

TORTS

Released Multiple Choice Questions

Multiple
Choice
Question
Set



Desert Dangers

13 QUESTIONS

30 MINUTES (*suggested*)

SUBJECTS:

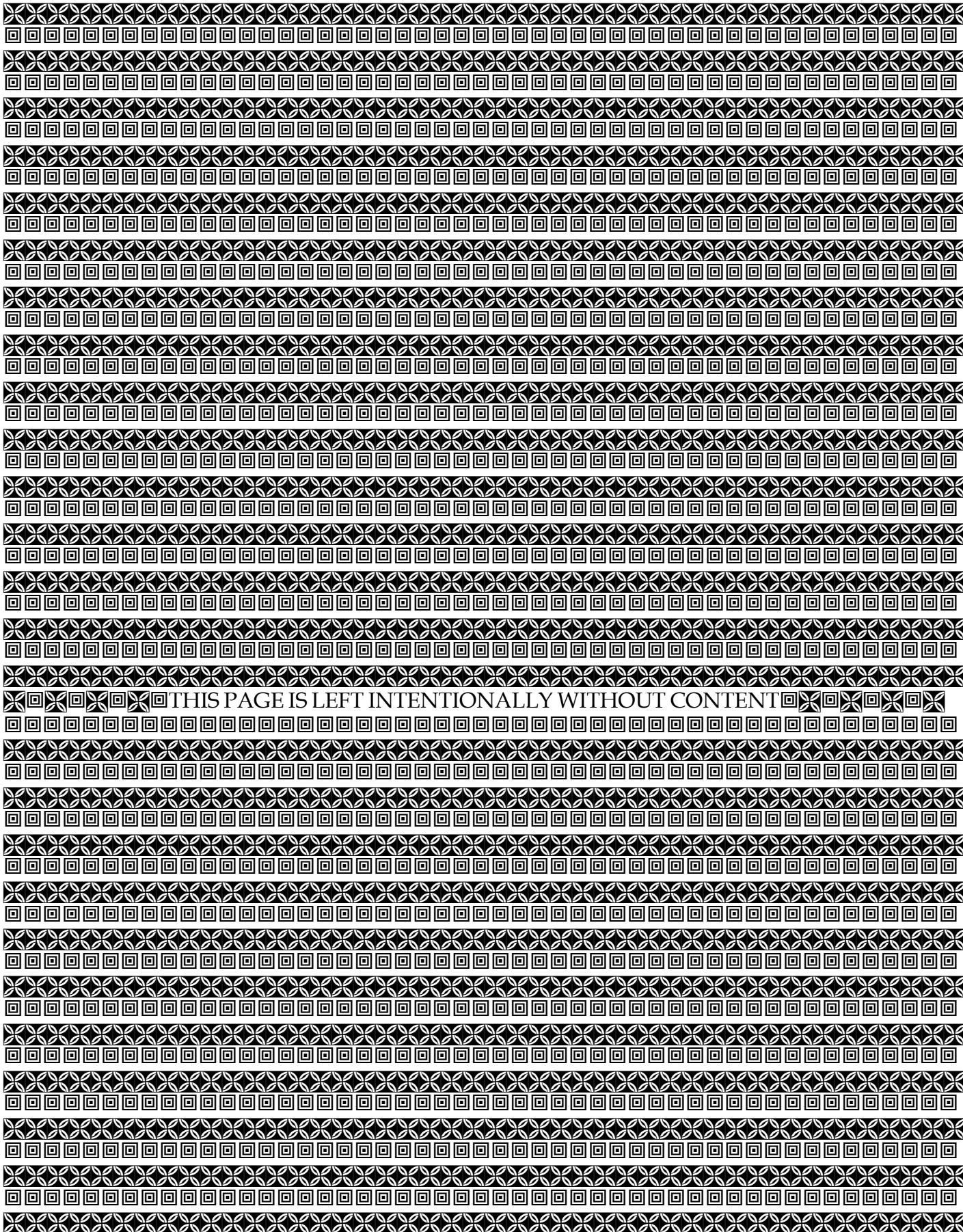
negligence, intentional torts, workers compensation,
damages, products liability

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. The photo found in this set is for decorative purposes and isn't intended to be useful in answering any question.

Image credit: Fig. 1 photo by NASA, altered by Eric E. Johnson.

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. Ed is Head of Security and Surveillance at the glittering, sun-drenched Montenella Hotel Casino. With a temper as hot as his Mojave Desert surroundings, Ed's past as a CIA operative leads him to break the rules here and there to protect his employer from the city's endless parade of scum. In which of these situations is Ed least likely to be found liable for false imprisonment?
 - (A) Bursting into the hotel's interrogation room where Erica is being held after getting caught counting cards, Ed flashes a police detective badge recovered from the hotel lost and found and tells Erica that she is under arrest. She must remain seated, he says, for the next hour – until he has decided whether to book her or offer her a deal. Ed leaves the door open on his way out.
 - (B) Laird is a valet parker who shows up to work so drunk, he passes out. His co-workers laugh as they push him upright into his own locker. They then walk away. Disgusted, Ed goes to the locker room and closes the door on Laird, securing it with a padlock. After Ed's shift is over, Danny, who is Ed's no. 2, takes the padlock off the locker and opens the door to find Laird still passed out. Danny sets a liter of Gatorade and two tablets of aspirin on a nearby bench for Laird to find when he wakes up.
 - (C) Jessica, a Montenella guest and self-proclaimed blackjack novice, complains to Ed about a dealer named Rodney. She says that Rodney used a filthy word to refer to her when she asked for a hit on an ace and king. Hotly angry, Ed locks Rodney in room where, as he explains to Rodney, his only means of escape is to climb up a chimney and get down from the roof. Rodney climbs up the two-story chimney, getting covered with soot in the process, and then climbs down the pitched roof, jumping off into a hedge to break his fall.
 - (D) Mike, a computer whiz who works under Ed, is concerned that Rodney has been unjustly accused. He has the surveillance staff comb through hours of video footage. When he finds the relevant footage, he tries to use lip-reading software to decipher what Rodney said, but the footage is too blurry to be conclusive. Ed, coming up behind Mike, examines the monitor. "Enhance," he orders. Mike punches a button and the critical portion of the video footage instantly sharpens. Within seconds, a luminescent green grid flickers over the contours of Rodney's mouth and the computer reveals that he said nothing inappropriate. A follow-up check of databases shows that Jessica is Rodney's jealous sister, who was cut out of her mother's modest inheritance. Ed is incensed. He finds Jessica in the parking lot. "I'm going to explain to you the meaning of family," Ed growls. "You're going to stand here patiently while I give you some insight into your own pathetic life, or I'm going to break your face." Jessica tearfully complies.
 - (E) When Ed finds out that Jacques, a long-time nemesis from Ed's CIA days, is staying at the hotel, Ed goes berserk. He puts a hood over Jacques's head, ties him up, shoves him into the backseat of his Aston Martin, and drives him out to the desert. Ed then gives Jacques a lecture on the value of freedom and the meaning of honor.

2. 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?
- (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."
3. 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.

4. In the negligence case of *Sturben v. Hollander*, which involved a forklift accident, the jury rendered a verdict in favor of plaintiff Stuart Sturben for \$127,300 against Holly Hollander. 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.
5. Who among the following is most likely to be held to have 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

6. In the state of Nevada, 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 with his friend Marcia in the passenger seat. Because Richard fails to yield when merging on to the interstate, his vintage Chevrolet Corvette collides with a Mack truck. Marcia is badly injured, losing an arm because of the accident. Which of the following is most accurate?
- (A) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing negligence-per-se doctrine.
 - (B) Marcia can use N.V.C. § 27001 to establish the standard of care in a negligence suit by employing res ipsa loquitur doctrine.
 - (C) Marcia can use an elevated standard of care in a negligence suit because she is an unanticipated licensee.
 - (D) Richard can require the use of a lowered standard of care in a negligence suit because Richard is only a common carrier.
 - (E) Richard can require the use of a lowered standard of care if Marcia has current and adequate health insurance coverage.
7. Which of the following situations is least likely to give rise to strict liability?
- (A) A rattlesnake escapes its enclosure at the University of Nevada's herpetology lab, slithers down the hall into a lecture hall, and bites a drowsy student about to fall asleep during class. The venom-filled wound requires medical attention. Captured from the wild last year after being hit by a car, the snake was believed by leading reptile experts to be too infirm to be capable of escaping any enclosure, much less the state-of-the-art, industry-leading, carefully maintained snake enclosure that had actually been used by the lab.
 - (B) A storage tank at a chemical plant ruptures, releasing highly toxic liquids that contaminate nearby houses such that roofs, windows, and siding must be replaced. Luckily, there are no personal injuries.
 - (C) Riders are injured when a wooden roller coaster at an amusement park collapses because of a failure of park staff to carry out regular inspections that would have found rotted beams.
 - (D) A fireworks factory in a residential area explodes, breaking many residents' windows and setting fire to several houses. One resident is burned as a result.
 - (E) One of a herd of goats at a small dairy operation escapes its pen, breaks into a neighbor's greenhouse, and proceeds to eat all the growing vegetables. The goat is a domesticated breed.



FIG 1: Hexetron Nuclear Systems' Canyoncrest Assembly Plant is proud to have spent nearly half as much on safety as it has on painting its name and slogan on the sides of its buildings.

8. Eleanor is an assembly-line worker employed by Hexetron Nuclear Systems at its Canyoncrest Assembly Plant. Eleanor was at her station installing wiring harnesses for the control-rod assembly of a nuclear reactor when she was clipped by an electric cart being negligently driven by Harvey. Harvey is Hexetron's Senior Vice President for International Sales. Trying to land a huge sale to a foreign government, Harvey had gotten drunk with a foreign official before giving him a factory tour. Had Harvey not been drunk, or had he been watching where he was going, he would not have injured Eleanor. The accident left Eleanor with a sprained ankle and a concussion. She needed medical care, and she missed three days of work.

Note the following:

- I. an action in negligence
- II. an action in strict liability
- III. a claim for worker's compensation

Which of the following identifies each likely successful avenue for recovery in favor of Eleanor against Hexetron Nuclear Systems?

- (A) II, but not I or III
- (B) III, but not I or II
- (C) I and II, but not III
- (D) All of I, II, and III
- (E) None of I, II, or III

NOTE THE FOLLOWING FACTS FOR QUESTIONS 9 AND 10:

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 Home Hangar, a retailer that competes with Lowe's, Menards, and other home improvement stores.

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, and if the warning had been present, Patricia would have asked for and received an effective substitute medication that was safe for her.

9. 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) Home Hangar
 - (D) The manufacturer of the suture thread
 - (E) The manufacturer of Rodrupol
10. Will Patricia be able to recover punitive damages against Glaretram Mfg Co?
- (A) Maybe – there is a good chance of an award of punitive damages because Glaretram Mfg Co knew deaths and serious injury were almost sure to result from the defective ladders.
 - (B) Maybe – there is a good chance of an award of punitive damages because the injury from the Rodrupol interaction constitutes an additional injury, which is a factor favoring punitive damages.
 - (C) No, because no death resulted in this case.
 - (D) No, because the underlying claim is based on a design defect.
 - (E) No, because compensatory damages would be an adequate legal remedy, in this case, to make the plaintiff whole.



NOTE THE FOLLOWING FACTS FOR QUESTIONS 11 AND 12:

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

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

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

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

11. Assuming there are no other relevant facts, in the suit by George Gerges against HexMart, which of the following elements of a prima facie case for negligence poses the greatest problem for the plaintiff?
 - (A) Duty
 - (B) Breach of duty
 - (C) Actual causation
 - (D) Proximate causation
 - (E) Injury/damages

12. Assuming there are no other relevant facts, in the suit by Holly Herod against HexMart, which of the following elements of a prima facie case for negligence poses the greatest problem for the plaintiff?
 - (A) Duty
 - (B) Breach of duty
 - (C) Actual causation
 - (D) Proximate causation
 - (E) Injury/damages



13. 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.



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

