

Torts II, Spring 2018

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SPECIAL STUDY SET OF THE MOST USEFUL RELEASED MULTIPLE-CHOICE QUESTIONS

IMPORTANT NOTES:

This document contains a subset of the publicly released amalgamated multiple-choice questions for Torts I & II.¹

Released in April 2018, **this document is intended to contain the multiple-choice questions I judged to be most useful for studying for the Torts II exam in Spring 2018.**

Note that I have erred on the side of overinclusiveness. **These questions come from past semesters, when I taught a different mix of topics.** You may find mixed into these questions doctrine that I didn't emphasize or maybe didn't even teach this semester. So some of them may be a stretch for current-semester students. And definitely keep in mind that **this set of questions is not intended to represent the relative emphasis of topics or the frequency with which they will be tested on your exam.** So, you should use this set of questions as a way to practice, not as a tool for guessing the coverage for your exam. Regarding subject-matter scope and emphasis on 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 to all questions are available in a separate document in the Exam Archive at 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.

¹ The full amalgamated question bank from which this document was derived is available in the Exam Archive at ericejohnson.com. Here is the direct URL:

http://www.ericejohnson.com/exam_archive/Torts_I_and_II_amalgamated_released_multiple-choice_questions.pdf

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

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

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

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

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

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

24. Ed is Head of Security and Surveillance at the glittering, sun-drenched Montenella Hotel Casino. With a temper as hot as his Mojave Desert surroundings, Ed's past as a CIA operative leads him to break the rules here and there to protect his employer from the city's endless parade of scum.

In which of these situations is Ed least likely to be found liable for false imprisonment?

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

25. 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.

35. 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 Friday'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

48. 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
49. 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.

50. 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. 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
52. 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.

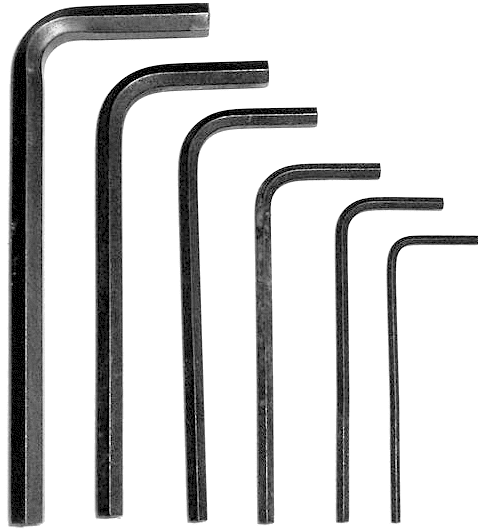
NOTE THE FOLLOWING FACTS FOR QUESTIONS 53, 54, AND 56:

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.

53. If Hannah sues Wyatt for battery, which of the following must Hannah prove in order to succeed on her claim?
- (A) Wyatt was substantially certain that the door would strike the bullhorn.
 - (B) Wyatt was substantially certain that the bullhorn would hit Hannah's face.
 - (C) Wyatt acted with anger, or, at least, malice.
 - (D) Hannah had an immediate apprehension of the impact.
 - (E) Hannah was on Wyatt's property lawfully.
54. If Wyatt sues for outrage (intentional infliction of emotional distress), will his claim succeed?
- (A) Yes.
 - (B) No, because Hannah had an implied license to be on Wyatt's property.
 - (C) No, because Wyatt's mental distress was not sufficiently severe.
 - (D) No, because Wyatt would come to the court with unclean hands.
 - (E) No, because the claim would be barred by the doctrine of third-party estoppel.



*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.



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.

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. Andrea and Isaac stole Cassidy's car, sold it, and invested the profits in an internet start-up company, which then flopped. Cassidy subsequently won a lawsuit against Andrea and Isaac for conversion, getting a judgment against Andrea and Isaac for \$30,000. Andrea is rich – she has plenty of money. Isaac has no cash, but he does have several valuable pieces of farm equipment, including a Case International combine harvester and a John Deere tractor. Which of the following is most accurate?
- (A) Cassidy will be able to recover up to, but not more, than \$15,000 from Andrea, unless Andrea was found more than 50 percent at fault.
 - (B) Cassidy will be able to gain possession of the John Deere tractor in order to satisfy the judgment against Isaac only if she can prove that the tractor is related to the conversion for which she was awarded the judgment.
 - (C) Cassidy can get the entire \$30,000 judgment satisfied by Andrea if Cassidy chooses, a decision she can make based solely on the fact that Andrea has more ready cash.
 - (D) Cassidy must appeal the judgment to an intermediate appeals court before she can get an enforceable order to execute the judgment.
 - (E) If Andrea and Isaac both refuse to comply with a court order to pay the judgment and continue to drag their feet, Cassidy will ultimately have to go to a bankruptcy court to actually force Andrea and Isaac to pay.
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 QUESTION 74:

[some facts omitted]

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.

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.

75. Gregor Gillingshurst went to FFM Pharmacy to fill a prescription for tablets of nixaltandiga, a patent-protected cancer drug that costs \$1,000 per tablet. When the bottle – labeled and pill-filled – was presented to him, Gregor paid. But it instead of having filled the prescription with genuine tablets of nixaltandiga, FFM had given Gregor placebo tablets – that is, tablets with no active ingredients and no genuine medicine. Gregor is pursuing an action against FFM for fraud. Which additional fact or conclusion, if established at trial, would not allow FFM to escape liability?
- (A) Gregor really should have known that the tablets were not nixaltandiga, since the pharmacy tech offered to sell Gregor 30 additional tablets for a total of \$50.
 - (B) When Gregor saw the FFM Pharmacy tech filling the prescription the first time, he could tell, even from a distance over the counter, that the tablets were probably not genuine nixaltandiga tablets, pictures of which he had seen at his physician's office.
 - (C) FFM Pharmacy is a unit of the United States Department of Veterans Affairs, a unit of the federal government.
 - (D) Although the label on the pill bottle provided by FFM said "nixaltandiga" in large letters, it also said in very fine print on the label "FFM Pharmacy makes no guarantees about the efficacy of or identity of any ingredients of the tablets contained herein."
 - (E) As the placebo tablets came from a supplier which had labeled them as genuine tablets of nixaltandiga, FFM was never aware that it was substituting placebos for nixaltandiga.



FIG 10: Some tablets that some pharmacists say look similar to nixaltandiga.

76. 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.

●● 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.

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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