

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW
Torts I

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AMALGAMATED RELEASED MULTIPLE-CHOICE QUESTIONS

This document contains all released multiple-choice questions for Torts I (negligence and health-care liability), except for released questions which are deprecated, meaning that they are not helpful precedent for any future questions.

Answers are available in a separate document in the Exam Archive at ericejohnson.com

Typical Notes and Instructions:

General 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 class, as well as, where appropriate, the theory and history discussed in class. Your goal is to show your mastery of the material presented in the course 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. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
4. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing student examinations or from viewing materials other than your own.

Notes and Instructions for Multiple-Choice Questions:

- a. Each correct answer is worth one point.
- b. This section of the examination is “closed book.” You may not use any materials at all, other than writing instruments and the materials provided as part of the examination.
- c. Do not assume any additional facts not presented in the questions.
- d. Choose the most correct answer based on the materials assigned and information presented in class. Each question has only one most correct answer. For example, where choices (a) through (d) are correct and choice (e) is “All of the above,” the last choice (e) would be the most correct answer and the only answer that will be accepted. Where two or more choices are correct, the most correct answer is the answer that refers to each and every one of the correct choices.
- e. All exam materials, including this booklet, any scratch paper you use, and your answer sheet, must be turned in at the conclusion of the testing period.

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 Wyoming. 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

Wyoming 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 a pool of his own blood and liquefied organs. 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 as jointly and severally liable for wrongful death.
- (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, since working with Ebola-H9 is an ultrahazardous activity.

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 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 St. and Adeline St. Sharon was approaching on Harmon, and there was no stop sign or yield sign on Harmon St. 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 thought she could beat Sharon's Miata through the intersection. Unfortunately, Karen was mistaken in her assumption, because 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 is hit full-force by the careening Vespa.

Expert testimony later establishes 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 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

THIS IS THE END OF THE AMALGAMATED QUESTIONS.