, and III
- (E) None of I, II, or III

**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

●● THIS IS THE END OF THE QUESTIONS ●●

**CREDITS AND NOTES**

*(Note: Various of these credits and note apply to omitted questions.)*

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. Fig. 10 photo by Eric E. Johnson; Fig. 11 photo "Horse Barns at Iowa State 3" by Eric E. Johnson; Fig. 12 photo via Brady-Handy Photograph Collection at the U.S. Library of Congress, ID no. cwpbh.03890; Fig. 13 by Patsy Lynch, Federal Emergency Management Agency (FEMA). Most EEJ photos are available via Flickr and findable by name.

Text: All text by Eric E. Johnson. Questions 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).

Questions in this collection include released questions that were used on real exams and quizzes. Some questions may have originated as sample questions.

In a prior release, Question 71 was a repeat of Question 57. Because of this, the repeat was removed, and a new Question 71 was inserted.

In addition to adding questions, minor adjustments are made with new releases. Care is taken to avoid substantive changes. Among the changes for the November 2017 release, some typography was changed, one of the character names was changed, and a fake state name was changed.

Question 75 is the same as Question 16 in the amalgamated released multiple-choice questions for Sales. Questions 76-86 were Questions 1-11 on the 2017 Torts I midterm quiz.

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