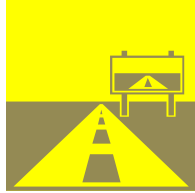


TORTS

Released Multiple Choice Questions

Multiple
Choice
Question
Set



Western Woes

12 QUESTIONS

30 MINUTES (*suggested*)

SUBJECTS:

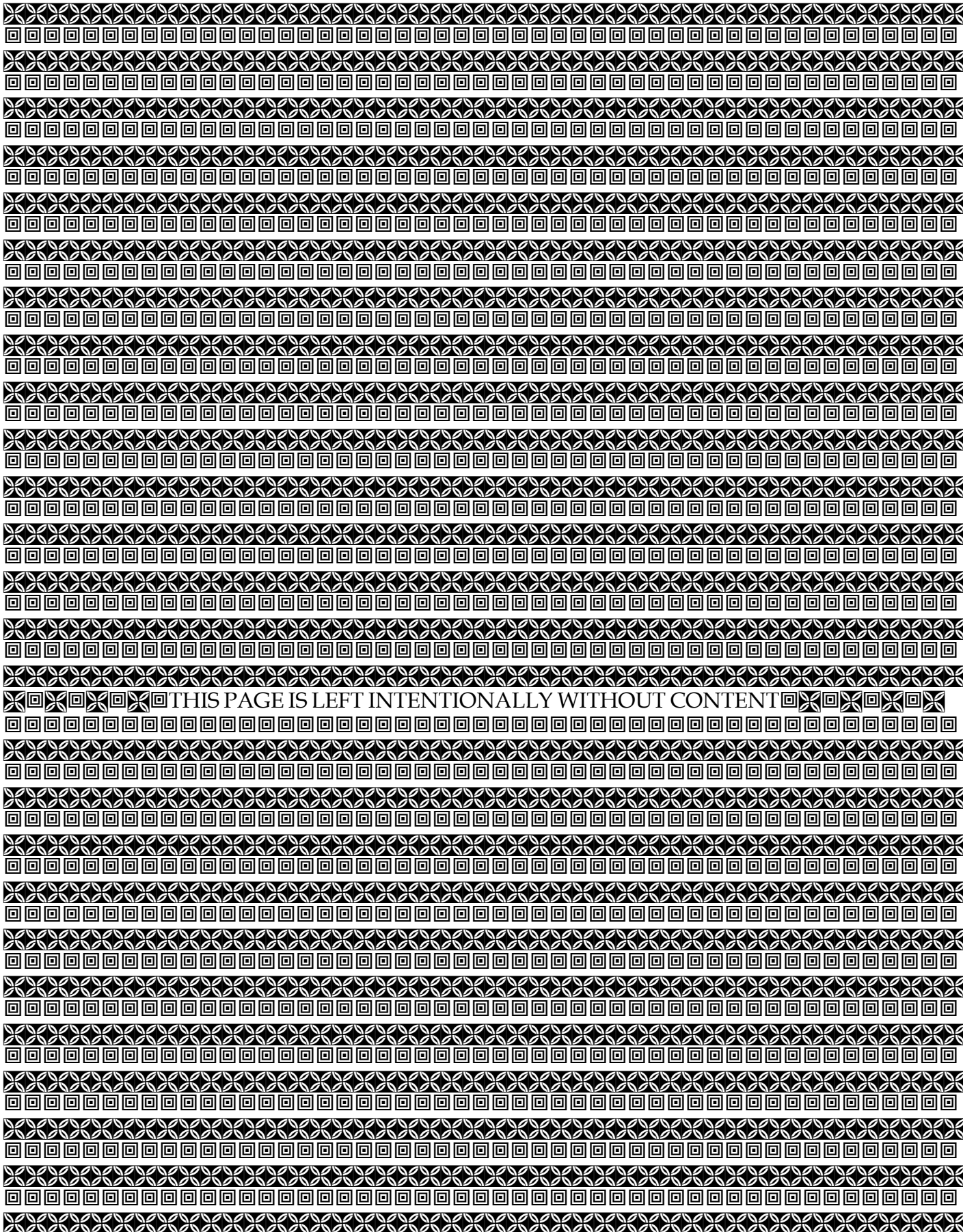
defamation, fraud, intentional torts, products liability,
negligence, wrongful death and survival actions,
enforcement of judgments, multiple tortfeasors

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.

Credits: Fig. 1 by Eric E. Johnson; Fig. 2 from pdclipart.org. Questions 8, 9, and 11 were patterned off of released MBE questions nos. 475-477. Those released MBE questions were found at:
http://www.ncbex.org/uploads/user_docrepos/MBEQuestions1992_011310.pdf.

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.	4	6	12



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1. In which of the following situations is the defendant least likely to be found liable on a strict-liability basis?
 - (A) Annabeth's grizzly bear escapes her basement and mauls to death her next-door neighbor.
 - (B) Bonanza 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 (excess fluid in the lungs, which impedes breathing).
 - (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 receives many broken bones 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, requiring extensive medical treatment.
 - (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.

2. Danielle struck Polly's 1978 Ford truck with a baseball bat leaving a huge dent. Polly wasn't in the truck at the time, but she did see Danielle swing and hit her truck from across a parking lot. Which of the following is Polly mostly likely to be able to successfully pursue against Danielle?
 - (A) Trespass to land
 - (B) Battery
 - (C) Trespass to chattels
 - (D) False imprisonment
 - (E) Assault

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

4. Darla intentionally communicated to third persons a defamatory statement that she knew to be false explicitly concerning Pam. Which of the following, if proved, would not be sufficient to permit Pam to maintain a defamation suit?
- (A) As a result, Pam suffered lost wages in a provably certain amount.
 - (B) The statement asserted that Pam was incompetent at her job.
 - (C) The statement asserted that Pam was born out of wedlock.
 - (D) The statement was published via printed paper.
 - (E) The statement asserted that Pam had a sexually transmitted bacterial disease.

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

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

Now consider the following phrases:

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

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

- (A) I, but not II or III
 - (B) I or II, but not III
 - (C) I or III, but not II
 - (D) II, but not I or III
 - (E) II or III, but not I
6. According to American common law unmodified by statute, which of the following will result in the least liability for Matthew?
- (A) Matthew intentionally throws a pickaxe at Lawrence, hitting him and killing him.
 - (B) Matthew intentionally throws a pickaxe at Lawrence, hitting him and causing him to lose his left leg.
 - (C) Matthew intentionally throws a pickaxe at Lawrence, narrowly missing him, since Lawrence ducks.
 - (D) Matthew intentionally throws a pickaxe at Lawrence, missing him by such a wide margin that Lawrence never apprehends being hit; the pickaxe ends up hitting a car, shattering the windshield.
 - (E) Matthew intentionally throws a pickaxe at Lawrence, missing him by such a wide margin that Lawrence never apprehends being hit; the pickaxe ends up hitting William, a passer-by, who is injured.

7. Gregor Gillingshurst went to FFM Pharmacy to fill a prescription for tablets of nixaltandiga, a patent-protected cancer drug that costs \$1,000 per tablet. When the bottle – labeled and pill-filled – was presented to him, Gregor paid. But instead of having filled the prescription with genuine tablets of nixaltandiga, FFM had given Gregor placebo tablets – that is, tablets with no active ingredients and no genuine medicine. Gregor is pursuing an action against FFM for fraud. Which additional fact or conclusion, if established at trial, would not allow FFM to escape liability?
- (A) Gregor really should have known that the tablets were not nixaltandiga, since the pharmacy tech offered to sell Gregor 30 additional tablets for a total of \$50.
 - (B) When Gregor saw the FFM Pharmacy tech filling the prescription the first time, he could tell, even from a distance over the counter, that the tablets were probably not genuine nixaltandiga tablets, pictures of which he had seen at his physician’s office.
 - (C) Gregor’s friend Laquisha told Gregor that she had watched pharmacy personnel preparing the prescription, and she saw that they were not using genuine nixaltandiga. As Gregor was aware, Laquisha is a retired pharmacist. Laquisha had no affiliations with FFM.
 - (D) Although the label on the pill bottle provided by FFM said “nixaltandiga” in large letters, it also said in very fine print on the label “FFM Pharmacy makes no guarantees about the efficacy of or identity of any ingredients of the tablets contained herein.”
 - (E) As the placebo tablets came from a supplier which had labeled them as genuine tablets of nixaltandiga, FFM was never aware that it was substituting placebos for nixaltandiga.



FIG 1: Some tablets that some pharmacists say look similar to nixaltandiga.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 8 THROUGH 11:

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 a handheld electronic bullhorn to her mouth and announced with very loud amplified sound, "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 brought on by the stress of Hannah's actions. The heart attack was picked up by a portable EKG machine that Wyatt was wearing at the time.

8. If Hannah sues Wyatt for battery, which of the following must Hannah prove in order to succeed on her claim?
- (A) Wyatt was substantially certain that the door would strike the bullhorn.
 - (B) Wyatt was substantially certain that the bullhorn would hit Hannah's face.
 - (C) Wyatt acted with anger, or, at least, malice.
 - (D) Hannah had an immediate apprehension of the impact.
 - (E) Hannah was on Wyatt's property lawfully.

9. If Wyatt sues for outrage (intentional infliction of emotional distress), will his claim succeed?
- (A) Yes.
 - (B) No, because Hannah had an implied license to be on Wyatt's property.
 - (C) No, because Wyatt's mental distress was not sufficiently severe.
 - (D) No, because Wyatt would come to the court with unclean hands.
 - (E) No, because the claim would be barred by the doctrine of third-party estoppel.
10. 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.

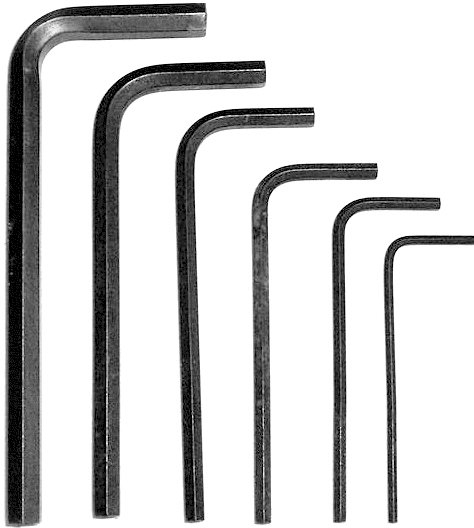


FIG 2:
*The hex wrenches
Wyatt received from
the Hexetron Tool-of-
the-Month Club.*

11. If Wyatt sues for defamation, will his claim succeed?
- (A) Yes, because the conduct of Hannah and Hexetron was extreme and outrageous.
 - (B) Yes, if Hannah's remarks were overheard by at least one neighbor.
 - (C) No, unless Wyatt can prove special damages stemming from the reputational harm.
 - (D) No, because Wyatt would come to the court with unclean hands.
 - (E) No, because Hexetron has qualified immunity, and the scope of the privilege was not exceeded.



12. Andrea and Isaac stole Cassidy's car, sold it, and invested the profits in an internet start-up company, which then flopped. Cassidy subsequently won a lawsuit against Andrea and Isaac for conversion, getting a judgment against Andrea and Isaac for \$30,000. Andrea is rich – she has plenty of money. Isaac has no cash, but he does have several valuable pieces of farm equipment, including a Case International combine harvester and a John Deere tractor. Which of the following is most accurate?
- (A) Cassidy will be able to recover up to, but not more, than \$15,000 from Andrea, unless Andrea was found more than 50 percent at fault.
 - (B) Cassidy will be able to gain possession of the John Deere tractor in order to satisfy the judgment against Isaac only if she can prove that the tractor is related to the conversion for which she was awarded the judgment.
 - (C) Cassidy can get the entire \$30,000 judgment satisfied by Andrea if Cassidy chooses, a decision she can make based solely on the fact that Andrea has more ready cash.
 - (D) Cassidy must appeal the judgment to an intermediate appeals court before she can get an enforceable order to execute the judgment.
 - (E) If Andrea and Isaac both refuse to comply with a court order to pay the judgment and continue to drag their feet, Cassidy will ultimately have to go to a bankruptcy court to actually force Andrea and Isaac to pay.



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

