

TORTS

Released Multiple Choice Questions
Set No. X

Question Set

X



Extra Questions on Advanced Topics

20 QUESTIONS

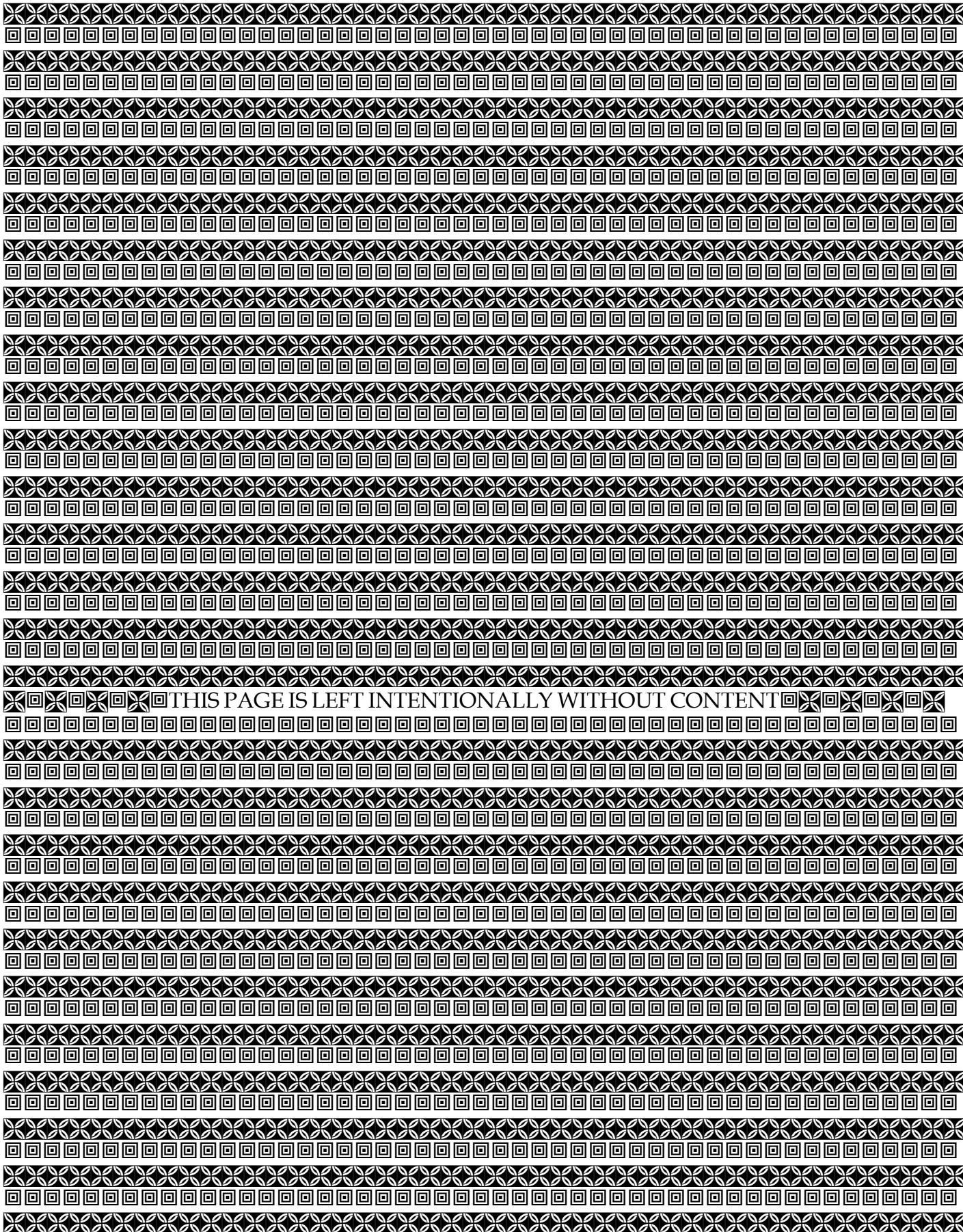
SUBJECTS:

remedies, immunities, constitutional torts, multiple tortfeasors,
workers compensation, strict liability, intentional torts, damages,
products liability, economic torts

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. All photos in this set are for decorative purposes and aren't intended to be useful in answering questions.

Images: Fig. 1, photo by the New York Federal Reserve, altered by Eric E. Johnson; Fig. 2, General Motors.



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NOTE THE FOLLOWING FACTS FOR QUESTIONS 1 THROUGH 5:

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, who was just beginning his shift at the time, and Nina, a bystander, 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."

1. Note the following statements:

- I. Olaf can likely recover in tort against Shalini under a theory of battery.
- II. Olaf can likely recover in tort against Shalini under a theory of strict liability for ultrahazardous activities.
- III. Olaf can likely recover in tort against Shalini under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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

2. Note the following statements:

- I. Olaf can likely recover in tort against Blastodyne under a theory of battery.
- II. Olaf can likely recover in tort against Blastodyne under a theory of strict liability for ultrahazardous activities.
- III. Olaf can likely recover in tort against Blastodyne under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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

3. Note the following statements:

- I. Nina can likely recover in tort against Blastodyne under a theory of battery.
- II. Nina can likely recover in tort against Blastodyne under a theory of strict liability for ultrahazardous activities.
- III. Nina can likely recover in tort against Blastodyne under a theory of products liability.

Which answer below identifies each accurate statement from the above?

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

4. Assume that Nina wins a judgment against Blastodyne and Cyanamid Carbide for her injuries on the basis of negligence. Now, note the following statements:

- I. Nina could choose to recover all of the judgment from Blastodyne. Alternatively, she could recover all of the judgment from Cyanamid Carbide if she so chose.
- II. Nina can recover from each of Blastodyne and Cyanamid Carbide only that portion of the judgment that corresponds to that defendant's proportionate share of fault.
- III. In a later litigation, Blastodyne could sue Cyanamid Carbide under a theory of contribution.

Which answer below identifies each accurate statement from the above?

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

5. Which of the following is most accurate?
- (A) F.L.U.C. § 900-36 likely provides a private right of action against Blastodyne by those who were injured.
 - (B) Olaf can likely recover against MacKenzie's estate for battery.
 - (C) MacKenzie's estate can likely recover against Olaf for defamation.
 - (D) MacKenzie's estate can likely recover against WRC-TV for libel.
 - (E) MacKenzie's survivors have absolutely no chance of getting punitive damages through a workers compensation claim.



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



FIG 1:
Some of the copper bullion from James's basement that was taken by Garth.

NOTE THE FOLLOWING FACTS FOR QUESTIONS NOS. 7 THROUGH 11:

Everything was going according to plan for Brynn. Using an assumed name, she rented a gray Ford Taurus sedan from Y-Pay-Mor Car Rental, signing a standard rental agreement, and then Brynn drove the car to a municipal parking lot next-door to the First Eastern Midwest Savings & Loan Bank on Maple Road. The next day, carrying an unloaded 9mm pistol, she entered the bank, withdrew the pistol, bobbling it slightly, and pointed it at Trevor, a bank teller. Throwing a canvas shopping bag on the counter, Brynn said, "Fill it, or die." Brynn then shifted the gun's aim to Cassius, another teller. She then threw a bag into the air at Cassius and said, "You too, big guy. Bag it or bite it."

Cassius passed out just before the bag hit him harmlessly on the forehead, after which he fell like a sack of rocks. Trevor complied, albeit with cocked eyebrows indicating a nonchalant "whatever" attitude. When the bag was filled, he tossed it to Brynn. She dashed from the bank, hopped in the Taurus, and peeled out of the parking lot. As planned, she drove the car off the Route 261 bridge into the river, escaping the car as it sank. She then swam to a drainage pipe where she crawled 200 feet underground to an abandoned farmhouse, owned by Fergus.

That's when things stopped going according to plan. Entering the farmhouse where Brynn had stashed a motorcycle, she tripped over a wire that triggered a rifle supported just one inch off the floor and aimed parallel to the ground. The spring gun fired and shot Brynn in the foot.

It turns out that Brynn's prior trips to the farmhouse, staking it out and setting it up with her getaway motorcycle, had alerted Fergus to the presence of trespassers. It was in Fergus's zeal to catch the miscreant that Fergus had set up the trip-wired spring gun.

Brynn was able to hobble to her motorcycle, and she took off down the road. When she got to a used car lot, she used some of the cash from the bag to buy a beautifully restored 1972 Chevrolet El Camino. With the motorcycle in the back, continued down the road.

Eventually Brynn came to an antique store. There she used some of the cash to buy an ax that, according to the antique dealer, once belonged to Abraham Lincoln. It was expensive, but, for a piece of American history, Brynn figured, it was worth it.

After driving for another hour or so, Brynn was feeling light-headed from the loss of blood. She



FIG 2: The 1972 Chevy El Camino, America's original hybrid: half car, half pick-up truck.

determined she couldn't go on, so she stopped at an emergency room to obtain care for her injured foot. Her refusal of pain medication aroused the suspicion of doctors and nurses, who started asking her how it was that she got injured. Brynn then passed out.

When Brynn came to, she felt the cold sensation of steel handcuffs around her wrists. Blinking her eyes open, she saw Trevor, the teller from the bank. It turned out that Trevor was an undercover FBI agent.

Agent Trevor explained to Brynn that as an expert in firearms, he recognized, by the way she bobbled the pistol, that it was unloaded. He also noticed immediately that the safety was welded in the on position and the barrel was filled with resin, rendering the firearm unusable. And since he had placed a GPS-enabled tracking device in the bag with the money, he was happy to let Brynn make her escape - at least initially.

Brynn vowed to herself she'd never again rob a bank with a gun stolen from the prop department of her community theatre group. And, she figured, wincing in pain as Trevor smirked at her, that if she ever checked into an ER on a getaway again, she might as well take all the pain killers they had to offer.

In the days after the robbery, a new movie debuted - *Charlie the Chimp and the El Camino*. The wild success of the film instantly caused the price of El Caminos on the classic car market to skyrocket.

7. What cause of action or remedy would best serve Y-Pay-Mor against Brynn from among the following?
 - (A) Replevin
 - (B) Trespass to chattels
 - (C) Conversion
 - (D) Trespass to land
 - (E) Constructive lien on the Taurus

8. Who will likely be able to recover against Brynn for battery?
 - (A) Trevor only
 - (B) Cassius only
 - (C) Trevor and Cassius
 - (D) Trevor, Cassius, and Fergus
 - (E) None of Trevor, Cassius, or Fergus

9. Who will likely be able to recover against Brynn for assault?
- (A) Trevor only
 - (B) Cassius only
 - (C) Trevor and Cassius
 - (D) Trevor, Cassius, and Fergus
 - (E) None of Trevor, Cassius, or Fergus
10. Which of the following would be the best advice for a lawyer to give First Eastern Midwest Savings & Loan Bank?
- (A) Pursue an injunction against Brynn.
 - (B) Pursue an equitable lien on the El Camino.
 - (C) Pursue a constructive trust on the El Camino.
 - (D) Pursue an ejectment action against Brynn.
 - (E) Pursue equitable damages against Brynn.
11. Let's say Brynn is lucky enough to win an acquittal at her criminal trial the next month, and when she is released from jail she finds out that the ax she bought never belonged to Abraham Lincoln. If she sues the antique dealer in equity, which of the following might be a good defense?
- (A) Statute of limitations
 - (B) Laches
 - (C) Equitable estoppel
 - (D) Private necessity
 - (E) Unclean hands



NOTE THE FOLLOWING FACTS FOR QUESTIONS 12 AND 13:

Congress has just established Nataqua as the 51st state. Nataqua exists on land previously governed as a U.S. territory. The legislature of Nataqua has yet to pass any statutes in the private law sphere, and the newly established courts are operating solely on the basis of Anglo-American common law.

Today is the first session of the Nataqua Court of Appeals. Here's a rundown of what's on the docket:

Jorden v. J-Mart Corporation: The defendant J-Mart Corporation intentionally swindled plaintiff Justine Jorden out of \$100,000 in a loan scam that used fake but realistic-looking documents promising to pay Jorden interest of \$60,000 over the term of the promissory note. J-Mart represented itself as a new business. The interest rate is on the high side of rates for promissory notes for new businesses, although it's not unheard of.

Kalia v. Kantzel: The defendant, Kevin Kantzel, was negligently driving his Cadillac CTS when he hit pedestrian Kathy Kalia, who died in the ambulance on the way to hospital. Kalia, 35 years old, was earning \$200,000 a year as a management consultant and was expected to earn at least that much for the next 30 years. The action is brought by her estate.

Lourdell v. Lindenfeld Laboratories, LLC: The defendant Lindenfeld Laboratories supplied intravenous medications that were tainted with *Aspergillus fumigatus*, a fungus capable of infecting humans. The jury found that the fungal contamination was due to Lindenfeld Laboratories' "recklessly and wantonly" deficient laboratory practices. Lorelei Lourdell received intravenous administration of the tainted medication and exhibited some ill effects, but she was treated quickly and made a full recovery. The jury awarded \$1,000 in compensatory damages and \$2.9 million in punitive damages.

12. Consider the total monetary recovery for the plaintiff likely to be upheld on appeal in each of the cases. Which answer below correctly orders the cases from greatest to smallest in terms of monetary value?
- (A) *Jorden v. J-Mart Corporation*; *Lourdell v. Lindenfeld Laboratories, LLC*; *Kalia v. Kantzel*
 - (B) *Kalia v. Kantzel*; *Jorden v. J-Mart Corporation*; *Lourdell v. Lindenfeld Laboratories, LLC*
 - (C) *Kalia v. Kantzel*; *Lourdell v. Lindenfeld Laboratories, LLC*; *Jorden v. J-Mart Corporation*
 - (D) *Lourdell v. Lindenfeld Laboratories, LLC*; *Jorden v. J-Mart Corporation*; *Kalia v. Kantzel*
 - (E) *Lourdell v. Lindenfeld Laboratories, LLC*; *Kalia v. Kantzel*; *Jorden v. J-Mart Corporation*

13. Which of the following are causes of action that are likely to be upheld on appeal in the case of *Jorden v. J-Mart Corporation* based on the facts stated?
- (A) breach of confidence, but not fraud or intentional interference with contract
 - (B) fraud, but not intentional interference with contract or breach of confidence
 - (C) intentional interference with contract, but not fraud or breach of confidence
 - (D) fraud and intentional interference with contract, but not breach of confidence
 - (E) breach of confidence, fraud, and intentional interference with contract



14. Which of the following best describes the firefighter rule?
- (A) Firefighting organizations, such as municipal fire departments, are immune from suit for negligence for fire fighting activities.
 - (B) Firefighters are immune from suit for negligence for firefighting activities.
 - (C) Firefighters are precluded from suing homeowners and others in negligence for injuries sustained while fighting a fire.
 - (D) Firefighting is *per se* excluded as an abnormally dangerous activity giving rise to strict liability.
 - (E) The lack of warning labels does not constitute a product defect for purposes of strict products liability where the product is one sold exclusively for the use of highly trained professionals and is to be used in the course of their work, where such work includes engaging in dangerous activities as a matter of course.
15. Which of the following statements is not accurate?
- (A) Restitutionary remedies offer an alternative to compensatory damages in some cases.
 - (B) Restitutionary remedies center around a notion of “unjust enrichment.”
 - (C) Restitutionary remedies may be either legal or equitable.
 - (D) Restitutionary remedies are typically measured by the amount of harm suffered by the plaintiff.
 - (E) Examples of restitutionary remedies are replevin, ejectment, constructive trust, equitable lien, and quasi-contract.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 16 AND 17:

Andrew files a claim against the United States Army for negligence. He was injured in Afghanistan when artillery fire was mistakenly and carelessly directed toward his location as part of a combat operation.

Brett files a claim for battery against the Bureau of Reclamation (an agency of the United States Department of the Interior). Brett suffered several broken fingers when a government worker, acting pursuant to an informal policy to discourage environmentalist protestors, purposely slammed Brett's fingers in a doorjamb when Brett tried to obtain a permit to stage a rally in support of environmental legislation. Brett had a right to obtain the permit under the First Amendment.

Candace files a claim for fraud against the sitting president of the United States, claiming an executive order the president signed regarding the detention of undocumented immigrants was not in keeping with campaign promises.

Doris files a claim for negligence against the Defense Advanced Research Projects Agency (an agency of the United States Department of Defense). While visiting the agency's offices, she was struck and injured by a ceiling lighting fixture that had been incompetently installed by a government worker. It turns out that the government worker installed one of the screws into the wrong hole.

Ethan files a claim for strict liability against the United States Department of Energy. Ethan was injured when an experimental plutonium breeder reactor suffered a partial meltdown.

16. Who has filed the claim that is most likely to be compensable under the Federal Tort Claims Act?
- (A) Andrew
 - (B) Brett
 - (C) Candace
 - (D) Doris
 - (E) Ethan
17. Based on the facts disclosed, who would be in a plausible position to recover under 42 U.S.C. § 1983?
- (A) Each of Andrew, Brett, Candace, Doris, and Ethan
 - (B) Andrew and Brett only
 - (C) Doris only
 - (D) Doris and Ethan only
 - (E) Not any of Andrew, Brett, Candace, Doris, or Ethan



18. It was a bad week for Paavali Paanenen. He set out to drive from his home in Green Bay to his dad's house in a retirement community in the desert Southwest. His plan was to see a little bit of America and arrive in time for his dad's 75th birthday.

On Monday, Officer Abby Akutagawa of the Ansvenson City Police Department in Ansvenson City, South Dakota pulled over Paavali for a traffic stop. It was purely out of undirected spite – with no probable cause whatsoever. Abby, in blatant violation of the U.S. Constitution, then seized \$300 worth of birthday gifts from the trunk.

On Tuesday, in Nebraska, Paavali had the misfortune to cross paths with Special Agent Benton Burrell, a out-of-control rogue law enforcement officer with the U.S. Department of Transportation National Highway Traffic and Safety Administration's Office of Odometer Fraud Investigation. Entirely without probable cause, and in blatant violation of the U.S. Constitution, Benton used a plasma torch to cut into the side of Paavali's 1979 Chevy Impala to access Paavali's odometer from behind the dashboard.

Which of the following is most accurate?

- (A) Paavali has a plausible claim under 42 U.S.C. §1983 for the incident with Officer Abby Akutagawa and for the incident with Special Agent Benton Burrell.
 - (B) Paavali has a plausible *Bivens* action claim for the incident with Officer Abby Akutagawa and for the incident with Special Agent Benton Burrell.
 - (C) Paavali has a plausible claim under 42 U.S.C. §1983 for the incident with Officer Abby Akutagawa.
 - (D) Paavali has a plausible claim under 42 U.S.C. §1983 for the incident with Special Agent Benton Burrell.
 - (E) Paavali has no plausible claim under 42 U.S.C. §1983, nor does he have a plausible *Bivens* action claim.
19. On Wednesday night, Paavali was camping in the Rocky Mountain foothills. Having had a few beers while trying to unwind after a very stressful Monday and Tuesday, Paavali got a little careless: He negligently set fire to his RV trailer. Municipal firefighter Charlie Carson, who responded to the blaze, was injured while entering the trailer to make sure everyone was out.

Based on these facts, which of the following is true?

- (A) Paavali will be liable to Charlie by way of a statutory cause of action, assuming this state has a statute similar to the Federal Tort Claims Act.
- (B) Paavali will be liable to Charlie through an implied right of action.
- (C) Paavali will be liable to Charlie through an action for contribution.
- (D) Paavali will not be liable to Charlie because Charlie will be barred from suing Paavali.
- (E) Paavali will not be liable to Charlie because application of the doctrine of indemnification means that compensatory damages will be zero.

20. 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.



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

