

Torts I & II

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AMALGAMATED RELEASED MULTIPLE-CHOICE QUESTIONS

Explanations for Selected Questions

- Question 3:** The answer is E because the engineers are at least licensees, which means at a minimum they are owed a duty to warn of or render safe any known, concealed dangerous condition, whether natural or artificial. Randall knows about the carbon-dioxide seep, so he had a duty to warn them about it. Many people answer C, perhaps thinking that this falls under the doctrine of attractive nuisance. But that only seems to make sense insofar as you might conceive of the doctrine by the common meaning of the words “attractive nuisance.” Remember, attractive nuisance is a term of art. In that regard, note that the children are injured or killed by a natural phenomenon (flash flood), not by an artificial condition. Attractive nuisance is about dangerous artificial conditions.
- Question 9:** The answer is E because I, II, and III are inaccurate. I is inaccurate because Armstrong likely will be able to recover against Karen; the fact that Sharon’s breach was an actual cause of Armstrong’s injury is irrelevant to the fact that Armstrong has a good prima facie case of negligence against Karen. II is inaccurate for the same reason as I, with the Karen and Sharon reversed: Armstrong likely will be able to recover against Sharon; the fact that Karen’s breach was an actual cause of Armstrong’s injury is irrelevant to the fact that Armstrong has a good prima facie case of negligence against Sharon. III is inaccurate because Armstrong likely will be able to recover against both Karen and Sharon; proximate causation is easily proved because the harm suffered by Armstrong was foreseeable and because the harm befalling Armstrong was of the kind that made Karen’s and Sharon’s conduct unreasonably risky. (To be candid, this question has some features that make it less than ideal. One difficulty is that the facts are long. Also, having talked with several students about this question, I see now it doesn’t help a long fact pattern when two of the characters’ names rhyme and two of the characters’ names are alliterative. Fwiw, the names come from a song about friends headed out on California’s East Bay punk scene.)
- Question 37:** The answer is D because the gumball is completely destroyed, so the remedy of a forced sale is appropriate. With A, the Prius isn’t completely destroyed, so that’s a less good case for an actionable

conversion. With C, same thing: the Slushee machine isn't destroyed, so it's less certain as an actionable conversion than the chewed-up gumball. Now, the Slushee machine *might* qualify as a conversion – that's arguable. But the gumball is 100%, so D is the correct answer. (Let me be candid: This is an old question, and I don't love it. Although I didn't intend it to be tricky, I suspect it may draw people off for the wrong reasons. And that's the sort of thing I try to avoid.)

Question 38: The answer is C because packing a parachute is not an ultrahazardous activity, and it otherwise doesn't qualify for strict liability. Meanwhile, A (keeping of a wild animal), B (crop dusting, an archetypal well-recognized ultrahazard category), D (defective product), and E (trespassing livestock) are clearly instances of strict liability.

Question 39: The answer is E because I, II, and III are inaccurate. I is inaccurate because, among other reasons, there was no intent to effect a touching. II is inaccurate because Shalini was not engaged in an ultrahazardous activity. III is inaccurate because the injury was not caused by a defective product commercially distributed by Shalini.

Question 40: The answer is E because I, II, and III are inaccurate. I is inaccurate because, among other reasons, there was no intent to effect a touching. II and III are inaccurate because workers compensation bars Olaf from recovering from his employer in tort for the accident arising in the course of his employment. III is also inaccurate because the injury was not caused by a defective product commercially distributed by Blastodyne.

Question 41: The answer is B because I and III are inaccurate and II is accurate. I is inaccurate because, among other reasons, there was no intent to effect a touching. II is accurate because mass manufacturing of chemical components of explosives in an area with a density of residences and a sparsity of industrial activity is an ultrahazardous or abnormally dangerous activity. III is inaccurate because the injury was not caused by a defective product commercially distributed by Blastodyne.

Question 44: The answer is B because I and II are not correct and III is correct. I is not correct because Jolene is barred by workers compensation from recovering from her employer in tort for the accident suffered in the course of her employment. II is not correct because there is not a design defect that has caused Jolene's injury. III is correct because the problem with the plastic-injection molding that resulted in a faulty part constituted a manufacturing defect, and this manufacturing defect caused the injury.

Question 59: The answer is A, in part because of constitutional due process issues. Plaintiff Lourdell's punitive damages award will likely be limited to be substantially less than \$160,000 on appeal.