

TORTS

Released Multiple Choice Questions

Multiple
Choice
Question
Set



Cross-Country Catastrophes

13 QUESTIONS

30 MINUTES (*suggested*)

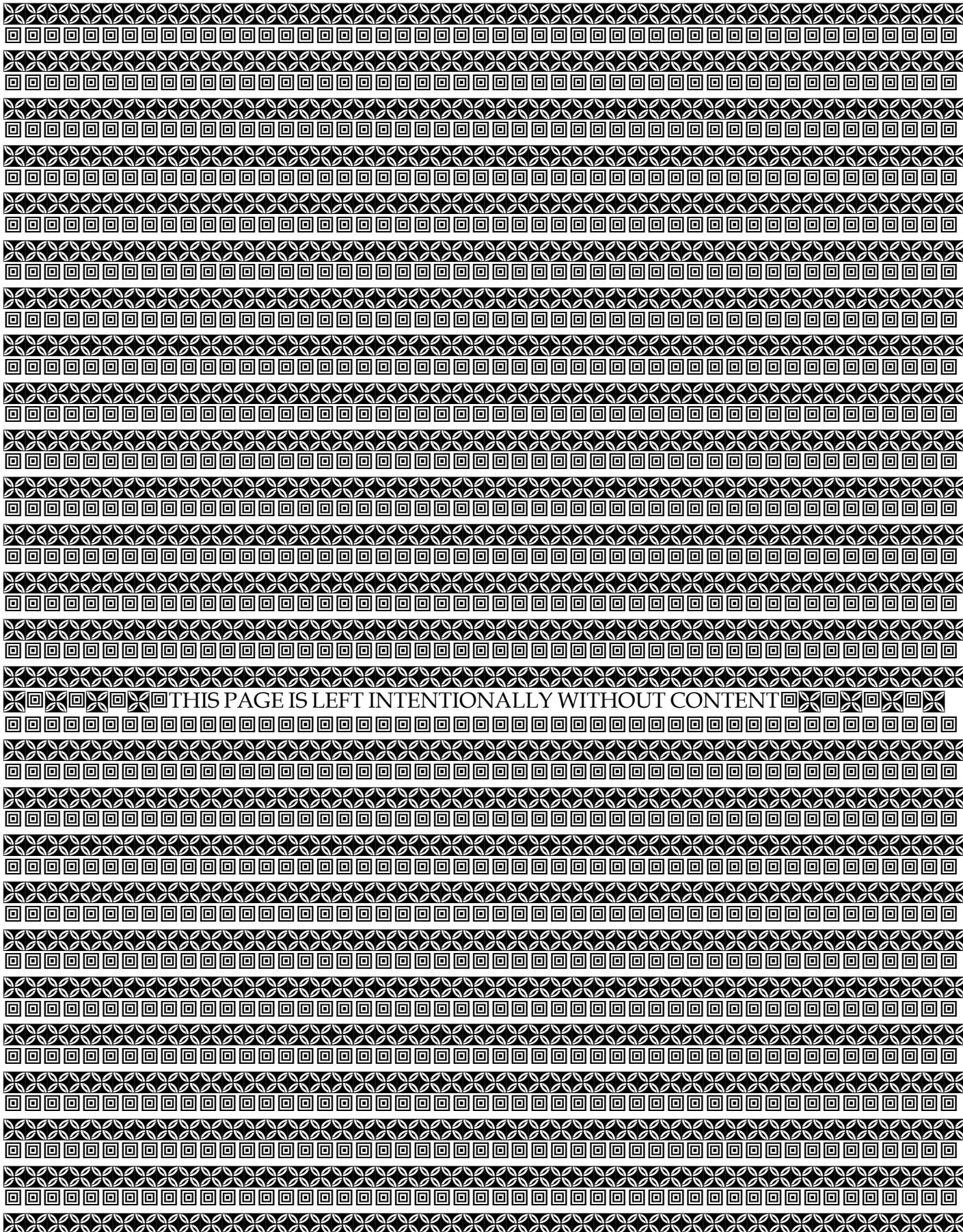
SUBJECTS:

negligence, healthcare torts, strict liability, remedies issues, special issues concerning parties and actions (multiple tortfeasors, wrongful death, survival actions, immunities), transactional torts, right of publicity

from the Exam Archive of
Professor Eric E. Johnson
ericejohnson.com/exam_archive

These are publicly released multiple choice questions for use in practicing and studying. Answers can be found in the Exam Archive. This question set is the same questions in the same order as the multiple-choice portion of the Fall 2020 exam.

Pacing chart: To finish all questions and have 2 minutes left over, then:			
at this time since starting	10 minutes	15 minutes	28 minutes
be done with question no.	5	7	13



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1. Which of the following situations is least likely to give rise to strict liability?
- (A) “Gretalynn,” a goat in the Farm Friends Corral at the Farapolis City Petting Zoo kicks three-year-old Amelia Asadu, sending her to the hospital with broken ribs. The Farapolis City Petting Zoo is owned and operated by the Parks & Recreation Department of the City of Farapolis. Gretalynn, who’d always had a friendly disposition, is a pure-bred Thatherton, a breed raised for centuries in Karelia for its rich wool.
 - (B) “Bessie,” a milk-producing pure-bred Brown Swiss cow owned by a dairy farmer, wandered into the vegetable patch of Bradford Brantley, a retiree living on three acres of land on the rich soil of the Delta region of Arkissippi. Bessie trampled and ruined several of the vegetable plants. It’s farm country, and it’s a fence-in jurisdiction.
 - (C) “Charlie,” a giant 150-year-old-plus tortoise, lives with Carla Claihsfahl in the rolling foothills of Convasta County, Wyorado. Carla is only the latest of Charlie’s many owners and caretakers. He was originally taken in by a sea captain who found him on a shoal off the coast of Namibia back in 1866. One day Charlie wandered away from Carla’s yard and into the garden of Carla’s neighbors. The neighbors had no fence around their garden, and Charlie munched on lettuce being grown in their garden. Arid and sparsely populated, Convasta County is ranch country, and it is a fence-out jurisdiction.
 - (D) Hexetron Agri-Dynamics Inc. was testing its new nuclear-powered cropdusting airplane, the Dragon Duster 3000. Unfortunately, on its second test flight, the plane fell out of the sky and crashed into Frannie Frelzer’s farm, spewing hundreds of gallons of herbicide and radioactive contamination all over Frelzer’s pumpkin patch. It looks like she’ll have to call up Pokey Oaks Elementary School and tell them that the field trip for this autumn is off.
 - (E) Enormo Entertainment is filming the latest installment of its wildly successful motion-picture franchise about a group of tough young lawyers who drive fast cars and make bad arguments: *Speedy and Spurious 7*. To create a signature stunt sequence, Enormo Entertainment evacuated part of downtown Nashlanta on a Sunday. At the corner of State Street and Park Boulevard the film crew rigged hundreds of pounds of pyrotechnics to explode when, according to the plan, a stunt performer jackknifed a tractor-trailer into a sailboat in the middle of the intersection. Unfortunately, after the director called “Action!”, the stunt driver of the tractor-trailer timed his braking wrong and landed the truck in the middle of a building lobby. The pyrotechnics, knocked off their platforms, were propelled into a restaurant, where they exploded. The property damage will run into the millions. Fortunately, however, no person suffered any bodily injuries. Even more fortunately, the spectacular destruction was caught on film from 18 different camera positions.

2. Thalia and Sebastian were extremely intoxicated – drunk on vodka and high on marijuana – when they squeezed together into the driver’s seat of Thalia’s car to drive jointly down a rural road. They were driving more than 50 miles an hour over the speed limit when they went through a red light and impacted a vehicle carrying Veronica and Peabody. Sebastian was essentially unhurt. Thalia suffered a severed artery in the crash and died from her injuries at the scene. Veronica, a highly paid business executive who supported a wife and a newborn baby, sustained massive trauma to her chest and abdomen. After four pain-filled weeks in a hospital’s intensive care unit, Veronica died from the injuries she sustained in the crash. Peabody required surgery because of the injuries he received in the crash, but he will survive. Which of the following is most clearly not correct?
- (A) Because of survival statutes, Veronica’s claims for pain and suffering, medical care, and any lost wages will survive her death and be recoverable by her estate.
 - (B) Because of survival statutes, Thalia’s liability will survive her death, and Peabody will be able to recover against her estate.
 - (C) If Peabody obtains a verdict for money damages against Sebastian, and a court enters judgment on that verdict, Peabody will not actually be able to get any money or otherwise satisfy the judgment against Sebastian until he brings a contribution action, during the pendency of which Sebastian can appeal the original judgment.
 - (D) Even if jointly operating the vehicle was Thalia’s idea, and even if she was the one who put her foot on the gas and was the sufficient cause of the vehicle going through the red light and impacting the vehicle carrying Peabody, Peabody will still be able to recover against Sebastian because the two were engaged in a joint enterprise that tortuously injured Peabody.
 - (E) Veronica’s wife and minor child will have a wrongful death cause of action against Sebastian.

3. Dr. Donald Dregnan recommended to his patient, Pierre Pierpont, a hepatic artery bypass graft surgery. Even though Pierpont had no outward symptoms of liver disease, and despite the fact that he had only some indicators of mild decrease in liver function from a single blood test, Dregnan nevertheless told Pierpont that surgery was by far the best course, since it would greatly improve his liver function.

According to medical experts, the medical standard of care is to not recommend or perform hepatic artery bypass graft surgery for mild decrease in liver function. Moreover, according to medical experts, the medical standard of care is not to even diagnose mild decrease in liver function on the basis of the indicators Dregnan perceived from the single blood test. The medical standard of care is to order follow-up tests. But, to put it bluntly, Dregnan is not a very good doctor.

When Pierpont asked Dregnan about the risks of hepatic artery bypass graft, Dregnan simply said there was nothing worth worrying about. In fact, however, like most major surgeries, hepatic artery bypass graft surgery carries risks of infection and thrombosis (blood clot), either of which can be disabling or fatal. Most surgeons consider the disclosure of these risks important, as do most patients. And Pierpont, for his part, would not have agreed to the surgery had he been told of the risks. But not having been given the information, Pierpont agreed to undergo the surgery.

Putting aside the fact that the surgery was not medically necessary, Dregnan performed it competently. Unfortunately for Pierpont, a thrombosis resulted and caused an arterial embolism that led to tissue death in the quadriceps muscle of the left thigh. Thankfully, the muscle damage was minor, and Pierpont has suffered no noticeable disability in walking or in moving his leg lasting beyond a week.

From among professional negligence, medical battery, and informed consent actions, what causes of action are likely to be ones for which Dr. Dregnan will be held liable?

- (A) professional negligence, medical battery, and informed consent
- (B) professional negligence and informed consent, but not medical battery
- (C) professional negligence, but not medical battery or informed consent
- (D) informed consent, but not professional negligence or medical battery
- (E) not any of professional negligence, medical battery, or informed consent

4. Roger, a professional photographer and member of the paparazzi, took a brilliantly clear photograph of A-list celebrity movie star Stanton Struvik looking fabulous and smiling in the direction of the camera as he was exiting a Moonbucks Coffee shop with a 20-ounce latte. Roger is eager to monetize the photo – it’s one of the few recent photos of Stanton Struvik in which he is not wearing sunglasses. Note the following:
- I. The publication of the photo in a full-page magazine ad for Moonbucks Coffee
 - II. The publication of the photo to illustrate a magazine article about how Stanton Struvik has been spending his time since his high-profile divorce
 - III. The sale of stainless-steel insulated travel-ready beverage containers, where the exterior of the body of the container has the photo as a wrap-around graphic

Which are uses of the photo for which Stanton Struvik would likely win a lawsuit on the basis of the right of publicity?

- (A) I and II, but not III
- (B) I and III, but not II
- (C) II, but not I or III
- (D) I, II, and III
- (E) Not any of I, II, or III

NOTE THE FOLLOWING FACTS FOR QUESTIONS 5 AND 6:

Regarding Irsia, a banking executive, and Sybil, a management consultant: Pacific Millennium Bank was on the verge of hiring its next CEO. After several rounds of interviews, all the members of the board were in agreement to hire Irsia for \$15 million in annual compensation. Irsia, who was then executive vice president of Atlantic Century Bank making \$2 million a year, would have accepted the offer had it been made. But at the board meeting where the decision was about to be finalized, the board heard a report from Sybil, a management consultant who had been hired by Pacific Millennium Bank to create a vision for the future of the company. Sybil concluded, on the basis of her extensive research and analysis, that Pacific Millennium Bank should move aggressively to develop overseas markets. Because Irsia had no experience with overseas markets, Sybil recommended Pacific Millennium Bank not hire her to be CEO. Sybil knew that her advice would almost certainly cause the board not to hire Irsia, and indeed, after hearing Sybil’s report, the board voted narrowly not to extend the offer to Irsia.

Regarding Aiesla, a 17-year-old actor, and Rana, her roommate: Aiesla was invited along with dozens of other young actors to audition for a starring role in a new Steven Spielberg film. The role paid \$750,000, and Aiesla’s talent agent, like just about every other film-industry talent agent, figured that the part would launch a whole career for whomever got it. But Aiesla never made it to the audition because her roommate Rana, motivated by jealousy, managed to prevent her from doing so. Rana did this first by pretending to have a medical emergency, thus delaying Aiesla

from leaving the apartment they shared. And when Aiesla finally did leave and start to drive toward the audition, Aiesla's car broke down because of a chemical additive Rana had added to the gas tank.

Regarding Excalliance Express, a shipping services company, and Maitlan, an independent-contractor truck driver: SaeroAerospace was a long-time customer of Excalliance Express, hiring them several times a year for the past 15 years for specialized transport services. The business, worth millions annually, had every indication of continuing. One day, SaeroAerospace hired Excalliance to transport a machine press from one of its facilities to another several hundred miles away. Excalliance sought to hire Maitlan to drive the truck hauling the machine press. Maitlan agreed because he saw the job an opportunity to pressure Excalliance into paying up on money it owed him. Maitlan began driving the truck, as agreed, but instead of driving to the agreed destination at the agreed time, Maitlan called up Excalliance Express and informed them he was refusing to deliver the machine press on time because Excalliance had not paid him for a number of past jobs. "I knew right from the start this would screw up your relationship with SaeroAerospace," Maitlan said. "So now that I have your attention, pay me the money you owe me." As a result of the delayed delivery, SaeroAerospace never hired Excalliance again.

Regarding Lukas, a seller of farm equipment, and Shobena, an attorney: Shobena advised her client, Jon, to refuse to sign a contract with Lukas for the sale of a combine harvester. Jon would have signed the contract but for the advice of Shobena, and had he signed, Lukas would have cleared \$32,000 in profit. Shobena advised Jon against signing the contract because she felt it left him inadequately legally protected.

Regarding Ulfred, an investor, and Tobias, a real estate developer: Tobias invited Ulfred to participate as an investor in a joint venture to develop a new shopping mall in suburban Baltidelphia. Tobias and Ulfred signed an agreement creating the joint venture, but then Tobias found out that Ulfred had once flirted with Tobias's wife. Angry at this revelation, Tobias sought revenge by deliberately breaching the joint venture agreement, which caused Ulfred a loss of several hundred thousand dollars.

5. Who among the following has the best chance of ultimately succeeding with a claim of intentional economic interference against the party indicated? (Note that succeeding with a claim includes overcoming any applicable defenses.)
- (A) Irsia against Sybil
 - (B) Aiesla against Rana
 - (C) Excalliance Express against Maitlan
 - (D) Lukas against Shobena
 - (E) Ulfred against Tobias

6. Who among the following has the best chance of ultimately succeeding with a claim of fraud against the party indicated? (Note that succeeding with a claim includes overcoming any applicable defenses.)
- (A) Irsia against Sybil
 - (B) Aiesla against Rana
 - (C) Excalliance Express against Maitlan
 - (D) Lukas against Shobena
 - (E) Ulfred against Tobias



7. Legendary trial attorney Theodore Ericsson is drafting his closing argument in the case of *Lornayo v. Hexetron*. He is planning on asking the jury for \$5 billion in punitive damages. He is considering including the following:
- I. "Hexetron last year had revenues of \$80 billion. To punish them, you'll need to award an amount that's going to make them stand up and take notice. And for a company that pulls in \$80 billion a year, it's going to take a lot to make them notice."
 - II. "What Hexetron did in this case was heinous. It was callous. It was shocking. It was far worse than negligence. They were reckless and indifferent to the human suffering they knew they would inflict. And because of that, they deserve more than mere liability for the damages they've caused - that is, more than compensatory damages. They deserve to be punished."
 - III. "In making an award of punitive damages, you are the voice of the community. You, the jury, are the voice of conscience. Your award should reflect the condemnation that must be brought down on the behavior and lack of scruples exhibited by Hexetron in this case. And it should make them change their behavior so they'll never do this again."

Which of the statements would be proper for Ericsson to include in arguing for punitive damages?

- (A) I, but not II or III
- (B) II, but not I or III
- (C) III, but not I or II
- (D) I, II and III
- (E) Not any of I, II, or III

NOTE THE FOLLOWING FACTS FOR QUESTIONS 8 AND 9:

Sally lives in a small, dismal-looking apartment building on a narrow lot between two large oil refineries, one operated by Octan Oil, the other by Clampett-Ewing Petroleum. The refineries combine to surround the apartment building with an acrid fog 24 hours a day. After several years of living in her apartment, Sally gets very sick. An internist determines Sally has suffered severe liver disease caused by Sally's exposure to volatile organic compounds (VOCs) released by the refineries.

Hoping to interest a personal-injury attorney in her case, Sally starts doing some research. She finds out that living in very close proximity to a discharge of 80,000 tons per year of VOC emissions is sufficient to cause liver disease in humans.

Next, Sally turns to trying to find out how much pollution is discharged by the refineries. She finds two reports on the subject reaching contradictory conclusions. A report by the environmental-activist Clear Blue Coalition says that the Octan refinery emits 100,000 tons of VOCs annually and that the Clampett-Ewing refinery emits 50,000 tons per year. The other report, prepared by Freeman Engineering Group at the direction of managers of the two refineries, found that the Octan facility emits 70,000 tons of VOCs on a yearly basis while the Clampett-Ewing facility emits 35,000 tons annually.

8. Assuming the report of the Clear Blue Coalition to be correct, which of the following statements most accurately describes the provable causation of Sally's disease for the purposes of a tort claim?
- (A) Octan, but not Clampett-Ewing, caused Sally's disease.
 - (B) Clampett-Ewing, but not Octan, caused Sally's disease.
 - (C) Both Clampett-Ewing and Octan caused Sally's disease.
 - (D) Neither Clampett-Ewing nor Octan is deemed a cause of Sally's disease because neither is a sufficient cause.
 - (E) Neither Clampett-Ewing nor Octan is deemed a cause of Sally's disease because neither is a necessary cause.
9. Assuming the report of the Freeman Engineering Group to be correct, which of the following statements most accurately describes the provable causation of Sally's disease for the purposes of a tort claim?
- (A) Octan, but not Clampett-Ewing, caused Sally's disease.
 - (B) Clampett-Ewing, but not Octan, caused Sally's disease.
 - (C) Both Clampett-Ewing and Octan caused Sally's disease.
 - (D) Neither Clampett-Ewing nor Octan is deemed a cause of Sally's disease because neither is a sufficient cause.
 - (E) Neither Clampett-Ewing nor Octan is deemed a cause of Sally's disease because neither is a necessary cause.



10. Which of the following is an example of a statute providing for pure comparative negligence?
- (A) “Contributory negligence shall not bar recovery in any action by any person or the person’s legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not greater than the negligence of the person or in the case of more than one person, the aggregate negligence of such persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.”
 - (B) “In any and all actions brought to recover damages for injuries to a person or a person’s property caused by the negligence of another, the fact that the plaintiff may have been contributorily negligent shall not bar recovery when the contributory negligence of the plaintiff was slight compared to the negligence of the defendant. But in such a case, damages shall be reduced in proportion to the amount of plaintiff’s contributory negligence.”
 - (C) “If the plaintiff by ordinary care could have avoided the consequences to the plaintiff caused by the defendant’s negligence, that plaintiff is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.”
 - (D) “Contributory negligence does not bar recovery in an action by any claimant to recover damages for death or personal injury or damage to property where the fault that may be attributed to the claimant was not more than the combined fault of all persons, including but not limited to all defendants; yet damages allowed will be diminished in the proportion to the fault percentage determined to be attributed to the claimant.”
 - (E) “In all actions for personal injuries, property injuries, or for injuries resulting in death, the fact that the person injured may have been guilty of contributory negligence does not bar recovery therefor, but damages shall be reduced in proportion to the amount of negligence attributable by the jury or factfinder to the person injured.”

11. You're hanging out at a coffee shop in Portattle, Washegon near the courthouse. Some friendly attorneys invite you over to their table. As they down cups of the latest local microroast, they regale you with stories about cases they've taken to trial locally.

Fiona said she once won a \$1 million verdict in a personal injury negligence case where, per the special verdict form, all the damages were non-pecuniary damages for pain and suffering, and the verdict was upheld on appeal even though the jury awarded zero pecuniary damages.

Glen said he once won a \$1.5 million verdict in a personal-injury negligence case brought by a bank employee against her employer bank for an on-the-job injury that happened when she got her foot slammed by the vault door. The award was increased to \$1.9 million on remittitur. And that was upheld on appeal.

Holly said she once won a \$2 million verdict in lawsuit over an intrusion-type privacy tort claim, and because she and her plaintiff prevailed in the case, the court applied the American Rule and awarded \$300,000 in attorneys fees.

What can you say about the truthfulness of the stories told by the lawyers?

- (A) Fiona may have been telling the truth, but the stories told by Glen and Holly can't be right and, thus, seem clearly to be false.
- (B) Glen may have been telling the truth, but the stories told by Fiona and Holly can't be right and, thus, seem clearly to be false.
- (C) Holly may have been telling the truth, but the stories told by Fiona and Glen can't be right and, thus, seem clearly to be false.
- (D) Fiona and Glen may have been telling the truth, but the story told by Holly can't be right and, thus, seems clearly to be false.
- (E) Fiona, Glen, and Holly all may have been telling the truth. Their stories are all plausible on their face.

12. Under which of the following factual scenarios does express assumption of the risk have the best prospects of being upheld to bar recovery by an injured plaintiff?
- (A) Iceplanes Unlimited offers regular once-a-week air service to three different small towns at very high elevations that all lie north of the Arctic Circle. With no runways in these towns, pilots must land on treeless stretches of the snow-covered mountain slopes. Avalanches are a constant danger, as are winds that can suddenly deprive the plane of the lift needed to become airborne. To fly with Iceplanes Unlimited, a customer must sign an assumption of risk agreement that outlines these and other risks inherent in the operation.
 - (B) George's Fishing Hole is a roadside attraction off Interstate 70. Billboards advertise that folks are guaranteed to catch a fish within five minutes in George's well-stocked ponds. To fish at George's Fishing Hole, visitors must sign an assumption of risk agreement explaining the various minor risks visitors face. Any fish they catch must be thrown back.
 - (C) Big Basket Food Mart is the grocery store in the small town of Palo Woods, Calizona. On the way into the store there is a sign that says: "Grocery shopping is an inherently dangerous activity. Shoppers may be injured or killed. If you do not wish to be subjected to this risk, do not shop here. By entering, you agree to assume all risk of injury, death and property damage, caused by the ordinary (but not gross or willful) negligence of Big Basket Food Mart."
 - (D) Northern Virtucky Memorial Hospital is a non-profit medical center. During their pre-op evaluation, surgery patients are required to sign papers assuming all risk for surgery and waiving "all claims whatsoever" against the hospital.
 - (E) Carossee Bus Lines has an assumption of risk agreement that every passenger signs in the process of buying a ticket. Carossee is a common carrier.

13. Wilden brought his niece Anneliese to Jump Jungle, an indoor trampoline park that is wholly owned and operated by the City of Baltidelphia as a unit of the Baltidelphia Parks and Recreation Department. In order to buy a pass and for Anneliese to be able to jump, Wilden signed a binding contract by which he agreed to “indemnify and hold harmless Jump Jungle and its owners, operators, employees, staff, and affiliates against any and all claims brought by [Anneliese] relating to injuries sustained in the usage of Jump Jungle equipment and/or facilities, including as a result of the negligence of Jump Jungle staff.” Anneliese suffered a broken arm in the course of using Jump Jungle equipment because of the negligence of some of Jump Jungle’s staff. Does Anneliese has a good claim for negligence against Jump Jungle?
- (A) Probably yes.
 - (B) No, because Jump Jungle has immunity; but not because of indemnification.
 - (C) No, because Wilden signed the indemnification agreement, transferring liability for Anneliese’s claim to him, such that Anneliese can successfully sue Wilden; but not because of immunity.
 - (D) No, because Wilden signed the indemnification agreement, extinguishing Anneliese’s claim; but not because of immunity.
 - (E) No, for at least two reasons: because Wilden indemnified Jump Jungle, and because Jump Jungle has immunity.



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

