

Torts

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AMALGAMATED RELEASED MULTIPLE-CHOICE QUESTIONS

November 2018 Release

This document contains all released multiple-choice questions for Torts.¹

These questions date from 2007 up to the present day. Note that the oldest questions are the lowest-numbered. As question numbers get higher, the questions get more recent.

Released in November 2018, this updated set of amalgamated questions incorporates questions released previously – up to question 86 – and adds questions 101-108, which constituted the Fall 2018 quiz. Note that the numbering of the questions is discontinuous: There are no questions numbered 87-100. Another change: For this release, Question 12 was changed somewhat; it was made to better conform to currently taught doctrine.

Questions 1-20, 64-65, & 76-86 concern negligence and health-care liability.

Questions 21-24, 28-29, 35, 37, 48-50, & 52-54 concern intentional torts.

Questions 21-56 concern intentional torts, strict liability, products liability, remedies, and other subjects.

Questions 57-63 & 66-75 concern strict liability, products liability, immunities, remedies, transactional torts, privacy torts, defamation, and other subjects.

Questions 101-108 concern negligence and intentional torts.

Answers 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.

¹There is one exception: A deprecated question concerning an issue specific to North Dakota law, which is not useful for studying for future exams, is not reproduced in this document. It may be found here:
http://www.eejlaw.com/courses/torts_0708/materials/Torts_final_exam_2007_pt1_partial_with_answer.pdf

1. Peabody and Dalton walked into the Rusty Knob Tavern and sat on stools at the bar. After a few drinks, Dalton and Peabody got into an argument. Dalton said, "Peabody, you're a bucket of slime, and I hope you die a painful, horrible death." Peabody left to use the restroom, and while he was gone, Dalton noticed that another bar patron, Tatiana, left a lit cigarette on Peabody's stool. When Peabody came back from the restroom, Dalton thought about warning Peabody, but Dalton decided against it. Peabody sat on the lit cigarette and received painful burns. Peabody sued Dalton for negligence.

Which of the following statements is most correct regarding Peabody's negligence case against Dalton?

- (A) Peabody cannot recover because he cannot establish that Dalton had a duty to act, and duty is a necessary element of a negligence case.
- (B) Peabody cannot recover because he cannot establish that Dalton's failure to warn Peabody of the cigarette is a but-for cause of Peabody's injury, and actual causation is a necessary element of a negligence case.
- (C) Peabody cannot recover because he cannot establish damages flowing from having sat on the cigarette, since merely "painful" injuries are not sufficient to establish damages in a negligence case.
- (D) Peabody cannot recover because he cannot establish *res ipsa loquitur*.
- (E) Peabody can recover.
2. Elmer and Susan were both operating motor vehicles involved in a collision in the state of North Carolina. Elmer sustained physical injuries and sued Susan for negligence. The jury returned this special verdict form:

What percentage, if any, was Elmer's negligence responsible for his own injuries? 10%

What percentage, if any, was Susan's negligence responsible for Elmer's injuries? 90%

What dollar amount represents the total damages incurred by Elmer, regardless of responsibility? \$100,000

North Carolina is a contributory negligence jurisdiction.

Which of the following statements is most correct?

- (A) Elmer will be awarded \$110,000 in damages, to be paid by Susan.
- (B) Elmer will be awarded \$100,000 in damages, to be paid by Susan.
- (C) Elmer will be awarded \$10,000 in damages, to be paid by Susan.
- (D) Elmer will be awarded \$90,000 in damages, to be paid by Susan.
- (E) Elmer will be awarded no damages.

3. In which of these situations is Randall most clearly liable in negligence?
- (A) At half past midnight, hoping to impress his girlfriend who is waiting in a parked car, Jared hops a 10-foot chain-link fence onto Randall's property to pick some roses out of Randall's garden. Feeling his way through the darkness, Jared trips over a tangled clump of thick electrical cord and falls into a koi pond. The cord is more than 75 years old and has visibly broken insulation. When it contacts the water, the cord shoots 240 volts of alternating current into the pond and through Jared's body. Jared is unable to escape the pond as the electrical current locks his muscles in a continuous state of contraction. The electricity does not cut out, since Randall previously circumvented the circuit breakers to the garden outlets. Jared suffers severe, lasting, and permanent damage to multiple internal organs.
 - (B) Lord Marbury has accepted Randall's invitation for a game of croquet in the garden on a Sunday afternoon. While walking to the fourth wicket, Lord Marbury suddenly disappears through the ground in a spray of dust and mulched grass clippings. Peering through the resulting hole, Randall sees Lord Marbury 20 feet below, writhing in agony from two broken tibias, surrounded by rotting wooden wine barrels. "I'm so sorry!" Randall calls down to Marbury, "I had no idea!" Then Randall whispers to himself under his breath, "I should have inspected this property for abandoned underground wine cellars before inviting people to play on the lawn."
 - (C) Down below Randall's house and gardens, next to an elementary school, is an unimproved tract of land with a glen of trees in a steep ravine. As Randall knows, the creek at the bottom of the ravine is prone to flash flooding in winter. This is where Randall decides to stow his collection of 15-foot-tall statues of the Care Bears. Able to see a glimpse of Funshine Bear from the four-square courts, more than a dozen kindergartners climb on to Randall's property and down into the ravine, where a sudden deluge drowns three children and injures nine more.
 - (D) Following the injuries to Jared, Lord Marbury, and the kindergartners, Randall hires the very reputable Slayton Engineering Group to thoroughly investigate his entire estate for any hazards that might injure anyone. The firm gives Randall's property a clean bill of health. The next week, at the bed-and-breakfast that Randall operates on the far corner of his property, a just-married couple staying in the honeymoon suite is killed when carbon-dioxide from volcanic activity under the property (never previously known in the area) seeps out and smothers the newlyweds overnight.
 - (E) Extremely upset about the undiscovered volcanic-gas condition, Randall calls up Slayton Engineering Group and leaves a voice mail: "Could you please come out to the bed-and-breakfast and re-inspect that portion of the property as soon as possible? Thanks." While on site hours later, two SEG engineers are overcome by the gas and die.

4. The HexSync 3000 is a sensitive hand-held instrument for calibrating still other sensitive hand-held instruments. Who owes the highest duty of care with regard to the HexSync 3000?
- (A) a bailee, who borrowed the HexSync 3000 for a purpose solely benefiting the bailor
 - (B) a bailee, who borrowed the HexSync 3000 for a purpose mutually benefiting the bailor and bailee
 - (C) a bailee, who borrowed the HexSync 3000 for a purpose solely benefiting himself (i.e., the bailee)
 - (D) a two-year-old boy, who is playing with the HexSync 3000
 - (E) a farmer, who lived 125 years ago and is the great-great-great grandfather of the inventor of the HexSync 3000.
5. It is 5:45 p.m. on Friday at the University of Arkissippi's biosafety-level-4 laboratory for the study of hemorrhagic fevers. Karen, Sharon, and Suzanne have spent a long day working with samples of the newly discovered H9 strain of the Ebola virus. Communicating by intercom while working in their pressurized suits, the women hatch a plan to take a car trip to the big city of Nashlanta, five hours away, to check out a hot new night club, Sensations. Realizing they will have to hurry, the women move hastily through the decontamination procedures, skipping certain prescribed steps they consider redundant. They dart through the airlock, change into their clubbing clothes in the locker room, and hit the road. At Sensations, after several drinks, the women all descend on Tim, a handsome investment banker. Grabbing him to the dance floor, they all engage in dancing with Tim that involves very close body contact. Seven days later Tim is found dead in his kitchen, lying in a pool of blood. Tests quickly determine Ebola-H9 to be the pathogenic cause of death. Expert testimony at trial establishes the following: The virus particles that transmitted the hemorrhagic fever are equally likely to have come from Karen, Sharon, or Suzanne; it is also possible that such particles came from some combination of the three women, but there is a 90-percent likelihood that only one of women transmitted the virus to Tim.

Which of the following is most accurate?

- (A) Tim's estate is entitled to a judgment against Karen, Sharon, and Suzanne because each is a proximate cause, even though none is an actual cause.
- (B) Tim's estate can make out a prima facie case establishing liability for Karen, Sharon, and Suzanne, shifting the burden of proof to each woman to disprove, by a preponderance of the evidence, that her actions were not a but-for cause of the transmission of the virus to Tim.
- (C) Tim's estate is not entitled to a judgment against any of Karen, Sharon, or Suzanne, since Tim's estate cannot establish that it is more likely than not the case that any particular defendant actually caused Tim's death.
- (D) Tim's estate probably cannot recover against any of Karen, Sharon, or Suzanne, since the women's allegedly negligent actions are unlikely to be found to be the proximate cause of Tim's death.
- (E) Tim's estate can recover against each of Karen, Sharon, and Suzanne on the basis that each had a land-owner/occupier duty to warn of the concealed condition of the Ebola-H9.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 6, 7, AND 8:

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

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

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

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

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

Now, consider the following:

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

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

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

NOTE THE FOLLOWING FACTS FOR QUESTIONS 9, 10, AND 11:

Karen, Sharon, and Suzanne are medical doctors and post-doc research fellows at the University of Arkissippi's School of Medicine and Health Sciences. While the three were working hard in the laboratory one day, Suzanne suggested they should all take a break and head to the local soda fountain for refreshments. Sharon and Karen didn't want to go, but after Suzanne kept talking about it and pushing the issue, they gave in.

Sharon and Suzanne hopped in Sharon's Mazda Miata, a two-seater car, and Karen hopped on her Vespa scooter. Each party took a different route to the soda fountain, but they crossed paths at the intersection of Harmon Street and Adeline Street. Sharon was approaching on Harmon, and there was no stop sign or yield sign on Harmon Street where it crosses Adeline. Karen, traveling on Adeline, failed to come to a complete stop, despite a stop sign on Adeline crossing Harmon. Karen proceeded through the stop sign because she thought she could beat Sharon's Miata through the intersection. Unfortunately, Karen was mistaken in her assumption, since Sharon was going faster than Karen anticipated. In fact, Sharon was driving 57 miles per hour - despite a speed limit of 25.

Sharon's Miata collided with Karen's Vespa, knocking Karen into the air and sending the Vespa careening at a 45-degree angle to its previous direction of travel. Armstrong, a promising young lawyer who worked with underprivileged children, was walking on the sidewalk. While dialing the phone to call his mother to say, "I love you," Armstrong was hit full-force by the careening Vespa.

Expert testimony later established two facts: first, Karen's Vespa would not have hit Armstrong without the force applied by Sharon's Miata, and, second, if Sharon had been driving the speed limit, the force applied by the Miata would not have been enough to propel the Vespa all the way to where Armstrong was standing.

9. Note the following statements:

- I. Armstrong will likely not be able to recover against Karen, since Karen's Vespa would not have hit Armstrong but for Sharon's negligence.
- II. Armstrong will likely not be able to recover against Sharon, since Karen's Vespa would not have hit Armstrong but for Karen's negligence.
- III. Armstrong will likely not be able to recover against Karen or Sharon, since Armstrong's injuries were not proximately caused by the actions of either Karen or Sharon.

Which answer below identifies each accurate statement from the above?

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

10. Which of the following is most accurate?
- (A) Armstrong likely will not be successful in a negligence suit against Suzanne because none of Suzanne's acts was a but-for cause of Armstrong's injuries.
 - (B) Armstrong will likely not be successful in a negligence suit against Suzanne because none of her actions constituted a breach of the duty owed under a reasonably prudent person standard.
 - (C) Armstrong likely will not be successful in a negligence suit against Suzanne because res ipsa loquitur establishes another party as being at comparatively greater fault.
 - (D) Armstrong likely will not be successful in a negligence suit against Suzanne because of the "last clear chance" doctrine.
 - (E) Armstrong likely will be able to recover in a negligence suit against Suzanne.

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION NO. 11 ONLY:

Amazingly, Karen has only minor scrapes and bruises. She stands up and dusts herself off. Sharon and Suzanne are completely unhurt. They all gather on the corner opposite where Armstrong is lying on the ground, gushing blood from a badly sliced arm. After Karen dials 911 on her cell phone, she asks Sharon and Suzanne, "Should we apply a tourniquet?" The women discuss the prospect, but ultimately decide to leave the work to the emergency responders, for whenever they arrive.

11. Which of the following best describes those who had a duty of care to provide first aid to Armstrong at the accident scene?
- (A) Karen, but not Sharon or Suzanne
 - (B) Sharon, but not Karen or Suzanne
 - (C) Karen and Sharon, but not Suzanne
 - (D) Karen, Sharon and Suzanne
 - (E) None of Karen, Sharon, or Suzanne

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

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

- (A) I, II, III
 - (B) I, III, II
 - (C) II, I, III
 - (D) III, I, II
 - (E) III, II, I
13. Who among the following has a duty to perform according to the knowledge, skill, and custom of practice that exists nationwide in her field?
- (A) A general practitioner physician in a very small town.
 - (B) A general practitioner physician in one of the largest cities in America.
 - (C) An internist (i.e., a physician specializing in internal medicine) in a rural area.
 - (D) A general practitioner dentist.
 - (E) A truck driver on an intercity route that crosses state boundaries.
14. Which of the following best describes the burden of proof for a plaintiff in a negligence suit?
- (A) Each element must be proven by a preponderance of the evidence.
 - (B) At least one element must be proven by a preponderance of the evidence.
 - (C) Each element must be proven by clear and convincing evidence.
 - (D) At least one element must be proven by clear and convincing evidence.
 - (E) Each affirmative defense must be negated by clear and convincing evidence.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 15 AND 16:

Garth is smitten with Jill, and he invites her over to his house for dinner. To Garth's delight, Jill accepts. They have a pleasant dinner and then sit together on the couch enjoying a drink. Jill asks Garth if he would excuse her for a few moments, as she needs to make a private phone call. She suggests that she go into the backyard to make her call so that she can enjoy the crisp, early winter air and crystalline starry sky. Garth says that would be fine, but, he warns, "Watch out for the gigantic naturally occurring quicksand pit. It's way back past the shed. As long as you stay between the house and the shed, you'll be fine." Jill thanks Garth and excuses herself.

While wandering around the backyard talking to her mother, Jill becomes absent-minded and walks past the shed. She soon comes upon the quicksand pit, and GLURP! Jill is sucked under.

Meanwhile, Wolfgang, who is looking for his lost cat in the town's nature preserve, wanders into Garth's backyard. Wolfgang has no reason to suspect that there is a quicksand pit, and, in fact, Wolfgang is not even aware that he has wandered out of the bounds of the nature preserve and on to Garth's private property. Wolfgang walks slowly, listening for faint meows, and GLURP! Wolfgang falls in.

Garth, waiting for Jill, is somewhat worried. Has he done something to offend Jill? Did she simply invent the phone call as a reason to leave without saying good-bye? Suffering a panic attack, Garth passes out.

At some point in the middle of the night, Rafaella, who is in her own backyard, hears Wolfgang's and Jill's cries for help. Rafaella has never heard of the quicksand pit either. She enters Garth's backyard to investigate. Rafaella calls out as she approaches, "Is someone in trouble?"

"Yes! Help us! Help us!" Wolfgang and Jill yell.

Rafaella picks up her pace as she steps through the dark and GLURP! Rafaella sinks into the pit.

Jill, Wolfgang, and Rafaella all end up spending several hours in the quicksand pit, during which they receive severe injuries from cold and exposure.

15. Which of the following statements is most correct regarding Garth's liability?
- (A) Garth is liable in negligence for Jill's injuries, but not Wolfgang's.
 - (B) Garth is liable in negligence for Wolfgang's injuries, but not Jill's.
 - (C) Garth is liable in negligence for Jill's injuries and Wolfgang's injuries.
 - (D) Garth is not liable in negligence for either Jill's injuries or Wolfgang's injuries.
 - (E) Garth's negligence liability is unclear, but it is clear that he is liable for the tort of implied consent.

16. Which of the following statements is most correct regarding the liability of Jill?
- (A) Jill is liable for Rafaella's injuries.
 - (B) Jill is not liable for Rafaella's injuries because Wolfgang is liable.
 - (C) Jill is not liable for Rafaella's injuries because Garth is liable.
 - (D) Jill is not liable for Rafaella's injuries because Rafaella, herself, is liable.
 - (E) Jill is not liable for Rafaella's injuries because Rafaella had no affirmative duty to help.



17. In the state of Nevaho, the vehicular code, at N.V.C. § 27001, defines as a traffic infraction, punishable by an \$83 fine, the failure to yield when merging on to a freeway. Richard is driving his friend Marcia to the auto-repair shop to pick up her Toyota Prius, which is in for a windshield replacement. Because Richard fails to yield when merging on to the interstate, his vintage 1965 Chevrolet Corvette Stingray collides with a Mack truck. Marcia is badly injured, losing an arm because of the accident. Which of the following is most accurate?
- (A) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing negligence-per-se doctrine.
 - (B) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing res ipsa loquitur doctrine.
 - (C) Marcia can use an elevated standard of care in a negligence suit because she is an unanticipated licensee.
 - (D) Richard can require the use of a lowered standard of care in a negligence suit because Richard is only a common carrier.
 - (E) Richard can require the use of a lowered standard of care if Marcia has current and adequate health insurance coverage.



FIG 1:
*Richard's 1965 Corvette
Stingray.*

18. Janet and her family are going to Lake Wazzapamani for the weekend. Stopping into the Cut'n'Run convenience store for ice, Janet buys a lottery ticket for that evening's drawing. A mere three hours later, Janet and her husband are millionaires. The next day, the family goes on a shopping spree, buying up every luxury that the town of Lake Wazzapamani has to offer, including a new motorboat. Janet has never driven a boat before, but she spends an hour talking with the sales associate at Wazzapamani Boat & RV about what to do, and, that night, she reads *The New Boater's Safety Guide* cover to cover. Out on the lake the next day, with Janet at the wheel, the boat collides with a jetski that Janet didn't see. The accident badly injures Parker, the jetski's rider. After a bench trial, the court makes findings of fact and renders judgment as follows:

Based on Parker's testimony, it is clear that Parker, in undertaking to ride a jetski, knew there was some chance he could be involved in a collision with a larger watercraft. Moreover, the evidence establishes that Parker violated this state's use-tax laws by purchasing the jetski in a neighboring state, one without sales tax, and using the jetski in this state without submitting the required use tax to the Minnesota Department of Revenue. ... Janet was extremely diligent in attempting to learn all she could about the proper operation of a motorboat before undertaking to drive the boat. Moreover, at all times during her operation of the boat, she was extremely cautious. Unfortunately, despite Janet doing her personal best, her operation of the boat caused serious bodily injury to Parker. If Janet had been operating the boat in the manner that the theoretical reasonable person (one who was not so inexperienced) would have been, this accident would not have occurred. Nonetheless, because Janet was doing her best, this court renders judgment for Janet on the negligence claim brought by Parker.

Lake Wazzapamani is in the state of Minnesota. Currently, Minnesota is a contributory negligence jurisdiction.

Which of the following is the best example of how an appeals court should analyze and rule on the case on an appeal from the judgment?

- (A) "The trial court committed clear error because the relevant standard of care for negligence is an objective standard of care, not a subjective one. Therefore, it is irrelevant that Janet was 'doing her personal best[.]' Reversed and remanded."
- (B) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker violated this state's use-tax laws, he was negligent per se. Thus, because this state follows the doctrine of contributory negligence, no claim for negligence will lie under these facts. Affirmed."
- (C) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker violated this state's use-tax laws, he was negligent under the doctrine of res ipsa loquitur. Thus, because this state follows the doctrine of contributory negligence, no claim for negligence will lie under these facts. Affirmed."
- (D) "Without rendering an opinion on the court's analysis, we affirm on alternative grounds. Because Parker 'knew there was some chance he could be involved in a collision with a larger watercraft,' he expressly assumed the risk. Express assumption of risk is a complete defense to negligence. Thus, no claim for negligence will lie under these facts. Affirmed."
- (E) "The trial court's analysis and judgment are correct. Affirmed."

19. On which of the following facts is it most likely that a court would not require the plaintiff to prove specific facts showing of breach of duty?
- (A) Andrew was riding his motorcycle when he was hit by a tanker truck operated by Hexetron Dental Amalgams LLC, whose driver was goofing off and not paying attention. Andrew suffered severe injuries. He sues Hexetron Dental Amalgams LLC for negligence.
 - (B) Bartholomew had an appendectomy at Nashlanta Regional Medical Center. It is the only surgery he has ever had. Three years later, an x-ray reveals a stainless steel surgical instrument inside his abdomen. The instrument has caused minor injuries and will require surgery to remove. Bartholomew sues Nashlanta Regional Medical Center for the injuries.
 - (C) Carolyn was shopping at Cut'n'Run convenience store when a portion of the roof collapsed, causing Carolyn to be injured. Carolyn sues Cut'n'Run for the injuries.
 - (D) Daria took Voralex (vlithiarid voralide) as prescribed by her physician. The Voralex caused severe liver damage. Daria sues her physician for her injuries.
 - (E) Elwood was injured in a crash of an airliner operated by Oceanic Airlines, a major international airline. Elwood sues Oceanic for the injuries he sustained in the crash.

20. Note the following:

- I. A broken thigh bone (femur).
- II. A tear to the fibrocartilaginous band that spans the lateral side of the interior of the knee joint (said band, the lateral meniscus).
- III. A lower-leg contusion (denoting a region of tissue with torn capillaries).
- IV. Torn vinyl siding on a house.

Which of the foregoing are sufficient injuries for bringing a claim in negligence?

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

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.

NOTE THE FOLLOWING FACTS FOR QUESTIONS NOS. 27 THROUGH 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
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
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 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.



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

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.
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."

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'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
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.*

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
51. While James was vacationing overseas, Garth broke into James's basement and stole his 2,000 pound stock of copper bullion. At the time Garth took the bullion, copper was trading for \$3.00 per pound. Three months later, the price per pound of copper had ballooned to \$5.00, and Garth was able to clear \$10,000 by selling the metal. Which theory of remedies should James use to recover the \$6,000 worth of copper that was stolen plus the \$4,000 increase in value?
- (A) Ejectment
 - (B) Constructive trust
 - (C) Equitable lien
 - (D) Mandatory injunction
 - (E) Nominal damages



FIG 6:
*Some of the copper bullion
 from James's basement
 that was taken by Garth.*

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 THROUGH 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.
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 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."



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

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, Friday, and Saturday, Paavali completed his cross-country roadtrip to get to his dad's Big 75th birthday bash. But things did not wrap up smoothly.

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. They pointed out that the National Park Service didn't own the owl, feed it, or even locate it there – it was just part of nature. And they seemed to silently blame Paavali 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.
64. Preston is traveling up the intercoastal waterway on the *MV Nassboden*, a ferry operated by White Square Line. Onboard, there is a small gift store called Memories'n'Things. While browsing inside Memories'n'Things, Preston trips over a duffel bag negligently left in his path by Leela. Preston is knocked unconscious. Under common-law negligence principles, who is under an affirmative duty to come Preston's aid?
- (A) Leela, but neither White Square Line, nor Memories'n'Things
 - (B) White Square Line, but neither Leela, nor Memories'n'Things
 - (C) Leela and White Square Line, but not Memories'n'Things
 - (D) Leela, White Square Line, and Memories'n'Things
 - (E) Neither Leela, nor White Square Line, nor Memories'n'Things

65. The state of New Merizona has a statute, at NMRS § 787.12, allowing recovery in a negligence suit despite the plaintiff's negligence, so long as the plaintiff's recovery is reduced in proportion to the plaintiff's negligence. Which of the following best describes this New Merizona law?
- (A) This is an example of a statute mandating application of the substantial-factor test.
 - (B) This is an example of a pure contributory negligence statute.
 - (C) This is an example of a partial contributory negligence statute.
 - (D) This is an example of a pure comparative negligence statute.
 - (E) This is an example of a partial comparative negligence statute.
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. 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 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.

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.
77. Ulena owns a very large country estate in the mountains of Virtucky. Note the following:
- I. Jill is a hiker who is trespassing on Ulena's land. Ulena does not know about Jill in particular, but Ulena is aware that hikers sometimes trespass on her land.
 - II. Kelton is a tourist who is going horseback riding on Ulena's property. Kelton is a customer of the riding stables that Ulena operates for a profit.
 - III. Liam is Ulena's friend. He is at Ulena's house for a birthday party to which he was invited.

Which of the following correctly orders the above situations from most expansive to least expansive in terms of the standard of care owed by Ulena?

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



*FIG 11:
Ulena's
riding
stables
welcomed
adorable
baby horses
this year.*

78. Kjell was walking along in the city. Nearby, Josephine was juggling knives for a crowd of astonished onlookers. Unfortunately for Kjell, just as he was walking by, Josephine lost control of the knives and they went flying at Kjell. Consider the following allegations:

- I. Kjell received a knife wound to his forearm.
- II. Kjell's \$2,000 suit jacket was slashed and ruined by the knives.
- III. Kjell was left upset and angry at seeing Josephine lose control of the knives.

Which allegations are sufficient by themselves to meet the injury or damages requirement of a negligence case?

- (A) I, but neither II nor III
- (B) II, but neither I nor III
- (C) I and II, but not III
- (D) I and III, but not II
- (E) Not any of I, II, or III

79. Sonia and Adrienne spent the day in Spiny Spires National Park. It was Adrienne's idea. (Sonia hates nature almost as much as she hates not having good data reception on her phone.) They took a hike to the top of a hill where a brief rainstorm created a vivid double rainbow. "Rain makes mud, and I hate mud," Sonia complained. At the visitor's center, they saw a third-grader, who won a national essay contest, give a presentation about President Ulysses S. Grant, who signed legislation in 1876 creating Spiny Spires National Park. President Grant was instrumental in overcoming a Congressional push to have the land sold off as private property. "Most boring fact ever," Sonia grumbled. But the drive home was even worse. Another car came across the double-yellow line and crashed into Sonia and Adrienne's SUV. Sonia suffered bruised ribs and a torn fingernail. "I'm going to sue Ulysses S. Grant for getting Spiny Spires National Park created," Sonia muttered through gritted teeth. "Without his boneheaded move, I never would have gotten hurt." Given that Sonia was hurt, Adrienne didn't want to argue. But if Adrienne had answered back, which of the following would be most accurate?



FIG 12:
Ulysses S. Grant

- (A) "Well, that case would be a non-starter for a lot of reasons. But among them is a lack of actual causation."
- (B) "Well, that case would be a non-starter for a lot of reasons. But among them is a lack of proximate causation."
- (C) "Well, that case would be a non-starter for a lot of reasons. But among them is the lack of an injury sufficient for a claim in tort."
- (D) "Well, that case would be a non-starter for a lot of reasons. But you could sue the driver who hit us. No matter how careful she was being, she is absolutely liable for accidents she has caused as a driver."
- (E) "Well, if he were still alive, then yes, you would have a case in negligence against Ulysses S. Grant."

NOTE THE FOLLOWING FACTS FOR QUESTIONS 80, 81, AND 82:

Northern BronzeWorks is the most popular tanning salon in town. Daisy is a frequent customer. One day Daisy spilled a bottle of slippery tanning oil on the floor. In the dimly lit salon, the clear oil was virtually invisible on the floor. Daisy told the manager about the spilled oil, but the manager, who was frazzled from a busy day dealing with several malfunctioning tanning beds, neglected to clean it up or do anything about it. An hour or so later, Parker, a new customer, came along. He slipped on the oil and fell, leaving him with a broken arm and serious back injuries.

80. Suppose Parker goes to see a personal-injury attorney about the possibility of suing. Which of the following statements constitutes the wisest counsel from that attorney?
- (A) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you tried to sue both, then either one could point to the other and escape liability. That is what is known as *Summers v. Tice* doctrine.
 - (B) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you tried to sue both, then either one could point to the other and escape liability. That is part of the duty-of-care element of a negligence case: Only one party can be said to have the duty of care."
 - (C) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. If you sue both, then the culpability standard cannot be met, because then each party will be only 50% responsible. And a defendant must be more than 50% responsible to be held liable in negligence."
 - (D) "You are going to have to choose between suing Daisy or suing Northern BronzeWorks. It's a question of proximate causation: Only one party can be the proximate cause of your injuries."
 - (E) "You can sue both Daisy and Northern BronzeWorks at the same time."
81. Assume Parker sues Daisy for negligence. Which of the following is the most correct analysis regarding actual causation in this case?
- (A) The element is met because, but for Daisy having spilled the tanning oil, Parker would not have been injured.
 - (B) The element is met because the spilled oil is the only cause of Parker's injuries.
 - (C) The element is met because Daisy can be construed to have intended to injure Parker.
 - (D) The element is met because Parker was a foreseeable plaintiff.
 - (E) The element is not met.

82. Assume Parker sues Northern BronzeWorks for negligence. Which of the following is the most correct analysis regarding the element of breach of the duty of care in this case?
- (A) The element is met because the injury took place on Northern BronzeWorks' premises, and companies are responsible for all injuries that happen on their premises.
 - (B) The element is met because Parker was an invitee, and Northern BronzeWorks has a duty to warn of or make safe any known, concealed dangerous condition, plus a duty to inspect. Northern BronzeWorks knew about the condition, because Daisy informed the manager. And even if Northern BronzeWorks hadn't known, they had a duty to inspect, which would have uncovered it. The condition was dangerous because it could hurt someone (as it did). And it was concealed because with dim lights, the clear oil was virtually invisible.
 - (C) The element is met because the spilled oil is the only cause of Parker's injuries.
 - (D) The element is not met because Northern BronzeWorks owed Parker no duty.
 - (E) The element is not met because, but for Daisy having spilled the tanning oil, Parker would not have been injured.



NOTE THE FOLLOWING FACTS FOR QUESTIONS 83, 84, AND 85:

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

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

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

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

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

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

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

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

ASSUME THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 85:

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

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

86. In the negligence case of *Sturben v. Hollander*, which involved a forklift accident, the jury rendered a verdict in favor of plaintiff Sturben for \$127,300. The jury returned a special-verdict form filled out in part, as follows:

Do you, the jury, find that defendant Holly Hollander is liable to plaintiff Stuart Sturben for negligence? Yes.

Do you, the jury, find that it was foreseeable for a person in Holly Hollander's position, in the time immediately leading up to the accident, that someone in Stuart Sturben's position might be injured by the operation of the forklift? Yes.

Do you, the jury, find that Stuart Sturben was negligent in any way that contributed to the accident? No.

The accident and the trial took place in Wyoming, which is a comparative negligence jurisdiction. Which of the following could be accurately said about the jury's verdict?

- (A) The jury's verdict in favor of the plaintiff is inconsistent with one of its answers on the special verdict form, since the special verdict form indicates that Hollander owed Sturben no duty of care.
- (B) The jury's verdict in favor of the plaintiff is inconsistent with one of its answers on the special verdict form, since the special verdict form indicates that Hollander's actions were not a proximate cause of an injury to Sturben.
- (C) The jury's verdict in favor of the plaintiff is inconsistent with one of its answers on the special verdict form, since the special verdict form indicates that Sturben's actions were not a proximate cause of an injury to Hollander.
- (D) The jury's verdict in favor of the plaintiff is inconsistent with one of its answers on the special verdict form, since the special verdict form indicates that Sturben's actions did not contribute in any way to the accident.
- (E) The jury's verdict seems consistent – at least from as much of it as can be seen above.



FIG 13:
A forklift.

NOTE: THE QUESTIONS ON THE FOLLOWING
PAGES ARE NUMBERED DISCONTINUOUSLY. THE
NUMBERING PICKS BACK UP WITH 101.

(THUS, THERE ARE NO QUESTIONS NUMBERED 87
THROUGH 100 IN THIS SET OF
AMALGAMATED QUESTIONS.)

101. Darla drove through a stop sign at an intersection without stopping. Not having the right-of-way, Darla's car collided with a taxicab in which Pauline was a passenger. Immediately after the accident, Pauline suffered a heart attack causing death of some myocardial tissue (heart muscle tissue). Doctors determined that even without the collision, Pauline would have had her heart attack at that time anyway because of existing cardiovascular disease. Which is most correct regarding an appraisal of a negligence action by Pauline against Darla?
- (A) Pauline likely will prevail in a negligence action because all the elements can be proven.
 - (B) Pauline likely will not prevail in a negligence action because this case falls within the domain of strict liability.
 - (C) Pauline likely will not prevail in a negligence action because Darla did not owe Pauline a duty of care.
 - (D) Pauline likely will not prevail in a negligence action because Darla did not breach her duty of care.
 - (E) Pauline likely will not prevail in a negligence action because of a lack of actual causation for her myocardial injury.
102. Danielle struck Polly's 1978 Ford truck with a baseball bat leaving a huge dent. Which of the following is Polly mostly likely to be able to successfully pursue against Danielle?
- (A) Trespass to land
 - (B) Battery
 - (C) Trespass to chattels
 - (D) False imprisonment
 - (E) Assault
103. Drayden snuck up behind Pryor and pushed him so that he fell down. Which of the following is Pryor mostly likely to be able to successfully pursue against Drayden?
- (A) Trespass to land
 - (B) Battery
 - (C) Trespass to chattels
 - (D) False imprisonment
 - (E) Assault

NOTE THE FOLLOWING FACTS FOR QUESTIONS 104 AND 105:

HexMart is a general retailer selling groceries, clothing, household goods, electronics, and other categories of merchandise. The following reconstruction of events is based on witness interviews and closed-circuit television footage.

At 3:11:03 p.m., an unknown customer dropped a container of vanilla yogurt in aisle 11. The container burst open and spilled yogurt on the floor. The customer picked up the mostly empty container, put it back on the shelf, and exited the aisle. The puddle of yogurt, rendered virtually invisible against the white-and-gray speckled linoleum, was left behind.

At 3:11:23 p.m., a shopper named George Gerges walked into aisle 11. Five seconds later, at 3:11:28 p.m., Gerges slipped on the yogurt puddle, causing him to suffer a broken wrist and a concussion. Gerges then called for help. At 3:11:55 p.m., a HexMart employee named Debra Dunnecort responded. George told Debra how he was injured and pointed out the spilled yogurt. At 3:12:22 p.m., Dunnecort used her walkie talkie device to report the spill and the need for a clean-up.

At 7:23:04 p.m., a shopper named Holly Herod slipped on the yogurt puddle, which had not been cleaned up or marked with a sign in the intervening time. Herod suffered deep embarrassment and emotional distress. She additionally felt great anger when she learned that no one in the store had bothered to clean up the mess in more than four hours.

104. Assuming there are no other relevant facts, in the suit by George Gerges against HexMart, which of the following elements of a prima facie case for negligence poses the greatest problem for the plaintiff?
- (A) duty
 - (B) breach of duty
 - (C) actual causation
 - (D) proximate causation
 - (E) injury/damages
105. Assuming there are no other relevant facts, in the suit by Holly Herod against HexMart, which of the following elements of a prima facie case for negligence poses the greatest problem for the plaintiff?
- (A) duty
 - (B) breach of duty
 - (C) actual causation
 - (D) proximate causation
 - (E) injury/damages



106. Sulola is a two-year-old in a home-based daycare, which is owned and operated by John. Sulola's parents pay John for the daycare services, and John draws customers from the general public. While in daycare, Sulola begins choking on a plastic part that became detached from a toy. This is happening as John stands five feet away, watching. Does John have a duty of care in terms of negligence doctrine?
- (A) Yes, because John stands in a qualifying special relationship to Sulola.
 - (B) Yes, because John is a common carrier.
 - (C) Yes, because John is within the "zone of danger."
 - (D) Yes, because Sulola is an infant.
 - (E) No

107. Consider the following quote from the opinion of an appellate court in a negligence case:

"Whether _____ is generally a matter for a court to decide, not a jury. The fundamental question is whether the plaintiff's interests are entitled to legal protection against the defendant's conduct."

Now consider the following phrases:

- I. a duty of care exists
- II. actual causation is satisfied
- III. factual causation is excused

What phrases would correctly fill in the blank in the quote?

- (A) I, but not II or III
- (B) I or II, but not III
- (C) I or III, but not II
- (D) II, but not I or III
- (E) II or III, but not I

108. Davida and Philip got into a car accident in the state of Floribama. Floribama is a contributory negligence jurisdiction. Davida recently received a summons and a complaint. It turns out that Philip is suing her in negligence for the damage to his car. Davida will be hiring an attorney to defend her in the suit. She has initial interviews with several, bringing you along to help her figure out who is most competent. As she explains to the lawyers, she believes that Philip is also responsible for the accident, since he was being careless while driving by changing lanes at the same time as he was trying to stick a pacifier in the mouth of his three-month-old baby in the back seat.

Which of the following comments, made by a lawyer Davida interviewed, seems most correct?

- (A) "Because Philip's negligence contributed to the accident, he will be unable to prove breach of the duty of care as part of his prima facie case."
- (B) "Because Philip's negligence contributed to the accident, he will be unable to prove actual causation as part of his prima facie case."
- (C) "Because Philip's negligence contributed to the accident, he will be unable to prove proximate causation as part of his prima facie case."
- (D) "We could raise an affirmative defense of contributory negligence. We'll need to prove each of the elements of the defense by clear and convincing evidence."
- (E) "We could raise an affirmative defense of contributory negligence. We'll need to prove each of the elements of the defense by a preponderance of the evidence."

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

CREDITS AND NOTES

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. In the November 2018 release, Question 12 was changed somewhat; it was made to better conform to currently taught doctrine.

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. Questions 101-108 were Questions 1-8 on the Fall 2018 Torts midterm quiz.

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