

# Torts I

Prof. Eric E. Johnson  
University of North Dakota

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## SPECIAL STUDY SET OF RELEASED MULTIPLE-CHOICE QUESTIONS

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### IMPORTANT NOTES:

Released in November 2017, this document is intended to contain all the multiple-choice questions reasonably useful for studying for the Torts I exam from among the amalgamated released multiple-choice questions for the entire torts sequence contained in the Exam Archive. I have erred on the side of overinclusiveness. Thus, some questions, being from past semesters with somewhat different course content and topic coverage, might be a stretch for current students.

Being what this is – every available question that seemed reasonably useful – this set of questions is not intended to represent the relative emphasis of topics or the frequency with which they will be tested on your exam. So use it as a way to practice, not as a tool for guessing what will be on your exam. Regarding subject-matter scope and emphasis of your exam, consult your semester's Syllabus and, when issued, Exam Prospectus.

The numbering in this subset has been retained from the numbering of the amalgamated questions. Thus, the questions in this document are not numbered continuously. Regarding why one question is numbered *41bis*, see the end-page notes.

Questions 76-86 appearing here were Questions 1-11 on the 2017 Torts I midterm quiz. They are in the same order, such that Question 76 here was 1 on the quiz, 77 was 2, 78 was 3, and so on.

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

### *Some Typical Notes and Instructions:*

1. Answer the questions based on the general state of the common law and typical statutory law in the United States, including all rules, procedures, and cases as presented in the course, as well as, where appropriate, the theory, history, and skills covered in the course. Your goal is to show your mastery of the course material and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. All facts take place in the United States, unless otherwise noted. Assume that today's date is *[today's date]*, unless indicated otherwise.
3. Each question has one correct answer. Choose the correct answer based on the materials assigned and information presented in the course.
4. Each correct answer is worth one point. There is no penalty for incorrect answers.
5. A reference to "can sue," "can bring an action," "has a claim," etc., refers to a plaintiff's ability to properly allege and plead a claim with some substantial promise of success.

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 Arkassippi'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 any defects in 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 loquitor 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 Minnekota 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 Minnekota. Currently, Minnekota 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 loquitor. 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 32, 33, AND 34:**

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

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

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

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



36. Though no one would suspect it, the shuttered aircraft maintenance hangar in the sleepy suburban community of Farapolis, Minnekota houses a test facility where Hexetron Systems, working under a Department of Defense contract, is developing a weather-control radar device. When operational, the system will, it is hoped, allow on-demand generation of powerful windstorms capable of destroying enemy installations without implicating U.S. involvement. The device uses an experimental nuclear fusion reactor to power a radio-frequency wave generator with a radiated power output equal to millions of TV-broadcast transmitters operating simultaneously. A full-scale test is undertaken, managed by a team of brilliant, well-trained, and well-rested engineers, all of whom diligently cross-check each other's work. All equipment is operated with several redundant safety systems, each of which far exceeds the state-of-the-art in all relevant industrial standards. Despite these precautions, during the test, a freak, undetectable wind-shear condition in the otherwise calm air over the test site deflects the generated energy beam back at the facility. The beam unevenly raises the temperature of the reactor containment vessel, which in turn causes a breach of the vessel wall, which then allows a plume of deadly radioactive material to escape. Earl, out jogging in a park three miles away, breathes in some of the radioactive particulate matter and suffers severe radiation poisoning as a result. He is given only months to live.

Which of the following is most accurate with regard to a possible lawsuit brought by Earl against Hexetron for personal injuries?

- (A) Earl has no claim because Hexetron did not owe him a duty of care.
  - (B) Earl has no claim because he cannot establish a relevant standard of care, since the technology is so new.
  - (C) Earl has no claim because he cannot establish a breach of the duty of care, since Hexetron took all due precautions and therefore did not act negligently.
  - (D) Earl has no claim because he cannot establish that Hexetron's actions were a proximate cause of his injuries.
  - (E) Earl has a claim.
38. In which of the following situations is the defendant least likely to be found liable on a strict-liability basis?
- (A) Annabeth's polar bear escapes her basement and mauls to death her next-door neighbor.
  - (B) Bivens Air Services, while crop dusting a plot of corn on a vacant lot on the west side of downtown San Frangeles, accidentally douses a bicycle messenger with pesticide, causing acute pulmonary edema.
  - (C) While packing the parachute for first-time skydiver Cathy, Chuck's attention is diverted by a tense *American Idol* results show. As a consequence, Chuck crosses the shroud lines, the parachute malfunctions on deployment, and Cathy is rendered permanently paralyzed after hitting the ground at high speed.
  - (D) Reaching into the refrigerator at the Cut'n'Run convenience store, Donald grabs a bottle of cherry vanilla soda pop, which suddenly explodes, propelling a glass shard into Donald's left eye, puncturing his cornea and detaching more than half of the retina.
  - (E) Emily's prize-winning dairy cow, who has always been mild-mannered, leaves Emily's farm through a gap in a barbed-wire fence, then tumbles down an embankment and through the living-room window of a neighbor's home.



**NOTE THE FOLLOWING FACTS FOR QUESTION 41bis:**

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."

41bis. Note the following statements:

- I. Nina can likely recover in tort against Blastodyne under a theory of informed consent.
- 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



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

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.

47. In which of the following situations is Farmer Fran most likely to be liable on the basis of strict liability?
- (A) Farmer Fran's prize dairy cow escapes and munches on the neighbor's crops.
  - (B) Farmer Fran's prize dairy cow kicks a visitor in the knee.
  - (C) Farmer Fran serves tainted milk to a houseguest.
  - (D) Farmer Fran tells everyone in the county that Rancher Ron has been poisoning her livestock – something that Farmer Fran honestly believes, but which she should have realized was false.
  - (E) Farmer Fran goes downtown in a horse-drawn wagon with large iron jugs of milk for market. When the manager of the Cut'n'Run convenience store refuses to buy the milk, explaining that he doesn't think stores have purchased milk this way in decades, Farmer Fran freaks out, lifting a jug over her head and bashing the manager with it.



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

**NOTE THE FOLLOWING FACTS FOR QUESTION 55:**

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

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

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

55. If Wyatt sues for the injuries to his hand, will his claim succeed?

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



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

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."

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.



**NOTE THE FOLLOWING FACTS FOR QUESTION 73:**

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

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.

### CREDITS AND NOTES

Images: Fig. 1, General Motors; Fig. 4, photo by Sgt. Jacob H. Smith, U.S. Army; Fig. 5, photo by the U.S. Department of Agriculture; Fig. 7, photo from pdclipart.org; 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.

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

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.

Questions 76-86 were Questions 1-11 on the 2017 Torts I midterm quiz.

**One question, Question 41*bis*, is a modified version of Question 41. It has been revised here to substitute one wrong answer-choice element for another for the purpose of keeping the question content within Torts I subject matter.**

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