Question 3 - Torts - Intentional Torts

The question was:

A lender met an individual who had borrowed money from him on the street, demanded that the borrower pay a debt owed to him, and threatened to punch the borrower in the nose. A fight ensued between them. A man came upon the scene just as the lender was about to kick the borrower in the head. Noting that the lender was getting the better of the fight, the man pointed a gun at him and said, "Stop, or I'll shoot." If the lender asserts a claim against the man based on assault, will he prevail?

A: Yes, because the man threatened to use deadly force.
B: Yes, because the man was related to the borrower.
C: No, because it was apparent that the lender was about to inflict serious bodily harm upon the borrower.
D: No, because the lender was the original aggressor by threatening the borrower with a battery.

The explanation for the answer is:

C is the best answer. The man has a privilege to defend the borrower as long as the man reasonably believes that the borrower would also have the privilege of self-defense. In addition, the use of force in defense of another cannot exceed the force that the victim is being threatened with. The key issue here is whether the man's use of threatened deadly force (the gun) to defend against a kick by the lender would exceed that privilege. C is the best answer because it provides the correct justification for the man's threat to use deadly force.

A is incorrect. The man's threat alone will not cause the lender to prevail because the man can assert the privilege of defense of another, which, if successful, would negate the man's liability. B is incorrect for two reasons. First, it relies on a fact not presented in the question. Furthermore, it refers to the outdated requirement that only family members or those with a special duty to protect the victim were allowed the privilege of defense. Under the modern view, anyone with a reasonable belief that the victim would have a right of self-defense is privileged to intervene. D is incorrect because it incompletely states the rule of self-defense. Generally, only the force that reasonably appears to be necessary to prevent the harm is privileged. If more force than necessary is used, the actor loses the privilege. Therefore, if the lender had not been appearing to use substantial force likely to cause serious injury, his designation as the initial aggressor would not bar his assault claim against the man.

Question 13 - Torts - Intentional Torts

The question was:

A professor, in a lecture in her psychology course at a private university, described an experiment in which a group of college students in a neighboring city rushed out and washed cars stopped at traffic lights during rush hour. She described how people reacted differently--with shock, joy, and surprise. At the conclusion of her report, she said, "You understand, of course, that you are not to undertake this or any other experiment unless you first clear it with me." Four of the professor's students decided to try the same experiment but did not clear it with the professor.

One subject of their experiment said, "I was shocked. There were two people on each side of the car. At first I thought negatively. I thought they were going to attack me and thought of driving away. Then I quieted down and decided there were too many dirty cars in the city anyway."

Charitable immunity has been abolished in the jurisdiction.

If the subject asserts a claim against the students who washed his car, his best theory is

A: assault.
B: negligence.
C: invasion of privacy.
D: false imprisonment.

The explanation for the answer is:

A is correct as it most closely resembles the facts given. Here, the key words are "I thought they were going to attack me." Apprehension of imminent harm is the issue. The facts do not fit any other cause of action and the call of the question pointedly asks for a theory against the students, not the university.

B is incorrect. The subject is asserting a claim against the students, so there are no grounds for vicarious liability. Instead, the subject would need to show a duty on the part of the students not to act in a way that would cause the unreasonable risk of foreseeable harm to the subject. There must then be breach of that duty, causation, harm and damages. There was no harm done to the subject. The question asks for the best theory, and the elements of assault are much more easily and clearly met.

C is not correct. The only possible privacy tort applicable would be intrusion into seclusion, which does not require harm or publication - only offensive intrusion upon the solitude of another. While the subject was alone in the vehicle, the facts state that the experiment took place at stoplights during rush hour; a time and place when privacy in one's car (if ever) would not be expected by the reasonable person. It is not the best theory available.

D is not the best answer. The subject was not falsely imprisoned. Note the key words "I thought of driving away." False imprisonment requires belief that one is confined and, consequently, is not the best theory available to the subject.

Question 14 - Torts - Intentional Torts

The question was:

A professor, in a lecture in her psychology course at a private university, described an experiment in which a group of college students in a neighboring city rushed out and washed cars stopped at traffic lights during rush hour. She described how people reacted differently--with shock, joy, and surprise. At the conclusion of her report, she said, "You understand, of course, that you are not to undertake this or any other experiment unless you first clear it with me." Four of the professor's students decided to try the same experiment but did not clear it with the professor.

One subject of their experiment said, "I was shocked. There were two people on each side of the car. At first I thought negatively. I thought they were going to attack me and thought of driving away. Then I quieted down and decided there were too many dirty cars in the city anyway."

Charitable immunity has been abolished in the jurisdiction.

If the subject has a valid claim against the students, will he also prevail against the university?

A: Yes, because the students would not have performed the experiment but for the professor's lecture.
B: Yes, because the subject's claim against the students is based on negligence.
C: No, because the students were not the professor's employees.
D: No, because the professor did not authorize the car wash as a class project.

The explanation for the answer is:

D is the best response. The call of the question asks for possible vicarious liability claims against the university. There was no master/servant relationship between the university and the students because the students were not authorized by the professor to try the experiment as a class project. Therefore, the subject will not prevail against the university.

A is incorrect. The "but for" test is a test of causation-in-fact. Even though the professor's lecture was a cause-in-fact, there is no legal causation due to the lack of foreseeability of the student's actions by the professor.

B is incorrect. Even if the students are found negligent, that negligence would not be imputed to the university because the actions of the students were not within any master/servant relationship if the actions were not authorized.

C is not the best answer. While it is correct, it is also incomplete because there would be vicarious liability if the professor had authorized the car wash as a class project, thus making the students agents of the university.

Question 20 - Torts - Negligence

The question was:

A truck driver was driving along a lonely road on a very cold night. He saw a man lying in a field by the side of the road and apparently injured. The driver stopped his truck, alighted, and, upon examination, discovered that the man was intoxicated and in danger of suffering from exposure to the cold. However, the driver returned to his truck and drove away without making any effort to help the man, who remained lying at the same place and was later injured when struck by a car driven by a traveler who, drowsy and inattentive, had veered off the road into the field and hit him. The traveler did not see the man prior to hitting him.

If the man asserts a claim against the truck driver for damages for his injuries, will the man prevail?

A: Yes, because by stopping and examining the man, the truck driver assumed a duty to aid him.
B: Yes, because a reasonably prudent person under the circumstances would have aided the man.
C: No, because the truck driver did not, in any way, make the man's situation worse.
D: No, because the man himself created the risk of harm by becoming intoxicated.

The explanation for the answer is:

C is correct. There is no general duty to render aid to another. The exceptions to this include (1) if the truck driver had caused the original harm to the victim, (2) if the truck driver had a special duty (such as husband to wife or parent to child) that imposed an affirmative duty to aid victim, or (3) if the truck driver had affirmatively acted in some way to aid the victim, thus undertaking a duty to aid. The facts state that the truck driver "examined" the man, but "left him lying in the same place." The truck driver did not affirmatively act to make the man's situation worse and thus, did not undertake a duty to aid him.

Without a special duty, simply stopping to see who is on the side of the road does not give rise to a duty to aid, so A is incorrect. Without a duty to aid, a claim for negligence must fail, precluding the need to assert a contributory negligence defense, so D is also incorrect. C addresses the issue of duty, which must be met before considering any other negligence element, which makes it the best answer.

B is incorrect. This answer simply states the ordinary person standard of care, which does not apply to the Good Samaritan rule. If the truck driver had undertaken to help the man, then he would have had a duty to act with reasonably prudent care in aiding him, but since the truck driver did not, this answer is not relevant to the issue being addressed.

Question 21 - Torts - Negligence

The question was:

A truck driver was driving along a lonely road on a very cold night. He saw a man lying in a field by the side of the road and apparently injured. The truck driver stopped his truck, alighted, and, upon examination, discovered that the man was intoxicated and in danger of suffering from exposure to the cold. However, the truck driver returned to his truck and drove away without making any effort to help the man, who remained lying at the same place and was later injured when struck by a car driven by a traveler who, drowsy and inattentive, had veered off the road into the field and hit the man. The traveler did not see the man prior to hitting him.

If the man asserts a claim against the traveler, will the man prevail?

A: Yes, because the traveler was negligent in going off the road.
B: Yes, because the man was in a helpless condition.
C: No, because the traveler did not see the man before he was struck.
D: No, because the man's intoxication was the cause in fact of his harm.

The explanation for the answer is:

A is correct. Only the last two sentences are relevant to the call of the question. The man was lying on the side of the road and the traveler was "drowsy and inattentive," veering off the road. The traveler acted negligently and caused harm to the man. The traveler has a duty to drive in a reasonably prudent way, which clearly does not include driving while drowsy or "inattentive." The traveler's driving was in breach of his standard of care. Consequently, a claim against the traveler for negligence will prevail.

B comes to the right answer for the wrong reason. The man's helpless condition did not give rise to a duty on the part of the traveler to drive carefully, which is the issue of this question.

C is not the best answer. The traveler did not need to see the man, he only needed to reasonably foresee that driving while drowsy would potentially cause harm to whomever he happened to hit as the result of his inattentiveness. This answer addresses the "foreseeable plaintiff v. universal duty" jurisdictional analysis issue. The answer is incomplete, however, because it does not address the duty of driving safely, which would cause anyone on the side of the road where the car veered to become a foreseeable victim.

D is incorrect. This issue would go to damages, but will not affect the ability of the man to assert a claim against the traveler. The man's intoxication did not contribute in any way to the traveler's veering off the road. (Note: The Examiners will tell you to assume there is pure comparative negligence applied unless otherwise directed. Consequently, even a successful claim of contributory negligence would not bar the man from recovery under the facts of this question.)

Question 22 - Torts - Negligence

The question was:

A roofer entered into a written contract to repair a homeowner's roof, the repairs to be done "in a workmanlike manner." The roofer completed the repairs and took all of his equipment away, with the exception of a 20-foot extension ladder, which was left against the side of the house. He intended to come back and get the ladder the next morning. At that time, the homeowner and her family were away on a trip. During the night, a thief, using the ladder to gain access to an upstairs window, entered the house and stole some valuable jewels. The homeowner has asserted a claim against the roofer for damages for the loss of the jewels.

In her claim against the roofer, will the homeowner prevail?

A: Yes, because by leaving the ladder the roofer became a trespasser on the owner's property.
B: Yes, because by leaving the ladder, the roofer created the risk that a person might unlawfully enter the house.
C: No, because the act of the thief was a superseding cause.
D: No, because the owner's claim is limited to damages for breach of contract.

The explanation for the answer is:

B is correct. Generally an intentional tort, such as theft, is a superseding action that cuts off liability in a negligence analysis, unless the negligent act's foreseeable consequences include the same type of intentional or criminal acts. The ladder was left upright against a home where the family was away on a trip, in plain view for any thief to see. The roofer had a duty of ordinary care to remove his equipment, and it was certainly foreseeable that leaving the ladder at an unoccupied home would potentially result in its use as the instrumentality for a break-in. The burden to remove the ladder was slight compared to the potential severity of the harm. Because the roofer created a foreseeable risk, his liability is not cut off by the thief's intentional intervening act. Therefore, C is incorrect.

A is incorrect. The roofer did not become a trespasser by leaving the ladder on the owner's property. His license to be on the property did not expire until his job was completed, which would include removal of his equipment. Thus, the issue of whether the roofer has a trespasser's liability for any damage caused to the owner's property does not apply.

D is meant to distract and confuse. This is not a contracts issue. The contract involved the making of repairs to the roof. Those repairs, according to the fact pattern, were completed, so despite the red-herring phrase "workmanlike manner," breach of contract is not in issue here. Rather, the issue here is negligence by the roofer during the removal of his equipment.

Question 26 - Torts - Negligence

The question was:

Two lawyers work as partners in a small town that has only one other lawyer in it. The partners do a substantial amount of personal injury work. A client was severely and permanently injured in an automobile collision. The client employed the partners to represent her in obtaining damages from the motorist for her injuries. At the time she employed the partners, the statute of limitations on her claim had six weeks to run. The complaint was prepared but not filed. Each partner thought the other partner would file the complaint. The statute of limitations ran on the client's claim against the motorist.

The client has filed suit against the partners for negligence. That case is on trial with a jury in a court of general jurisdiction.

In order to establish a breach of the standard of care owed to her by the partners, the client

A: must have a legal expert from the same locality testify that defendants' conduct was a breach.
B: must have a legal expert from the same state testify that defendants' conduct was a breach.
C: can rely on the application of the jurors' common knowledge as to whether there was a breach.
D: can rely on the judge, as an expert in the law, to advise the jury whether there was a breach.

The explanation for the answer is:

C is correct. The failure to file within a statute-of-limitations deadline does not require special knowledge to understand. Expert testimony is not generally needed or required where an attorney's standard of care and breach of conduct are obvious, or "common knowledge."

A is not the best answer. The standard stated only applies to issues involving locality rules. A statute-of-limitation is generally state law, so local expert testimony is not required.

B is a trap - beware the word "must." While the trend in court today is to require expert testimony to establish a professional standard of care, there is still a certain amount of discretion and flexibility. Expert testimony is not required where the standard and breach are common knowledge. In addition, if the claim is regarding a local court rule, expert testimony on local standard of care may be required instead.

D is incorrect. A judge is not allowed to use personal knowledge and should not be giving legal advice from the bench. This answer wants you to think "jury instruction," but that is a trick.

Question 27 - Torts - Negligence

The question was:

Two lawyers work as partners in a small town that has only one other lawyer in it. The partners do a substantial amount of personal injury work. A client was severely and permanently injured in an automobile collision. The client employed the partners to represent her in obtaining damages from the motorist for her injuries. At the time she employed the partners, the statute of limitations on her claim had six weeks to run. The complaint was prepared but not filed. Each partner thought that the other partner would file the complaint. The statute of limitations ran on the client's claim against the motorist.

The client has filed suit against the partners for negligence. That case is on trial with a jury in a court of general jurisdiction.

In addition to proving that the partners were negligent, the client must establish, as a minimum, that she

A: would have, but for her lawyers' negligence, recovered from the motorist.
B: had a good faith claim against the motorist that was lost by her lawyers' negligence.
C: was severely and permanently injured when struck by the motorist's automobile.
D: did not negligently contribute to the failure to have the complaint filed.

The explanation for the answer is:

A is correct. Unlike ordinary negligence, the plaintiff in a legal malpractice claim must prove that (1) the lawyer's misconduct or lack of action caused her loss AND (2) that, had the lawyer met the standard of care, the plaintiff would have won her claim or defense and been eligible to receive a specifically defined result. This situation is often called the "trial within a trial" burden. Consequently, while answers B, C, and D are all partially correct, they do not go far enough in establishing the client's minimum burden of proof in a claim for legal malpractice/negligence.

Question 38 - Torts - Strict Liability

The question was:

A homeowner owns a house in a city. On the lawn in front of his home and within five feet of the public sidewalk there was a large tree. The roots of the tree caused the sidewalk to buckle severely and become dangerous. An ordinance of the city requires adjacent landowners to keep sidewalks in safe condition. The homeowner engaged a contractor to repair the sidewalk, leaving it to the contractor to decide how the repair should be made.

The contractor dug up the sidewalk, cut back the roots of the tree, and laid a new sidewalk. Two days after the homeowner had paid the contractor the agreed price of the repair, the tree fell over onto the street and damaged a parked car belonging to a driver.

The driver has asserted claims against the homeowner and the contractor, and both defendants admit that cutting the roots caused the tree to fall. The homeowner also admitted that he was aware of the dangerous manner in which the contractor was performing the repairs.

The theory on which the driver is most likely to prevail against the homeowner is that the homeowner is

A: strictly liable, because the tree was on his property.
B: liable for the contractor's negligence because the homeowner knew the contractor was engaged in an ultra-hazardous activity.
C: liable, because he assumed responsibility when he paid the contractor for the repair.
D: liable on the basis of *respondeat superior*.

The explanation for the answer is:

B is the best answer. Ordinarily a landowner would not be liable for the acts of an independent contractor, so long as the contractor was not negligently hired. The exception is where the homeowner has a non-delegable duty, which includes ultra-hazardous activities performed on the landowner's property. Ultra-hazardous activities give rise to strict liability because, even in the absence of negligence, their inherent danger is unreasonably high when weighed against their social utility. Therefore, because the homeowner was aware of the contractor's ultra-hazardous activity, he will be liable for the damage.

A is incorrect because the fact that the tree was on the homeowner's property does not automatically make him liable for the contractor's negligence. C is also incorrect. A payor does not assume responsibility for damage caused by a contracting party's negligent act simply by paying that party. D is incorrect because this was an independent contractor, not an employee, so the concept of *respondeat superior* would not apply. The fact that this was an independent contractor is bolstered by the fact that the homeowner was "leaving it to the contractor to decide how the repairs should be made."

Question 39 - Torts - Negligence

The question was:

A homeowner owns a house in a city. On the lawn in front of his home and within five feet of the public sidewalk there was a large tree. The roots of the tree caused the sidewalk to buckle severely and become dangerous. An ordinance of the city requires adjacent landowners to keep sidewalks in safe condition. The homeowner engaged a contractor to repair the sidewalk, leaving it to the contractor to decide how the repair should be made.

The contractor dug up the sidewalk, cut back the roots of the tree, and laid a new sidewalk. Two days after the homeowner had paid the contractor the agreed price of the repair, the tree fell over onto the street and damaged a parked car belonging to a driver.

The driver has asserted claims against the homeowner and the contractor, and both defendants admit that cutting the roots caused the tree to fall.

In the claim of the driver against the contractor, the best defense of the contractor is that

A: the tree was on the property of the homeowner.
B: he repaired the sidewalk at the direction of the homeowner.
C: he could not reasonably foresee that the tree would fall.
D: he was relieved of liability when the homeowner paid for the repair.

The explanation for the answer is:

C is correct. The driver will be asserting a claim of negligence, claiming that the contractor breached his duty to exercise reasonable care in the repair of the sidewalk. The contractor was a paid professional and an independent contractor who had discretion in how to repair the sidewalk. His best defense to liability would be to show that the risk of the tree falling was not foreseeable so there was no breach of duty. A and B are incorrect because they are arguments for vicarious liability, and even if successful, would not relieve the contractor's liability as the homeowner would then be entitled to indemnification from the contractor. D is incorrect because being paid for services does not limit an individual's liability for negligence.

Question 40 - Torts - Negligence

The question was:

A homeowner owns a house in a city. On the lawn in front of his home and within five feet of the public sidewalk there was a large tree. The roots of the tree caused the sidewalk to buckle severely and become dangerous. An ordinance of the city requires adjacent landowners to keep sidewalks in safe condition. The homeowner engaged a contractor to repair the sidewalk, leaving it to the contractor to decide how the repair should be made.

The contractor dug up the sidewalk, cut back the roots of the tree, and laid a new sidewalk. Two days after the homeowner had paid the contractor the agreed price of the repair, the tree fell over onto the street and damaged a parked car belonging to a driver.

The driver has asserted claims against the homeowner and the contractor, and both defendants admit that cutting the roots caused the tree to fall.

If the driver recovers a judgment against the homeowner due to the homeowner's vicarious liability, does the homeowner have any recourse against the contractor?

A: No, because payment by the homeowner was an acceptance of the work.
B: No, because the homeowner selected the contractor to do the work.
C: Yes, because the judgment against the homeowner was based on vicarious liability.
D: Yes, because the homeowner's conduct was not a factual cause of the harm.

The explanation for the answer is:

C is correct. A judgment against an individual based on vicarious liability is a finding that the individual must pay for the wrong committed by a third-party based on the special relationship between the parties. If the homeowner is held for damages caused by the contractor based on a theory of vicarious liability, then the homeowner then has the right to seek indemnification from the contractor for the amount of the judgment.

A is incorrect. Being paid for services does not limit one's liability for negligence. B is incorrect because the selection of the contractor by the homeowner would only be relevant if the judgment obtained by the driver was for negligent hiring. D comes to the correct conclusion but is not the best answer. For the homeowner to bring a successful indemnification claim against the contractor, there must have been a judgment against the homeowner based on vicarious liability.

Question 59 - Torts - Negligence

The question was:

A property owner owns a hotel. When the International Order of Badgers came to town for its convention, its members rented 400 of the 500 rooms, and the hotel opened its convention facilities to them. During their convention, the members littered both the inside and the outside of the hotel with debris and bottles. The hotel manager knew that objects were being thrown out of the hotel windows. At his direction, hotel employees patrolled the hallways telling the guests to refrain from such conduct. The owner was out of town and was not aware of the problems which were occurring. During the convention, as a pedestrian walked past the hotel on the sidewalk, he was hit and injured by an ashtray thrown out of a window in the hotel by an unknown person. The pedestrian sued the owner for damages for his injuries.

Will the pedestrian prevail in his claim against the owner?

A: Yes, because a property owner is strictly liable for acts on his premises if such acts cause harm to persons using the adjacent public sidewalks.
B: Yes, because the person who threw the ashtray cannot be identified.
C: No, because the owner had no personal knowledge of the conduct of the hotel guests.
D: No, because the hotel employees had taken reasonable precautions to prevent such an injury.

The explanation for the answer is:

D is the correct answer. The injured person was not a guest, but a passerby, so the principle that innkeepers are liable for slight negligence does not apply to this situation. Instead, the pedestrian was a licensee, so the owner had a duty to exercise reasonable care in conducting active operations. Because the hotel employees took reasonable precautions against injury to a passerby, the owner will not be found liable.

A is incorrect. The strict liability standard does not apply to active operations unless the activity being performed is ultra-hazardous (such as demolition or the storage of hazardous waste). The hosting of a convention is not an ultra-hazardous activity, so the owner is not strictly liable for any harm caused by active operations. B is incorrect because the owner has not breached his duty of care, and is not liable even if the actual wrongdoer cannot be identified. C is incorrect because if the owner's employees had not acted with reasonable care, then the owner could be vicariously liable for the pedestrian's injury on a theory of respondeat superior even if the owner had no personal knowledge of the conduct of the hotel guests.

Question 69 - Torts - Other Torts

The question was:

In 2006, a utility company constructed a new plant for the generation of electricity. The plant burns lignite, a low grade fuel which is available in large quantities.

Although the plant was constructed in accordance with the best practicable technology, the plant emits a substantial quantity of invisible fumes. The only way the utility company can reduce the fumes is by the use of scrubbing equipment that would cost $50,000,000 to install and would increase the retail price of generated electricity by 50 percent while reducing the volume of fumes by only 20 percent. Because of the expense of such equipment and its relative ineffectiveness, no other generating plants burning lignite use such equipment.

The plant was located in a sparsely settled rural area, remote from the large city served by the utility company.

A farmer owned a farm adjacent to the plant. He had farmed the land for forty years and lived on the premises. The prevailing winds carried fumes from the new plant over the farmer's land. His 2006 crop was less than half the average size of this crop over the five years immediately preceding the construction of the plant. It can be established that the fumes caused the crop reduction.

The farmer's hay fever, from which he had long suffered, became worse in 2006. Physicians advised him that the lignite fumes were affecting it and that serious lung disease would soon result unless he moved away from the plant. He did so, selling his farm at its reasonable market value, which was then $10,000 less than before the construction of the plant.

If the farmer asserts a claim based on nuisance against the utility company for damages for personal injuries, will the farmer prevail?

A: No, because there is no practicable way for the utility company to reduce the fumes.
B: No, because the utility company's acts constituted a public nuisance.
C: Yes, because the farmer's personal injuries were within the scope of the liability imposed on the utility company.
D: Yes, because the generation of electricity is an ultra-hazardous activity.

The explanation for the answer is:

C is correct. The fumes created by the plant are a public nuisance because they unreasonably interfere with the property rights of the community. A private person may recover for a public nuisance only if he has suffered unique damage not suffered by the public. The farmer has suffered unique damages due to the exacerbation of his hay fever to the point where he would develop a serious lung disease. Therefore, his personal injuries are within the scope of liability imposed on the utility company.

A is incorrect because the balancing of competing interests is only done when injunctive relief from the nuisance is sought. The farmer is only seeking damages, so the impracticality of reducing fumes is irrelevant to the analysis. B is incorrect because although this is a public nuisance, the farmer's unique damages allow him to bring suit. D is incorrect. An activity may be characterized as ultra-hazardous if it involves a substantial risk of serious harm to persons or property no matter how much care is exercised. There is no indication that the generation of electricity by burning lignite cannot be performed without risk of serious harm; the facts indicate that the farmer was only injured due to a preexisting condition. Therefore, it is unlikely it will be considered an ultra-hazardous activity.

Question 70 - Torts - Negligence

The question was:

In 2006, a utility company constructed a new plant for the generation of electricity. The plant burns lignite, a low grade fuel which is available in large quantities.

Although the plant was constructed in accordance with the best practicable technology, the plant emits a substantial quantity of invisible fumes. The only way the utility company can reduce the fumes is by the use of scrubbing equipment that would cost $50,000,000 to install and would increase the retail price of generated electricity by 50 percent while reducing the volume of fumes by only 20 percent. Because of the expense of such equipment and its relative ineffectiveness, no other generating plants burning lignite use such equipment.

The plant was located in a sparsely settled rural area, remote from the large city served by the utility company.

A farmer owned a farm adjacent to the plant. He had farmed the land for forty years and lived on the premises. The prevailing winds carried fumes from the new plant over the farmer's land. His 2006 crop was less than half the average size of this crop over the five years immediately preceding the construction of the plant. It can be established that the fumes caused the crop reduction.

The farmer's hay fever, from which he had long suffered, became worse in 2006. Physicians advised him that the lignite fumes were affecting it and that serious lung disease would soon result unless he moved away from the plant. He did so, selling his farm at its reasonable market value, which was then $10,000 less than before the construction of the plant.

If the farmer asserts a claim based on negligence against the utility company for crop damages, will he prevail?

A: No, because the utility company was not negligent.
B: No as to 2006 crop damage, because the farmer did not mitigate damages by selling his farm in 2005.
C: Yes as to 20 percent of his crop damage, because use of available equipment would have reduced the fumes by 20 percent.
D: Yes, because operation of the plant constitutes a nuisance.

The explanation for the answer is:

A is correct. The facts clearly indicate that the utility company met the current industry standard of care and to do more was unduly burdensome. The plant was constructed in accordance with the best practicable technology and was located in a sparsely populated area. Because the utility company met its burden of care, the farmer will not prevail in a negligence action for his property damage. B is incorrect. The farmer was not in a contractual relationship with the utility company and was not required to mitigate his damages based on the presumption that the utility company would build next to him in 2006. His failure to sell before the plant was constructed will not be considered contributory negligence. C is incorrect because it assumes that the farmer's damages can be calculated based on the failure of the utility company to use the prohibitively expensive scrubbing equipment.

D is incorrect. A nuisance action may be based on a negligence theory, and the fumes created by the plant could constitute a public nuisance due to their substantial interference with the property rights of the community. However, there is no indication that crop damage is a unique damage not suffered by the rest of the rural community. Therefore, the farmer will not be able to recover for the property damage even if the utility company had been negligent.

Question 86 - Torts - Negligence

The question was:

A company operated an installation for distributing sand and gravel. The installation was adjacent to a residential area. On the company's grounds there was a chute with polished metal sides for loading sand and gravel into trucks. The trucks being loaded stopped on the public street below the chute.

After closing hours, a plywood screen was placed in the chute and the ladder used for inspection was removed to another section of the installation. For several months, however, a number of children, 8 to 10 years of age, had been playing on the company's property and the adjoining street after closing hours and had discovered the chute could be used as a slide. The company knew of this activity.

One evening, as children were playing on the chute, a commuter driving by the chute hit an 8-year-old boy who slid down in front of the automobile. The commuter applied her brakes, but they suddenly failed, and she hit and injured the child. The commuter saw the child in time to have avoided hitting him if her brakes had worked properly. Two days earlier, the commuter had taken her car to a mechanic to have her brakes inspected, and the mechanic had told her that the brakes were in perfect condition. Claims were asserted on behalf of the child by his proper legal representative against the company, the commuter, and the mechanic.

With respect to the child's claim against the commuter, the commuter's best defense is that

A: her conduct was not the cause in fact of the harm.
B: she used reasonable care in the maintenance of her brakes.
C: she could not reasonably foresee the child's presence in the street.
D: she did not act willfully and wantonly.

The explanation for the answer is:

B is correct. The prima facie case for negligence requires a duty, a breach of that duty, causation, and damages. Here, the commuter had a general duty of care: to act as an ordinary, prudent, and reasonable driver. There is no indication that the commuter was negligent in her driving. Instead, it was the state of the car's brakes that caused the injury. Therefore, if the commuter used reasonable care in the maintenance of her brakes, she will have satisfied her duty and not be liable for the child's injuries. A is incorrect because if the commuter had breached her duty, she would be the cause in fact of the harm. C is incorrect because the presence of a person in the road is foreseeable, and the woman owed a duty to the child. D is incorrect because willful and wanton conduct is not required to breach the commuter's duty of care; failure to act as a reasonable person will suffice.

Question 87 - Torts - Negligence

The question was:

A company operated an installation for distributing sand and gravel. The installation was adjacent to a residential area. On the company's grounds there was a chute with polished metal sides for loading sand and gravel into trucks. The trucks being loaded stopped on the public street below the chute.

After closing hours, a plywood screen was placed in the chute and the ladder used for inspection was removed to another section of the installation. For several months, however, a number of children, 8 to 10 years of age, had been playing on the company's property and the adjoining street after closing hours. The children found the ladder and also discovered that they could remove the plywood screen from the chute and slide down to the street below. The company knew of this activity.

One evening, as children were playing on the chute, a commuter driving by the chute hit an 8-year-old boy who slid down in front of the automobile. The commuter applied her brakes, but they suddenly failed, and she hit and injured the child. The commuter saw the child in time to have avoided hitting him if her brakes had worked properly. Two days earlier, the commuter had taken her car to a mechanic to have her brakes inspected, and after a negligent inspection the mechanic had told her that the brakes were in perfect condition. Claims were asserted on behalf of the child by his proper legal representative against the company, the commuter, and the mechanic.

On the child's claim against the mechanic, will the child prevail?

A: Yes, because the mechanic is strictly liable in tort.
B: Yes, because the mechanic was negligent in inspecting the commuter's brakes.
C: No, because the child was in the legal category of a bystander.
D: No, because the company's conduct was an independent and superseding cause.

The explanation for the answer is:

B is the correct answer. A collision injury caused by brake failure is a foreseeable result of failing to properly inspect a car's brakes. Because the mechanic was negligent in inspecting the commuter's brakes, he breached his duty of care and that breach is the proximate cause of the child's injuries. Since the commuter saw the child in time to stop if her brakes had worked properly, the mechanic's negligence is also the cause in fact of the injuries. Therefore, the child will prevail on his claim. A is incorrect because there is no basis for strict liability as the mechanic only inspected the brakes; he did not install new ones. C is incorrect and irrelevant because the child was directly injured. D is incorrect because the injury of the child by the car was a foreseeable result (injury due to brake failure) caused by an unforeseeable intervening force (an attractive nuisance placing a child in the road). Therefore, the mechanic will still be liable.

Question 89 - Torts - Intentional Torts

The question was:

A salesman and a mechanic are identical twins. The salesman, angry at a man, said, "You'd better stay out of my way. The next time I find you around here, I'll beat you up." Two days later, while in the neighborhood, the man saw the mechanic coming toward him. As the mechanic came up to the man, the mechanic raised his hand. Thinking he was the salesman, and reasonably fearing bodily harm, the man struck the mechanic.

If the mechanic asserts a claim against the man and the man relies on the privilege of self-defense, will the man prevail?

A: No, because the mechanic was not an aggressor.
B: No, because the mechanic did not intended his gesture as a threat.
C: Yes, because the man honestly believed that the mechanic would attack him.
D: Yes, because a reasonable person under the circumstances would have believed that the mechanic would attack him.

The explanation for the answer is:

D is correct. The issue is battery due to a mistake of fact, which can only turn into the privilege of self-defense if the belief was objectively reasonable. Because the man's fear of an assault was reasonable, the man can properly claim self-defense. Since an objective belief is needed, it is not determinative that the mechanic was not actually the aggressor, so A and C are incorrect.

B is not the best answer. The proper test is what a reasonable person in the defendant's position would have believed. What the mechanic intended would only be relevant if he was the party accused of assault.

Question 90 - Torts - Negligence

The question was:

Section 1 of the Vehicle Code of a state makes it illegal to cross a street in a central business district other than at a designated crosswalk. Section 2 of the Code prohibits parking any motor vehicle so that it blocks any part of a designated crosswalk. A pedestrian wanted to cross Main Street in the central business district of a city, located in the state, but a truck parked by a trucker was blocking the designated crosswalk. The pedestrian stepped out into Main Street and carefully walked around the back of the truck. The pedestrian was struck by a motor vehicle negligently operated by a driver.

If the pedestrian asserts a claim against the driver, the pedestrian's failure to be in the crosswalk will have which of the following effects?

A: It is not relevant in determining the right of the pedestrian.
B: It may be considered by the trier of fact on the issue of the driver's liability.
C: It will bar the pedestrian's recovery unless the driver saw the pedestrian in time to avoid the impact.
D: It will bar the pedestrian's recovery as a matter of law.

The explanation for the answer is:

B is the correct answer. The pedestrian's failure to be in the crosswalk will be used to establish comparative negligence on the part of the plaintiff. The statute that the pedestrian violated was designed to protect pedestrians, and the harm the pedestrian suffered was the type that the statute was designed to protect. Since this violation is not excused, under the majority rule the violation would be negligence per se. Therefore, the defendant's failure to use the crosswalk can be considered by the trier of fact to determine the driver's liability.

A is incorrect. The pedestrian's behavior is relevant because is concerns possible comparative negligence. C and D are incorrect. Both refer to the doctrine of contributory negligence as a complete bar to recovery. C refers to the last clear chance exception and D states the rule for contributory negligence. The Examiners' instructions, however, state that pure comparative negligence is to be used unless there are specific instructions in the facts to the contrary. Always be sure to read the jurisdictional directions before beginning the MBE as this distinction is often important.

Question 91 - Torts - Negligence

The question was:

Section 1 of the Vehicle Code of a state makes it illegal to cross a street in a central business district other than at a designated crosswalk. Section 2 of the Code prohibits parking any motor vehicle so that it blocks any part of a designated crosswalk. A pedestrian wanted to cross Main Street in the central business district of a city, located in the state, but a truck parked by a trucker was blocking the designated crosswalk. The pedestrian stepped out into Main Street and carefully walked around the back of the truck. The pedestrian was struck by a motor vehicle negligently operated by a driver.

If the pedestrian asserts a claim against the trucker, the most likely result is that the pedestrian will

A: prevail, because the trucker's violation of a state statute makes him strictly liable for all injuries caused thereby.
B: prevail, because the probable purpose of Section 2 of the Vehicle Code of State was to safeguard pedestrians in using crosswalk.
C: not prevail, because the pedestrian assumed the risk of injury when he crossed the street outside the crosswalk.
D: not prevail, because the driver's conduct was the actual cause of the pedestrian's harm.

The explanation for the answer is:

B is the correct answer. The statute the trucker violated was designed to protect pedestrians, and the harm the pedestrian suffered was the type that the statute was designed to protect. In the majority of states, such a violation would be negligence per se; in a few states it would only establish a prime facie case for negligence. B is the best choice because it correctly identifies the relevance of the safety statute to the claim against the trucker.

A is inaccurate because the trucker's actions do not give rise to strict liability. C is not the best answer. The trucker, by negligently parking in the crosswalk, bears the responsibility for harm caused to negligent jaywalkers because pedestrians being forced to cross outside of the crosswalk is a foreseeable consequence of the trucker's negligent decision to block the busy crosswalk. A trier of fact would find that the pedestrian did not voluntarily assume the risk of crossing.

D is incorrect. The driver's conduct was the indirect cause of the plaintiff's injuries. The driver's subsequent intervening act does not cut off the trucker's liability because the pedestrian's injury was foreseeable. While the driver's negligence was an independent intervening force, that negligence was a foreseeable risk created by the trucker's conduct. Therefore, the pedestrian will prevail against the trucker.

Question 103 - Torts - Intentional Torts

The question was:

A husband and a wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by the neighbor. After climbing over the fence, the husband and wife damaged some of the neighbor's plants which were near the fence. The fence was posted with a large sign, "No Trespassing."

The neighbor saw the husband and the wife and came toward them with his large watchdog on a long leash. The dog rushed at the wife. The neighbor had intended only to frighten the husband and the wife, but the leash broke, and before the neighbor could restrain the dog, the dog bit the wife.

If the wife asserts a claim based on battery against the neighbor, will she prevail?

A: Yes, because the neighbor intended that the dog frighten the wife.
B: Yes, because the breaking of the leash establishes liability under *res ipsa loquitur*.
C: No, because the wife made an unauthorized entry on the neighbor's land.
D: No, because the neighbor did not intend to cause any harmful contact with the wife.

The explanation for the answer is:

A is the correct answer. The neighbor only intended to commit the tort of assault, but then the dog actually bit the wife. However, the doctrine of transferred intent) allows for the neighbor's intent to assault the woman to be transferred to the battery.

B is incorrect. Res ipsa loquitur is used to establish a prima facie negligence claim, and is inapplicable to an intentional tort claim.

C is not correct because the wife's entry onto the neighbor's land was privileged by private necessity. As such, the wife has a limited right to be on the neighbor's property as long as the conditions leading to the private necessity exist (in this case a bull running loose on the road). D is incorrect because the neighbor's intent to commit the assault will satisfy the intent requirement for the resulting battery.

Question 104 - Torts - Intentional Torts

The question was:

A husband and a wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by the neighbor. After climbing over the fence, the husband and wife damaged some of the neighbor's plants which were near the fence. The fence was posted with a large sign, "No Trespassing."

The neighbor saw the husband and the wife and came toward them with his large watchdog on a long leash. The dog rushed at the wife. The neighbor had intended only to frighten the husband and the wife, but the leash broke. Both the husband and wife reasonably believed that the dog was going to bite them. Before the neighbor could restrain the dog, the dog managed to only bite the wife.

If the husband asserts a claim based on assault against the neighbor, will he prevail?

A: Yes, because the landowner did not have a privilege to use excessive force.
B: Yes, because the husband reasonably believed that the dog might bite him.
C: No, because the dog did not come in contact with him.
D: No, because the neighbor was trying to protect his property.

The explanation for the answer is:

B is correct. For the tort of assault, the husband's apprehension must be reasonable, and the neighbor must have the apparent present ability to complete the battery. The neighbor ran towards both the husband and the wife with the dog. Because husband reasonably believed that the dog would bite him, he will prevail in a claim for assault against the neighbor.

A is not the best answer. Generally, a landowner can use reasonable force to prevent the commission of a tort against the property. However, the use of force must be preceded by a request to desist. Furthermore, the privilege of private necessity supersedes the defense of property privilege. Therefore, the landowner did not have the privilege to use any force, not just excessive force, and B is the better answer.

C is incorrect because physical contact is not necessary for the commission of an assault. D is incorrect because the husband and wife's private necessity privilege supersedes the neighbor's defense of property privilege.

Question 105 - Torts - Intentional Torts

The question was:

A husband and a wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by the neighbor. After climbing over the fence, the husband and wife damaged some of the neighbor's plants which were near the fence. The fence was posted with a large sign, "No Trespassing."

The neighbor saw the husband and the wife and came toward them with his large watchdog on a long leash. The dog rushed at the wife. The neighbor had intended only to frighten the husband and the wife, but the leash broke, and before the neighbor could restrain the dog, the dog bit the wife.

If the neighbor asserts a claim against the wife and the husband for damage to his plants, will he prevail?

A: Yes, because the wife and the husband entered on his land without permission.
B: Yes, because the neighbor had posted his property with a "No Trespassing" sign.
C: No, because the wife and the husband were confronted by an emergency situation.
D: No, because the neighbor used excessive force toward the wife and the husband.

The explanation for the answer is:

A is the best answer. The husband and wife had the "incomplete" privilege of private necessity, which allows trespass onto the property of another to avoid a serious threat to life or property, but retains liability for any actual damage caused by the intrusion. The facts place a bull running loose on the road, which qualifies as an emergency sufficient to invoke the necessity privilege. The privilege of private necessity means that the husband and the wife (1) are only liable for actual damages, that the husband and the wife (2) are not legally trespassers, and that (3) the neighbor has no privilege to "protect his property" from the husband and wife until the dangerous situation has passed. Answer A addresses the fact that the husband and the wife were on the neighbor's property without permission, and acknowledges that, while they are not liable for trespass due to the emergency, they still must compensate the neighbor for any actual damage to his plants that they caused. Thus, C is incorrect.

B reaches the right result for the wrong reason. "No Trespassing" signs are ineffective against private necessity and would not be the reason for the neighbor's recovery.

D is incorrect. The neighbor's excessive force is a separate claim and will affect his liability to the husband and the wife. If the cases are consolidated it may reduce his damage award, but it would not prevent the neighbor's recovery of actual damages from the husband and wife's trespass by private necessity.

Question 110 - Torts - Products Liability

The question was:

A storekeeper who owns a large hardware store sells power saws for both personal and commercial use. He often takes old power saws as trade-ins on new ones. The old power saws are then completely disassembled and rebuilt with new bearings by the storekeeper's employees and sold by the storekeeper as "reconditioned saws."

A purchaser, the owner and operator of a cabinet-making shop, informed the storekeeper that he wanted to buy a reconditioned circular saw for use in his cabinet making business. However, the blade that was on the saw he picked out had very coarse teeth for cutting rough lumber. The purchaser told the storekeeper that he wanted a saw blade that would cut plywood. The storekeeper exchanged the coarse blade for a new one with finer teeth that would cut plywood smoothly, but used the original shaft. The new blade was manufactured by Saw-Blade Company, which uses all available techniques to inspect its products for defects. The reconditioned saw had been manufactured by Power Saw Company.

The week after the saw was purchased, an employee, who works for the purchaser in the purchaser's cabinet-making shop, was injured while using the saw. The employee's arm was severely cut. As a result, the cabinetmaking shop was shut down for a week until a replacement for the employee could be found.

If the employee was injured while cutting plywood when the shaft holding the saw blade came loose when a bearing gave way and the shaft and blade flew off the saw, and if the employee asserts a claim based on strict liability in tort against Power Saw Company, the employee will probably

A: recover because the shaft that came loose was a part of the saw when it was new.
B: recover, because Power Saw Company was in the business of manufacturing dangerous machines.
C: not recover, because the employee was not the buyer of the power saw.
D: not recover, because the saw has been rebuilt by the storekeeper.

The explanation for the answer is:

D is the correct answer. A threshold requirement for a products liability claim is that the defect must have existed at the time the product left the defendant's control. Here, the original saw blade was removed and replaced. Therefore, the defect with the bearing did not exist at the time the saw left the Power Saw Company's control. Furthermore, the reconditioning of the saw by the shopkeeper was a substantial alteration of the product, which will sever the strict liability of the Power Saw Company.

A and B are incorrect because the product was substantially altered before reaching the consumer. C is incorrect because any person who is within the foreseeable zone of risk can bring a products liability claim based on strict liability.

Question 133 - Torts - Other Torts

The question was:

A free-lance photographer took a picture of an athlete in front of a shoe store. The athlete was a nationally known amateur basketball star who had received much publicity in the press. At the time, the window display in the shoe store featured "Jumpers," a well-known make of basketball shoes. The photographer sold the picture, greatly enlarged, to the shoe store and told the shoe store that the photographer had the athlete's approval to do so and that the athlete had consented to the shoe store's showing the enlarged picture in the window. The shoe store made no effort to ascertain whether the athlete had given his consent to the photographer. In fact, the athlete did not even know that that the photographer had taken the picture. The shoe store put the enlarged picture in the window with the display of "Jumpers" shoes. The college that the athlete attended believed that the athlete had intentionally endorsed the shoe store and "Jumpers" shoes, and subsequently canceled his athletic scholarship.

If the athlete asserts a claim based on invasion of privacy against the shoe store, will he prevail?

A: Yes, because the photographer had no right to take the athlete's picture.
B: Yes, because the shoe store, without the athlete's permission, used the athlete's picture for profit.
C: No, because the athlete was already a basketball star who had received much publicity in the press.
D: No, because the shoe store believed it had permission to put the picture in the window.

The explanation for the answer is:

B is correct. The tort of invasion of privacy covers four kinds of wrongs: (1) intrusion into seclusion, (2) public disclosure of private facts, (3) false light publicity, and (4) appropriation of another's name or likeness. The fact pattern clearly states that the athlete's likeness was used for the store's commercial advantage without the athlete's authorization. Therefore, the placing of the athlete's picture in the store's window was an unauthorized use of the athlete's likeness to promote the store and the athlete will prevail.

A is incorrect because it is the unauthorized use of the picture for profit, not the taking of the picture, that is actionable. C is incorrect as prior publicity or celebrity does not give rise to any valid defense. D is incorrect because a mistake concerning whether consent was given, even if that mistake was reasonable, is not a valid defense to an invasion of privacy claim.

Question 157 - Torts - Other Torts

The question was:

In 1970, a cattle company bought a 150-acre tract of agricultural land well suited for a cattle feed lot. The tract was ten miles from the city and five miles from the nearest home. By 2006, the city limits extended to the cattle company's feed lot. About 10,000 people lived within three miles of the cattle-feeding operation.

The cattle company land is outside the city limits and no zoning ordinance applies. The cattle company uses the best and most sanitary feed lot procedures, including chemical sprays, to keep down flies and odors and frequently removes manure. Despite these measures, residents of the city complain of flies and odors. An action has been filed by five individual homeowners who live within half a mile of the cattle company feed lot. Flies in the area are five to ten times more numerous than in other parts of the city, and extremely obnoxious odors are frequently carried by the wind to the plaintiffs' homes. The odors do not affect any other part of the city. The flies and odors are a substantial health hazard.

If plaintiffs assert a claim based on public nuisance, plaintiffs will

A: prevail because plaintiffs sustained harm different from that suffered by the public at large.
B: prevail because the cattle company's acts interfered with a person's enjoyment of his property.
C: not prevail, because only the state may bring an action based on public nuisance.
D: not prevail, because plaintiffs came to the nuisance.

The explanation for the answer is:

A is the correct answer. The cattle lot qualifies as a public nuisance because it unreasonably interferes with the health and property rights of the community. Although public nuisances generally must be prosecuted by public authorities, recovery for a public nuisance is possible if a private party suffered some unique damage not suffered by the general public. Because the plaintiffs suffered a different harm than the public at large, they will prevail. Consequently, A is correct and C is incorrect.

B is incorrect because interference with a plaintiff's private enjoyment of his land is insufficient, the interference must cause unique damages. D is incorrect. Generally if the purchaser bought in good faith, the purchaser is entitled to the reasonable use or enjoyment of the land. Therefore, coming to the nuisance does not automatically preclude a nuisance action.

Question 158 - Torts - Other Torts

The question was:

In 1970, a cattle company paid $30,000 for a 150-acre tract of agricultural land well suited for a cattle feed lot. The tract was ten miles from the city and five miles from the nearest home. By 2006, the city limits extended to the cattle company's feed lot. About 10,000 people lived within three miles of the cattle-feeding operation.

The cattle company land is outside the city limits and no zoning ordinance applies. The cattle company land is now worth $300,000, and $25,000 has been invested in buildings and pens. The cattle company uses the best and most sanitary feed lot procedures, including chemical sprays, to keep down flies and odors and frequently removes manure. Despite these measures, residents of the city complain of flies and odors. An action has been filed by five individual homeowners who live within half a mile of the cattle company feed lot. The plaintiffs' homes are valued currently at $25,000 to $40,000 each. Flies in the area are five to ten times more numerous than in other parts of the city, and extremely obnoxious odors are frequently carried by the wind to the plaintiffs' homes. The flies and odors are a substantial health hazard.

If plaintiffs assert a claim based on nuisance, plaintiffs will

A: prevail, because the cattle company's activity unreasonably interferes with plaintiffs' use and enjoyment of their property.
B: prevail, because the cattle company's activity constitutes an inverse condemnation of their property.
C: not prevail, because the cattle company had operated the feed lot for more than 25 years.
D: not prevail, because the cattle company uses the most reasonable procedures to keep down flies and odors.

The explanation for the answer is:

A is the correct answer. A private nuisance is substantial and unreasonable interference with a possessor's use or enjoyment of his property. Interference is substantial if it is offensive to an average person in the community. Interference is unreasonable if the injury to the plaintiff outweighs the utility of the defendant's conduct. In making this determination, the court will consider the neighborhood, land value, and alternative courses of conduct for the defendant.

In this situation, the interference is unreasonable because the injury outweighs the utility of the feed lot. Due to the growth of the city, there are now a substantial number of residences near the feed lot. Furthermore, while the cattle company's land is worth $300,000, the company has only invested $25,000 in the establishment of the feed lot, and is severely impairing the use of between $125,000 to $200,000 worth of residential property. Therefore, the interference will be considered a private nuisance.

B is incorrect. Inverse condemnation is a property action brought by the owner against a government entity that has taken the owner's property without the use of formal condemnation proceedings. The cattle company is not a government entity.

C is incorrect. Generally, if the purchaser bought in good faith, the purchaser is entitled to the reasonable use or enjoyment of the land. Therefore, coming to the nuisance does not automatically preclude a nuisance action.

D is incorrect. The defendant's use of reasonable procedures is an insufficient defense if the flies and odors are still a substantial and unreasonable interference with the plaintiffs' use or enjoyment of their property.

Question 169 - Torts - Negligence

The question was:

A motorist arranged to borrow his friend's car to drive for one day while the motorist's car was being repaired. The friend knew that the brakes on his car were faulty and might fail in an emergency. The friend forgot to tell the motorist about the brakes when the motorist picked up the car, but the friend did telephone the motorist's wife and told her about them. The wife, however, forgot to tell the motorist.

The motorist was driving the friend's car at a reasonable rate of speed and within the posted speed limit with the motorist's wife as a passenger. Another car, driven by a woman, crossed in front of the motorist at an intersection and in violation of the traffic signal. The motorist tried to stop, but the brakes failed, and the two cars collided. If the brakes had been in proper working order, the motorist could have stopped in time to avoid the collision. The motorist and his wife were injured.

If the motorist asserts a claim against the woman, the motorist will

A: recover the full amount of his damages, because the motorist himself was not at fault.
B: recover only a proportion of his damages, because the wife was also at fault.
C: not recover, because the wife was negligent and a wife's negligence is imputed to her husband.
D: not recover, because the failure of the brakes was the immediate cause of the collision.

The explanation for the answer is:

A correctly states the reason why the motorist will recover full damages from the woman. The motorist was driving reasonably and attempted to stop when the woman cut him off in violation of a traffic signal. The motorist's inability to stop despite his attempt does not give rise to fault. The woman had a duty to obey the traffic lights and it was foreseeable that breaching her duty and crossing in violation of a light would result in harm to an opposing motorist.

B and C are both incorrect. The wife's negligence is not imputed to her husband. D is not correct because the failure of the brakes will not cut short the woman's liability. The woman's action is the legal cause of the collision.

Question 177 - Torts - Negligence

The question was:

A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale.

Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price."

The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. Before the guest arrived, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna's being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

If the customer asserts a claim against the canning company based on negligence, the doctrine of *res ipsa loquitur* is

A: applicable, because the tuna was packed in a sealed can.
B: applicable, because the canning company, as the packer, is strictly liable.
C: not applicable, because the case of tuna had been knocked over by the workmen.
D: not applicable, because of the sign on the table from which the customer purchased the tuna.

The explanation for the answer is:

C is the correct answer. The doctrine of res ipsa loquitur generally cannot be applied unless (1) the defendant had exclusive control of the instrumentality during the relevant time, and (2) the plaintiff shows that she was not responsible for the injury. The doctrine of *res ipsa loquitur* will not be applicable here because the canning company did not have exclusive control over the cans of tuna at the time they were damaged.

A is incorrect because the fact that the tuna was in a sealed can does not create an inference of negligence attributable to the canning company because the cans were subsequently damaged by another party.

B is incorrect. The question specifically refers to a negligence claim, therefore strict liability is irrelevant to this situation.

D is incorrect. In order to use the doctrine of *res ipsa loquitur*, the plaintiff must be free of negligence. The defendant's use of the tuna after seeing the sign on the table was not negligent, and is not a valid reason for *res ipsa loquitur* to be held inapplicable.

Question 178 - Torts - Negligence

The question was:

A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale.

Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price."

The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. The customer returned home and inspected the tuna. Finding no defect with either can, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

If the guest asserts a claim against the customer, the customer most likely will

A: be held strictly liable in tort for serving spoiled tuna.
B: not be held liable because she was not negligent.
C: not be held liable because she did not act with reckless disregard for the safety of the guest.
D: not be held liable, because the guest was a social visitor.

The explanation for the answer is:

B is the correct answer and is reached by the process of elimination. The customer is not a merchant or manufacturer, so her use of spoiled tuna does not give rise to a products liability claim. Therefore, A is incorrect. Likewise, tuna casserole is not a hazardous condition or activity by an owner or occupier of land, so D can be eliminated. C states the wrong standard; the customer only owed the guest a duty of ordinary care. Therefore, B is correct because the customer will only be found liable if she was negligent in her use of the tainted tuna. Since there is no evidence that the customer breached her duty of ordinary care, B is the best answer. A, C, and D are incorrect.

Question 179 - Torts - Products Liability

The question was:

A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale.

Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price."damaged cans but the real thing is that the tuna was damaged already.

The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. Before the guest arrived, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna's being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

If the guest asserts a claim against the grocery store, the most likely result is that the guest will

A: recover on the theory of *res ipsa loquitur*.
B: recover on the theory of strict liability.
C: not recover, because the grocery store gave proper warning.
D: not recover, because the guest was not the purchaser of the cans.

The explanation for the answer is:

B is the correct answer. Strict liability can be imposed upon the grocery store for the sale of any product which is in a defective condition or is unreasonably dangerous to the user. Liability for physical harm to the guest is available provided that: (1) the grocery store is engaged in the business of selling groceries, and (2) the dented tuna can was not substantially changed by anyone else before the guest consumed it. The use of tuna within a casserole was a reasonable and foreseeable use which would not cut short the grocery store's liability. In addition, any person who is foreseeably (and in fact) injured by the grocery store's defective product can bring an action.

D is incorrect because privity of contract is not required; anyone who is injured by the product has standing to sue. A is incorrect because while there is an inference of negligence from the spoilt tuna, the negligence could be attributable to the canning company, the store, or the customer. Thus, the guest will not recover on a negligence theory based on the doctrine of *res ipsa loquitur*.Text

C is incorrect because the grocery store did not give proper warning. It only stated the cans were dented, not that they might (or did) contain spoiled food. Consequently, the grocery store will not be able to assert that customer had assumed the risk because the customer had not been adequately warned.

Text

Question 208 - Torts - Other Torts

The question was:

An unmarried woman was prominent in the women's liberation movement. She recently gave birth to a baby and publicly announced that she had no intention of marrying the father or disclosing his identity. The local newspaper decided to do a series of articles on the woman.

The first article discussed the woman's parents. The article correctly stated that her mother had died recently and her father is still living. The article referred to the fact that at the time of the woman's birth there were rumors that she had been born six months after her parent's marriage, that her father was not in fact her father, and that an actor was her real father. The actor has lived in retirement for the last ten years.

If the woman asserts a claim based on invasion of privacy against the newspaper for the statements in the first article about her birth and it is established that the statements are true, the most likely result is that the woman will

A: not prevail, because truth is a complete defense.
B: not prevail, because of her announcement concerning the birth of her own child.
C: prevail, because the statements hold her up to ridicule and contempt.
D: prevail, because her statements are embarrassing to her.

The explanation for the answer is:

B is the correct answer because it addresses the specific status of the woman. Due to First Amendment concerns, liability for published information about public figures must meet a stricter standard than for private individuals. On the facts, the woman would qualify as a "limited purpose" public figure because her position as a women's liberation movement member and her public announcement that she would not disclose the identity of or marry her child's father meant that she voluntarily "thrust" herself into the public eye. Consequently, since the facts published turned out to be true, the woman cannot (instead of defamation, which requires falsity to prevail) rely upon the privacy tort of public disclosure of private facts because the information about her private life is "newsworthy" and thus not actionable.

Liability for public disclosure of private facts arises when true facts about the plaintiff are published that are both highly offensive (which includes embarrassing facts) and not of legitimate concern to the public. Newsworthy information, if obtained through public means, is a complete defense. Therefore A, C and D are incorrect.

Question 211 - Torts - Negligence

The question was:

A city ordinance makes it unlawful to park a motor vehicle on a city street within ten feet of a fire hydrant. At 1:55 p.m. a man, realizing he must be in the bank before it closed at 2:00 p.m., and finding no other space available, parked his automobile in front of a fire hydrant on a city street. The man then hurried into the bank, leaving his aged neighbor as a passenger in the rear seat of the car. About 5 minutes later, and while the man was still in the bank, a driver was driving down the street. The driver swerved to avoid what he mistakenly thought was a hole in the street and sideswiped the man's car. The man's car was turned over on top of the hydrant, breaking the hydrant and causing a small flood of water. The man's car was severely damaged and the neighbor was badly injured. There is no applicable guest statute.

If the neighbor asserts a claim against the man, the most likely result is that the neighbor will

A: recover, because the man's action was negligence per se.
B: recover, because the man's action was a continuing wrong which contributed to the neighbor's injuries.
C: not recover, because a reasonably prudent person could not foresee injury to the neighbor as a result of the man's action.
D: not recover, because a violation of a city ordinance does not give rise to a civil cause of action.

The explanation for the answer is:

C is the correct answer because it addresses the issue of proximate or legal cause of the injury. The man had a duty of reasonable care to his aged neighbor, but when he negligently parked in a no parking zone, it was not reasonably foreseeable that the type of injury that would result from parking near the hydrant would be a rollover and flood injury. Consequently, the man's liability is cut short, and the neighbor will not prevail against the man for injuries suffered in the rollover.

A is incorrect. Under the majority, such a violation would be negligence per se (in the minority it would be evidence of negligence) if the statute the man violated was designed to protect the neighbor's class of foreseeable plaintiff, and the harm the neighbor suffered was the type that the statute was designed to protect. Parking restrictions in front of fire hydrants are to ensure access to fire department vehicles, not to protect against roadside accidents, so negligence per se is improperly invoked here.

B is incorrect. Continuing wrong is most commonly used in statute of limitations disputes to effectively toll the statute by proving the wrongful conduct is continuing and therefore recent enough to remain actionable. It is irrelevant to this question.

D misstates the use of safety statutes. Enforcement of safety statutes is indeed a government prosecution issue. Generally, use of safety statutes in civil suits is only to establish (or provide evidence of) the relevant standard of care and subsequent breach in negligence actions.

Question 212 - Torts - Negligence

The question was:

A city ordinance makes it unlawful to park a motor vehicle on a city street within ten feet of a fire hydrant. At 1:55 p.m. a man, realizing he must be in the bank before it closed at 2:00 p.m., and finding no other space available, parked his automobile in front of a fire hydrant on a city street. The man then hurried into the bank, leaving his aged neighbor as a passenger in the rear seat of the car. About 5 minutes later, and while the man was still in the bank, a driver was driving down the street. The driver swerved to avoid what he mistakenly thought was a hole in the street and sideswiped the man's car. The man's car was turned over on top of the hydrant, breaking the hydrant and causing a small flood of water. The man's car was severely damaged and the neighbor was badly injured. There is no applicable guest statute.

If the man asserts a claim against the driver for damage to the man's automobile, the most likely result is that the man will

A: recover, because the purpose of the ordinance is to provide access to the fire hydrant.
B: recover, because the driver's negligence was later in time than the man's act of parking.
C: not recover, because the man was contributorily negligent as a matter of law.
D: not recover, because the man's action in parking unlawfully was a continuing wrong.

The explanation for the answer is:

A is correct because it properly disposes of the safety statute issue as a potential bar to recovery. Safety statutes are used only if the statute violated was designed to protect the particular class of foreseeable victim that the plaintiff belonged to, and the harm the plaintiff suffered was the type that the statute was designed to protect. Parking restrictions in front of fire hydrants are designed to provide access for fire department vehicles, so the invocation of the statute is inappropriate here. Consequently, the man's illegal parking of his car does not cut short the driver's liability for the effects of his negligence in sideswiping the man's car.

B inadequately addresses the independent superseding cause issue. The man will not recover simply because the driver's negligence was later than the man's. He will recover because the driver's action was an unforeseeable, independent superseding action.

C is incorrect because the man cannot be held contributorily negligent, because the harm done was unforeseeable by the man.

D is incorrect. Continuing wrong is most commonly used in statute of limitations disputes to effectively toll the statute by proving the wrongful conduct is continuing and therefore recent enough to remain actionable. It is irrelevant to this question.

Question 213 - Torts - Negligence

The question was:

A city ordinance makes it unlawful to park a motor vehicle on a city street within ten feet of a fire hydrant. At 1:55 p.m. a man, realizing he must be in the bank before it closed at 2:00 p.m., and finding no other space available, parked his automobile in front of a fire hydrant on a city street. The man then hurried into the bank, leaving his aged neighbor as a passenger in the rear seat of the car. About 5 minutes later, and while the man was still in the bank, a driver was driving down the street. The driver swerved to avoid what he mistakenly thought was a hole in the street and sideswiped the man's car. The man's car was turned over on top of the hydrant, breaking the hydrant and causing a small flood of water. The man's car was severely damaged and the neighbor was badly injured. There is no applicable guest statute.

If the city asserts a claim against the driver for the damage to the fire hydrant and the driver was negligent in swerving his car, his negligence is

A: a cause in fact and a legal cause of the city's harm.
B: a cause in fact, but not a legal cause, of the city's harm because the man parked illegally.
C: a legal cause, but not a cause in fact, of the city's harm because the man's car struck the hydrant.
D: neither a legal cause nor a cause in fact of the city's harm.

The explanation for the answer is:

A is the correct answer. Negligence requires duty, breach, causation, and damages. The driver had a duty to drive with ordinary care, and breached that duty by sideswiping a parked car and damaging the fire hydrant. Therefore, the issue here is causation. The driver was the cause-in-fact of the damage because but for the driver's sideswiping of the man's car, the car would not have overturned onto the hydrant and caused damage. Likewise, the driver is the proximate cause of the damage because the resulting damages were a foreseeable result of the driver's negligence. The unforeseeable manner in which the damage occurred does not relieve the driver of liability. Thus, the driver's negligence is the actual and proximate cause of the city's harm. Therefore, B, C, and D are incorrect.

Question 222 - Torts - Negligence

The question was:

A 10-year-old boy lived near a company that sold new and used machinery. The company stored discarded machinery, pending sale for scrap, on a large vacant area it owned. This area was unfenced and was one-quarter mile from the housing development where the child lived. The company knew that children frequently played in the area and on the machinery. The child's parents had directed him not to play on the machinery because it was dangerous.

One day the child was playing on the press in the company's storage area. The press had several wheels, each geared to the other. The child climbed on the largest wheel, which was about five feet in diameter. The child's weight caused the wheel to rotate, his foot was caught between two wheels that were set in motion, and he was severely injured.

A claim for relief was asserted by the child through a duly appointed guardian. The company denied liability and pleaded the child's contributory fault as a defense.

In determining whether the company breached a duty to the child, which of the following is the most significant?

A: Whether the press on which the child was injured was visible from a public way.
B: Whether the maintenance of the area for the storage of discarded machinery was a private nuisance.
C: Whether the maintenance of the area for the storage of discarded machinery was a public nuisance.
D: Whether the company could have eliminated the risk of harm without unduly interfering with the company's normal operations.

The explanation for the answer is:

D is the correct answer. The attractive nuisance doctrine states that a landowner must exercise reasonable care to protect against reasonably foreseeable risks of harm to children caused by artificial conditions on the property. An attractive nuisance exists where: (1) the defendant is aware, or should be aware, of the dangerous condition, (2) the defendant knows that children enter the land, (3) the children would not realize the danger of the condition, and (4) the risk of harm is great compared to the cost to eliminate the condition. Here, all the elements are met except for the fourth condition. Therefore, the cost of eliminating the risk of harm would be the most significant information in determining a breach of duty by the company.

A is incorrect because the danger need not be visible from outside the property and can be discovered once the child is on the premises. B and C are incorrect as they both address nuisance (interference with the property of another), not attractive nuisance (a possessor's duty of care to children on the premises).

Question 223 - Torts - Intentional Torts

The question was:

A man was in the act of siphoning gasoline from a neighbor's car in the neighbor's garage and without his consent when the gasoline exploded and caused a fire. A rescuer, seeing the fire, grabbed a fire extinguisher from his car and put out the fire, saving the man's life and the neighbor's car and garage. In doing so, the rescuer was badly burned.

If the rescuer asserts a claim against the man for personal injuries, the rescuer will

A: prevail, because he saved the man's life.
B: prevail, because the man was at fault in causing the fire.
C: not prevail, because the rescuer knowingly assumed the risk.
D: not prevail, because the rescuer's action was not a foreseeable consequence of the man's conduct.

The explanation for the answer is:

B is correct. The man will be liable to the rescuer because the rescuer is a foreseeable plaintiff as long as the rescue was reasonably conducted. Since the man negligently caused a fire and put himself in danger, he is liable for the injury to the rescuer who was injured in the attempted rescue. Thus, D is incorrect. A is incorrect because a rescuer needs only to be injured in attempting the rescue to recover. C is incorrect because an attempted rescue is not an assumption of risk if the rescue is attempted in a reasonable fashion.

Question 224 - Torts - Negligence

The question was:

A man was in the act of siphoning gasoline from a neighbor's car in the neighbor's garage and without his consent when the gasoline exploded and caused a fire. A rescuer, seeing the fire, grabbed a fire extinguisher from his car and put out the fire, saving the man's life and the neighbor's car and garage. In doing so, the rescuer was badly burned.

If the rescuer asserts a claim against the neighbor for personal injuries, the rescuer will

A: prevail, because he saved the neighbor's property.
B: prevail, because he acted reasonably in an emergency.
C: not prevail, because the neighbor was not at fault.
D: not prevail, because the rescuer knowingly assumed the risk.

The explanation for the answer is:

C is the correct answer. A rescuer is a foreseeable plaintiff if the defendant's negligence places a person in peril and the plaintiff is injured while attempting a rescue of that person. Here, the neighbor was not negligent, and his actions did not place the man in danger or necessitate the rescue attempt. Therefore, the neighbor will not be at fault and cannot be held liable. A is incorrect because the duty arises from negligent causation, not from a benefit conferred. B is incorrect because the reasonableness of the rescue is not sufficient to hold the neighbor liable as he was not at fault for the emergency. D is incorrect because an attempted rescue is not an assumption of risk if the rescue is attempted in a reasonable fashion.

Question 248 - Torts - Intentional Torts

The question was:

A six-year old boy has a well-deserved reputation for bullying younger and smaller children. His parents have encouraged him to be aggressive and tough. The child, for no reason, knocked down, kicked and severely injured his playmate, a four-year old. A claim for relief has been asserted by the playmate's parents for their medical and hospital costs and for the playmate's injuries.

If the claim is asserted against the child's parents, the most likely result is they will be

A: liable, because parents are strictly liable for the torts of their children.
B: liable, because the child's parents encouraged him to be aggressive and tough.
C: not liable, because a six-year old cannot commit a tort.
D: not liable, because parents cannot be held liable for the tort of a child.

The explanation for the answer is:

B is the correct answer. At common law, parents are generally not vicariously liable for the tortious conduct of their children. However, parents may be liable for their own negligence in allowing or encouraging the child to act in a dangerous manner. The parent may also be liable when he knows of the child's tendency to injure others, and does not exercise due care to control or mitigate that tendency. Here, the parents encouraged the child to "be aggressive and tough" even though the child had a founded reputation for bullying. Therefore, the parents did not act with due care and will be liable for the playmate's injuries.

A is incorrect. Parents are not strictly liable for the torts of their children. C is incorrect. Children as young as four have been held capable of forming a tortious intent. D is incorrect. Beware of rules that are too broadly worded. A parent can be held liable for his child's torts when the child is acting as the agent for the parent.

Question 249 - Torts - Intentional Torts

The question was:

A six-year old boy has a well-deserved reputation for bullying younger and smaller children. His parents have encouraged him to be aggressive and tough. The child, for no reason, knocked down, kicked and severely injured his playmate, a four-year old. A claim for relief has been asserted by the playmate's parents for their medical and hospital costs and for the playmate's injuries.

If the claim is asserted against the child, the most likely result is the child will be

A: liable, because he intentionally harmed the playmate.
B: liable, because, as a six-year-old, he should have known his conduct was wrongful.
C: not liable, because a child under seven is not liable in tort.
D: not liable, because he is presumed to be under his parents' control and they have the sole responsibility.

The explanation for the answer is:

A is correct. Children as young as four have been held capable of forming a tortious intent and can be held liable for their actions. Here, the child intentionally injured the playmate. Furthermore, he did so for "no reason", so the action was not privileged.

C is incorrect because any minor will be liable for an intentional tort as long as they possess the requisite intent. B reaches the correct conclusion but uses the negligence standard. The negligence standard for children is whether the child's age, education, abilities and experiences rendered him capable of knowing that his conduct was likely to cause harm. Instead, the child is liable because he deliberately harmed another child, thus A is the better answer.

D is incorrect. Parents are generally not liable for the torts of their child where they are not in direct control of the child. Instead, the parents would be liable for their failure to act with due care regarding the child, and the child would remain liable for his intentional conduct.

Question 253 - Torts - Intentional Torts

The question was:

A customer went into a store at approximately 6:45 p.m. to look at some suits. The customer selected three suits from a rack and went into the dressing room to try them on. Signs posted on the walls of the store state that closing time is 9:00 p.m.; however, because of a special awards banquet for employees, the store was closed at 7:00 p.m. on this day. When the customer emerged from the dressing room a few minutes after 7:00 p.m., he was alone and locked in. The customer tried the front door but it was secured on the outside by a bar and padlock, so he went to the rear door. The customer grabbed the door knob and vigorously shook the door. The activity set off a mechanism that sprayed a chemical mist in the customer's face, causing him to become temporarily blind.

If the customer is to prevail on a claim against the store based on battery from the use of the chemical spray, the customer must establish that

A: he suffered severe bodily harm.
B: the spray mist was an offensive or harmful contact.
C: he suffered severe emotional distress.
D: his conduct was not a factual cause of the chemical's spraying him.

The explanation for the answer is:

B is correct because it gives the appropriate element necessary to complete the tort of battery, which is the call of the question. When looking for a correct response, always satisfy the elements in order. A battery is caused by an intentional harmful or offensive contact to the plaintiff's person or an extension thereof, without consent or privilege. Battery is a dignitary tort and does not require severe bodily harm or severe emotional distress, so A and C are incorrect. In addition, the instrumentality of the intentional touching need not be done personally by the defendant as long as the defendant set into motion an action with purpose or knowledge to a substantial certainty that the offensive or harmful touching would result. Therefore D is also wrong. A, C and D are incorrect.

Question 254 - Torts - Other Torts

The question was:

A suitor had been unsuccessfully pursuing a woman, who had recently announced her engagement to a different man. Angered by her engagement, the suitor sent the woman the following letter: "I hope you know what you are doing. The man you think you love wears women's clothes when at home. A Friend." At the time the suitor sent the letter, he believed the contents to be false.

The receipt of this letter caused the woman great emotional distress. She hysterically telephoned her fiance, read him the letter, and told him that she was breaking their engagement. The contents of the letter were not revealed to others. The fiance, who was a young attorney in the state attorney's office, suffered serious humiliation and emotional distress as a result of the broken engagement.

If the fiance asserts a claim against the suitor based on defamation, and it is proved that the suitor's statement was true, such proof will be

A: a defense by itself.
B: no defense because the suitor was motivated by malice.
C: no defense because the suitor believed it to be false.
D: no defense by itself.

The explanation for the answer is:

A is correct. The question specifically gives you the claim of defamation. A claim for defamation must prove that there was a defamatory communication of fact about the plaintiff that was published to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. If the plaintiff is not a public figure, and the statement is not about a matter of public concern, then falsity is not an element of the defamation claim. However, truth is always a complete defense. Thus, D is incorrect. Answers B and C are incorrect because they are only relevant if the statement was false. Because the statement was proved to be true, the suitor has a complete defense.

Question 266 - Torts - Negligence

The question was:

A construction company contracted to build a laundry for a laundry company on the latter's vacant lot in a residential area. As a part of its work, the construction company dug a trench from the partially completed laundry to the edge of a public sidewalk; waterlines were to be installed in the trench. Because of the contour of the land, the trench was dug to a depth ranging from 7 to 9 feet. The construction company did not place any barriers around the trench and permitted it to lie open for almost a week while waiting for the delivery of water pipes. This was known to the laundry company, but it raised no objection.

During the time the trench was open, a series of heavy rains fell, causing 5 feet of surface water to gather in the bottom of the trench. While this condition existed, a 5-year-old child, who was playing on the vacant lot with friends, stumbled and fell into the trench. An adult passerby, saw this and immediately lowered himself into the trench to rescue the child. However, his doing so caused the rain-soaked walls of the trench to collapse, killing both him and the child.

In a claim for wrongful death by the child's administrator against the construction company, the most likely result is that plaintiff will

A: recover, because the defendant left the open trench unprotected.
B: recover, because construction companies are strictly liable for inherently dangerous conditions.
C: not recover, because the child was a trespasser.
D: not recover, because the child's death was a result of the collapse of the trench, an independent intervening cause.

The explanation for the answer is:

A is correct. The creation of an artificial condition requires a duty of ordinary care on the part of the construction company. Under the facts, the construction company knew the lot was in a residential neighborhood and that the trench connected to the public sidewalk. It was foreseeable that, without some sort of barrier or warning, a trench 7 to 9 feet deep would likely cause severe harm to anyone who happened to fall into it as compared to the relatively light burden of placing temporary barriers around the trench. The foreseeability of harm was increased with the rains, which would have caused the ground near the trench to become unstable and even more in need of protective barriers. The construction company had a duty of care to those who, foreseeably, might inadvertently stray from the sidewalk onto the land itself and subsequently be injured by the excavation at the sidewalk's edge. The construction company clearly had a duty to provide a protective barrier around the trench that was breached, causing the child's wrongful death.

B is incorrect. A trench is not generally considered an abnormally dangerous or ultra-hazardous condition or activity, which is required for a strict liability claim.

C is incorrect. The child was a foreseeable and known infant trespasser. This was a vacant lot in a residential neighborhood. The trench connected to a public sidewalk. The construction company had a duty of care to pedestrians who, foreseeably, might inadvertently stray from the sidewalk onto the land itself and subsequently be injured by the excavation at the sidewalk's edge. The construction company also had a duty to protect known (and reasonably knowable) infant trespassers who enter the area without an appreciation of the danger, by securing the area, as long as securing the area would not place an undue burden on the company.

D is incorrect. The collapse of the trench walls was a foreseeable result of the construction company's choice not to strengthen up the walls or to, at a minimum, place barriers around the trench. The foreseeability of severe harm increased with the rains, compared with the relatively low burden of placing barriers around the trench. An independent intervening force must be unforeseeable to supersede the construction company's liability.

Question 283 - Torts - Products Liability

The question was:

A homeowner hired a contractor to remodel her kitchen. She had learned of him through a classified advertisement he placed in the local newspaper. During the telephone conversation in which she hired him, he stated he was experienced and qualified to do all necessary work. Because of his low charge for his work, they agreed in writing that on acceptance of his job by the homeowner, he would have no further liability to her or to anyone else for any defects in materials or workmanship, and that she would bear all such costs.

The homeowner purchased a dishwasher manufactured by a large company from a dealer, who was in the retail electrical appliance business. The washer was sold by the dealer with only the manufacturer's warranty and with no warranty by the dealer; the manufacturing company restricted its warranty to ninety days on parts and labor. The contractor installed the dishwasher.

Two months after the homeowner accepted the entire job, she was conversing in her home with an accountant, an acquaintance who had agreed to prepare her income tax return gratuitously. As they talked, they noticed that the dishwasher was operating strangely, repeatedly stopping and starting. At the homeowner's request, the accountant gave it a cursory examination and, while inspecting it, received a violent electrical shock which did him extensive harm. The dishwasher had an internal wiring defect which allowed electrical current to be carried into the framework and caused the machine to malfunction. The machine had not been adequately grounded by the contractor during installation; if it had been, the current would have been led harmlessly away. The machine carried instructions for correct grounding, which the contractor had not followed.

If the accountant asserts a claim based on strict liability against the manufacturing company for damages, the probable result is that the accountant will

A: recover, because the dishwasher was defectively made.
B: recover, because the company that manufactured the dishwasher is vicariously liable for the improper installation.
C: not recover, because he assumed the risk by inspecting the machine.
D: not recover, because he was not the purchaser.

The explanation for the answer is:

A is the correct answer. The key words here are "internal wiring defect." This is a manufacturing defect case. When flaws occur in the manufacturing process, making the product more dangerous than it was intended to be, the manufacturer is strictly liable and the plaintiff does not need to prove negligence in creating or failing to discover the defect. Under the facts, the contractor's negligent installation was not an unforeseeable misuse or substantial change of the product such that it would cut short liability by the manufacturer. Finally, any user or consumer of a defective product would be protected by the strict liability rule, which would include the accountant, so D is incorrect.

B is the right conclusion but the wrong theory. The contractor was not affiliated in any way with the manufacturer. He installed a washer that the homeowner independently purchased and asked him to install. The accountant has no claim under vicarious liability on these facts. C is incorrect. The accountant did not knowingly and unreasonably proceed in full knowledge of the defect.

Question 292 - Torts - Products Liability

The question was:

A widow recently purchased a new uncrated electric range for her kitchen from a local retailer. The range has a wide oven with a large oven door. The crate in which the manufacturer shipped the range carried a warning label that the stove would tip over with a weight of 25 pounds or more on the oven door. The widow has one child, aged 3. Recently, the child was playing on the floor of the kitchen while the widow was heating water in a pan on the stove. When the widow left the kitchen for a moment, the child opened the oven door and climbed on it to see what was in the pan. The child's weight (25 pounds) on the door caused the stove to tip over forward. The child fell to the floor and the hot water spilled over her, burning her severely. The widow ran to the kitchen and immediately gave her first aid treatment for burns. The child thereafter received medical treatment.

The child's burns were painful. They have now healed and do not bother her, but she has ugly scars on her legs and back. The child's claim is asserted on her behalf by the proper party.

If the child asserts a claim based on strict liability against the manufacturer, she must establish that

A: the defendant negligently designed the stove.
B: stoves made by other manufacturers do not turn over with a 25-pound weight on the oven door.
C: the defendant failed to warn the widow and her that the stove would turn over easily.
D: the stove was defective and unreasonably dangerous to her.

The explanation for the answer is:

D is the correct answer and can be reached by the process of elimination. The facts indicate that the stove arrived exactly as it was designed. This is a defective design case. For strict liability to apply in defective design, the plaintiff must prevail in a risk-utility balancing test where the child must show that the risk and severity of her injuries were predictable to her as a small child. In some jurisdictions, the court would then consider the feasibility of alternative designs. Other jurisdictions shift the burden to the defendant (once plaintiff proves causation) requiring the manufacturer to show that the utility of the design outweighs the inherent danger. A warning does not need to be verbal.

The stove came with a written warning, so C can be eliminated. The risk-utility test is similar to the negligence standard but, since the question states the claim theory, answer A can be eliminated as an inappropriate standard. The presence of other stoves in the industry that do not tip with 25 pounds of weight would be part of the determination of the feasibility of other, safer designs, so "B" is not the best answer. D is the most complete response and states the rule rather than applicable facts. A, B and C are incorrect.

Question 298 - Torts - Negligence

The question was:

A woman's 12-year-old daughter had some difficulty getting along with other children in the neighborhood, especially with the younger ones. Thinking the experience would be good for her, the woman recommended her daughter to a parent as a baby sitter for his five-year-old child but did not mention her daughter's difficulties or her lack of prior experience as a baby sitter. The woman and the parents were longstanding social acquaintances. On the evening the daughter was to sit, the parents told the daughter that she should treat their child firmly, but that it would be preferable not to spank him since he did not take kindly to it. They did not tell the daughter sitter they had experienced trouble retaining baby sitters because of their child's temper tantrums.

Later in the evening when the child became angry upon being told to go to his room for being naughty, the daughter spanked him, but only moderately hard. The child then threw a hardcover book at the daughter, hitting her in the eye. As the daughter tried to catch the child to take him to his room, the child fled around the house and out the back door, knocking over and breaking an expensive lamp.

The back yard was completely dark. The daughter heard the child screaming and banging at the back door, which had closed and locked automatically, but she did nothing. After twenty minutes had passed, she heard a banging and crying at the front door, but still she did nothing. Then the noise stopped. In a few minutes the daughter went outside and found the child lying on the steps unconscious and injured.

If a claim is asserted on behalf of the child against the woman for damages based on her daughter's conduct, the woman will probably be liable, because

A: parents are vicariously liable for the intentional torts of their children.
B: she has a nondelegable duty to control the actions of her child.
C: respondeat superior applies.
D: she was negligent.

The explanation for the answer is:

D is the correct answer. Parents have a number of affirmative duties, based on their special relationship to their minor children. This includes the duty to exercise reasonable care in the control of their minor children. Liability is generally limited to actions that were foreseeable by the parent. A parent who fails to exercise control regarding a known propensity of his child is generally not vicariously liable for the child's tortious behavior; rather the parent is liable for their own negligence in failing to control the child. In this case, the woman was aware that her daughter had trouble dealing with younger children and had no experience as a babysitter. It was, therefore, foreseeable that when she recommended her daughter to babysit, the twelve year old would encounter difficulties that she could not handle, which would result in harm to the child she was caring for. The question states that the woman will (only) *probably* be liable, because the conduct of her daughter must be specific in its foreseeability. General concerns would not be enough.

A is incorrect. A parent who fails to exercise control regarding a known propensity of his child is generally not vicariously liable for the child's tortious behavior; rather the parent is liable for their own negligence in failing to control the child.

B is overly broad and thus incorrect. A parent's duty to control can be delegable to other caretakers or custodians (who must be physically present with the child before the duty attaches) to exercise care in control of the child.

C is incorrect. Unless the child is actively an employee or agent of the parent, *respondeat superior* would not apply. Even though the woman actively recommended her daughter as a babysitter, the daughter's actions as a babysitter are not under her mother's control, and the daughter is not acting with her mother's authority as an agent.

Question 301 - Torts - Other Torts

The question was:

A store owner owned a secondhand goods store. He often placed merchandise on the sidewalk, sometimes for short intervals, sometimes from 7:00 a.m. until 6:00 p.m. Pedestrians from time to time stopped and gathered to look at the merchandise. A man had moved into an apartment which was situated immediately above the store; a street-level stairway entrance was located about twenty feet to the east. On several occasions, the man had complained to the store owner about the situation because not only were his view and peace of mind affected, but his travel on the sidewalk was made more difficult. The man owned and managed a restaurant two blocks to the west of his apartment and made frequent trips back and forth. There was a back entrance to his apartment through a parking lot; this entrance was about two hundred feet farther in walking distance from his restaurant. Once the man complained to the police, whereupon the store owner was arrested under a local ordinance which prohibited the placing of goods or merchandise on public sidewalks and imposed, as its sole sanction, a fine for its violation.

One day, the sidewalk in front of the store owner's store was unusually cluttered because he was cleaning and mopping the floor of his shop. The man and his fifteen-year-old son saw a bus they wished to take, and they raced down the stairs and onto the cluttered sidewalk in front of the store, the man in the lead. While dodging merchandise and people, the man fell. The son tripped over him and suffered a broken arm. The man also suffered broken bones and was unable to attend to his duties for six weeks.

If, prior to the day of his personal injuries, the man had asserted a claim based on public nuisance for injunctive relief against the store owner for his obstruction of the sidewalk in violation of the ordinance, the defense on which the store owner would have most likely prevailed is that

A: the man consented to the obstruction by continuing to rent his apartment.
B: the violation of the ordinance was not unreasonable.
C: remedy of abatement by self-help was adequate.
D: there was no claim for special damage.

The explanation for the answer is:

D is the correct answer. Although public nuisances generally must be prosecuted by public authorities, a public nuisance action by a private party is possible if the public nuisance causes a unique harm to the plaintiff that differs from the general harm to the public. The remedy for the public nuisance is usually damages. In this case, the man is asking for injunctive relief, which only is granted where damages are an unavailable or inadequate remedy. Since the man has alleged no injury for which damages (compensation for the injuries and a fine) would be inadequate, an injunction would probably be denied. Therefore, D provides the best defense for the store owner.

A is incorrect. A claim for nuisance does not have to be mitigated by removal, and remaining in proximity to the nuisance is not implied consent.

B is incorrect. The issue is whether the interference with the safety and property rights of the community was unreasonable, not whether the violation of the ordinance was reasonable.

C is incorrect as there is no remedy of self-help available to the man. Self-help is applied to recovery of chattels that are wrongly held by a defendant without title, and recovery must be made without disturbing the peace and without use of excessive force. Here, the man has no duty and no privilege to remove any of the items in front of the store owner's store.

Question 323 - Torts - Negligence

The question was:

The most generally accepted basis on which a court will hold that a person has a legal duty to aid another is the recognition by that person that there is immediate danger of serious harm to

A: another human being from a stranger's wrongful conduct.
B: his neighbor from a stranger's wrongful conduct.
C: his cousin from a stranger's wrongful conduct.
D: another human being from the person's own non-negligent conduct.

The explanation for the answer is:

D is the correct answer. This is a simple "Good Samaritan rule" question. Generally, there is no affirmative duty to act. However, four exceptions exist. There is a duty to act when your own negligence has created the peril, where there is a special relationship (such as an innkeeper or common carrier), where you have a duty to control a third person, or where you have undertaken to aid another. A can be eliminated immediately, because there is no general duty to render aid to another. B and C are incorrect as there is no duty to control a third person simply because they are your neighbor or cousin. None of the answers deal with a special relationship between the defendant and the person in danger or peril. D can fall into the last exception. If the person has non-negligently undertaken to assist the person in peril, they now have a duty to continue to aid. Therefore, D is correct, a person may have a duty to provide aid to another arising from their own non-negligent conduct in undertaking to assist. A, B and C are incorrect.

Question 337 - Torts - Negligence

The question was:

A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident.

The pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

The violation of the crosswalk statute by the pedestrian should not defeat her cause of action against the driver because

A: the driver violated the traffic light statute at a later point in time than the pedestrian's violation.
B: pedestrians are entitled to assume that automobile drivers will obey the law.
C: the pedestrian was hit while in the crosswalk.
D: the risks that the statute was designed to protect against probably did not include an earlier arrival at another point.

The explanation for the answer is:

D is the correct answer. The question instructs an analysis based on the use of a safety statute. To determine why the pedestrian should prevail in her cause of action despite her violation of the crosswalk statute, look to the rule. Safety statutes are used only if the statute violated was designed to protect the particular class of foreseeable victim that the plaintiff belonged to, and the harm the plaintiff suffered was the type that the statute was designed to protect. If the safety statute applies, in a majority jurisdiction it establishes duty and breach (negligence *per se*), while in a minority jurisdiction it only serves as evidence of negligence. Causation must still be argued to prevail. The only answer that addresses the rule itself is D.

A is irrelevant because it only addresses timing. B is an overly broad assumption. C, while a true statement, is inapplicable to the call of the question. A, B, and C are incorrect.

Question 339 - Torts - Negligence

The question was:

A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact, the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident.

The pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

If the pedestrian establishes liability on the part of the driver for her physical injuries, should the pedestrian's recovery include damages for a broken leg?

A: No, since only 0.02 percent of the population have bones as brittle as the pedestrian's.
B: No, because a person of ordinary health would probably not have suffered a broken leg from the impact.
C: Yes, because the driver could foresee that there would be unforeseeable consequences of the impact.
D: Yes, even though the extent of the injury was not a foreseeable consequence of the impact.

The explanation for the answer is:

D is correct. Once liability is established, the driver is required to take the pedestrian as he finds her even if the injury's extent is due to the aggravation of a pre-existing condition. Damages are not limited to "reasonable person" damages. Therefore A and B are incorrect. C is incorrect. For there to be causation, the type of injury must be foreseeable, not the manner or extent. C should be eliminated immediately as it provides an inappropriate standard.

Question 340 - Torts - Negligence

The question was:

A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact, the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident.

The pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute, she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

The pedestrian's violation of the crosswalk statute should not be considered by the jury because

A: there is no dispute in the evidence about factual cause.
B: as a matter of law the violation of the statute results in liability for all resulting harm.
C: as a matter of law the driver's conduct was an independent intervening cause.
D: as a matter of law the injury to the pedestrian was not the result of a risk the statute was designed to protect against.

The explanation for the answer is:

A is incorrect. Ultimately, the pedestrian's violation of the statute should not be a question for the jury because it is a question of law and not fact. The pedestrian's violation of the statute may qualify as negligence per se, meaning it may serve as evidence of a duty and breach as a matter of law. A is incorrect because there is no dispute that the pedestrian breached the statute, thus, there is no question of fact regarding the violation of the statute. However, there is a dispute as to causation of the damages, thus A is incorrect.

B is incorrect because even if it is determined that the violation of the statute is negligence per se, this does not result in liability for any and all damage that follows. C is incorrect because the issue is the applicability of a safety statute in determining a legal standard of care. This answer deals with causation, which is still a question for the jury.

Finally, D is correct because safety statutes are used to establish duty and breach only if the violated statute was designed to protect the particular class of foreseeable victim that the plaintiff belonged to, and the harm the plaintiff suffered was the type that the statute was designed to protect. Here, the pedestrian was hit by the driver when she was already in the other crosswalk, so she was not in the class of people that the statute was designed to protect, namely, pedestrians crossing streets outside of crosswalks. D appropriately acknowledges the test and distinction and is the correct response.

Question 352 - Torts - Products Liability

The question was:

Two parents purchased a new mobile home from a seller. The mobile home was manufactured by Mobilco and had a ventilating system designed by Mobilco with both a heating unit and an air conditioner. Mobilco installed a furnace manufactured by Heatco and an air conditioning unit manufactured by Coolco. Each was controlled by an independent thermostat installed by Mobilco. Because of the manner in which Mobilco designed the ventilating system, the first time the ventilating system was operated by the parents, cold air was vented into the parents' bedroom to keep the temperature at 68 degrees F (20 degrees C). The cold air then activated the heater thermostat, and hot air was pumped into the bedroom of the six-month-old child of the parents. The temperature in the child's room reached more than 170 degrees F (77 degrees C) before the child's mother became aware of the condition and shut the system off manually. As a result, the child suffered permanent physical injury.

Claims have been asserted by the child, through a duly appointed guardian, against Mobilco, the seller, Heatco, and Coolco.

If the child's claims against Mobilco, Heatco, and Coolco are based on strict liability in tort, the child will probably recover against

A: Mobilco only, because the ventilating system was defectively designed by Mobilco.
B: Heatco only, because it was the excessive heat from the furnace that caused the child's injuries.
C: Mobilco and Heatco only, because the combination of Mobilco's design and Heatco's furnace caused the child's injuries.
D: Mobilco, Heatco, and Coolco, because the combination of Mobilco's design, Heatco's furnace, and Coolco's air conditioning unit caused the child's injuries.

The explanation for the answer is:

A is the correct answer. Generally, a manufacturer is strictly liable only if the product was defective when it left the control of the manufacturer. The fact pattern and the call of the question clearly state that the defect was in the ventilation design, not in the products by Heatco and Coolco. Since the products used in the design were not themselves defective, the child will only be able to recover from the designer of the defective ventilation system, Mobilco. Thus, B, C and D are incorrect.

Question 364 - Torts - Intentional Torts

The question was:

A city has an ordinance that makes it an offense, punishable by fine, for the owner of a dog to permit the dog to run unleashed on a public way.

A police officer observed a small dog running loose in the street. As he picked the dog up, the dog's owner, who was seated in her car lawfully parked on the curb, called out, "Oh, thank you Officer for returning Fido." The police officer asked the owner whether the dog was hers, and when she acknowledged ownership, he asked to see her driver's license. The owner gave her name and address, but she refused to produce a driver's license. The police officer then told her that if she didn't produce her driver's license then she would go to jail. The owner responded by saying, "Isn't this ridiculous?" The police officer took her by the arm and said, "Let's go. You are under arrest."

The owner cried out that the police officer was hurting her but he refused to release her arm, so she struck him with her free hand. The police officer then dragged the owner from her car, forced her into his squad car, and took her to the police station.

The incident took place on the street in front of the apartment where the owner and her aged father lived. The police officer did not know that the father had observed what took place from a window in the apartment.

If the owner's father asserts a claim against the police officer for intentional infliction of emotional distress, will he prevail?

A: Yes, because the police officer's acts caused the father severe emotional distress.
B: Yes, because the police officer's behavior was extreme and outrageous with respect to the dog owner.
C: No, because the police officer did not know that the father was watching.
D: No, because the father was not within the zone of physical danger.

The explanation for the answer is:

C is the correct answer. The key sentence in the fact pattern is "The police officer did not know that the father had observed what took place from a window in the apartment." The elements of intentional infliction of emotional distress are: (1) the defendant's intentional (with purpose or knowledge to a substantial certainty) or reckless (2) extreme and outrageous conduct (3) which causes the plaintiff severe emotional distress. In bystander cases, the intent and causation requirements are satisfied if: (1) the plaintiff was present when the severe physical harm occurred to the other person, (2) the plaintiff was a close relative of the injured person, and (3) the defendant knew that the plaintiff was present and a close relative of the injured person. Here, the police officer did not know the father was present during his arrest of the woman; therefore, the officer could not have intended to inflict emotional distress on the father. Because the intent element is not satisfied, both A and B are incorrect. D is incorrect as it refers to a requirement for negligent infliction of emotional distress, and is irrelevant to this cause of action.

Question 369 - Torts - Negligence

The question was:

A group of children, ranging in age from 8 to 15, regularly played football on the common area of an apartment complex. Most of the children lived in the apartment complex, but some lived elsewhere. The owner of the apartment complex knew that the children played on the common area and had not objected.

The plaintiff, a 13-year-old who did not live in the apartment complex, fell over a sprinkler head while running for a pass and broke his leg. Although the plaintiff had played football on the common area before, he had never noticed the sprinkler heads. The sprinkler heads protruded one inch above the ground and were unlikely to be discovered by a passerby.

If a claim is asserted on the plaintiff's behalf, he will

A: prevail because the sprinkler head was a hazard that the plaintiff probably would not discover.
B: prevail, because the apartment complex owner had not objected to children playing on the common area.
C: not prevail, because the plaintiff did not live in the apartment complex.
D: not prevail because the sprinkler heads were not abnormally dangerous to users of the common area.

The explanation for the answer is:

A is correct. In general, an owner of land has a duty to warn of known, dangerous conditions on his land. This duty is expanded to protect child trespassers. However, the owner of the apartment complex will not be held to the higher standard of protection of known child trespassers because the plaintiff is a teenager. As an older child, a court will hold that he should be able to recognize dangers and take precautions to protect himself. As an ordinary "known trespasser," the plaintiff will be expected to notice and appreciate reasonable risk conditions of the common area as long as the dangers are not hidden. Thus, the plaintiff would prevail only if the court deems the sprinkler head a hazard that the plaintiff would not discover on his own. B and C are not determinative of liability here, and so are incorrect. D is incorrect because sprinkler systems are not considered ultra-hazardous conditions. Under either theory, the only claim the plaintiff could make that would create liability would be that the sprinkler heads were hidden hazards, so A is correct, and B, C and D are incorrect.

Question 384 - Torts - Products Liability

The question was:

A woman worked as a secretary in an office in a building occupied partly by her employer and partly by a retail store. The two areas were separated by walls and were in no way connected, except that the air conditioning unit served both areas and there was a common return-air duct. The retail store began remodeling, and its employees did the work, which included affixing a plastic surfacing material to counters. To fasten the plastic to the counters, the employees purchased glue from a manufacturer that was packaged in a sealed container by the manufacturer and retailed by a paint company.

In the course of the remodeling job, one of the retail store's employees turned on the air conditioning and caused fumes from the glue to travel from the retail store through the air conditioning unit and into the woman's office. The employees did not know that there was common duct work for the air conditioners. The woman was permanently blinded by the fumes from the glue.

The label on the container of glue read, "DANGER. Do not smoke near this product. Extremely flammable. Contains Butanone, Tuluol and Hexane. Use with adequate ventilation. Keep out of the reach of children." The three chemicals listed on the label are very toxic and harmful to human eyes. The retail store had received no reports of eye injuries during the ten years that the product had been manufactured and sold.

If the woman asserts a claim against the paint company, the most likely result is that she will

A: recover because she can recover against the glue manufacturer.
B: recover, because the woman was an invitee of a tenant in the building.
C: not recover because the paint company was not negligent.
D: not recover, because the glue came in a sealed package.

The explanation for the answer is:

A is correct because strict liability can be imposed upon the paint company (and up the chain to the manufacturer) for the sale of any product that is in a defective or unreasonably dangerous condition. The paint company as a supplier of the glue is strictly liable for any resulting physical harm to the woman, provided that (1) the paint company is engaged in the business of selling the glue(alone or in addition to other products)and (2) the condition of the glue was not substantially changed as from when it was purchased. Thus, C and D are incorrect.

B is incorrect because it gives an inappropriate standard. This is a products liability issue, and the woman's status as an invitee is irrelevant to the analysis. No privity of contract is required to maintain a strict liability claim for products liability for failure to warn; all that is necessary is actual harm to the plaintiff as the result of the injury.

Question 390 - Torts - Other Torts

The question was:

A private duty nurse on occasion worked in a hospital. The hospital called a private duty referral agency through which the nurse usually obtained employment and asked that in the future she not be assigned to patients in the hospital. The referral agency asked the hospital why it had made the request. The hospital sent a letter to the agency giving as the reason for its request that significant amounts of narcotics had disappeared during the nurse's shift from the nursing stations at which she had worked.

Assume that although the narcotics disappeared during the nurse's shifts and the hospital reasonably believed that the nurse took the narcotics, the nurse did not actually take the narcotics. If the nurse asserts a claim based on defamation against the hospital, the nurse will

A: recover, because the hospital accused the nurse of improper professional conduct.
B: recover because the nurse did not take the narcotics.
C: not recover because narcotics disappeared during the nurse's shifts.
D: not recover because the hospital reasonably believed that the nurse took the narcotics.

The explanation for the answer is:

D is the correct answer. A claim for defamation must prove that the defendant was at fault, that the information was a false and defamatory communication of fact about the plaintiff, that it was published to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. A qualified privilege exists between employers about an employee, however, provided the statement was not made with the knowledge it was false or with reckless disregard for its truth or falsity. If the hospital had reasonable grounds to believe the nurse took the narcotics, it is permitted to disclose that belief to the referral agency at the referral agency's request. Hence, A is incorrect.

B is incorrect. While falsity is an element of defamation, this communication was between employers about an employee. It was made under a qualified privilege that can only be overcome if the hospital made the statement with knowledge that it was false or with reckless disregard for its truth or falsity. Here, the hospital had reasonable belief, so it will not be liable.

C is not the best answer. This is a true statement of fact, but does not state the appropriate test necessary for the nurse to prevail. The nurse must prove that the information was a false and defamatory communication of fact about her, published to the referral agency who understood it was defamatory and which, as a result, caused harm to the nurse. D gives the appropriate element to address the issue of privilege.

Question 415 - Torts - Strict Liability

The question was:

A gas company owns a storage facility where flammable gases are stored in liquified form under high pressure in large spherical tanks. The facility was constructed for the gas company by a construction company that specializes in the construction of such facilities. After the facility had been in use for five years, an explosion in the facility started a large fire that blanketed the surrounding countryside with a high concentration of oily smoke and soot. A farmer owns a large truck farm near the facility. His entire lettuce crop was destroyed by oil deposits left by the smoke. A neighbor, who lives near the facility, inhaled a large amount of the smoke and thereafter became obsessed by a fear that the inhalation would destroy his health and ultimately cause his death.

If the farmer asserts a claim against the gas company for the loss of his lettuce crop and is unable to show any negligence on the part of the gas company, will the farmer prevail?

A: Yes, because the operation of the storage facility was an abnormally dangerous activity.
B: Yes, because the intrusion of the smoke onto the farmer's farm amounted to a trespass.
C: No, because the explosion was most likely caused by internal corrosion that reasonable inspection procedures would not have disclosed.
D: No, because the explosion could have been caused by negligent construction on the construction company's part.

The explanation for the answer is:

A is the correct answer. The operation of a storage facility that contains pressurized hazardous chemicals is considered an abnormally dangerous activity. Ultra-hazardous activities give rise to strict liability because the inherent danger or peculiar risk is unreasonably high when compared with its social utility. Therefore, the storage facility will be liable for damages caused by its operations even in the absence of negligence and where all the proper precautions have been taken. Because negligence does not have to be proven to prevail, C and D are incorrect. B is incorrect because it comes to the right conclusion for the wrong reason. An action for trespass does not fit the facts because the storage facility had no intent to bring about a physical invasion of the farmer's land.

Question 416 - Torts - Products Liability

The question was:

A gas company owns a storage facility where flammable gases are stored in liquified form under high pressure in large spherical tanks. The facility was designed by the gas company and constructed for the gas company by a construction company that specializes in the construction of such facilities. After the facility had been in use for five years, an explosion in the facility started a large fire that blanketed the surrounding countryside with a high concentration of oily smoke and soot. The explosion was caused by an obvious defect in the design of the storage facility. A farmer owns a large truck farm near the facility. His entire lettuce crop was destroyed by oil deposits left by the smoke. A neighbor, who lives near the facility, inhaled a large amount of the smoke and thereafter became obsessed by a fear that the inhalation would destroy his health and ultimately cause his death.

If the farmer asserts a claim against the construction company for the loss of his lettuce crop, will the farmer prevail?

A: No, because the construction company did not design the storage facility.
B: No, because the construction company was an independent contractor.
C: Yes, because the operation of the storage facility was an abnormally dangerous activity.
D: Yes, because the explosion resulted from a defect of which the construction company should have been aware.

The explanation for the answer is:

D is the correct answer. On a products liability action based on a negligence theory, a manufacturer/builder will be liable for the damage caused by a defective product if the manufacturer knew or should have known of the dangerous defect. Here, the construction company was acting as a manufacturer. Because the defect was obvious and the construction company specialized in the construction of these facilities, the construction company would be liable for the damage caused by the defective storage facility because it knew or should have known of the dangerous defect that caused the explosion. Therefore, D is the correct answer.

A is incorrect. The facts state that the construction company specialized in the construction of these facilities, so the company will be liable for the construction of a defective facility even though it did not design the facility. B is an incorrect statement of law because an independent contractor can be held liable for the work it performed. Independent contractor status is only important for determining vicarious liability. C comes to the right conclusion, but for the wrong reason. An abnormally dangerous activity is the responsibility of the landowner/occupier and would not apply to this situation because the construction company only built the storage facility, and did not conduct the storage of the flammable gases.

Question 424 - Torts - Negligence

The question was:

When a mother visited a bowling alley to participate in the weekly bowling league competition held there, she brought her 2 year-old son along and left him in a nursery provided by the bowling alley for the convenience of his customers. The children in the nursery were normally supervised by three attendants, but at this particular time, as the mother knew, there was only one attendant present to care for about twenty children of assorted ages.

About thirty minutes later, while the attendant was looking the other way, the son suddenly started to cry. The attendant found him lying on his back, picked him up, and called his mother. It was later discovered that the son had suffered a skull fracture.

If a claim is asserted against the bowling alley on the son's behalf, will the son prevail?

A: Yes, because the bowling alley owed the child the highest degree of care.
B: Yes, because a 2-year old is incapable of contributory negligence.
C: No, because the bowling alley and its employees exercised reasonable care to assure the son's safety.
D: No, because the mother assumed the risk by leaving her son in the nursery.

The explanation for the answer is:

C is the correct answer. Here, there is no intentional tort and babysitting is not a source of strict liability. Instead, negligence is the basis for this claim so the first step is determining the duty of care owed. The mother was a business invitee and was owed a duty of ordinary care by the bowling alley. The son will also be classified as a business invitee because he accompanied his mother, even though he is not there to conduct business himself. A is wrong because it incorrectly states the degree of care owed. B and D are both incorrect because they both rely on defenses that do not correspond to the facts. Therefore, C is correct because it provides the appropriate standard of care and the correct result.

Question 429 - Torts - Negligence

The question was:

A car owner left her car at a mechanic's garage to have repair work done. After completing the repairs, the mechanic took the car out for a test drive and was involved in an accident that caused damages to the plaintiff.

A statute imposes liability on the owner of an automobile for injuries to a third party that are caused by the negligence of any person driving the automobile with the owner's consent. The statute applies to situations of this kind, even if the owner did not specifically authorize the mechanic to test-drive the car.

The plaintiff sued the car owner and the mechanic jointly for damages arising from the accident. In that action, the car owner cross-claims to recover from the mechanic the amount of any payment the car owner may be required to make to the plaintiff. The trier of fact has determined that the accident was caused solely by negligent driving on the mechanic's part, and that the plaintiff's damages were $100,000.

In this action, the proper outcome will be that

A: The plaintiff should have judgment for $50,000 each against the car owner and the mechanic; the car owner should recover nothing from the mechanic.
B: The plaintiff should have judgment for $100,000 against the mechanic only.
C: The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for 50 percent of an amount collected from the car owner by the plaintiff.
D: The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for any amount collected from the car owner by the plaintiff.

The explanation for the answer is:

D is correct. The fact pattern's statute creates vicarious liability for the owner of a car for the actions of known and permitted drivers. Therefore, the plaintiff can collect from either the mechanic (due to his negligence), or the car owner (under a theory of vicarious liability). However, since the court found that the mechanic was 100% responsible for the accident, the car owner would be entitled to indemnification from the mechanic for any amount the car owner must pay to the plaintiff.

A is incorrect because the plaintiff can choose to recover from either party depending on the selected theory of liability. B is incorrect because the statute makes the car owner vicariously liable for the mechanic's actions. C is incorrect because the mechanic was 100% responsible for the accident. Therefore, the mechanic must fully indemnify the car owner for any amount the plaintiff collects from the car owner.

Question 435 - Torts - Other Torts

The question was:

A restaurant owner applied to the state liquor board for transfer of the license of his bar and grill. The board held a hearing on the application.

At that hearing, a man appeared without being subpoenaed and stated that the restaurant owner had underworld connections. Although the man did not know this information to be true, reasonably believed it to be the truth. He had heard rumors about the restaurant owner's character and had noticed several known underworld figures going in and out of the bar and grill. However, the restaurant owner had no underworld connections and the state liquor board granted the license.

In a claim against the man based on defamation, the restaurant owner will

A: not recover, because the man reasonably believed his statement to be true.
B: not recover, because the board granted the restaurant owner's application.
C: recover, because the man's statement was false.
D: recover, because the man appeared before the board voluntarily.

The explanation for the answer is:

A is correct. A claim for defamation must prove that there was: (1) a defamatory communication of fact made about the plaintiff, that was (2) published to a third person who understood it which (3) resulted in harm to the plaintiff. The man's statement was made at an administrative hearing on a license application, which entitles those who testify to a qualified privilege. The privilege can only be overcome if the restaurant owner can show that the statement was made with knowledge that it was false or in reckless disregard for the statement's truth or falsity. Therefore, because the man reasonably believed his statement to be true, the restaurant owner would not prevail.

B is not the best answer. Even though the restaurant owner's application was granted, the owner could still have an actionable injury due to the harm to his reputation and standing in the community. C is incorrect. The falsity of the statement is only one element. The restaurant owner must also show the man made the statement with knowledge of its falsity or reckless disregard for whether it was true or false. A is the better answer because it addresses the appropriate issue of conditional privilege. D is incorrect. Conditional privilege is not premised on voluntary or subpoenaed testimony; it covers any testimonial statement made at an administrative hearing.

Question 456 - Torts - Products Liability

The question was:

A bicycle company manufactured a bicycle that it sold to a retail bicycle dealer which in turn sold it to a bicyclist. Shortly thereafter, while the bicyclist was riding the bicycle along a city street, he saw a traffic light facing him turn from green to yellow. He sped up, hoping to cross the intersection before the light turned red. However, the bicyclist quickly realized that he could not do so and applied the brake, which failed. To avoid the traffic that was then crossing in front of him, the bicyclist turned sharply to his right and onto the sidewalk, where he struck a pedestrian. Both the pedestrian and the bicyclist sustained injuries. Assume that the breaks were faulty when the bike left the factory, and that the retail dealer carefully inspected the bike upon receipt but did not notice the defect.

If bicyclist asserts a claim against the the retailer based on strict liability in tort, will the bicyclist prevail?

A: Yes, because the brake failed due to a defect present when the bicycle left the factory of the bicycle company.
B: Yes, because the brake failed while the bicyclist was riding the bicycle.
C: No, because the bicyclist contributed to his own injury by speeding up.
D: No, because the retail dealer carefully inspected the bicycle before selling it.

The explanation for the answer is:

A is the correct answer. Strict liability can be imposed upon the retailer (and up the chain to the manufacturer) for the sale of any product that is in a unreasonably dangerous condition. The retailer, as a supplier of the bike, is strictly liable for any resulting physical harm to the bicyclist, provided that (1) the retail dealer is engaged in the business of selling bikes (alone or in addition to other products), and (2) the condition of the bike was not substantially changed from when it was purchased. The facts indicate that the bike was manufactured by the bicycle company and sold by the retailer. Therefore, if the defect was present when the when the bike left the factory, the retailer will be liable on strict liability.

B reaches the right result for the wrong reason. The bicyclist can only prevail if the bike contained a manufacturing defect. The fact that the brake failed while riding will be relevant to proof of damages, but it is not determinative of the initial claim. C is incorrect. Contributory negligence is not a defense to strict liability if the product was being used for its intended purpose and the bicyclist merely failed to discover or guard against the possibility of a defect. D is incorrect because negligence need not be proved in a strict liability case and the retailer is liable as a commercial supplier.

Question 457 - Torts - Negligence

The question was:

A bicycle company manufactured a bicycle that was sold to a retail bicycle dealer which in turn sold it to a bicyclist. Shortly thereafter, while the bicyclist was riding the bicycle along a city street, he saw a traffic light facing him turn from green to yellow. He sped up, hoping to cross the intersection before the light turned red. However, the bicyclist quickly realized that he could not do so and applied the brake, which failed. To avoid the traffic that was then crossing in front of him, the bicyclist turned sharply to his right and onto the sidewalk, where he struck a pedestrian. Both the pedestrian and the bicyclist sustained injuries.

Assume that it is found that the brake failure resulted from a manufacturing defect in the bicycle, and that the defect would have been discovered by a reasonable inspection of the bicycle. If the pedestrian asserts a claim based on negligence against the bicycle company, will the pedestrian prevail?

A: Yes, because the bicycle company placed a defective bicycle into the stream of commerce.
B: Yes, because the defect could have been discovered through the exercise of reasonable care by the bicycle company.
C: No, because the pedestrian was not a purchaser of the bicycle.
D: No, because the bicyclist was negligent in turning into the sidewalk.

The explanation for the answer is:

B is the correct answer. The call of this question is negligence. Under a negligence claim, if the bicycle company failed to exercise due care, which caused the bike to be different than intended or more dangerous than others of its kind, any person who was foreseeably and actually harmed by the defect can bring a negligence action. The bicycle company has a duty to exercise due care in its manufacturing, which would include a reasonable inspection. Because the bicycle company failed to provide a reasonable inspection of the bicycle, the pedestrian will prevail. br />
A is incorrect. The call of the question is a negligence claim, this is a strict liability standard. C is incorrect because the pedestrian is a foreseeable plaintiff, and privity is not required. D is incorrect because the bicyclist's negligence could lead to an action for contribution by the bicycle company, but it would not cut short the bicycle company's liability.

Question 468 - Torts - Negligence

The question was:

A man was driving north on an interstate highway at about 50 miles per hour when a tractor-trailer rig, owned and driven by a driver, passed him. The tractor was pulling a refrigerated meat trailer fully loaded with beef carcasses hanging freely from the trailer ceiling. When the driver cut back in front of the man, the shifting weight of the beef caused the trailer to overturn. The man was unable to avoid a collision with the overturned trailer and was injured.

The trailer had been manufactured by a trailer company. A number of truckers had complained to the trailer company that the design of the trailer, which allowed the load to swing freely, was dangerous. The driver knew of the dangerous propensity of the trailer. A restraining device that could be installed in the trailer would prevent the load from shifting and was available at nominal cost. The restraining device would have prevented the trailer from overturning. The driver knew of the restraining device but had not installed it.

If the man asserts a claim for his injuries against the driver, he will

A: prevail, because the use of a restraining device would have prevented the trailer from overturning.
B: prevail, because the driver is strictly liable to the man for injuries resulting from defects in the trailer.
C: not prevail because the driver was not driving in a negligent manner at the time the man was injured.
D: not prevail, because the driver was not the manufacturer or seller of the trailer.

The explanation for the answer is:

A is correct and can be reached through the process of elimination. The driver is a user, not a manufacturer or seller of the unreasonably dangerous truck, so B is out. The man can, however, assert a claim against the driver for negligence, so D can be eliminated. C is wrong because it misstates the negligent act, which is the driver's knowing use of an unreasonably dangerous product. Facts indicate that the driver knew about the dangerous propensity as well as a reasonable means of increasing the trailer's safety at a "nominal cost." Causation is not the issue; duty and breach are. A correctly states the result of the balancing test between the foreseeability and severity of harm as weighed against the burden to the driver to make a change that would protect foreseeable plaintiffs from injury. B, C and D are incorrect.

Question 475 - Torts - Other Torts

The question was:

A customer ordered some merchandise from a store. When the merchandise was delivered, the customer decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the customer's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection.

The bill collector showed up at the customer's house at 7 p.m. on a summer evening while many of the customer's neighbors were seated on their porches. When the customer opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the customer a "deadbeat" and asked him when he intended to pay his bill to the store.

The customer, greatly angered, slammed the door shut. The door struck the bullhorn and jammed it forcibly against the bill collector's face. As a consequence, the bill collector lost some of his front teeth.

If the customer asserts a claim based on defamation against the bill collector, will the customer prevail?

A: Yes, because the bill collector's remarks were heard by the customer's neighbors.
B: Yes, because the bill collector's conduct was extreme and outrageous.
C: No, because the bill collector did not know that the customer owed no money to the store.
D: No, because the customer did not suffer any special damages.

The explanation for the answer is:

D is correct. A claim for defamation must prove that there was a defamatory communication of fact made about the plaintiff, published to a third person who understood it was defamatory, and a resulting harm to the plaintiff. In the case of slander (verbal defamation), the plaintiff must plead and prove special damages (pecuniary). Four exceptions, which do not require special damages, include if the defendant made allegations regarding (1) criminal activity, (2) misconduct regarding plaintiff's occupation, (3) sexual misconduct, and (4) plaintiff having a "loathsome" disease. The bill collector's verbal statements do not fit into any of the exceptions. Therefore, because the customer suffered no special damages, he will not prevail.

A is incorrect. Publication is not the issue here. The facts state that the customer's neighbors were out and that the collector used a bullhorn. The issue is whether the customer suffered pecuniary damages as a result of the action. B gives the test for intentional infliction of emotional distress. This question specifically gives you a claim for defamation. C is incorrect. Malice is not at issue here, so the bill collector's good faith belief about the truth of his statement is irrelevant.

Question 476 - Torts - Intentional Torts

The question was:

A purchaser ordered some merchandise from a store. When the merchandise was delivered, the purchaser decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the purchaser's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection.

The bill collector showed up at the purchaser's house at 7 p.m. on a summer evening while many of the purchaser's neighbors were seated on their porches. When the purchaser opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the purchaser a "deadbeat" and asked him when he intended to pay his bill to the store.

The purchaser, greatly angered, embarassed, and distressed, slammed the door shut. The door struck the bullhorn and jammed it forcibly against the bill collector's face. As a consequence, the bill collector lost some of his front teeth.

If the purchaser asserts a claim based on intentional infliction of emotional distress against the bill collector, will the purchaser prevail?

A: Yes, because the bill collector's conduct was extreme and outrageous.
B: Yes, because the bill collector was intruding on the purchaser's property.
C: No, because the purchaser did not suffer physical harm.
D: No, because the purchaser still owed a store for the merchandise.

The explanation for the answer is:

A is correct. The elements of intentional infliction of emotional distress are: (1) defendant's intentional (with purpose or knowledge to a substantial certainty) or reckless (2) extreme and outrageous conduct (3) causes plaintiff severe emotional distress. Choice A is the only answer that addresses an element of the claim provided in the call of the question. Severe emotional distress can be evidenced physically but is not required. Therefore, B, C, and D are incorrect.

Question 477 - Torts - Intentional Torts

The question was:

A purchaser ordered some merchandise from a store. When the merchandise was delivered, the purchaser decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the purchaser's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection.

The bill collector showed up at the purchaser's house at 7 p.m. on a summer evening while many of the purchaser's neighbors were seated on their porches. When the purchaser opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the purchaser a "deadbeat" and asked him when he intended to pay his bill to the store.

The purchaser, greatly angered, slammed the door shut knowing it would strike the bullhorn. The door struck the bullhorn and jammed it forcibly against the the bill collector's face. As a consequence, the bill collector lost some of his front teeth.

If the bill collector asserts a claim of battery against the purchaser will the bill collector prevail?

A: Yes, because the purchaser had not first asked the bill collector to leave the property.
B: Yes, because the purchaser knew that the door was substantially certain to strike the bullhorn.
C: No, because the bill collector's conduct triggered the purchaser's response.
D: No, because the bill collector was an intruder on the purchaser's property.

The explanation for the answer is:

B is the correct answer because the purchaser acted with knowledge to a substantial certainty that his door would hit the bill collector. A battery is caused by an intentional harmful or offensive contact to the plaintiff's person or an extension thereof, without consent or privilege. The actual touching is not required to be done personally by the defendant as long as the defendant set into motion an action with purpose or knowledge to a substantial certainty that the offensive or harmful contact would result.

A is incorrect. This is not a defense of property issue. The call of the question is for battery. C is incorrect because even if the bill collector's conduct triggered the response, it would not provide a complete defense. D is incorrect. The purchaser was not entitled to use force to remove the bill collector from his property, as the bill collector was not threatening the purchaser with force. At most this would go to damages.

Question 488 - Torts - Intentional Torts

The question was:

A well-known politician was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, the defendant pushed the politician's chair to one side. As a result, the politician fell to the floor. The politician was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

Assume that the defendant knew that the politician was about to sit in the chair before he pushed it. If the politician asserts a claim against the defendant for damages because of his embarrassment, will the politician prevail?

A: Yes, because the defendant knew that the politician was about to sit on the chair.
B: Yes, because the defendant negligently failed to notice that the politician would fall.
C: No, because the politician suffered no physical harm along with his embarrassment.
D: No, because the defendant intended moving the chair to be a good-natured practical joke on the politician.

The explanation for the answer is:

A is the correct answer. The call of the question does not give a specific claim, but the key word here is "embarrassment." This is a dignitary tort claim. A battery consists of the unlawful application of force to the person resulting in bodily injury or offensive touching, without consent or privilege. Battery is a general intent crime, and the force need not be applied directly. Here, the defendant set into motion an action with purpose or knowledge to a substantial certainty that the offensive contact would result. Therefore, the defendant committed a battery and the politician can recover for the harm to his dignity.

B is incorrect. Negligence allows pain and suffering, but only for actual damages. A claim based on embarrassment must necessarily involve a dignitary tort, such as battery, to succeed. C is incorrect. All that is required is an offensive touching; physical harm is not required. D is incorrect. Because the defendant pushed the chair knowing that the politician was about to sit on it, the defendant's intent to be funny is irrelevant as battery is a general intent crime.

Question 502 - Torts - Negligence

The question was:

While on a hiking trip during the late fall, the plaintiff arrived, toward the end of the day, at a clearing where several similar cabins were located, none of which was occupied. One of the cabins belonged to the plaintiff's friend, who had given the plaintiff permission to use it. The plaintiff entered one of the cabins, which she thought was her friend's, and prepared to spend the night. In fact the cabin was owned, not by her friend, but by the defendant.

When the night turned cold, the plaintiff started a fire in the stove. Unknown to the plaintiff, there was a defect in the stove that allowed carbon monoxide to escape into the cabin. During the night the fumes caused serious injury to the plaintiff.

If the plaintiff asserts a claim against the defendant for her injury, will she recover?

A: Yes, because the defendant knew that the stove was defective.
B: Yes, because the defendant could have discovered the defect in the stove by a reasonable inspection.
C: No, because the defendant had no reason to anticipate the plaintiff's presence in the cabin.
D: No, unless the plaintiff needed to use the cabin for her own protection.

The explanation for the answer is:

C is correct. The defendant had no duty to exercise care or put the cabin in a safe condition for the plaintiff because the plaintiff was an unknown/undiscovered trespasser. The plaintiff's mistake of fact with regard to the cabin's ownership does not change her status with regard to the defendant. A landowner's only duty to a trespasser begins once the trespasser is discovered or if the defendant was or should have been aware that members of the public were known to frequently trespass on his property. The facts do not support this conclusion, as the plaintiff was a hiker who approached several empty cabins. C addresses the appropriate element at issue.

A is incorrect because it gives the standard of care owed to a licensee. B is incorrect because it gives the standard of care owed to an invitee. D is incorrect because the private necessity privilege does not give rise to any affirmative duty on the part of the landowner, it only serves to supersede a landowner's privilege to defend his property from trespass. Even if the plaintiff's presence in the cabin came through private necessity, it would not change the defendant's duty as the plaintiff would still be an unanticipated trespasser.

Question 509 - Torts - Negligence

The question was:

A local telephone company negligently allowed one of its telephone poles, located between a street and a sidewalk, to become termite-ridden. A driver, who was intoxicated and driving at an excessive rate of speed, lost control of her car and hit the weakened telephone pole. One week later, the pole fell and struck a pedestrian who was walking on the sidewalk. The pole fell because of the combination of the force of the car's impact and the pole's termite-ridden condition.

If the pedestrian asserts a claims against the telephone company and the driver, will the pedestrian prevail?

A: Yes, against the telephone company but not the driver.
B: Yes, against the driver but not the telephone company.
C: Yes, against the telephone company and the driver, each for one-half of his damages.
D: Yes, against both the telephone company and the driver for the full amount of his damages.

The explanation for the answer is:

D is the correct answer. This is an issue of a single indivisible injury. The separate and independent acts of negligence by the telephone company and the driver combined to cause the pole to fall, and cannot be apportioned between them. The facts do not indicate that either action alone would have caused the injury. A majority rule jurisdiction in this indivisible injury case will hold both the telephone company and the driver jointly and severally liable for all of the pedestrian's injuries. A minority jurisdiction would request the jury to roughly apportion fault or apportion an indivisible injury equally between defendants. Unless the instructions direct otherwise, the majority rule position should always be chosen. A, B and C are, therefore, incorrect.

Question 516 - Torts - Products Liability

The question was:

A drug company developed a new drug, ZB, for treatment of Wegener's disease. The company extensively tested ZB for several years on animals and human volunteers and had observed no undesirable side effects. The Federal Drug Administration (FDA) then approved ZB for sale as a prescription drug.

Five other drug companies, each acting independently, developed drugs identical to ZB. Each of these drugs was also approved by the FDA for sale as a prescription drug. A wholesaler bought identically-shaped pills from all six of the manufacturers and sold the pills to drugstores as Wegener's X.

This drug had a long-delayed side effect. Sons of male users of Wegener's X are sterile. One such son brought an action against the drug company for his damages. The drug company, through the wholesaler, supplied about 10 percent of the Wegener's X sold in the state where the son lived. It is not possible to establish which of the five companies supplied the particular pills that the son's father took.

If the son asserts a claim against the drug company based on strict liability in tort, which of the following will be a decisive question in determining whether the son will prevail?

A: Does the *res ipsa loquitur* doctrine apply?
B: Can liability be imposed on the drug company without proof that the drug company knew that the drug had an undesirable side effect?
C: Is the drug company relieved of liability by the FDA approval of the drug?
D: Can liability be imposed on the drug company without showing that its pills were used by the son's father?

The explanation for the answer is:

D is the best answer because it addresses the appropriate issue. For a drug manufacturer to be held in strict liability for a product that is defective or unreasonably dangerous, there must be an injury from the use of the product that was not properly warned against or proper directions provided for its use. If the son cannot show that his father specifically used the drug company's product, a strict liability claim will fail.

A is incorrect. Res ipsa loquitur is used to infer negligence. The call of the question is for strict liability. Choose the answer that best suits the facts and answer the question asked. (Although clearly, a negligence claim based on market share liability might have more success.)

B is incorrect. For a drug manufacturer to be held in strict liability for a product that is defective or unreasonably dangerous, there must be an injury from the use of the product that was not properly warned against or proper directions provided for its use. Proof of the drug company's knowledge isn't needed for strict liability, but use of the drug is, which makes D the best answer. (Note: It is recognized that some drugs are unavoidably dangerous, but their utility in combating an even more dangerous medical disease or condition justifies the use and marketing of a product and, if accompanied by the proper directions and warnings, such a drug will not be held to be defective or unreasonably dangerous.)

C is incorrect. FDA approval does not relieve the drug company of liability. FDA approval is not a guarantor of safety. If a drug did not contain proper warnings or directions, or if the type of injury was not disclosed to the FDA during the approval process, among other possibilities, liability can still be found.

Question 520 - Torts - Other Torts

The question was:

A nurse, after being notified by her employer, a doctor, that her employment with his office was terminated, applied for a position with a hospital. In her application, the nurse listed her former employment with the doctor. The doctor, in response to a telephone inquiry from the hospital, stated that the nurse "lacked professional competence." Although the doctor reasonably believed that to be a fair assessment of the nurse, his adverse rating was mostly based on an episode of malpractice for which the nurse was blamed, but was actually the fault of another doctor. Because of the doctor's adverse comment on her qualification, the nurse was not employed by the hospital.

If the nurse asserts a claim based on defamation against the doctor, will the nurse prevail?

A: Yes, because the doctor was mistaken in the facts on which he based his opinion of the nurse's competence.
B: Yes, because the doctor's statement reflected adversely on the nurse' professional competence.
C: No, because the nurse authorized the hospital to make inquiry of her former employer.
D: No, because the doctor had reasonable grounds for his belief that the nurse was not competent.

The explanation for the answer is:

D is the correct answer. A claim for defamation must prove that there was a defamatory communication of fact made about the plaintiff, which was published to a third person who understood the statement and resulted in harm to the plaintiff's reputation. However, there is a qualified privilege for former employers who provide statements to prospective employers regarding a job applicant, provided that such statements are not made with knowledge of their falsity or with reckless disregard for their truth. Therefore, because the doctor had reasonable grounds to believe that the nurse was not competent, he was privileged to disclose that belief to the hospital at the hospital's request and is not liable for defamation. Thus, A, B, and C are incorrect.

Question 526 - Torts - Strict Liability

The question was:

A chemical company designed and built a large tank on its premises for the purpose of storing highly toxic gas. The tank developed a sudden leak and escaping toxic gas drifted into the adjacent premises where a neighbor lived. The neighbor inhaled the gas and died as a result.

In a suit brought by the neighbor's personal representative against the chemical company, which of the following states what must be established for the claim to prevail?

A: The toxic gas that escaped from the chemical company's premises was the cause of the neighbor's death.
B: The tank was built in a defective manner and the toxic gas that escaped from the chemical company's premises was the cause of the neighbor's death.
C: The chemical company was negligent in designing the tank and the toxic gas that escaped from the chemical company's premises was the cause of the neighbor's death.
D: The chemical company was negligent in designing the tank, the tank was built in a defective manner, and the toxic gas that escaped from the chemical company's premises was the cause of the neighbor's death.

The explanation for the answer is:

A is correct. The operation of a storage facility that contains highly toxic chemicals is considered an abnormally dangerous activity. Ultra-hazardous or abnormally dangerous activities give rise to strict liability because the inherent danger or peculiar risk is unreasonably high when compared to its social utility, even in the absence of negligence and where all the proper precautions have been taken. Consequently, the neighbor's estate will prevail in a claim for damages against the chemical company as owner of the storage facility as long as it can be shown that the escaped gases caused the death; it is irrelevant whether the facility was defective or the chemical company was negligent in the operation of the property. Therefore B, C and D are incorrect.

Question 541 - Torts - Negligence

The question was:

The defendant operates a residential rehabilitation center for emotionally disturbed and ungovernable children who have been committed to his custody by their parents or by juvenile authorities. Though the children are not permitted to leave the center without his permission, there are no bars or guards to prevent them from doing so. It has been held in the state where the center is located that persons having custody of children have the same duties and responsibilities that they would have if they were the parents of the children.

A child, aged 12, who had been in the defendant's custody for six months, left the center without permission. The defendant became aware of the child's absence almost immediately, but made no attempt to locate him or secure his return, though reports reached him that the child had been seen in the vicinity. Thirty-six hours after the child left the center, the child committed a brutal assault upon the plaintiff, a five-year-old child, causing the plaintiff to suffer extensive permanent injury. The defendant had no reason to suspect that the child had a propensity to attack younger children.

If an action is brought against the defendant on behalf of the plaintiff to recover damages for the plaintiff's injuries, will the plaintiff prevail?

A: No, because parents are not personally liable for their child's intentional torts.
B: Yes, because the child was old enough to be liable for battery.
C: Yes, because the child was in the defendant's custody.
D: No, because the defendant did not know or have reason to know that the child had a propensity to attack younger children.

The explanation for the answer is:

D is the correct answer. Parents or legal custodians of children have a number of affirmative duties, based on their special relationship to their minor children. This includes the duty to exercise reasonable care in the control of minor children in their custody. Liability is generally limited to specific types of actions that were foreseeable by the custodian. Thus C is incorrect. A parent or custodian who fails to exercise control regarding the known propensity of his child is generally not vicariously liable for the child's tortious behavior; the parent is only liable for his or her own negligence in failing to control the child. Thus A and B are incorrect. D is the best answer because it addresses the issue that the child's tortious conduct must be specific in its foreseeability. General concerns would not be enough. A, B and C are incorrect.

Question 560 - Torts - Strict Liability

The question was:

As a result of an accident at the NPP nuclear power plant, a quantity of radioactive vapor escaped from the facility and two members of the public were exposed to excessive doses of radiation. According to qualified medical opinion, that exposure will double the chance that these two persons will ultimately develop cancer. However, any cancer that might be caused by this exposure will not be detectable for at least ten years. If the two exposed persons do develop cancer, it will not be possible to determine whether it was caused by this exposure or would have developed in any event.

If the exposed persons assert a claim for damages against NPP shortly after the escape of the radiation, which of the following questions will NOT present a substantial issue?

A: Will the court recognize that the plaintiffs have suffered a present legal injury?
B: Can the plaintiffs prove the amount of their damages?
C: Can the plaintiffs prove that any harm they may suffer was caused by this exposure?
D: Can the plaintiffs prevail without presenting evidence of specific negligence on the part of NPP?

The explanation for the answer is:

D is the correct answer. The call of the question wants you to find the answer that is NOT a substantial issue. The operation of a nuclear power that contains highly toxic chemicals/ radioactive vapor is considered an abnormally dangerous activity. Ultra-hazardous activities give rise to strict liability because the inherent danger or peculiar risk is unreasonably high when compared to its social utility, even in the absence of negligence and where all the proper precautions have been taken. Evidence of negligence, therefore, is not an issue in this situation, which makes D the best answer.

A is a substantial issue. The plaintiff's only current harm is increased risk of future injury, which is not universally recognized as sufficiently concrete to grant standing. B is a substantial issue because the damages have not yet manifested and actual damage is only a possibility. C is a substantial issue because for strict liability to apply, the plaintiffs generally must show that the defendant's emissions caused the injury.

Question 568 - Torts - Negligence

The question was:

While driving at a speed in excess of the statutory limit, the defendant negligently collided with another car, and the disabled vehicles blocked two of the highway's three northbound lanes. When the plaintiff approached the scene two minutes later, he slowed his car to see if he could help those involved in the collision. As he slowed, he was rear-ended by the driver of another vehicle. The plaintiff, who sustained damage to his car and was seriously injured, brought an action against the defendant to recover damages. The jurisdiction adheres to the traditional common law rules pertaining to contributory negligence.

If the defendant moves to dismiss the action for failure to state a claim upon which relief may be granted, should the motion be granted?

A: Yes, because it was the driver, not the defendant, who collided with the plaintiff's car and caused the plaintiff's injuries.
B: Yes, because the plaintiff could have safely passed the disabled vehicles in the traffic lane that remained open.
C: No, because a jury could find that the plaintiff's injury arose from a risk that was a continuing consequence of the defendant's negligence.
D: No, because the defendant was driving in excess of the statutory limit when he negligently caused the first accident.

The explanation for the answer is:

C is the correct answer. This question addresses the issue of causation in a negligence action, and causation requires that the defendant's negligence be both the actual and legal cause of the plaintiff's injuries. The defendant is the actual cause of the plaintiff's injuries because but for the defendant's negligent speeding, the plaintiff would not have been injured. Furthermore, it is possible the defendant is the legal cause of the plaintiff's injuries because it is foreseeable that speeding would cause an accident, and that the accident would create a dangerous road condition leading to subsequent accidents.

A is incorrect because it is possible that the driver was a foreseeable independent intervening force, and his collision with the plaintiff's car was a foreseeable result of the accident caused by the defendant. B is incorrect because even if the plaintiff was negligent in not taking the open lane, his contributory negligence would only go to damages, it would not automatically sever the defendant's liability. D is incorrect because even if the plaintiff was negligently speeding, his contributory negligence would only go to damages, it would not automatically sever the defendant's liability.

Question 575 - Torts - Intentional Torts

The question was:

The defendant was a pitcher for the City Robins, a professional baseball team. While the defendant was throwing warm-up pitches on the sidelines during a game, he was continuously heckled by some spectators seated in the stands above the dugout behind a wire mesh fence. On several occasions, the defendant turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. The defendant wound up as though he was preparing to pitch in the direction of his catcher; however the ball traveled from his hand at high speed, at a 90-degree angle from the line to the catcher and directly toward the hecklers in the stands. The ball passed through the wire mesh fence and struck the plaintiff, one of the hecklers. The defendant had documented anger management issues.

The plaintiff brought an action for damages against the defendant and the City Robins, based upon negligence and battery. The trial court directed a verdict for the defendants on the battery count. The jury found for the defendants on the negligence count because the jury determined that the defendant could not foresee that the ball would pass through the wire mesh fence. The defendant's intent was not considered by the court.

The plaintiff has appealed the judgments on the battery counts, contending that the trial court erred in directing verdicts for the defendant and the City Robins.

On appeal, the judgment entered on the directed verdict in the defendant's favor on the battery claim should be

A: affirmed, because the jury found on the evidence that the defendant could not foresee that the ball would pass through the fence.
B: affirmed, because there was evidence that the defendant was mentally ill and that his act was the product of his mental illness.
C: reversed and the case remanded, because a jury could find on the evidence that the defendant intended to cause the hecklers to fear being hit.
D: reversed and the case remanded, because a jury could find that the defendant's conduct was extreme and outrageous, and the cause of physical harm to the plaintiff.

The explanation for the answer is:

C is correct. If the directed verdict was granted without considering the evidence of the baseball player's intent to cause apprehension of immediate harmful or offensive contact, then it was granted improperly. If there is evidence of intent to assault, then that intent transfers to battery. The baseball player would be held liable for battery when the ball passed through the mesh and hit the plaintiff if he had the intent to commit assault. Therefore, the judgment should be reversed and remanded because the jury could find intent to commit an assault on the evidence.

A is incorrect because this fact pattern deals with an intentional tort, not negligence. There is no need to prove that it is reasonably foreseeable that the ball would travel through the mesh fence. All the plaintiff must prove is that there was intent on the part of the defendant to create a reasonable apprehension in the plaintiff of immediate harmful or offensive contact. Thus, the directed verdict should not be affirmed on the basis that no one could reasonably foresee the ball breaking the mesh.

B is incorrect because everyone, even a child or a mentally ill person, has the capacity to commit an intentional tort. Thus, evidence of a mental illness does not relieve the baseball player of liability and would not be proper grounds on which to affirm the directed verdict.

D is incorrect because "extreme and outrageous" conduct is not an element of battery but rather an element of IIED, which is not subject to transferred intent. Thus, there is no way this could be the grounds on which the directed verdict is reversed and remanded.

Question 581 - Torts - Negligence

The question was:

The defendant parked her car in violation of a city ordinance that prohibits parking within ten feet of a fire hydrant. The city ordinance was enacted solely to allow firefighters quick access to the hydrants in the case of an emergency. Because a man was driving negligently, his car sideswiped the defendant's parked car. The plaintiff, a passenger in the man's car, was injured in the collision. The plaintiff would not have been injured if the defendant was not parked by the fire hydrant.

If the plaintiff asserts a claim against the defendant to recover damages for his injuries, basing his claim on the defendant's violation of the parking ordinance, will the plaintiff prevail?

A: Yes, because the defendant was guilty of negligence per se.
B: Yes, because the plaintiff would not have been injured had the defendant's car not been parked where it was.
C: No, because the defendant's parked car was not an active or efficient cause of the plaintiff's injury.
D: No, because the prevention of traffic accidents was not a purpose of the ordinance.

The explanation for the answer is:

D is the correct answer. Safety statutes establish negligence *per se* only if the violated statute was designed to protect the particular class of foreseeable victim as the plaintiff, and the harm the plaintiff suffered was the type that the statute was designed to protect against. Thus, if the prevention of traffic accidents was not a purpose of the ordinance, the plaintiff will not prevail.

A is incorrect. The purpose of the ordinance is to protect access by fire department vehicles, so the violation of the statute does not make the defendant negligent per se.

B is incorrect because it only focuses on causation. While B may be a true statement regarding causation, it does not address the absence of a duty or breach. C is also incorrect because it only focuses on causation. The "efficient cause test" determines proximate cause by hindsight and operates more strictly against the defendant than the foreseeability test. Furthermore, this is a minority jurisdiction test and would not be the proper test for causation without an explicit instruction in the question.

Question 582 - Torts - Products Liability

The question was:

A 16-year old boy purchased an educational chemistry set manufactured by Chemco.

The teenager invited his friend and classmate, the plaintiff, to assist him in a chemistry project. Referring to a library chemistry book on explosives and finding the chemistry set contained all of the necessary chemicals, the teenager and the plaintiff agreed to make a bomb. During the course of the project, the teenager carelessly knocked a lighted Bunsen burner into a bowl of chemicals from the chemistry set. The chemicals burst into flames, injuring the plaintiff. Although the chemistry set was as safe as possible, and its educational benefits exceeded its risks, the set did not contain a warning that it could be used to make dangerous explosives.

In a suit by the plaintiff against Chemco, based on strict liability, the plaintiff will

A: prevail, because the chemistry set did not contain a warning that its contents could be combined to form dangerous explosives.
B: prevail, because manufacturers of chemistry sets are engaged in an abnormally dangerous activity.
C: not prevail, because the teenager's negligence was the cause in fact of the plaintiff's injury.
D: not prevail, because the chemistry set was as safe as possible, consistent with its educational purposes, and its benefits exceeded its risks.

The explanation for the answer is:

D is the best answer. The facts indicate that the chemistry set was exactly as it was designed. This is a defective design case. For strict liability to apply in defective design, the plaintiff must prevail in a risk-utility balancing test where the plaintiff must show that the risk and severity of his injuries were predictable. In some jurisdictions, the court would then consider the feasibility of alternative designs. Other jurisdictions shift the burden to the defendant (once plaintiff proves causation) requiring the manufacturer to show that the chemistry set was as safe as possible, with its educational utility and benefits outweighing the risks.

A is incorrect because the students did not use the set directions, but rather a library book. Failure to warn is not the issue.

B is incorrect. Abnormally dangerous activity on the part of the manufacturer is irrelevant to this question. Ultra-hazardous activities by landowners and occupiers give rise to strict liability or any resulting injury because the inherent danger or peculiar risk is unreasonably high when compared to their social utility, even in the absence of negligence and where all the proper precautions have been taken. At issue in this question is the purchase of a product, not the conditions on the land where the manufacturer resides.

C comes to the incorrect conclusion. The teenager's actions will not determine whether a products liability claim will prevail. The actions may go to damages as a defense, but will not be part of the case in chief, which is at issue in this question. If the design is found to be defective, the teenager's negligence will not set aside Chemco's strict liability to the plaintiff.

Question 603 - Torts - Other Torts

The question was:

The governor of a state signed a death warrant for a convicted murderer. Two protesters are active opponents of the death penalty. At a demonstration protesting the execution of the murderer, the protesters carried large signs that state, "The governor - Murderer." A television station broadcast news coverage of the demonstration, including pictures of the signs carried by the protesters.

The governor asserted a defamation claim against the television station. Assume that the jury finds that although the signs caused the public to hold the governor in lower esteem, the only reasonable interpretation of the signs was that the term "murderer" was intended as a characterization of anyone who would sign a death warrant.

Will the governor prevail?

A: Yes, because the signs would cause persons to hold the governor in lower esteem.
B: Yes, because the governor can prove that the television station showed the signs with knowledge of falsity or reckless disregard of the truth that the governor had not committed homicide.
C: No, because the governor cannot prove he suffered pecuniary loss resulting from harm to his reputation proximately caused by the defendants' signs.
D: No, because the only reasonable interpretation of the signs was that the term "murderer" was intended as a characterization of one who would sign a death warrant.

The explanation for the answer is:

D is the correct answer. Because the statement could be reasonably interpreted only in one way, then that interpretation must in fact be defamatory in order for a plaintiff to prevail in a case of defamation. Here, the statement was that “murderer” means one that would sign a death warrant. Therefore, the statement was the expression of an opinion not based on specific facts, and would not support a defamation action.

A is incorrect. As explained above, a defamatory statement must be a provably false statement of fact. Because the statement in question was the expression of an opinion that anyone who would sign a death warrant is a murderer, the governor’s claim would fail due to the inability to prove defamatory language on the part of the defendant.

B is incorrect because the common law elements of the claim must be satisfied before the constitutional questions are addressed. To be defamatory a statement must be a provably false statement of fact. Because the statement was an expression of opinion that anyone who would sign a death warrant is a murderer, the governor would fail in setting out a claim for defamation even before the constitutional issues were addressed. Therefore, a determination regarding malice under *New York Times v. Sullivan* is irrelevant.

C is incorrect. TV broadcasts tend to be treated as libel, which would mean special damages are not necessary. Even as a test for slander, however, this choice is incorrect because the accusation is criminal. A criminal accusation is slander per se and does not need proof of special damages to prevail.

Question 604 - Torts - Intentional Torts

The question was:

The governor of a state signed a death warrant for a convicted murderer. Two protesters are active opponents of the death penalty. At a demonstration protesting the execution of the murderer, the protesters carried large signs that state, "The governor - Murderer." A television station broadcasted news coverage of the demonstration, including pictures of the signs carried by the protesters.

If the governor asserts against the television station a claim of damages for intentional infliction of emotional distress, will the governor prevail?

A: Yes, because the broadcast showing the signs caused the governor to suffer severe emotional distress.
B: Yes, because the assertion on the signs was extreme and outrageous.
C: No, because the governor did not suffer physical harm as a consequence of the emotional distress caused by the signs.
D: No, because the television station did not publish a false statement of fact with "actual malice."

The explanation for the answer is:

D is the correct answer. The call of the question directs you to examine an intentional infliction of emotional distress claim, not the underlying defamation case. The elements of the prima facie case for intentional infliction of emotional distress ("IIED") are: (1) extreme and outrageous conduct by the defendant, (2) either severe emotional distress suffered by the plaintiff or recklessness by the defendant as to the effect of their conduct, (3) causation, and (4) damages. D is correct because a false statement of fact broadcast with actual malice would satisfy both the first and second elements of the prima facie case for IIED. Malice is defined as making a false statement with knowledge or with reckless disregard for its truth or falsity. Broadcasting a false statement of fact without regard for its veracity would not only be extreme and outrageous conduct for a news station, it would also show a reckless disregard for the effect of broadcasting the false statements. Therefore, absent a false statement of fact broadcast with actual malice, the television station will not be liable for IIED.

A is incorrect because it only addresses the second element. Even if the broadcast did cause severe emotional distress, there is still no evidence that broadcasting the protest was extreme and outrageous conduct for a news station. B is incorrect because it deals with the actions of a non-party. For the governor to prevail against the television station, it is the act of broadcasting the protest that needs to be extreme and outrageous. The fact that the assertions on the signs were extreme and outrageous is inadequate. C is incorrect because it fails to address the proper party's conduct. Additionally, an IIED claim does not require the manifestation of a physical injury.

Question 609 - Torts - Products Liability

The question was:

At a country auction, a plaintiff acquired an antique cabinet that he recognized as a "Morenci," an extremely rare and valuable collector's item. Unfortunately, the plaintiff's cabinet had several coats of varnish and paint over the original oil finish. Its potential value could only be realized if these layers could be removed without damaging the original finish. Much of the value of Morenci furniture depends on the condition of a unique oil finish, the secret of which died with Morenci, its inventor.

A professional restorer of antique furniture recommended that the plaintiff use *Restorall* to remove the paint and varnish from the cabinet. The plaintiff obtained and read a sales brochure published by Restorall, Inc., which contained the following statement: "This product will renew all antique furniture. Will not damage original oil finishes."

The plaintiff purchased some *Restorall* and used it on his cabinet, being very careful to follow the accompanying instructions exactly. Despite the plaintiff's care, the original Morenci finish was irreparably damaged. When finally refinished, the cabinet was worth less than 20% of what it would have been worth if the Morenci finish had been preserved. No other removal technique could have persevered the original finish.

If the plaintiff sues Restorall, Inc., to recover the loss he has suffered as a result of the destruction of the Morenci finish, will the plaintiff prevail?

A: Yes, because no other known removal technique would have preserved the Morenci finish.
B: Yes, because the loss would not have occurred had the statement in the brochure been true.
C: No, because the product was not defective when sold by Restorall, Inc.
D: No, because the product was not dangerous to persons.

The explanation for the answer is:

B is the correct answer. This is a misrepresentation issue. The assertions in the brochure were a public misrepresentation of a material fact concerning the quality or character of the "Restorall" product that caused an injury to the plaintiff when the cabinet was ruined because he relied on the statement to his detriment.

D is incorrect because whether the product was dangerous to persons is of no importance here. The call of the question asks what the result will be if the plaintiff sues to recover the loss he suffered as a result of the destruction of the furniture finish. C is incorrect because a claim for misrepresentation does not require proof of fault in the making or the designing of the product. A is incorrect because the defendant's false claim is actionable regardless of whether alternative products are available.

Question 631 - Torts - Negligence

The question was:

A landlord owns and operates a 12-story apartment building containing 72 apartments, 70 of which are rented. A pedestrian has brought an action against the landlord alleging that while he was walking along a public sidewalk adjacent to the landlord's apartment building a flower pot fell from above and struck him on the shoulder, causing extensive injuries. The action was to recover damages for those injuries.

If the pedestrian proves the foregoing facts and offers no other evidence explaining the accident, will his claim survive a motion for directed verdict offered by the defense?

A: Yes, because the pedestrian was injured by an artificial condition of the premises while using an adjacent public way.
B: Yes, because such an accident does not ordinarily happen in the absence of negligence.
C: No, because the landlord is in no better position than the pedestrian to explain the accident.
D: No, because there is no basis for a reasonable inference that the landlord was negligent.

The explanation for the answer is:

D is correct. Any time negligence must be inferred, there is a res ipsa loquitur issue. The doctrine of *res ipsa loquitur* will establish a prima facie case for negligence where (1) the defendant had exclusive control of the instrumentality during the relevant time, and (2) the plaintiff shows that he was not responsible for the injury. For a claim based on *res ipsa loquitur* to prevail, the pedestrian must show that the landlord had exclusive control of the flowerpot before it fell. In this case, the landlord did not have exclusive control of the flowerpot during the relevant time frame because 70 of the units had tenants, so *res ipsa loquitur* may not be used to establish negligence. Therefore, the pedestrian will not be able to make his prima facie case, and the landlord's motion for a directed verdict should be granted.

A is incorrect because the landlord would not be responsible for conditions created by tenants in their apartments. B is incorrect because it makes a true statement but does not address the requirement of exclusive control, so the negligence cannot be imputed on the landlord. C is incorrect. The landlord is not required to explain the accident. It is the plaintiff's burden to prove her case, including the fact that the landlord was in exclusive control of the instrumentality at the time the negligence occurred. The facts do not support the requirement, so the landlord's motion for a directed verdict will be granted.

Question 642 - Torts - Intentional Torts

The question was:

A plaintiff and a defendant were in the habit of playing practical jokes on each other on their respective birthdays. On the plaintiff's birthday, the defendant sent the plaintiff a cake containing an ingredient that he knew had, in the past, made the plaintiff very ill. After the plaintiff had eaten a piece of the cake, he suffered severe stomach pains and had to be taken to the hospital by ambulance. On the way to the hospital, the ambulance driver suffered a heart attack, which caused the ambulance to swerve from the road and hit a tree. As a result of the collision, the plaintiff suffered a broken leg.

In a suit by the plaintiff against the defendant to recover damages for the plaintiff's broken leg, the plaintiff will

A: prevail, because the defendant knew that the cake would be harmful or offensive to the plaintiff.
B: not prevail, because the ambulance driver was not negligent.
C: not prevail, because the defendant could not reasonably be expected to foresee injury to the plaintiff's leg.
D: not prevail, because the ambulance driver's heart attack was a superseding cause of the plaintiff's broken leg.

The explanation for the answer is:

A is the correct answer. The defendant intentionally fed the plaintiff a substance that he knew would make the plaintiff very ill. Despite the red-herring stating that the two "were in a habit of playing practical jokes," this is a battery. A battery is caused by an intentional harmful or offensive contact to the plaintiff's person or an extension thereof, without consent or privilege. The actual touching need not be done personally by the defendant as long as the defendant set into motion an action with purpose or knowledge to a substantial certainty that the offensive or harmful touching would result.

B, C and D are incorrect. Intentionally wrongful actions render the defendant liable for all consequences of those acts, even if unintended and unforeseen. Any possible negligence of the ambulance driver will likely have no effect on the plaintiff's claim against the defendant.

Question 649 - Torts - Negligence

The question was:

An eight-year-old child went to the grocery store with her mother. The child pushed the grocery cart while her mother put items into it. The child's mother remained near the child at all times. Another customer in the store noticed the child pushing the cart in a manner that caused the customer no concern. A short time later, the cart the child was pushing struck the customer in the knee, inflicting serious injury.

If the customer brings an action, based on negligence, against the grocery store, the store's best defense will be that

A: a store owes no duty to its customers to control the use of its shopping carts.
B: a store owes no duty to its customers to control the conduct of other customers.
C: any negligence of the store was not the proximate cause of the customer's injury.
D: a supervised child pushing a cart does not pose an unreasonable risk to other customers.

The explanation for the answer is:

D is the correct answer and can be reached by the process of elimination. D is the only choice that uses the language of the negligence standard as it applies to the facts. The other choices are overly broad generalizations of law and can be eliminated immediately. The issue is not general cart use or customer behavior. It is whether the actions of a young, supervised child posed a foreseeable danger to other customers. The grocery store has a duty to take reasonable steps to make the conditions on the premises reasonably safe, to conduct active operations with reasonable care for the presence of its invitees, and, under limited circumstances, to protect its customers against the acts of third persons or animals. The child was in the care and control of her mother at all times. The store's best defense is that the supervised child was not a foreseeable cause of severe harm such that the store had a duty to intervene to protect the customer. A, B and C are incorrect.

Question 651 - Torts - Negligence

The question was:

An eight-year-old child went to the grocery store with her mother. The child pushed the grocery cart while her mother put items into it. The child's mother remained near the child at all times. Another customer in the store noticed the child pushing the cart in a manner that caused the customer no concern. A short time later, the cart the child was pushing struck the customer in the knee, inflicting serious injury.

If the customer brings an action, based on negligence, against the child, the child's best argument in defense would be that

A: The child exercised care commensurate with her age, intelligence, and experience.
B: The child is not subject to tort liability.
C: The child was subject to parental supervision.
D: The customer assumed the risk that the child might hit the customer with the cart.

The explanation for the answer is:

Choice A is the correct defense, because it gives a child-appropriate negligence standard of care. The customer's claim for negligence will be allowed, but the child will only be held to the standard of care expected of "a reasonable child" of the same age, training, maturity, experience, and intelligence.

B is both overly broad and not a defense. The child is not too young to be held liable in tort. Children as young as four have been found capable of forming a tortious intent. C is not an appropriate defense. The child's mother can assert supervision of her child as a defense against a claim for negligence in the control of her daughter, but it is not available to the child herself. D is also incorrect. The customer did not expressly or impliedly and knowingly assume the risk that the child would push a cart into her. Entering the grocery store was not an assumption of the risk that she might be injured by a store cart.

Question 653 - Torts - Intentional Torts

The question was:

The defendant operates a collection agency. He was trying to collect a valid $400 bill for medical services rendered to the plaintiff by a doctor that was past due.

The defendant went to the plaintiff's house and when the plaintiff's mother answered the door, the defendant told her that he was there to collect a bill owed by the plaintiff. The mother told the defendant that because of the plaintiff's illness, the plaintiff had been unemployed for six months, that she was still ill and unable to work, and that she would pay the bill as soon as she could.

The defendant, in a loud voice, demanded to see the plaintiff and said that if he did not receive payment immediately, he would file a criminal complaint charging her with fraud. The plaintiff, hearing the conversation, came to the door. The defendant, in a loud voice, repeated his demand for immediate payment and his threat to use criminal process.

Assume that the plaintiff did not suffer physical harm as a result of the defendant's conduct, but did suffer severe emotional distress. If the plaintiff asserts a claim against the defendant based on intentional infliction of emotional distress, will the plaintiff prevail?

A: Yes, because the plaintiff suffered severe emotional distress as a result of the defendant's conduct.
B: No, because the bill for medical services was valid and past due.
C: No, because the plaintiff did not suffer physical harm as a result of the defendant's conduct.
D: No, because the defendant's conduct created almost no risk of physical harm to the plaintiff.

The explanation for the answer is:

A is the correct answer. The elements of intentional infliction of emotional distress ("IIED") are: (1) the defendant's intentional (with purpose or knowledge to a substantial certainty) or reckless (2) extreme and outrageous conduct which (3) causes the plaintiff severe emotional distress. The defendant, a bill collector, came to the house of the plaintiff, a severely ill disabled person, and loudly threatened her with criminal fraud charges over the payment of a hospital bill. This would likely constitute extreme and outrageous behavior. B and D are incorrect because neither one is relevant to an IIED claim. C is incorrect because severe emotional distress can be evidenced physically, but physical injuries are not necessary. Answer A establishes the last necessary element of the tort, making it the correct response.

Question 655 - Torts - Intentional Torts

The question was:

A car driven by the defendant entered land owned by and in the possession of the plaintiff, without the plaintiff's permission.

Which, if any, of the following allegations, without additional facts, would provide a sufficient basis for a claim by the plaintiff against the defendant?

A: The defendant intentionally drove his car onto the plaintiff's land.
B: The defendant's car damaged the plaintiff's land.
C: The defendant negligently drove his car onto the plaintiff's land.
D: None of the above.

The explanation for the answer is:

A is the correct answer. Trespass is the physical invasion of the real property of another, the intent to bring about that invasion, and causation. Intent refers only to the intent to enter the land; the defendant need not know that the land belongs to the plaintiff. Therefore, if the defendant intentionally drove his car onto the plaintiff's land, this would provide a sufficient basis for a trespass claim. Consequently, A is correct and D is incorrect.

Damage to the plaintiff's land by the defendant's property is not sufficient to sustain a claim of trespass because it does not establish intent of the part of the defendant. Likewise, damage and causation are insufficient to sustain a negligence claim without proof of duty and breach. Therefore, B does not provide a sufficient basis for a claim.

If the defendant negligently or unintentionally entered the land, the plaintiff would not have a trespass claim, and without damages there would be no valid negligence claim. Thus, C does not provide a sufficient basis for a claim.

Question 663 - Torts - Intentional Torts

The question was:

While an equestrian was riding her horse on what she thought was a public path, the owner of a house next to the path approached her, shaking a stick and shouting, "Get off my property." Unknown to the equestrian, the path on which she was riding crossed the private property of the shouting owner. When the equestrian explained that she thought the path was a public trail, the man cursed her, approached the equestrian's horse, and struck the horse with the stick. As a result of the blow, the horse reared, causing the equestrian to fear that she would fall. However, the equestrian managed to stay on her horse, and then departed. Neither the equestrian nor the horse suffered bodily harm.

If the equestrian brings an action for damages against the property owner, the result should be for

A: the equestrian, for trespass to her chattel property.
B: the equestrian, for battery and assault.
C: the defendant, because the equestrian suffered no physical harm.
D: the defendant, because he was privileged to exclude trespassers from his property.

The explanation for the answer is:

B is the correct answer. The equestrian suffered two specific tort injuries. The first was assault. For assault, the defendant must have the apparent present physical ability to complete his threatened battery for the tort of assault to be complete. Words alone are not sufficient. This first tort occurred when the owner approached her, yelling and shaking a stick at her. The second was a battery. A battery is caused by an intentional harmful or offensive touch to the plaintiff's person or an extension thereof, without consent or privilege. When the owner struck the horse the equestrian was seated on, he committed a battery by striking an extension of the equestrian, causing an offensive touch. Choice B appropriately lists both torts.

C is incorrect because battery is a dignitary tort and does not require bodily harm or severe emotional distress. A is incorrect. Trespass to chattels is an interference with the equestrian's possessory interest in her personal property. To prevail in trespass to chattels, however, the equestrian would have to prove actual damages, measured according to the diminution of the chattel's value. Since the facts clearly state the horse suffered no damage, this claim would not prevail. D is incorrect. The defendant had no privilege to use any type of force against the equestrian unless she was a threat to the owner's personal safety.

Question 669 - Torts - Negligence

The question was:

While driving his car, the plaintiff sustained injuries in a three-car collision. The plaintiff sued the drivers of the other two cars, D-1 and D-2, and each defendant crossclaimed against the other for contribution. The jurisdiction has adopted a rule of pure comparative negligence and allows contribution based upon proportionate fault. The rule of joint and several liability has been retained.

The jury has found that the plaintiff sustained damages in the amount of $100,000, and apportioned the causal negligence of the parties as follows: The plaintiff 40%, D-1 30%, and D-2 30%.

How much, if anything, can the plaintiff collect from D-1, and how much, if anything, can D-1 then collect from D-2 in contribution?

A: Nothing, and then D-1 can collect nothing from D-2.
B: $30,000, and then D-1 can collect nothing from D-2.
C: $40,000, and then D-1 can collect $10,000 from D-2.
D: $60,000, and then D-1 can collect $30,000 from D-2.

The explanation for the answer is:

D is the correct calculation. Pure comparative negligence allows recovery by the plaintiff for all damages not attributed to his own negligence. The plaintiff is therefore entitled to $60,000, which is the $100,000 in damages he suffered minus his 40% of the fault. Since this is a joint and several liability jurisdiction, the defendants are each liable for the entire award. The plaintiff can collect the full amount of his award from either defendant or both, as long as the total only equals the $60,000 he is entitled to. The facts indicate that the jurisdiction allows contribution based on proportionate fault. The question asks how much (what is the most) the plaintiff can collect from D-1. Under joint and several liability, the plaintiff can collect up to his full award, here $60,000, from D-1. D-1 can then collect D-2's proportionate amount of the award in contribution, which is 30% of $100,000, or $30,000. Thus, A, B and C are incorrect.

Question 681 - Torts - Negligence

The question was:

A hiker, although acting with reasonable care, fell while attempting to climb a mountain and lay unconscious and critically injured on a ledge that was difficult to reach. The plaintiff, an experienced mountain climber, was himself seriously injured while trying to rescue the hiker. The plaintiff's rescue attempt failed, and the hiker died of his injuries before he could be reached.

The plaintiff brought an action against the hiker's estate for compensation for his injuries. In this jurisdiction, the traditional common-law rules relating to contributory negligence and assumption of risk remain in effect.

Will the plaintiff prevail in his action against the hiker's estate?

A: Yes, because his rescue attempt was reasonable.
B: Yes, because the law should not discourage attempts to assist persons in helpless peril.
C: No, because the hiker's peril did not arise from his own failure to exercise reasonable care.
D: No, because the plaintiff's rescue attempt failed and therefore did not benefit the hiker.

The explanation for the answer is:

C is the correct answer. For the plaintiff to prevail on a negligence claim, the hiker must have actually been negligent in some way. One who acts negligently and endangers only himself is also liable for the resulting injuries of anyone who undertakes to rescue him.

A is incorrect. An action ending with a need to be rescued must have been negligent for the injured rescuer to have a claim against the estate. The negligence of a rescuer is generally a foreseeable result of the original negligent act, and the rescuer need not show that the rescue was reasonable (but that issue may go to damages).

B is incorrect. This is the general policy reason behind statutes that grant immunity to doctors or nurses who render medical assistance at the scene of an accident. The statutes do not create an affirmative duty to help emergency victims at the scene of an accident. They only absolve the medical professionals from liability for ordinary negligence. The policy is not applicable to the facts of this question.

D is incorrect. One who acts negligently and endangers only himself is also liable for the resulting injuries of anyone who undertakes to rescue him. A failed rescue attempt would not cut short liability if the hiker had been negligent.

Question 685 - Torts - Products Liability

The question was:

In preparation for a mountain-climbing expedition, a climber purchased the necessary climbing equipment from a retail dealer in sporting goods. A week later, the climber fell from a rock face when a safety device he had purchased from the retail dealer malfunctioned because of a defect in its manufacture. Thereafter, a rescuer was severely injured when he tried to reach and give assistance to the climber on the ledge to which the climber had fallen. The rescuer's injury was not caused by any fault on his own part.

If the rescuer brings an action against the retailer to recover damages for his injuries, will the rescuer prevail?

A: No, because the retailer could not have discovered the defect by a reasonable inspection of the safety device.
B: No, because the rescuer did not rely on the representation of safety implied from the sale of the safety device by the retailer.
C: Yes, because the climber was not negligent in failing to test the safety device.
D: Yes, because injury to a person in the rescuer's position was foreseeable if the safety device failed.

The explanation for the answer is:

D is correct and can be reached by the process of elimination. This is a products liability question. While the call of the question does not specify the basis for the claim, all four choices deal with aspects of products liability in negligence. The facts indicate that the retailer dealt with the defective goods involved. Sellers of products can be liable for injuries caused by the retailer's (or wholesaler's) failure to exercise due care. This can apply to the retailer, provided they were physically responsible for the climbing equipment's dangerous condition or they failed to inspect the equipment when an inspection would have been reasonable and possible under the circumstances.

The call of the question, however, is a claim by the rescuer of the purchaser of the defective goods. The issue then becomes whether a non-user of the defective equipment can prevail in a negligence claim for products liability against the seller of that product. The rule is that any person who was foreseeably endangered and actually injured by the seller's negligence can bring an action. Privity of contract is not required. While all four of the choices come to different results, they include true statements. D is the best answer, however, because it is the only answer that addresses the first issue a court will determine. Unless the rescuer has standing to make a claim, the merits of that claim will not be reached. A, B and C are incorrect.

Question 734 - Torts - Strict Liability

The question was:

A defendant's dog ran into the street in front of the defendant's home and began chasing cars. The plaintiff, who was driving a car on the street, swerved to avoid hitting the dog, struck a telephone pole, and was injured.

Assume that the defendant knew his dog would often chase cars but refused to restrain it. If the plaintiff asserts a claim against the defendant, will the plaintiff prevail?

A: Yes, because the defendant's dog was a cause in fact of the plaintiff's injury.
B: Yes, because the defendant knew his dog had a propensity to chase cars and did not restrain it.
C: No, because a dog is a domestic animal.
D: No, because there is no statute or ordinance making it unlawful for the owner to allow a dog to be unleashed on a public street.

The explanation for the answer is:

B is the correct answer. The owner of an animal can be held responsible for the damage caused when that animal escapes its owner's property. Because the dog is a domestic animal, the damage caused by the defendant's dog will generally create liability for compensation only if the defendant knew of his dog's "mischievous propensity." Thus A is incorrect. (Note: Some states, however, have imposed strict liability statutes for damage caused by wandering/trespassing dogs).

C is incorrect. While owners of wild animals are held in strict liability for the animal's damages, owners of domestic animals can also be held strictly liable, if the animal's "mischievous" propensity is known.

D is incorrect. The defendant's dog is a trespasser, with or without an applicable leash law, once it leaves its master's property.

Question 735 - Torts - Intentional Torts

The question was:

A defendant, an inexperienced driver, borrowed a car from the plaintiff, a casual acquaintance, for the express purpose of driving it several blocks to the local drug store. Instead, the defendant drove the car, which then was worth $12,000, 100 miles to another city. While the defendant was driving in the other city the next day, the car was hit by a negligently driven truck and sustained damage that will cost $3,000 to repair. If repaired, the car will be fully restored to its former condition.

If the plaintiff asserts a claim against the defendant based on conversion, the plaintiff should recover a judgment for

A: $12,000.
B: $3,000.
C: $3,000 plus damages for the loss of the use of the car during its repair.
D: nothing, because the defendant was negligent.

The explanation for the answer is:

A is the correct answer. When the defendant intentionally used the car to drive beyond the local drug store to the other city, he interfered with the plaintiff's possessory interest in his car by using it beyond the scope of the plaintiff's permission to do so. When the defendant kept dominion of the car overnight and continued to drive it the next day in the other city, the conduct constituted such a substantial possessory interference that the plaintiff had a claim for conversion as a result. The conversion occurred even if the defendant did not intend to get into an accident and was not negligent while driving the car. In a claim for conversion, the plaintiff may recover the fair market value of the car, which was $12,000 before it was damaged.

B and C are incorrect. The defendant's interference was substantial, so the plaintiff is entitled to full market value of the car. If the plaintiff had damaged the car while driving to the local drug store, he would only be liable for the $3,000 in actual damages in a claim for trespass to chattels. The facts, however, support a claim for conversion.

D is incorrect. The defendant's interference was intentional and a conversion. Therefore, the defendant's lack of negligence will not protect him from liability.

Question 739 - Torts - Negligence

The question was:

A defendant operates a bank courier service that uses armored trucks to transport money and securities. One of the defendant's armored trucks was parked illegally, too close to a street intersection. The plaintiff, driving his car at an excessive speed, skidded into the armored truck while trying to make a turn. The truck was not damaged, but the plaintiff was injured.

The plaintiff has brought an action against the defendant to recover damages for his loss resulting from the accident. The jury determined that both parties were negligent, but that the defendant was less negligent than the plaintiff. The jurisdiction follows a pure comparative negligence rule.

In this action, the plaintiff should recover

A: nothing, because the defendant was not an active or efficient cause of the plaintiff's loss.
B: nothing, because the defendant was less negligent.
C: his entire loss, reduced by a percentage that reflects the negligence attributed to the plaintiff.
D: his entire loss, because the defendant's truck suffered no damage.

The explanation for the answer is:

C is the correct answer because it states the proper standard of recovery. In a pure comparative negligence rule jurisdiction, the plaintiff may recover his full amount of damages, less the portion attributed to his own negligence. The plaintiff is not barred from recovery by his negligence, but he will have his award reduced, according to the court's determination of the plaintiff's percentage of responsibility for his own injuries due to his excessive speed in driving. Thus, A, B and D are incorrect.

Question 747 - Torts - Negligence

The question was:

While walking on a public sidewalk, a pedestrian was struck by a piece of lumber that fell from the roof of a homeowner's house. The homeowner had hired a repairman to make repairs to his roof, and the lumber fell through due to negligence on the repairman's part.

Assume that the homeowner exercised reasonable care in hiring the repairman, that the repairman was an independent contractor, and that public policy made a homeowner's duty to keep the sidewalk safe for pedestrian a nondelegable duty. If the pedestrian brings an action against the homeowner to recover damages for the injury caused to him by the repairman's negligence, will the pedestrian prevail?

A: Yes, under the *res ipsa loquitur* doctrine.
B: Yes, because the repairman's act was a breach of a nondelegable duty owed by the homeowner to the pedestrian.
C: No, because the repairman was an independent contractor rather than the homeowner's servant.
D: No, because the homeowner exercised reasonable care in hiring the repairman to do the repair.

The explanation for the answer is:

B is the correct answer. In general, an independent contractor is liable for his own torts. However, an exception exists where the contractor is carrying out an inherently dangerous activity or where there is a public policy consideration that makes the duty nondelegable. The facts indicate that the duty to make the sidewalk safe for pedestrians was a nondelegable duty. Therefore, Answer B is the best choice.

Answer A is inapplicable on the facts, which clearly state that the repairman was negligent. Res ipsa loquitur is only used where proof of negligence must be inferred.

Answer C reaches the wrong conclusion. The homeowner will still be held liable for the actions of an independent contractor because he had a nondelegable duty. The word servant is a term of art and refers to a hired individual with duties defined and under the control of the one who did the hiring.

Answer D is not the best answer. Even though the homeowner exercised reasonable care in hiring the repairman, he still had a nondelegable duty to keep the sidewalk safe.

Question 750 - Torts - Negligence

The question was:

An actress, who played the lead role in a television soap opera, was seriously injured in an automobile accident caused by the defendant's negligent driving. As a consequence of the actress's injury, the television series was canceled, and a supporting actor was laid off. Although the supporting actor looked for other work, he remained unemployed.

In an action against the defendant, can the supporting actor recover for his loss of income attributable to the accident?

A: Yes, because the defendant's negligence was the cause in fact of the supporting actor's loss.
B: Yes, because the supporting actor took reasonable measures to mitigate his loss.
C: No, because the defendant had no reason to foresee that by injuring the lead actress he would cause harm to the supporting actor.
D: No, because the defendant's liability does not extend to economic loss to the supporting actor that arises solely from physical harm to the lead actress.

The explanation for the answer is:

D is the correct answer. With the exception of a wrongful death claim allowed by statute, a negligence action for pure economic loss to a plaintiff as the result of an injury suffered by a third party is generally not recoverable. Courts, as a policy matter, will refuse to find proximate cause in such cases. Thus A, B and C are incorrect.

Question 758 - Torts - Negligence

The question was:

A plaintiff's three-year-old daughter was killed in an automobile accident. At the plaintiff's direction, the child's body was taken to a mausoleum for interment. Normally, the mausoleum's vaults are permanently sealed with marble plates secured by "tamper-proof" screws. After the child's body was placed in a mausoleum, however, only a fiberglass panel secured by caulking compound covered her vault. About a month later, the child's body was discovered in a cemetery located near the mausoleum. It had apparently been left there by vandals who had taken it from the mausoleum.

As a result of this experience, the plaintiff suffered great emotional distress.

If the plaintiff sues the mausoleum for the damages arising from her emotional distress, will she prevail?

A: No, because the plaintiff experienced no threat to her own safety.
B: No, because the mausoleum's behavior was not extreme and outrageous.
C: Yes, because the mausoleum failed to use reasonable care to safeguard the body.
D: No, because the plaintiff suffered no physical harm as a consequence of her emotional distress.

The explanation for the answer is:

C is correct. The mausoleum did not intentionally act in an extreme and outrageous way, so this is a negligent infliction of emotional distress issue. The mausoleum was negligent in its failure to adhere to its own standard in securing the child's body, and it was foreseeable that its failure to do so would cause emotional harm to the child's mother when the body of her three-year old daughter was mishandled. The mausoleum breached its duty of care regarding the child's body and the majority of courts allow standalone emotional harm to be recoverable where there has been a mishandling of a dead body of a relative resulting in severe emotional distress.

A is incorrect because the mausoleum directly created a foreseeable risk of harm by directly causing severe emotional distress through its failure to properly secure the vault. B is incorrect because extreme and outrageous behavior is an element of an intentional infliction of emotional distress claim, and the mausoleum did not intentionally act in an extreme and outrageous manner. D is incorrect because no physical harm is required when the negligent infliction of emotional distress action arises from the mishandling of a relative's corpse.

Question 762 - Torts - Negligence

The question was:

A plaintiff entered a drug store to make some purchases. As he was searching the aisles for various items, he noticed a display card containing automatic pencils. The display card was on a high shelf behind a cashier's counter. The plaintiff saw a sign on the counter that read, "No Admittance, Employees Only." Seeing no clerks in the vicinity to help him, the plaintiff went behind the counter to get a pencil. A clerk then appeared behind the counter and asked whether she could help him. He said he just wanted a pencil and that he could reach the display card himself. The clerk said nothing further. While reaching for the display card, the plaintiff stepped sideways into an open shaft and fell to the basement, ten feet below. The clerk knew of the presence of the open shaft, and had reason to believe that the plaintiff had not noticed it when stepping behind the counter.

The plaintiff sued the drug store to recover damages for the injuries he sustained in the fall. The jurisdiction has adopted a rule of pure comparative negligence, and it follows traditional common-law rules governing the duties of a land possessor.

Will the plaintiff recover a judgment against the drug store?

A: No, because the plaintiff was a trespasser.
B: No, because the plaintiff's injuries did not result from the defendant's willful or wanton misconduct.
C: Yes, because the premises were defective with respect to a public invitee.
D: Yes, because the clerk had reason to believe that the plaintiff was unaware of the open shaft.

The explanation for the answer is:

D is the correct answer. With respect to an invitee, a business has a duty to make a reasonable inspection and a duty to warn of, or repair, known hazards on the premises. The duty to protect applies to defects that are: (1) known to the business, (2) dangerous, and (3) non-obvious to the invitee. This liability may be abated if the invitee became a trespasser by entering an area that was restricted and off-limits to visitors. If a customer wanders into an off-limits area, the only duty the business owes is to refrain from willful and wanton conduct.

The first issue in this question is the customer's status. The facts state that the customer went into an "Employees Only" area. However, an employee observed the plaintiff and allowed the entry. Therefore, the plaintiff is not a trespasser in this situation, but an invitee. Thus, A and B are incorrect. The second issue is whether the hazard was open and obvious, thus abating the drug store's liability. Choice D appropriately addresses the issue that the clerk had a duty to warn the plaintiff of the danger if he had reason to believe that the plaintiff was unaware of the open shaft. C is not the best answer because the store only has a duty to warn if the defect is non-obvious. A, B, and C are incorrect.

Question 769 - Torts - Other Torts

The question was:

A woman and a man, who were professional rivals, were attending a computer industry dinner where each was to receive an award for achievement in the field of data processing. The man engaged the woman in conversation away from the rest of the party and expressed the opinion that if they joined forces, they could do even better. The woman replied that she would not consider the man as a business partner and when the man demanded to know why, she told him that he was incompetent.

The exchange was overheard by another person who attended the dinner. The man suffered emotional distress but no pecuniary loss.

If the man asserts a claim against the woman based on defamation, will the man prevail?

A: No, because the man suffered no pecuniary loss.
B: No, because the woman's statement was made to the man and not to the person who overheard the statement.
C: No, because the woman did not foresee that her statement would be overheard by another person.
D: No, because the woman did not intend to cause the man emotional distress.

The explanation for the answer is:

C is the correct answer. The prima facie case for defamation requires defamatory language concerning the plaintiff, publication of that language by the defendant to a third person, and damage to the reputation of the plaintiff. Here, the issue is whether there was publication by the defendant. The publication requirement is satisfied where there is communication of the defamatory statement to a third person who understood it. That communication can be either intentional, or the result of negligence. Therefore, if the woman had no reason to foresee that her statement would be overheard by another person, then there was no negligent or intentional communication and the man will not prevail on his defamation claim.

A is incorrect because the defamatory statement was verbal, so the man would also normally need to prove special damages (pecuniary). However, the woman's comment was one regarding the man's trade or occupation, making it slander per se, and injury will be presumed. B is incorrect because a defamatory communication can be made negligently as well as intentionally. D is incorrect because the man does not need to show that the woman intended to cause him emotional distress; in this case injury is presumed.

Question 772 - Torts - Other Torts

The question was:

The plaintiffs, a retired couple, had lived in their home in a residential neighborhood for 20 years when the defendants, a family of six, moved into the house next door and built a swimming pool in the back yard. The family's four young children frequently played in the pool after school. They often were joined by other neighborhood children. The plaintiffs were in the habit of reading and listening to classical music in the afternoons. Sometimes they took naps. The boisterous sounds of the children playing in the pool disturbed the plaintiffs' customary enjoyment of quiet afternoons.

In the plaintiffs' nuisance action for damages against the defendants, the plaintiffs should

A: prevail, because the children's noise constituted a substantial interference with the plaintiffs' use and enjoyment of their home.
B: prevail, because the the plaintiffs' interest in the quiet enjoyment of their home takes precedence in time over the defendants' interests.
C: not prevail, because the noise did not constitute a substantial and unreasonable disturbance to persons of normal sensibilities.
D: not prevail, because the children's interest in healthy play has priority over the plaintiffs' interest in peace and quiet.

The explanation for the answer is:

C is the correct answer. Private nuisance is defined as a substantial, unreasonable interference with another private individual's use or enjoyment of their own property. Substantial interference is something that would be offensive, inconvenient, or annoying to an average person of the same community.

Unreasonable interference is determined by balancing the severity of the injury against the utility of the defendant's conduct. Answer A is incorrect because nuisance is measured by an objective standard - the defendants' behavior must constitute a substantial interference to the reasonable person, not just to the plaintiffs. Answers B and D are incorrect because one side would not automatically trump another; rather a balancing test would be applied. Answer C is correct because it takes uses the correct standard, the balancing test that would be applied, and is a determinable element for a nuisance action.

Question 777 - Torts - Negligence

The question was:

A man, who was driving his car at night, stopped the car and went into a nearby tavern for a drink. He left the car standing at the side of the road, projecting three feet into the traffic lane. The lights were on and his friend, the plaintiff, was asleep in the back seat. The plaintiff awoke, discovered the situation, and went back to sleep. Before the man returned, his car was hit by an automobile approaching from the rear and driven by the defendant. The plaintiff was injured.

The plaintiff sued the defendant and the man jointly to recover the damages he suffered resulting from the accident. The jurisdiction has a pure comparative negligence rule and has abolished the defense of assumption of risk. In respect to other issues, the rules of the common law remain in effect.

The plaintiff should recover

A: nothing, because the plaintiff was more negligent than either the defendant or the man.
B: nothing, because the total of the defendant's and the man's negligence was not greater than the plaintiff's.
C: from the defendant and the man, jointly and severally, the amount of damages the plaintiff suffered reduced by the percentage of the total negligence that is attributed to the plaintiff.
D: from the defendant and the man, severally, a percentage of the plaintiff's damages equal to the percentage of fault attributed to each of the defendants.

The explanation for the answer is:

C is the correct answer. Pure comparative negligence allows recovery by the plaintiff for all damages not attributed to his own negligence. The plaintiff is therefore entitled to 100% of the damages he suffered, minus his percentage of the fault. Because this is a joint and several liability jurisdiction, the defendant and the man are each liable for the entire award. The plaintiff can collect the full amount of his award from either defendant or both, as long as the total only equals the percentage of the damages he is entitled to.

Choice A is incorrect. Pure comparative negligence does not require the plaintiff to be less at fault than the defendants. Choice B is incorrect. It gives the standard for modified (or hybrid), rather than pure, comparative fault. Choice D is incorrect. The facts state that, other than pure comparative negligence, the common law rules remain in effect. The adoption of pure comparative negligence, therefore, did not eliminate the joint and several liability of the defendants. The defendant and the man are each liable for the entire award and must pursue an action between them for contribution. The plaintiff is entitled to collect the entire award from either of them as long as his total award only equals the amount established by the judgment.

Question 784 - Torts - Intentional Torts

The question was:

A plaintiff owned a large tract of land on the shore of a lake. The defendant lived on a stream that ran along one boundary of the plaintiff's land and into the lake. At some time in the past, a channel had been cut across the plaintiff's land from the stream to the lake at a point some distance from the mouth of the stream. From where the defendant lived, the channel served as a convenient shortcut to the lake. Erroneously believing that the channel was a public waterway, the defendant made frequent trips through the channel in his motorboat. His use of the channel caused no harm to the land through which it passed. Once the defendant learned of the plaintiff's ownership of the channel, he stopped using it as a shortcut.

If the plaintiff asserts a claim for damages against the defendant based on trespass, which of the following would be a correct disposition of the case?

A: Judgment for the plaintiff for nominal damages, because the defendant intentionally used the channel.
B: Judgment for the defendant, because he did not use the channel after learning of the plaintiff's ownership claim.
C: Judgment for the defendant, because he caused no harm to the plaintiff's land.
D: Judgment for the defendant, because when he used the channel he believed it was a public waterway.

The explanation for the answer is:

A is the only possible choice under trespass because the other three responses find for the defendant. Trespass is an entry onto the land of another, without permission, with intent to enter the land or by some abnormally dangerous activity. The intent only refers to the intent to enter the property; the defendant need not know that it is another's private property. For an intentional trespass to land, damage is not required; the court will award nominal damages based on the trespass alone. B, C and D are incorrect.

Question 799 - Torts - Negligence

The question was:

A supermarket is in a section of town where there are sometimes street fights and where pedestrians are occasionally the victims of pickpockets and muggers. In recognition of the unusual number of robberies in the area, the supermarket posted signs in the store that read: Warning: There are pickpockets and muggers at work in this part of the city. The supermarket is not responsible for the acts of criminals. Other than posting the signs, the supermarket took no other precautions to prevent criminal activity on the premises.

One evening, a customer drove to the supermarket to see about a special on turkeys that the supermarket was advertising. She decided that the turkeys were too large and left the store without purchasing anything. In the parking lot, she was attacked by an unknown man who raped her and then ran away.

If the customer sues the supermarket, the result should be for the

A: plaintiff, because the supermarket failed to take reasonable steps to protect customers against criminal attack in its parking lot.
B: plaintiff, because the supermarket is liable for harm to business invitees on its premises.
C: defendant, because the warning signs were visible to the customer.
D: defendant, because the rapist was the proximate cause of the customer's injuries.

The explanation for the answer is:

A is the correct answer. The supermarket has a duty to take reasonable steps to make the conditions on its premises, indoors and outdoors, reasonably safe; to conduct active operations with reasonable care for the presence of its invitees; and, under limited circumstances, to use reasonable care to protect its customers against the foreseeable harmful/criminal acts of third persons or animals. Because the supermarket had actual knowledge of violent crimes occurring on the premises, the failure to take reasonable steps to protect customers will give rise to liability. Thus, C is incorrect.

B is incorrect. The supermarket is not strictly liable. Negligence must be proven for the customer to prevail in a claim for damages.

D is incorrect. The rapist was the actual cause of the customer's injuries. The issue in this question, however, is whether the supermarket acted reasonably to meet its burden of care in protecting the plaintiff, its customer, from the known or discoverable dangerous conditions on its premises.

Question 806 - Torts - Products Liability

The question was:

A plaintiff, who was 20 years old, purchased a new, high-powered sports car that was marketed with an intended and recognized appeal to youthful drivers. The car was designed with the capability to attain speeds in excess of 100 miles per hour. It was equipped with tires designed and tested only for a maximum safe speed of 85 miles per hour. The owner's manual that came with the car stated that "continuous driving over 90 miles per hour requires high-speed-capability tires," but the manual did not describe the speed capability of the tires sold with the car.

The plaintiff took her new car out for a spin on a straight, smooth country road where the posted speed limit was 55 miles per hour. Intending to test the car's power, she drove for a considerable distance at over 100 miles per hour. While she was doing so, the tread separated from the left rear tire, causing the car to leave the road and hit a tree. The plaintiff sustained severe injuries.

The plaintiff has brought a strict product liability action in tort against the manufacturer of the car. You should assume that pure comparative fault principles apply to this case.

Will the plaintiff prevail?

A: No, because the plaintiff's driving at an excessive speed constituted a misuse of the car.
B: No, because the car was not defective.
C: Yes, because the statement in the manual concerning the tires did not adequately warn of the danger of high-speed driving on the tires mounted on the car.
D: No, because the plaintiff's driving at a speed in excess of the posted speed limit was negligence *per se* that was not excusable.

The explanation for the answer is:

C is the correct answer. The car manufacturer created a high-powered sports car and then failed to equip it with high-speed capability tires. This would make the car unreasonably dangerous and strict liability may be applied if, as in this case, the manufacturer failed to give a proper warning as to the type of tires needed for the car to be driven at its higher speeds. The duty to warn will create strict liability despite the plaintiff's prolonged use of the car at a high speed because its use at that high speed was a foreseeable use, given its design and marketing. While the car was not defective, the failure to give proper directions and specific warning was. Thus, A and B are incorrect.

D is incorrect. Violation of an applicable safety statute would not prevent the plaintiff from prevailing under strict liability because her misuse of the car was foreseeable, given the car's design and marketing.

Question 816 - Torts - Other Torts

The question was:

A company operates a factory that requires the use of very high voltage electricity. A neighbor owns property adjacent to the factory where he has attempted to carry on a business that requires the use of sensitive electronic equipment. Occasionally, the effectiveness of the neighbor's electronic equipment is slightly impaired by electrical interference arising from the high voltage currents used in the company's factory. The neighbor has complained to the company several times, with no result. There is no way that the company, by taking reasonable precautions, can avoid the interference with the neighbor's operation that arises from the high voltage currents necessary to the company's operation.

In the neighbor's action against the company to recover damages for the economic loss caused to him by the electrical interference, will the neighbor prevail?

A: Yes, because the company's activity is abnormally dangerous.
B: Yes, for loss suffered by the neighbor after the company was made aware of the harm its activity was causing to the neighbor.
C: No, because the company did not cause a substantial and unreasonable interference with the neighbor's business.
D: No, because the neighbor's harm was purely economic and did not arise from physical harm to his person or property.

The explanation for the answer is:

C is the correct answer. Private nuisance is defined as a condition or activity that interferes with a landowner's use and enjoyment of his land to such an extent that the landowner cannot reasonably be expected to bear the condition without compensation. The scope of interference is personal discomfort to the occupants or tangible harm to property, resulting in a diminution of its market value. Nuisance does not require proof of negligence; it just requires actual damages. In this case, the harm to the business was only occasional slight interference. Because the electrical interference was not a substantial and unreasonable interference with the neighbor's use and enjoyment of his property, he will not prevail.

A is incorrect because there is no evidence that the activity cannot be performed without risk of serious harm to persons or property no matter how much care is exercised. B is incorrect. While it is true that nuisances generally must be intentional interferences, this interference is still not substantial nor unreasonable enough to be actionable. D is incorrect. Under a claim for nuisance, the neighbor could show that the electrical current caused physical harm to his equipment, thereby unreasonably damaging his business property interests with substantial electrical interference.

Question 823 - Torts - Negligence

The question was:

An eight-year-old had a habit of riding his bicycle onto a busy highway. His parents knew about this habit but continued to let the child ride his bicycle. One afternoon, the eight-year-old rode his bicycle down his driveway onto the busy highway and a driver had to stop her car suddenly to avoid colliding with the bike. Because of the sudden stop, the driver's two-year-old son, who was sitting on the seat without any restraint, was thrown into the dashboard and injured. Had the driver's son been properly restrained in a baby car seat, as required by a state safety statute of which his mother was aware, he would not have been injured.

In an action brought on the driver's son's behalf against the eight-year-old's parents to recover for the son's injuries, the driver's son will

A: not prevail, because parents are not vicariously liable for the negligent acts of their children.
B: not prevail, because the driver's son's injury was attributable to his mother's knowing violation of a safety statute.
C: prevail, because the eight-year-old's parents knew that he sometimes rode into the highway, and they took no steps to prevent it.
D: prevail, because the eight-year-old's riding into the highway was negligent and the proximate cause of the driver's son's injuries.

The explanation for the answer is:

C is the correct answer. Parents have a number of affirmative duties, based on their special relationship to their minor children. This includes the duty to exercise reasonable care in the control of the parent's minor children. Liability is generally limited to actions that were foreseeable by the parent. A parent who fails to exercise control regarding a known propensity of his child is generally not vicariously liable for the child's tortious behavior; rather the parent is liable for his or her own negligence in failing to control the child. Thus, A and D are incorrect.

B is incorrect. The driver's son's damages may be limited because of his lack of proper restraint, but it will not prevent him from prevailing in a claim for negligence if the eight-year-old's parents were also negligent in their care and control of the eight-year-old's known propensity to drive his bike into the street.

Question 824 - Torts - Negligence

The question was:

While a woman was in her kitchen, she heard the screech of automobile tires. She ran to the window and saw a tricycle flying through the air. The tricycle had been hit by a car driven by a young man, who had been speeding. She also saw a child's body in the grass adjacent to the street. As a result of her shock from this experience, the woman suffered a heart attack.

In a claim by the woman against the young man, the woman's right to recovery will depend on whether

A: a person can recover damages based on the defendant's breach of a duty owed to another.
B: it is foreseeable that a person may suffer physical harm caused solely by an injury inflicted on another.
C: a person can recover damages caused by shock unaccompanied by bodily impact.
D: a person can recover damages for harm resulting from shock caused solely by another's peril or injury.

The explanation for the answer is:

D is the correct answer. Traditionally, there are two requirements for a negligent infliction of emotional distress claim. First, the plaintiff must suffer physical injury from the emotional distress. Second, the plaintiff must be within the zone of danger. However, courts will waive the zone of danger requirement so long as three factors are present: (1) the plaintiff and the person injured are closely related, (2) the plaintiff was present at the scene of the injury, and (3) the plaintiff personally perceived the event.

Here, the facts clearly state that the woman had a physical injury due to the emotional distress, namely a heart attack. Therefore, as the woman was clearly outside of the zone of danger, her right to recovery will depend on whether she can recover emotional distress damages caused solely by another's peril or injury. Thus, answer D is the best choice even though the woman will be unable to satisfy the exception's requirements. Answers A and B are incorrect because they do not address the relevant requirements of a negligent infliction of emotional distress cause of action. Answer C is incorrect because in this case the shock clearly resulted in a physical injury.

Question 828 - Torts - Negligence

The question was:

A defendant left her car parked on the side of a hill. Two minutes later, the car rolled down the hill and struck and injured the plaintiff.

In the plaintiff's negligence action against the defendant, the plaintiff introduced into evidence the facts stated above, which are undisputed. The defendant testified that, when she parked her car, she turned the front wheels into the curb and put on her emergency brakes, which were in good working order. She also introduced evidence that, in the weeks before this incident, juveniles had been tampering with cars in the neighborhood. The jury returned a verdict in favor of the defendant, and the plaintiff moved for a judgment notwithstanding the verdict.

The plaintiff's motion should be

A: granted, because it is more likely than not that the defendant's negligent conduct was the legal cause of the plaintiff's injuries.
B: granted, because the evidence does not support the verdict.
C: denied, because, given the defendant's evidence, the jury was not required to draw an inference of negligence from the circumstances of the accident.
D: denied, because the defendant was in no better position than the plaintiff to explain the accident.

The explanation for the answer is:

C is correct. A motion for judgment notwithstanding the verdict (also called a motion for judgment as a matter of law) requires a finding by the judge that the verdict could not have been reached by a reasonable jury. The plaintiff attempted to prove her claim using the doctrine of res ipsa loquitur. The doctrine of *res ipsa loquitur* is generally applied in situations where negligence clearly occurred and (1) the defendant had exclusive control of the instrumentality during the relevant time, and (2) the plaintiff shows that he was not responsible for the injury. The plaintiff might have prevailed under *res ipsa loquitur* if it wasn't for the defendant's showing that she may not have been in exclusive control of the instrumentality. Because of the evidence to the contrary, the jury need not have inferred negligence from the circumstances of the accident. A verdict that could have been reached by a reasonable jury will not be overturned. In this situation, there was enough evidence in favor of the defendant that the jury's decision was not unreasonable. C is correct because it states the appropriate standard for a motion for judgment notwithstanding the verdict. Thus A, B and D are incorrect.

Question 834 - Torts - Intentional Torts

The question was:

A man owned a shotgun that he used for hunting. The man knew that his old friend had become involved with a violent gang that recently had a shoot-out with a rival gang. The man, who was going to a farm to hunt quail, placed his loaded shotgun on the back seat of his car. On his way to the farm, the man picked up his old friend to give him a ride to someone's house. After dropping off his old friend at the house, the man proceeded to the farm, where he discovered that his shotgun was missing from his car. The old friend had taken the shotgun and, later in the day, the old friend used it to shoot a member of the rival gang. The gang member was severely injured.

The gang member recovered a judgment for his damages against the man, as well as the old friend, on the ground that the man was negligent in allowing his old friend to obtain possession of the gun, and was therefore liable jointly and severally with the old friend for the gang member's damages. The jurisdiction has a statute that allows contribution based upon proportionate fault and adheres to the traditional common-law rules on indemnity.

If the man fully satisfies the judgment, he then will have a right to recover from the old friend

A: indemnity for the full amount of the judgment, because the old friend was an intentional tortfeasor.
B: contribution only, based on comparative fault, because the man himself was negligent.
C: one-half of the amount of the judgment.
D: nothing, because the man's negligence was a substantial proximate cause of the shooting.

The explanation for the answer is:

A is correct. An intentional tortfeasor is liable for all the consequences of his wrongful action, intended, unintended, or unforeseeable, including the negligent action of one who was affected by the wrongful act. The man is therefore entitled to an action in indemnity for the full amount of the judgment that he paid to the gang member.

B is incorrect because contribution is the sharing of a financial burden among joint wrongdoers, and that is not the case in this situation. C is incorrect because as an intentional tortfeasor, the old friend will be liable for all of the consequences of his act. D is incorrect because the the friend's intentional tort renders the man's negligence irrelevant.

Question 838 - Torts - Strict Liability

The question was:

A chemical company manufactured a liquid chemical product known as XRX. Some XRX leaked from a storage tank on the chemical company's property, seeped into the groundwater, flowed to a farmer's adjacent property, and polluted the farmer's well. Several of the farmer's cows drank the polluted well water and died.

If the farmer brings an action against the chemical company to recover the value of the cows that died, the farmer will

A: prevail, because a manufacturer is strictly liable for harm caused by its products.
B: prevail, because the XRX escaped from the chemical company's premises.
C: not prevail, unless the farmer can establish that the storage tank was defective.
D: not prevail, unless the chemical company failed to exercise reasonable care in storing the XRX.

The explanation for the answer is:

B is the correct answer. This is not a products liability question, but rather a strict liability question. The chemical company's storage of XRX was a use of the land which was not common to the area and which presented a serious risk of harm that could not be eliminated even if undertaken with due care. Because the chemicals were ultrahazardous and in an unusual accumulation, the chemical company is strictly liable for all damages which are "the natural consequences of its escape." As an abnormally dangerous use of the land, B is the best choice because it accurately reflects the determinative issue, which was the escape of the chemicals. The farmer does not need to show negligence or defect to recover against the chemical company. Thus A, C and D are incorrect.

Question 847 - Torts - Intentional Torts

The question was:

The plaintiff, a jockey, was seriously injured in a race when another jockey, the defendant, cut too sharply in front of her without adequate clearance. The two horses collided, causing the plaintiff to fall to the ground, sustaining injury. The State Racetrack Commission ruled that, by cutting in too sharply, the defendant committed a foul in violation of racetrack rules requiring adequate clearance for crossing lanes. The plaintiff has brought an action against the defendant for damages in which one count is based on battery.

Will the plaintiff prevail on the battery claim?

A: Yes, if the defendant was reckless in cutting across in front of the plaintiff's horse.
B: Yes, because the State Racetrack Commission determined that the defendant committed a foul in violation of rules applicable to racing.
C: No, unless the defendant intended to cause impermissible contact between the two horses or apprehension of such contact by the plaintiff.
D: No, because the plaintiff assumed the risk of accidental injury inherent in riding as a jockey in a horse race.

The explanation for the answer is:

C is the correct answer. The call of the question is a claim for battery, which the plaintiff could show happened in one of two ways: through the battery itself or through transferred intent via assault. A battery is caused by an intentional harmful or offensive contact to the plaintiff's person or an extension thereof, without consent or privilege. The actual contact need not be done personally by the defendant as long as the defendant set into motion an action with the purpose or knowledge to a substantial certainty that the offensive or harmful touching would result. The facts indicate that the defendant cut too sharply in front of the plaintiff, but unless the plaintiff can show that the defendant cut in front of her with the intent to cause a harmful or offensive contact, she will not prevail. On the other hand, if the plaintiff can show that the defendant intended to place the plaintiff in apprehension of an immediate harmful or offensive contact by moving sharply in front of the plaintiff, the intent to cause an assault would transfer to the subsequent battery, which would allow the plaintiff to prevail.

A is incorrect. Battery requires intent to prevail. B is incorrect. A violation of the rules does not prove intent *per se*, but could be considered evidence of intent. The rest of the elements still must be satisfied, however, to find battery. D is incorrect. This is a defense and would go to damages. It would not prevent the plaintiff from prevailing if she can show a battery occurred.

Question 857 - Torts - Other Torts

The question was:

The owner of a truck leasing company asked one of his employees to deliver $1,000 to the dealership's main office. The following week, as a result of a dispute over whether the money had been delivered, the owner instructed the employee to come to the office to submit to a lie detector test.

When the employee reported to the owner's office for the test, it was not administered. Instead, without hearing the employee's story, the owner shouted at him, "You're a thief!" and fired him. At the time the owner accused the employee of stealing, the owner believed the charge to be true. The owner's shout was overheard by several other employees who were in another office that was separated from the owner's office by a thin partition. The next day, the employee accepted another job at a higher salary. Several weeks later, upon discovering that the money had not been stolen, the owner offered to rehire the employee.

In a suit for slander by the employee against the owner, the employee will

A: prevail, because the employee was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.
B: prevail, because the owner should have foreseen that the statement would be overheard by other employees.
C: not prevail, because the owner made the charge in good faith, believing it to be true.
D: not prevail, because the statement was made to the employee alone and intended for his ears only.

The explanation for the answer is:

B is the correct answer. Don't fall for the red-herring of the "fraudulent polygraph test." The reason the employee went to the office is not relevant to the analysis of the slander action. The key phrases are "You're a thief" and "was overheard by several employees." The employee must prove that the owner's statement about him was a false and defamatory communication of fact, published knowingly or foreseeably to a third person who understood it was defamatory and which, as a result, caused harm to the employee. Because the statement was verbal (slander), the employee would also normally need to plead and prove special damages (pecuniary). The owner's accusation fell into one of four categories of exceptions, however, which do not require special damages. Exceptions include allegations regarding (1) criminal activity, (2) misconduct or incompetence in the plaintiff's trade or occupation, (3) sexual misconduct, and (4) the plaintiff's having a "loathsome" disease. Choice B addresses the only issue that is in dispute, which is whether the owner published the defamatory statement. Thus C is incorrect. In doing so, B also utilizes the negligence test of foreseeability, which is the correct test (for private individuals) under the facts. Choice D is subjective and is not the appropriate "reasonable person" foreseeability test. Thus, A, C, and D are incorrect.

Question 865 - Torts - Negligence

The question was:

For five years, a rancher had kept his horse in a ten-acre field enclosed by a six-foot woven wire fence with six inches of barbed wire on top. The gate to the field was latched and could not be opened by an animal. The rancher had never had any trouble with people coming onto his property and bothering the horse, and the horse had never escaped from the field. One day, however, when the rancher went to the field, he found that the gate was open and the horse was gone. Shortly before the rancher's discovery, a driver was driving with due care on a nearby highway when suddenly the rancher's horse darted in front of his car. When the driver attempted to avoid hitting the horse, he lost control of the car, which then crashed into a tree. The driver was injured.

The driver sued the rancher to recover damages for his injuries and the rancher moved for summary judgment.

If the facts stated above are undisputed, the judge should

A: deny the motion, because pursuant to the doctrine of *res ipsa loquitur*, a jury could infer that the rancher was negligent.
B: deny the motion, because an animal dangerous to highway users escaped from the rancher's property and caused the collision.
C: grant the motion, because there is no evidence that the rancher was negligent.
D: grant the motion, because the rancher did not knowingly permit the horse to run at large.

The explanation for the answer is:

A and C will both be given credit. Sometimes even the Examiners cannot agree on the correct response! A motion for summary judgment will be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. A and C are opposite sides of the res ipsa loquitur (*RIL*) argument. The doctrine of *RIL* is generally applied in situations where negligence clearly occurred and (1) the defendant had exclusive control of the instrumentality during the relevant time, and (2) the plaintiff shows that he was not responsible for the injury. The court is not required to infer negligence and no presumption is created; *RIL* merely permits the fact finder to infer negligence from the facts. Thus, either A or C could be correct, depending on the determination of the judge. Most jurisdictions hold that a plaintiff is not entitled to a directed verdict merely because the defendant did not rebut an *RIL* case. In this situation, however, the defendant made the motion.

B states an incorrect reason. The horse is livestock. As such, in common law, the rancher would be held in strict liability for its trespass. Under the Restatement (Second) of Torts, however, (§ 506) the horse would be considered a domestic animal and negligence would have to be proved before the driver could recover damages (unless the horse had a known propensity to escape, which is not the case in this situation). An animal "dangerous to highway users" is not a category. D is incorrect because the issue is negligence, not intentional trespass.

Question 884 - Torts - Negligence

The question was:

A man's father died in a hospital. The hospital maintains a morgue with refrigerated drawers a bit larger than the human body. The decedent's body was placed in such a drawer awaiting pickup by a mortician. Before the mortician called for the body, a hospital orderly placed two opaque plastic bags in the drawer with the decedent's body. One bag contained the decedent's personal effects, and the other contained an amputated leg from some other hospital patient. It is stipulated that the hospital was negligent to allow the amputated leg to get into the decedent's drawer. The mortician delivered the two opaque plastic bags to the man, assuming both contained personal effects. The man was shocked when he opened the bag containing the amputated leg. The man sued the hospital to recover for emotional distress. At the trial, the man testified that the experience had been extremely upsetting, that he had had recurring nightmares about it, and that his family and business relationships had been adversely affected for a period of several months. He did not seek medical or psychiatric treatment for his emotional distress.

Who should prevail?

A: The man, because of the sensitivity people have regarding the care of the bodies of deceased relatives.
B: The man, because hospitals are strictly liable for mishandling dead bodies.
C: the hospital, because the man did not require medical or psychiatric treatment.
D: the hospital, because the man suffered no bodily harm.

The explanation for the answer is:

A is correct. The hospital assumed a duty of care regarding the decedent's body and in such cases, most courts today would allow stand-alone emotional harm to be recoverable where: there has been mishandling of a dead body, the person affected was in a special relationship to the deceased, and the emotional suffering was severe.

The hospital stipulated to its negligence. Therefore, the man's special relationship to the decedent as his son, and the evidence of his emotional distress, should be sufficient to prevail. The standard is one of negligence and physical harm is not required. Thus B, C and D are incorrect.

Question 889 - Torts - Negligence

The question was:

While a plaintiff was leaving an elevator, it suddenly dropped several inches, causing her to fall. An investigation of the accident revealed that the elevator dropped because it had been negligently maintained by an elevator company. The elevator company had a contract with the owner of the building to inspect and maintain the elevator. The plaintiff's fall severely aggravated a preexisting physical disability.

If the plaintiff sues the elevator company for damages for her injuries, she should recover

A: nothing, because the elevator company could not reasonably have been expected to foresee the extent of harm that the plaintiff suffered as a result of the accident.
B: nothing, because the accident would not have caused significant harm to an ordinarily prudent elevator passenger.
C: damages for the full amount of her disability, because a tortfeasor must take its victim as it finds her.
D: damages for the injury caused by the falling elevator, including the aggravation of her preexisting disability.

The explanation for the answer is:

D is correct. It was foreseeable by the elevator company that a failure to maintain an elevator would cause severe physical harm to its passengers should the elevator malfunction as the result of that negligence. Clearly the burden to maintain the elevator, which the elevator company was being paid for, did not outweigh the potential harm to the elevator passengers. When negligence is found, the defendant takes the plaintiff as it finds her. The elevator company is therefore responsible for the plaintiff's injuries, including the aggravation of her existing disability. Thus, B is incorrect.

A is incorrect because the injury must be foreseeable, but not necessarily the extent of it. C misstates the rule. The elevator company is not responsible for any injury it did not cause by its negligence. The elevator company is only responsible for the aggravation of the disability.

Question 902 - Torts - Intentional Torts

The question was:

A gardener's backyard, which is landscaped with expensive flowers and shrubs, is adjacent to a golf course. While a golfer was playing golf on the course, a thunderstorm suddenly came up. As the golfer was returning to the clubhouse in his golf cart, lightning struck a tree on the course, and the tree began to fall in the golfer's direction. In order to avoid being hit by the tree, the golfer deliberately steered his cart onto the gardener's property, causing substantial damage to the gardener's expensive plantings.

In an action by the gardener against the golfer to recover damages for the harm to his plantings, the gardener will

A: prevail, because, although occasioned by necessity, the golfer's entry onto the gardener's property was for the golfer's benefit.
B: prevail, for nominal damages only, because the golfer was privileged to enter the gardener's property.
C: not prevail, because the lightning was an act of God.
D: not prevail, because the golfer's entry onto the gardener's property was occasioned by necessity and therefore privileged.

The explanation for the answer is:

A is the correct answer. The golfer has the "incomplete" privilege of private necessity, which allows trespass (without being branded the legal status of trespasser) onto the property of another to avoid a serious personal threat to life or property, but keeps liability for any actual damage caused by the intrusion. The golfer's need to escape a falling tree in a thunderstorm qualifies as an emergency sufficient to invoke a necessity privilege. The privilege of private necessity means that the golfer is only liable for actual damages, thus A is the appropriate choice.

B is incorrect. The golfer is not legally a trespasser due to the private emergency that caused him to take refuge on the gardener's property. The golfer's privilege to trespass is incomplete, however, so he must pay the gardener for any actual damages to the property as a result of the golfer's actions.

C is incorrect. An act of God is generally used as a defense (superseding cause) in negligence to cut short liability. Instead, the sudden storm created an emergency situation that justified the golfer's intrusion onto the gardener's property. Because it was a personal emergency, however, the golfer is subject to the provisions of the incomplete privilege of private necessity and must pay the gardener for any actual damage to the gardener's property as a result of the entry.

D is incorrect. If this had been a public emergency/necessity there would have been complete privilege with no liability. Private necessity, however, is an incomplete privilege, and the golfer is liable for any actual damages he caused.

Question 906 - Torts - Intentional Torts

The question was:

A real estate developer was trying to purchase land on which he intended to build a large commercial development. An elderly widow had rejected all of the developer's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of the developer's planned development. Finally, the developer offered her $250,000. He told her that if she rejected it, state law authorized him to have her property condemned. He subsequently parked a bulldozer in front of her house.

The widow then consulted her nephew, a law student, who researched the question and advised her that the developer had no power of condemnation under state law. The widow had been badly frightened by the developer's threat, and was outraged when she learned that the developer had lied to her.

If the widow sues the developer for damages for emotional distress, will she prevail?

A: Yes, because the developer's action was extreme and outrageous.
B: Yes, because the widow was frightened and outraged.
C: No, because the widow did not suffer emotional distress that was severe.
D: No, because it was not the developer's purpose to cause emotional distress.

The explanation for the answer is:

C is the correct answer. The developer intentionally tried to frighten the widow into selling him her land with an outrageous and extreme threat. This is an intentional tort issue. The elements of intentional infliction of emotional distress ("IIED") are: (1) defendant's intentional (with purpose or knowledge to a substantial certainty) or reckless (2) extreme and outrageous conduct (3) causes plaintiff severe emotional distress. Severe emotional distress can be evidenced physically, but physical injury is not required.

Here, the developer actions were extreme and outrageous. However, the facts state only that the widow was "frightened" and "outraged", and this is not sufficient to show "severe" emotional distress. Therefore, C is correct and B is incorrect. A is incorrect because extreme an outrageous conduct is not sufficient to support a claim of IIED without the suffering of severe emotional distress. D is incorrect because causing the severe emotional distress through recklessness will suffice.

Question 907 - Torts - Other Torts

The question was:

A real estate developer was trying to purchase land on which he intended to build a large commercial development. An elderly widow had rejected all of the developer's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of the developer's planned development. Finally, the developer offered her $250,000, which was the fair market value of the property. He also knowingly lied to the widow and told her that if she rejected it, state law authorized him to have her property condemned.

The widow then consulted her nephew, a law student, who researched the question and advised her that the developer had no power of condemnation under state law. The widow had been badly frightened by the developer's threat, and was outraged when she learned that the developer had lied to her.

If the widow asserts a claim based on misrepresentation against the developer, will she prevail?

A: Yes, because the developer knew he had no legal power of condemnation.
B: Yes, because the developer tried to take unfair advantage of a gross indifference between himself and the widow in commercial knowledge and experience.
C: No, because the developer's offer of $250,000 equaled the market value of the widow's property.
D: No, because the widow suffered no pecuniary loss.

The explanation for the answer is:

D is the correct answer. In her claim for misrepresentation against the developer, the widow will have to prove that the developer made a misrepresentation of a material fact for the purpose of inducing the widow to rely on the misrepresentation to her detriment. The developer's claim that he could have the widow's property condemned and confiscated for his development was clearly a false statement made to induce the widow to sell her land to him. The widow did not, however, sell. Instead she contacted her nephew to verify the developer's claim. Because she did not rely on the developer's misrepresentation, she was not harmed and her claim will not prevail. D is the best choice because it is the only element that is not met by the facts. Thus, A is incorrect.

B is incorrect. The developer did try to take advantage of the widow by misrepresenting the law. A claim for misrepresentation of law, however, must be premised upon the solicited confidence of the party defrauded or the party misrepresenting the law must stand in a fiduciary-type of special relationship with the plaintiff. The developer was never in a position of trust and confidence with the widow. This is not a claim for misrepresentation of law.

C is not the issue. Even though the developer offered the widow fair value for her property, the issue is that he misrepresented his power to obtain her land without her consent as a means of inducing her to sell to him.

Question 910 - Torts - Negligence

The question was:

A plaintiff and a man were passengers sitting in adjoining seats on a flight on an airline. There were many empty seats on the aircraft.

During the flight, a flight attendant served the man nine drinks. As the man became more and more obviously intoxicated and attempted to engage the plaintiff in a conversation, the plaintiff chose to ignore the man instead of changing seats. This angered the man, who suddenly struck the plaintiff in the face, giving him a black eye. The flight attendant had witnessed the man becoming violent but chose to not get involved.

If the plaintiff asserts a claim for damages against the airline based on negligence, the plaintiff will

A: not recover, because a person is not required by law to come to the assistance of another who is imperiled by a third party.
B: not recover, because the plaintiff could easily have moved to another seat.
C: recover, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.
D: recover, because the flight attendants should have perceived the man's condition and acted to protect the plaintiff before the blow was struck.

The explanation for the answer is:

D is the correct answer. The airline has a duty to take reasonable steps to make the conditions on its aircraft flights reasonably safe, to conduct active operations with reasonable care for the presence of its customers, and, in appropriate circumstances, to use reasonable care to protect its customers against the foreseeable harmful/criminal acts of third persons or animals. If the flight attendant served the man nine drinks, the issue becomes one of whether the attendant should have paid attention to the man's state of intoxication and his general behavior, because unruly or dangerous actions by intoxicated passengers are foreseeable. The airline has an affirmative duty to protect its passengers from foreseeable harmful acts of third parties caused by conditions that the airline created. Choice D is the best answer because it addresses the airline's proactive responsibility to its invitees for the conditions it created.

A is incorrect. The airline created the conditions on the plane. Drunken unruliness was a foreseeable result. An airline has an affirmative duty to step in and rescue where it is responsible for the conditions that led to the emergency. The issue in this situation, however, is whether the airline must step in before the dangerous conduct takes place. Thus, D is the appropriate answer.

B is incorrect. The plaintiff was in his contracted seat. The airline had a duty to take reasonable steps to protect the plaintiff from foreseeable harm stemming from the airline's own actions.

C is incorrect. A common carrier owes a very high duty of care to its passengers and may be found liable even for slight negligence, but common carriers are not strictly liable. Thus, the standard stated in answer C is incorrect and does not apply in this case.

Question 911 - Torts - Intentional Torts

The question was:

A plaintiff and a man were passengers sitting in adjoining seats on a flight on an airline. There were many empty seats on the aircraft.

During the flight, a flight attendant served the man nine drinks. As the man became more and more obviously intoxicated and attempted to engage the plaintiff in a conversation, the plaintiff chose to ignore the man. This angered the man, who suddenly struck the plaintiff in the face, giving her a black eye.

If the plaintiff asserts a claim for damages against the airline based on battery, she will

A: prevail, because she suffered an intentionally inflicted harmful or offensive contact.
B: prevail, because the flight attendant acted recklessly in continuing to serve liquor to the man.
C: not prevail, because the man was not acting as an agent or employee of the airline.
D: not prevail, because she cannot establish some permanent injury from the contact.

The explanation for the answer is:

C is the correct answer. The battery was an intentional action by the man, who was a customer and non-employee of the airline. For the airline to be liable in a claim for battery, the court would have to find vicarious liability. The man was not an employee or agent of the airline and was not authorized or substantially encouraged by the airline to harmfully or offensively touch the plaintiff. Defendants are not generally responsible for the tortious acts of third parties unless there is a special relationship between them that gives the defendant responsibility and/or control over the actions and responsibilities of the third party. At most, the airline would be liable in negligence for its own failure to exercise control over a situation that was foreseeably created because of the airline's practice of letting the attendants serve the guests multiple alcoholic beverages on its flights. Thus, A and B are incorrect. D is incorrect because battery is a dignitary tort and does not require more than an offensive or harmful touching.

Question 921 - Torts - Negligence

The question was:

The grandson and his friend, both eight years old, were visiting at the grandmother's house when, while exploring the premises, they discovered a hunting rifle in an unlocked gun cabinet. They removed it from the cabinet and were examining it when the rifle, while in the grandson's hands, somehow discharged. The bullet struck and injured the plaintiff. The gun cabinet was normally locked. The grandmother had opened it for dusting several days before the boys' visit, and had then forgotten to relock it. She was not aware that it was unlocked when the boys arrived.

At the trial on an action against a grandmother on behalf of the friend, the information above has been admitted into evidence. If the grandmother moves for a directed verdict in her favor at the end of the friend's case, that motion should be

A: granted, because the grandmother is not legally responsible for the acts of her grandson.
B: granted, because the grandmother did not recall that the gun cabinet was unlocked.
C: denied, because a firearm is an inherently dangerous instrumentality.
D: denied, because a jury could find that the grandmother breached a duty of care she owed to the plaintiff.

The explanation for the answer is:

D is the correct answer. A directed verdict (also called Judgment as a Matter of Law) allows judgment if the evidence, when viewed in the light most favorable to the nonmoving party, is such that a reasonable person/jury could not disagree. A directed verdict is entered at the close of the evidence before the matter goes to a jury. There are two potential claims at issue in this question. The first is whether the grandmother can be held vicariously liable for the grandson's tortious act. The grandmother has a duty to exercise reasonable care in the control of the grandson while he is physically within her care or custody. Liability, however, is generally limited to actions that were a known propensity of the child and thus foreseeable by the caretaker. A custodian of a child who fails to exercise control regarding the known propensity of that child is generally not vicariously liable for the child's tortious behavior; rather the caretaker is liable for his or her own negligence in failing to control the child. The facts clearly indicate that the grandson's behavior was not foreseeable to the grandmother. The second issue, however, is whether the grandmother had a duty of reasonable care to the plaintiff to take affirmative measures that would keep her grandson from using the gun. When the grandmother failed to remove the bullets from a stored gun and then forgot to relock the gun case, it was foreseeable that her grandson would find and play with the gun; she thereby failed in her duty to control the grandson's use of a dangerous instrumentality.

A is the wrong conclusion. While the grandmother may not generally be liable for her grandson's tortious activities, she is liable for her own negligence.

B is incorrect. The negligence occurred when the grandmother failed to remove the bullets from the gun and lock the cabinet, not several days later, when she failed to recall that she did not lock it.

C reaches the correct conclusion but not the best answer. When the grandmother failed to remove the bullets from a stored gun and then forgot to relock the gun case, it was foreseeable that her grandson would find and play with the gun, thus failing in her duty to control the grandson's use of a dangerous instrumentality. D is the better answer because it addresses the legal duty to the plaintiff, which is a more complete response.

Question 929 - Torts - Strict Liability

The question was:

A builder purchased a large tract of land intending to construct residential housing on it. The builder hired a contractor to build a large in-ground swimming pool on the tract. The contract provided that the contractor would carry out blasting operations that were necessary to create an excavation large enough for the pool. The blasting caused cracks to form in the walls of the plaintiff's home in a nearby residential neighborhood.

In the plaintiff's action for damages against the builder, the plaintiff should

A: prevail, only if the builder retained the right to direct and control the contractor's construction of the pool.
B: prevail, because the blasting that the contractor was hired to perform damaged the plaintiff's home.
C: not prevail, if the contractor used reasonable care in conducting the blasting operations.
D: not prevail, if the builder used reasonable care to hire a competent contractor.

The explanation for the answer is:

B is the correct answer. In general, an independent contractor is liable for his own torts. An exception occurs when the contractor is carrying out an inherently dangerous activity on the property of his employer, causing an injury or trespass. Thus A is incorrect. The use of blasting to excavate is considered an ultra-hazardous or abnormally dangerous activity and is subject to strict liability, which does not require a showing of negligence. Thus C and D are incorrect. The builder had a nondelegable duty of care to the plaintiff because the contractor's use of explosives in a residential neighborhood was inherently dangerous. B gives the correct standard and is the best choice. A, C, and D are incorrect.

Question 932 - Torts - Negligence

The question was:

A defendant has a small trampoline in his backyard which, as he knows, is commonly used by neighbor children as well as his own. The trampoline is in good condition, is not defective in any way, and normally is surrounded by mats to prevent injury if a user should fall off. Prior to leaving with his family for the day, the defendant leaned the trampoline up against the side of the house and placed the mats in the garage.

While the defendant and his family were away, the plaintiff, aged 11, a new boy in the neighborhood, wandered into the defendant's yard and saw the trampoline. The plaintiff had not previously been aware of its presence, but, having frequently used a trampoline before, he decided to set it up, and started to jump. He lost his balance on one jump and took a hard fall on the bare ground, suffering a serious injury that would have been prevented by the mats.

An action has been brought against the defendant on the plaintiff's behalf to recover damages for the injuries the plaintiff sustained from his fall. In this jurisdiction, the traditional common-law rules pertaining to contributory negligence have been replaced by a pure comparative negligence rule.

In his action against the defendant, will the plaintiff prevail?

A: No, because children likely to be attracted by the trampoline would normally realize the risk of using it without mats.
B: No, because the plaintiff failed to exercise reasonable care commensurate with his age, intelligence, and experience.
C: No, because the plaintiff entered the defendant's yard and used the trampoline without the defendant's permission.
D: No, because the plaintiff did not know about the trampoline before entering the defendant's yard and thus was not "lured" onto the premises.

The explanation for the answer is:

A is the correct answer. Because all four conclusions start with "No," scrutiny must be directed at the reasoning for why the plaintiff's claim cannot prevail against the defendant. The issue here is the defendant's duty to known child trespassers (also referred to as the attractive nuisance doctrine). The defendant would be liable for dangers caused by use of the trampoline on his land if he knew or should have known that: (1) children came to his property when the defendant and his family were not home, (2) children played on the trampoline, (3) use of the trampoline would likely cause injury because the children would not realize the danger of using the trampoline without the mats, and (4) the expense of remedying the situation was slight compared to the probability of injury.

The facts indicate that while the neighborhood children commonly used the defendant's trampoline, the plaintiff was new to the neighborhood and so was unknown to the defendant. The plaintiff is also 11, potentially old enough to understand the risks. The defendant knew that the local children would be aware of the need for mats because the neighborhood children "commonly" used it and would know better. Thus, A is the best response.

B is incorrect because it provides the test used for determining a child's standard of care in a negligence action and is not applicable here. C is incorrect because lack of permission does not provide a defense for a claim based on the attractive nuisance doctrine. D is incorrect because the courts now reject the traditional requirement that the child must be "lured" onto the premises by the attractive nuisance.

Question 938 - Torts - Products Liability

The question was:

In his employment, an employee operates a grinding wheel. To protect his eyes, he wears glasses, sold under the trade name "Safety Glasses," made by a glasses manufacturer. The glasses were sold with a warning label stating that they would protect only against small, flying objects. One day, the grinding wheel that the employee was using disintegrated and fragments of the stone wheel were thrown off with great force. One large fragment hit the employee, knocking his safety glasses up onto his forehead. Another fragment then hit and injured his eye.

The employee brought an action against the glasses manufacturer for the injury to his eye. The jurisdiction adheres to the traditional common-law rule pertaining to contributory negligence.

In this action, will the employee prevail?

A: Yes, because the safety glasses were defective in that they did not protect him from the disintegrating wheel.
B: Yes, because the glasses were sold under the trade name "Safety Glasses."
C: No, because the glasses were not designed or sold for protection against the kind of hazard the employee encountered.
D: No, if the employee will be compensated under the workers' compensation law.

The explanation for the answer is:

C is the correct answer. The key phrases in this problem are "small flying objects" as specified in the warning sold with the glasses, and "large fragment" hitting the employee's glasses from his face. This is not a defective products case, a misrepresentation, or a failure to warn case. The warning was accurate. The employee, however, encountered a hazard that the glasses were not designed to prevent against. Thus A is incorrect.

B is incorrect because the words "safety glasses" did not create an express warranty of fitness for a particular purpose beyond that specified by the manufacturer. D is irrelevant under this fact pattern and should be eliminated immediately. Generally the availability of an insurance recovery does not preclude a tort claim against a manufacturer unless it is specifically prohibited by statute.

Question 939 - Torts - Products Liability

The question was:

A college student purchased a large bottle of No-Flake dandruff shampoo, manufactured by a shampoo company. The box containing the bottle stated in part: "CAUTION--Use only 1 capful at most once a day. Greater use may cause severe damage to the scalp." The college student read the writing on the box, removed the bottle, and threw the box away. The college student's roommate asked to use the No-Flake, and college student said, "Be careful not to use too much." The roommate thereafter used No-Flake twice a day, applying two or three capfuls each time, notwithstanding the label statement that read: "Use no more than one capful per day. See box instructions." The more he used No-Flake, the more inflamed his scalp became, the more it itched, and the more he used. After three weeks of such use, the roommate finally consulted a doctor who diagnosed his problem as a serious and irreversible case of dermatitis caused by excessive exposure to the active ingredients in No-Flake. These ingredients are uniquely effective at controlling dandruff, but there is no way to remove a remote risk to a small percentage of persons who may contract dermatitis as the result of applying, for prolonged periods of time, amounts of No-Flake substantially in excess of the directions. This jurisdiction adheres to the traditional common-law rules pertaining to contributory negligence and assumption of risk. Based upon the foregoing facts, if the roommate sues the shampoo company to recover damages for his dermatitis, his most promising theory of liability will be that the No-Flake shampoo

A: had an unreasonably dangerous manufacturing defect.
B: had an unreasonably dangerous design defect.
C: was inherently dangerous.
D: was inadequately labeled to warn of its dangers.

The explanation for the answer is:

D is the correct answer, and is reached by the process of elimination. A defective product is one that is in a defective condition that is unreasonably dangerous to consumers. A product has an unreasonably dangerous manufacturing defect when the product is dangerous beyond the expectations of the ordinary consumer because of a departure from its intended design. The shampoo used by the roommate was made in conformity with the intended design, so A is incorrect. A product has a design defect when the plaintiff can show that a less dangerous modification or alternative was economically feasible. No such showing has been made by the roommate or suggested by the facts, so B is incorrect. C is incorrect because strict liability cannot be applied here due to the substantial altering of the packaging by the college student before it reached the roommate. Furthermore, the minimal risk does not outweigh the benefits of the product. Because A, B, and C are all inapplicable causes of action, the inadequate warning cause of action, though weak, is still the most promising theory of liability for the friend.

Question 940 - Torts - Products Liability

The question was:

A college student purchased a large bottle of No-Flake dandruff shampoo, manufactured by a shampoo company. The box containing the bottle stated in part: "CAUTION--Use only 1 capful at most once a day. Greater use may cause severe damage to the scalp." The college student read the writing on the box, removed the bottle, and threw the box away. The college student's roommate asked to use the No-Flake, and college student said, "Be careful not to use too much." The roommate thereafter used No-Flake twice a day, applying two or three capfuls each time, notwithstanding the label statement that read: "Use no more than one capful per day. See box instructions." The more he used No-Flake, the more inflamed his scalp became, the more it itched, and the more he used. After three weeks of such use, the roommate finally consulted a doctor who diagnosed his problem as a serious and irreversible case of dermatitis caused by excessive exposure to the active ingredients by No-Flake. These ingredients are uniquely effective at controlling dandruff, but there is no way to remove a remote risk to a small percentage of persons who may contract dermatitis as the result of applying, for prolonged periods of time, amounts of No-Flake substantially in excess of the directions. This jurisdiction adheres to the traditional common-law rules pertaining to contributory negligence and assumption of risk.

The roommate asserts a claim for his injuries against the shampoo company based on strict liability in tort. Three important facts were established at trial: The roommate misused the No-Flake shampoo, the roommate was contributorily negligent in continuing to use No-Flake shampoo when his scalp began to hurt and itch, and the roommate was a remote user and not in privity with the shampoo company. Which of the following would constitute a defense for the shampoo company?

A: The roommate misused the No-Flake shampoo.
B: The roommate misused the shampoo and was contributorily negligent in continuing to use No-Flake shampoo when his scalp began to hurt and itch.
C: The roommate was not in privity with the shampoo company.
D: The product was substantially changed from the condition in which it was sold

The explanation for the answer is:

D is correct. Any user who is injured by a defective product can bring a products liability claim based on strict liability in tort as long as they can satisfy the requirements for the prima facie case. The four elements of the case are: (1) a strict duty owed by a commercial supplier, (2) breach of that duty, (3) actual and proximate causation, and (4) damages. Since the college student removed and disposed of the box containing the adequate warning before the shampoo reached the roommate, the product was substantially changed from the condition in which it was sold, and there is not adequate causation to sustain the roommate's claim.

Answer A is incorrect. The roommate's misuse of the product would not provide a defense to a strict liability action in a jurisdiction that maintains traditional contributory negligence rules. Even if the misuse rose to the level that the roommate was contributorily negligent, this is not a defense where the plaintiff simply failed to recognize the danger or guard against its existence. Therefore, B is also incorrect. Answer C is incorrect because privity is not required in a products liability claim based on strict liability, the injured party must only be a foreseeable user. Thus, A, B, and C are incorrect while D is the correct answer choice.

Question 945 - Torts - Negligence

The question was:

While a driver was taking a leisurely spring drive, he momentarily took his eyes off the road to look at some colorful trees in bloom. As a result, his car swerved a few feet off the roadway, directly toward a pedestrian, who was standing on the shoulder of the road waiting for a chance to cross. When the pedestrian saw the car bearing down on him, he jumped backwards, fell, and injured his knee.

The pedestrian sued the driver for damages, and the driver moved for summary judgment. The foregoing facts are undisputed.

The driver's motion should be

A: denied, because the record shows that the pedestrian apprehended an imminent, harmful contact, with the driver's car.
B: denied, because a jury could find that the driver negligently caused the pedestrian to suffer a legally compensible injury.
C: granted, because the proximate cause of the pedestrian's injury was his own voluntary act.
D: granted, because it is not unreasonable for a person to be distracted momentarily.

The explanation for the answer is:

B is the correct answer. A motion for summary judgment will be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. A question of fact exists as to whether the driver's negligence caused the pedestrian's reaction, or whether the pedestrian's injury was the result of his own act. Since a motion for summary judgment by the driver can only be rendered for the driver or denied, B is the only possible answer.

A is incorrect. The driver did not act with the purpose of causing the pedestrian to apprehend an imminent harmful or offensive touching. The driver was merely inattentive, which is negligent rather than intentional.

C is incorrect. The pedestrian's action was a cause in fact of his injury, but not necessarily the proximate cause. A summary judgment can only be granted if, as a matter of law, the driver is entitled to judgment and no material fact is in dispute. Clearly the driver and the pedestrian are disputing which of them is responsible for the pedestrian's taking the jump backwards.

D is incorrect. While momentary distraction may not be unreasonable, the driver had a duty to drive safely, which was breached.

Question 949 - Torts - Negligence

The question was:

A construction company was engaged in blasting operations to clear the way for a new road. The company had erected adequate barriers and posted adequate warning signs in the vicinity of the blasting. Although the plaintiff read and understood the signs, he entered the area to walk his dog. As a result of the blasting, the plaintiff was hit by a piece of rock and sustained head injuries. The jurisdiction follows the traditional common-law rules governing the defenses of contributory negligence, assumption of risk, and last clear chance.

In an action by the plaintiff against the construction company to recover damages for his injuries, the plaintiff will

A: not prevail, because the construction company exercised reasonable care to protect the public from harm.
B: not prevail, because the plaintiff understood the signs and disregarded the warnings.
C: prevail, because the plaintiff was harmed by the construction company's abnormally dangerous activity.
D: prevail, because the plaintiff used reasonable care to protect himself from harm.

The explanation for the answer is:

B is the correct answer. Normally, contributory negligence is not a valid defense in a strict liability action. However, in ultra-hazardous activity cases, contributory negligence is a defense if the plaintiff knew of the danger and his unreasonable conduct was the reason the activity caused injury. In such a case, the plaintiff's conduct is deemed knowing contributory negligence, and will be treated as an assumption of risk. Here, the plaintiff read and understood the signs but unreasonably entered the area anyway. The plaintiff's decision to enter the dangerous area after being properly warned was the reason the blasting caused an injury, raising his actions to knowing contributory negligence. The plaintiff's assumption of risk will relieve the construction company of liability for his injuries.

A is incorrect because when performing an ultra-hazardous activity, the defendant has an absolute duty to make safe, and reasonable care will not be a valid defense when damages result from the activity. C is incorrect because the plaintiff's assumption of risk will preclude his recovery. D is incorrect because the plaintiff's failure to use reasonable care to protect himself from harm is only normal contributory negligence, and would not provide a valid defense to a strict liability action.

Question 969 - Torts - Other Torts

The question was:

Two law school classmates had competed for the position of editor of the law review. One of the students had a higher grade point average, but the other student was elected editor, largely in recognition of a long and important note that had appeared in the review over her name. During the following placement interview season, the student with the higher GPA was interviewed by a representative of a nationally prominent law firm. In response to the interviewer's request for information about the authorship of the law review note, the student said that he had heard that the note attributed to the law review editor was largely the work of another student. However, the student knew that the law review editor had written the note on her own. The firm told the law review editor that it would not interview her because of doubts about the authorship of the note. This greatly distressed her. In fact the note had been prepared by the law review editor without assistance from anyone else. If the law review editor asserts a claim against the other student based on defamation, she will

A: recover, because the other student's statement was false.
B: recover, because the other student had substantial doubts about the accuracy of the information he gave the interviewer.
C: not recover, because the law review editor did not prove pecuniary loss.
D: not recover, because the statement was made by the other student only after the interviewer inquired about the authorship of the note.

The explanation for the answer is:

B is the correct answer. The facts clearly indicate that the student with the higher GPA made a false statement about the law review editor, which was published to a potential employer, and which damaged the law review editor. The issue is what level of proof the law review editor needs in order to prevail in her claim. The two students are, at first glance, private parties. The student being interviewed, however, is speaking to a potential employer and within his position as a member of the law review staff. As such, he will most likely be found to have had a qualified privilege to talk about the law review editor's authorship during his job interview. Nevertheless, the student's qualified privilege is lost if the statement was made with knowledge that it was false or with reckless disregard for its truth. Because the student knew that the law review editor had written the note herself, B is the best answer.

A is incorrect because falsity alone is not sufficient where the speaker has a qualified privilege. C is incorrect because a claim for slander generally requires proof of special or pecuniary damages. However, the allegation against the law review editor is one of trade or professional misconduct and special damages are presumed. D is incorrect because the question by the interviewer triggered the qualified privilege, but the privilege is not absolute. The law review editor will still prevail if she can show that the other student made the statement with knowledge or in reckless disregard of its truth or falsity.

Question 976 - Torts - Negligence

The question was:

A plaintiff sustained personal injuries in a three-car collision caused by the concurrent negligence of all three drivers. In the plaintiff's action for damages against the other two drivers, the jury apportioned the negligence 30% to the plaintiff, 30% to driver #1, and 40% to driver #2. The plaintiff's total damages were $100,000.

A state statute provides for a system of pure comparative negligence, joint and several liability of concurrent tortfeasors, and contribution based upon proportionate fault.

If the plaintiff chooses to pursue the claim against driver #1 alone, she will be entitled to collect at most

A: $70,000 from driver #1, and then driver #1 will be entitled to collect $40,000 from driver #2.
B: $30,000 from driver #1, and then driver #1 will be entitled to collect $10,000 from driver #2.
C: $30,000 from driver #1, and then driver #1 will be entitled to collect nothing from driver #2.
D: nothing from driver #1, because the percentage of fault for driver #1 is not greater than that of the plaintiff.

The explanation for the answer is:

A is the correct answer. The facts indicate that the jury apportioned responsibility and that the statute allows contribution based on proportionate fault between jointly and severally liable tortfeasors in a pure comparative negligence state. Therefore, all this question requires is a little basic math. The plaintiff's damages were for $100,000. She was responsible for $30,000 of her own damages, leaving $70,000 that she could collect from driver #1 alone under the joint and several liability statute; the statute makes each co-defendant liable for the entire amount of the award. She would then be unable to collect any other amount from any other defendant. The jury determined that the share of responsibility for driver #1 was 30% or $30,000. Under the facts, the state allows contribution by proportionate fault; as a result, driver #1 is entitled to contribution from driver #2 in the amount of $40,000. B and C are incorrect.

D is incorrect because it gives the standard for modified (hybrid) comparative negligence. Pure comparative negligence allows the plaintiff to recover all her damages, minus the percentage attributed to her own negligence.

Question 977 - Torts - Negligence

The question was:

A plaintiff sustained personal injuries in a three-car collision caused by the concurrent negligence of all three drivers. In the plaintiff's action for damages against the other two drivers, the jury apportioned the negligence 30% to the plaintiff, 30% to driver #1, and 40% to driver #2. The plaintiff's total damages were $100,000.

Assume that the state has retained the common-law rule pertaining to contribution and that the state's comparative negligence statute provides for a system of pure comparative negligence but abolishes joint and several liability.

If the plaintiff chooses to pursue the claim against driver #1 alone, she will be entitled to collect at most

A: $70,000 from driver #1, and then driver #1 will be entitled to collect $40,000 from driver #2.
B: $30,000 from driver #1, and then driver #1 will be entitled to collect $10,000 from driver #2.
C: $30,000 from driver #1, and then driver #1 will be entitled to collect nothing from driver #2.
D: nothing from driver #1, because his percentage of fault is not greater than that of the plaintiff.

The explanation for the answer is:

C is the correct answer. The facts tell you that joint and several liability has been abolished, which means that each defendant is liable only for his own share of the damages, not the entire award. In addition, contribution between tortfeasors is only available where one defendant has paid more than his determined share of the damages. C is the only answer that appropriately applies these principles.

A is incorrect. It states a joint and several liability standard of application to the facts. B is incorrect. Driver #1 can collect nothing from driver #2. They are not jointly and severally liable and driver #1 has not paid out more than his share of liability, so contribution is not available to him. D is a misstatement of law. In pure comparative negligence, the plaintiff can recover all of her damages, minus the percentage attributed to her own fault. The plaintiff is entitled to $30,000 from driver #1.

Question 984 - Torts - Intentional Torts

The question was:

A neighbor, who lived next door to a homeowner, went into the homeowner's garage without permission and borrowed the homeowner's chain saw. The neighbor used the saw to clear broken branches from the trees on the neighbor's own property. After he had finished, the neighbor noticed several broken branches on the homeowner's trees that were in danger of falling on the homeowner's roof. While the neighbor was cutting the homeowner's branches, the saw broke.

In a suit for conversion by the homeowner against the neighbor, will the homeowner recover?

A: Yes, for the actual damage to the saw.
B: Yes, for the value of the saw before the neighbor borrowed it.
C: No, because when the saw broke the neighbor was using it to benefit the homeowner.
D: No, because the neighbor did not intend to keep the saw.

The explanation for the answer is:

B is the correct answer. The call of the question gives a claim for conversion. Conversion occurs when the defendant's trespass on the plaintiff's property interest is substantial and amounts to an act of ownership/dominion. D is incorrect because the neighbor took the saw without permission, which was a trespass to chattels. C is incorrect because when the neighbor broke the saw, the neighbor became liable to the homeowner for the market value of the saw before the conversion. It is irrelevant that, at the time the saw broke, the neighbor was cutting branches from the homeowner's trees. A is incorrect because the remedy for conversion is always the fair market value of the property at the time of conversion. If the neighbor had not broken the saw, the claim would have only been for trespass to chattels, which would have entitled the homeowner to actual damages, not market value.

Question 985 - Torts - Products Liability

The question was:

A homeowner hired an arsonist to set fire to the homeowner's house so that the homeowner could collect the insurance proceeds from the fire. After pouring gasoline around the house, the arsonist lit the fire with his cigarette lighter and then put the lighter in his pocket. As the arsonist was standing back admiring his work, the lighter exploded in his pocket. The arsonist suffered severe burns to his leg.

After finding out that the explosion was caused by a manufacturing defect in the lighter, the arsonist brought an action against the manufacturer of the lighter based on strict product liability. Under applicable law, the rules of pure comparative fault apply in such actions.

Will the arsonist prevail?

A: Yes, because the lighter exploded because of a defect caused by a manufacturing error.
B: Yes, because the lighter was the proximate cause of the arsonist's injury.
C: No, because the lighter was not being used for an intended or reasonably foreseeable purpose.
D: No, because the arsonist was injured in the course of committing a felony by the device used to perpetrate the felony.

The explanation for the answer is:

A is the correct answer. Don't be fooled by unsympathetic facts. The arsonist was using a lighter for its intended purpose, which was to create a small flame suitable for lighting cigarettes. It was foreseeable that the lighter would also be stored in a user's clothing because it was designed to be portable as part of its purpose and utility in lighting the cigarettes. The arsonist was merely storing the lighter in his pocket when it exploded, which had no causal connection to the fire he had just started. Therefore, despite the fact that moments before, the lighter had been used to start an arsonist's fire, the product was defective and the arsonist may recover in a claim for strict liability from the manufacturer. Strict liability can be imposed upon the manufacturer for the sale of any product that is in a defective or unreasonably dangerous condition and that results in an injury to the user.

C is incorrect because, as discussed above, the arsonist was using the lighter to create a small flame, which is the intended use of the lighter. B is incorrect because proximate cause is not the issue under the facts. The issue, rather, is liability of a manufacturer for a defective product used in the commission of a crime, and which injured its user. D is incorrect. The arsonist would still prevail under strict liability. Whether he will be permitted to keep the award is to be analyzed under criminal law and is irrelevant to the call of the question.

Question 995 - Torts - Intentional Torts

The question was:

A pedestrian was crossing a street at a crosswalk. A bystander, who was on the sidewalk nearby, thought he saw a speeding automobile heading in the pedestrian's direction. However, the automobile was obviously coming to a stop at the traffic light. Nevertheless, the bystander ran into the street and pushed the pedestrian onto the sidewalk. The pedestrian fell to the ground and broke her leg.

In an action for battery brought by the pedestrian against the bystander, will the pedestrian prevail?

A: Yes, because the bystander could have shouted a warning instead of pushing the pedestrian out of the way.
B: Yes, because the pedestrian was not actually in danger and the bystander should have realized it.
C: No, because the driver of the car was responsible for the pedestrian's injury.
D: No, because the bystander's intent was to save the pedestrian, not to harm her.

The explanation for the answer is:

B is the correct answer. The bystander acted intentionally to push the pedestrian. That push resulted in a harmful contact, and thus the bystander may be liable for battery. The issue here is whether the bystander was privileged to push the pedestrian for the pedestrian's safety. A person is privileged to use reasonable force to protect another as long as the "batterer" reasonably believes there is a threat to the other person's safety that requires contact to remove her from harm's way. Therefore, A is incorrect. Under the facts, the bystander believed a speeding car was headed for the pedestrian and a push was the only thing that would get her out of the way. However, because the bystander's belief was not reasonable, he has no privilege and will be liable for battery. Thus B is the best choice. C is incorrect because the actions of the driver will not cut short the bystander's liability for an intentional harmful or offensive contact. Only the bystander's own privilege will do that. D is incorrect because the bystander’s motivation would not provide a defense to the battery charge if his beliefs about the situation were unreasonable.

Question 998 - Torts - Intentional Torts

The question was:

A plaintiff suffered a serious injury while participating in an impromptu basketball game at a public park. The injury occurred when the plaintiff and the defendant, on opposing teams, each tried to obtain possession of the ball when it rebounded from the backboard after a missed shot at the basket. During that encounter, the plaintiff was struck and injured by the defendant's elbow. The plaintiff now seeks compensation from the defendant.

At the trial, evidence was introduced tending to prove that the game had been rough from the beginning, that elbows and knees had frequently been used to discourage interference by opposing players, and that the plaintiff had been one of those making liberal use of such tactics.

In this action, will the plaintiff prevail?

A: Yes, because the defendant intended to strike the plaintiff with his elbow.
B: Yes, because the defendant intended to cause harmful or offensive contact with the plaintiff.
C: No, because the plaintiff impliedly consented to violent play.
D: No, because the defendant did not intentionally use force that exceeded the players' consent.

The explanation for the answer is:

D is correct. The plaintiff and the defendant were voluntarily participating in a basketball game that "had been rough from the beginning." By taking part in the physically interactive basketball game, the plaintiff gave his implied consent to contact that, outside the game, might have otherwise been considered a harmful or offensive. That consent, however, is limited to ordinary game conduct. If the defendant's intentional contact reached a level of force that fell outside the scope of ordinary gamesmanship among the group of players, then he exceeded his privilege and the plaintiff will prevail. Thus, A, B and C are incorrect.

Question 1002 - Torts - Intentional Torts

The question was:

The police in a large city notified local gas station attendants that a woman recently had committed armed robberies at five city gas stations. The police said that the woman was approximately 75 years old, had white hair, and drove a vintage, cream-colored Ford Thunderbird. Attendants were advised to call the police if they saw her, but to not attempt to apprehend her. Armed robbery is a felony under state law.

A traveler was passing through the city on a cross-country journey. The traveler was a 75-year-old woman who had white hair and drove a vintage, cream-colored Ford Thunderbird. When the traveler drove into a gas station, the owner of the station thought the traveler must be the robber wanted by the police. After checking the oil at the traveler's request, the owner falsely informed the traveler that she had a broken fan belt, that her car could not be driven without a new belt, that it would take him about an hour to replace it, and that she should stay in his office for consultation about the repair. The traveler was greatly annoyed that her journey was delayed, but she stayed in the owner's office while she waited for her car. The owner telephoned the police and, within the hour, the police came and questioned the traveler. The police immediately determined that the traveler was not the woman, and the traveler resumed her journey without further delay.

In the traveler's action for false imprisonment against the owner, the traveler will

A: not prevail, because the owner reasonably believed that the traveler was the wanted woman.
B: not prevail, because the traveler suffered no physical or mental harm.
C: prevail, because the traveler reasonably believed she could not leave the owner's premises.
D: prevail, because the owner lied to the traveler about the condition of her car.

The explanation for the answer is:

A is the correct answer. False imprisonment occurs when the plaintiff is confined against her will and is aware of the confinement. The traveler was not confined to the office, but to the gas station premises through the owner's misrepresentation of fact. Physical damage is not required if the plaintiff was aware of her confinement. Thus B can be eliminated.

This is an issue of legal justification. Where the defendant claims there was justification to detain the plaintiff, his motive in detaining and the duration of the detention must be considered in determining whether the justification was exceeded.

A is the best answer because it addresses whether the owner had reasonable cause to suspect the traveler, which would provide legal justification to temporarily hold the traveler until the police arrived. B is incorrect.

C and D are not the best answers because they do not address the question of legal justification, which is the key issue here.

Question 1004 - Torts - Products Liability

The question was:

A plaintiff, who was an asbestos insulation installer from 1955 to 1965, contracted asbestosis, a serious lung disorder, as a result of inhaling airborne asbestos particles on the job. The asbestos was manufactured and sold to the plaintiff's employer by an asbestos company. Because neither the asbestos company nor anyone else discovered the risk to asbestos installers until 1966, the company did not provide any warnings of the risks to installers until after that date.

The plaintiff brought an action against the asbestos company based on strict liability in tort for failure to warn. The case is to be tried before a jury. The jurisdiction has not adopted a comparative fault rule in strict liability cases.

In this action, an issue that is relevant to the case and is a question for the court to decide as a matter of law, rather than for the jury to decide as a question of fact, is whether

A: a satisfactory, safer, alternative insulation material exists under today's technology.
B: the defendant should be held to the standard of a prudent manufacturer who knew of the risks, regardless of whether the risks were reasonably discoverable before 1966.
C: the defendant should reasonably have known of the risks of asbestos insulation materials before 1966, even though no one else had discovered the risks.
D: the asbestos insulation materials to which the plaintiff was exposed were inherently dangerous.

The explanation for the answer is:

B is correct. The facts indicate that the claim is for failure to warn. The asbestos company is only required to warn of dangers that were, or reasonably should have been, known to it (as a manufacturer) at the time the asbestos was delivered to the plaintiff's employer. The issue in this question is what information the asbestos company had a duty to know, and when it was required to share that information in its product warnings. The defendant's standard of care is a matter of law pertaining to the defendant's status and will be determined by the judge. Once the standard is established, a jury makes determinations of fact according to the standard set by the court. Therefore, B is the best choice because it appropriately addresses the issue of the standard of care.

A is irrelevant to the call of the question, but it is still a question of fact. C and D are both issues of fact that the jury will likely be asked to determine. Therefore, A, C and D are incorrect.

Question 1013 - Torts - Products Liability

The question was:

A company designed and built a processing plant for the manufacture of an explosive chemical. An engineer was retained by the company to design a filter system for the processing plant. She prepared an application for a permit to build the plant's filter system and submitted it to the state's Department of Environmental Protection (DEP). As required by DEP regulations, the engineer submitted a blueprint to the DEP with the application for permit. The blueprint showed the entire facility and was signed and sealed by her as a licensed professional engineer.

After the project was completed, a portion of the processing plant exploded, injuring the plaintiff. During discovery in an action by the plaintiff against the engineer, it was established that the explosion was caused by a design defect that was unrelated to the filter system designed by the engineer. However, the defect was present in the blueprint signed by the engineer.

In that action, will the plaintiff prevail?

A: Yes, because the engineer signed, sealed, and submitted a blueprint that showed the design defect.
B: Yes, because all of the plant's designers are jointly and severably liable for the defect.
C: No, because the engineer owed no duty to the plaintiff to prevent the particular risk of harm.
D: No, because the engineer was an independent contractor.

The explanation for the answer is:

C is the correct answer. While this looks like a products liability question, it is a professional malpractice issue. The company designed and built the processing plant. The engineer was retained solely for the purpose of designing a filter system for the plant. She had a duty to exercise skill in the design of the filter system, commensurate with her professional training and standards. The engineer's use of the company's blueprint for the proper permit did not impute liability onto the engineer for the entire facility, as a permit is nothing more than a license (permission) to proceed with construction, not a guarantee against defect. Thus A is incorrect. While the manufacturer of a defective product is subject to strict liability, strict liability does not apply to the performance of services. The engineer provided a service and will be held to a negligence standard. Thus C is the correct answer, and A is incorrect.

B is incorrect. The facts indicate that the processing plant was not a joint enterprise. The engineer was not in partnership with the company and was not in a business association with the company for the limited purpose of building the plant. The engineer was hired solely to perform a design service as an independent contractor. The engineer's design was not the cause of the injury, and she cannot be held liable for the company's design.

D is incorrect. The plaintiff is suing the engineer directly; the engineer's status as an independent contractor will not provide a defense.

Question 1017 - Torts - Negligence

The question was:

A mother rushed her eight-year-old daughter to the emergency room at a local hospital after the child fell off her bicycle and hit her head on a sharp rock. The wound caused by the fall was extensive and bloody.

The mother was permitted to remain in the treatment room, and held the child's hand while the emergency room physician cleaned and sutured the wound. During the procedure, the mother said that she was feeling faint and stood up to leave the room. While leaving the room, the mother fainted and, in falling, struck her head on a metal fixture that protruded from the emergency room wall. She sustained a serious injury as a consequence.

If the mother sues the hospital to recover damages for her injury, will she prevail?

A: Yes, because the mother was a public invitee of the hospital's.
B: Yes, because the fixture was an not an obvious, commonly used, and essential part of the hospital's equipment.
C: No, because there is no evidence that the hospital's personnel failed to take reasonable steps to anticipate and prevent the mother's injury.
D: No, because the hospital's personnel owed the mother no affirmative duty of care.

The explanation for the answer is:

C is the correct answer. The mother is an invitee, since she entered the premises under the hospital's implied invitation. Therefore, the hospital has a duty to keep the premises in a reasonably safe condition for her use. Thus, A and D can be eliminated immediately; A because the mother's status as an invitee does not make the hospital automatically liable for her injuries while on premises, and D because the hospital does owe an affirmative duty to a business/public invitee to protect the hospital patrons against known and discoverable hazards. B is also incorrect because whether the fixture was obvious is irrelevant. As long as the device did not pose an unreasonable danger to those around it, the hospital would not liable because it would not have failed to use reasonable care in connection with the device. Because there is no evidence that the hospital's personnel failed to take reasonable steps to anticipate and prevent the mother's injury, the hospital will not be liable.

Question 1022 - Torts - Intentional Torts

The question was:

For ten years, a vacationer and a neighbor have owned summer vacation homes on adjoining lots. A stream flows through both lots. As a result of a childhood swimming accident, the vacationer is afraid of water and has never gone close to the stream.

The neighbor built a dam on her property that has completely stopped the flow of the stream to the vacationer's property. The dam unreasonably interferes with the use and enjoyment of the vacationer's property but was built in conformity with all applicable laws.

In a suit by the vacationer against the neighbor, will the vacationer prevail?

A: Yes, because the damming unreasonably interferes with the use and enjoyment of the vacationer's property.
B: Yes, because the neighbor intended to affect the vacationer's property.
C: No, because the vacationer made no use of the stream.
D: No, because the dam was built in conformity with all applicable laws.

The explanation for the answer is:

A is the correct answer. While the call of the question does not provide a specific claim, the choices are aspects of nuisance. A landowner who causes a substantial, unreasonable interference with a neighbor's use or enjoyment of his property without a valid defense is liable for private nuisance. This rule also applies to flowing water, so an upstream owner may not stop the flow of water to a downstream property if it would substantially interfere with the use and enjoyment of the downstream property. Thus, D is incorrect.

B is incorrect because nuisance does not require proof of intent. C is incorrect because private nuisance covers both use and enjoyment. For example, interference with the vacationer's enjoyment from viewing of the stream would be sufficient to sustain a private nuisance action. D is incorrect because conformity with all applicable laws does not foreclose a nuisance action. Because there is unreasonable interference with the vacationer's use and enjoyment of his property, the vacationer will prevail.

Question 1052 - Torts - Negligence

The question was:

An employer retained a doctor to evaluate medical records of prospective employees. The doctor informed the employer that an applicant, a prospective employee, suffered from AIDS. The employer informed the applicant of this and declined to hire her.

The applicant was shocked by this news and suffered a heart attack as a result. Subsequent tests revealed that the applicant in fact did not have AIDS. The doctor had negligently confused the applicant's file with that of another prospective employee.

If the applicant sued the doctor for damages, on which of the following causes of action would the applicant recover?

A: Negligent infliction of emotional distress.
B: Invasion of privacy.
C: Negligent misrepresentation.
D: Both invasion of privacy and negligent misrepresentation.

The explanation for the answer is:

A is the correct answer. Invasion of privacy is not an applicable tort. The doctor was privileged to provide the results of his medical investigation regarding the applicant to the employer. In addition, the results were not released to the public. Thus, B is incorrect. A claim for negligent misrepresentation requires the applicant in the action to have relied upon the erroneous information negligently provided by the doctor. While the applicant was injured, it was the employer who relied upon the erroneous information. Thus, C and D are incorrect. The applicant can, however, recover for negligent infliction of emotional distress because she suffered a heart attack as the result of the doctor's negligent misreading and reporting of her medical file. Because providing a false diagnosis for a terminal disease creates a foreseeable risk of physical injury solely from the severe emotional distress caused, A is the correct answer.

Question 1061 - Torts - Negligence

The question was:

While approaching an intersection with the red light against him, a motorist suffered a heart attack that rendered him unconscious. The motorist's car struck a child, who was crossing the street with the green light in her favor. Under the state motor vehicle code, it is an offense to drive through a red traffic light.

The child sued the motorist to recover for her injuries. At trial it was stipulated that (1) immediately prior to suffering the heart attack, the motorist had been driving within the speed limit, had seen the red light, and had begun to slow his car; (2) the motorist had no history of heart disease and no warning of this attack; (3) while the motorist was unconscious, his car ran the red light.

On cross motions for directed verdicts on the issue of liability at the conclusion of the proofs, the court should

A: grant the child's motion, because the motorist ran a red light in violation of the motor vehicle code.
B: grant the child's motion, because, in the circumstances, reasonable persons would infer that the motorist was negligent.
C: grant the motorist's motion, because he had no history of heart disease or warning of the heart attack.
D: deny both motions and submit the case to the jury, to determine whether, in the circumstances, the motorist's conduct was that of a reasonably prudent person.

The explanation for the answer is:

C is correct. A directed verdict is granted when there is no relevant question fact and the moving party is entitled to judgment as a matter of law. A directed verdict is entered at the close of the evidence before the matter goes to a jury. Here, there is not negligence per se because the motorist was unconscious when his car went through the red light and hit the child. An unconscious person cannot be held liable for acts he had no control over unless it was foreseeable that a medical cause or condition would cause him to black out and precautions were not taken. The motorist suffered a heart attack and facts provide stipulations that the motorist had no previous history of heart disease and no warning of the attack. In addition, before the heart attack, the motorist had been in the process of stopping and was not driving negligently. Therefore, there is no direct evidence that the motorist had failed his duty to exercise due care. Consequently, the motorist’s motion will be granted, making C correct and D incorrect.

A is incorrect. The safety statute cannot be applied to show negligence per se because the motorist was unconscious when his car went through the stoplight. The motorist can only be held liable for negligence if it was foreseeable that he would lose consciousness while driving but did not take any precautions against the possibility.

B is incorrect. Res ipsa loquitur does not apply. Stipulations were made that the motorist had begun to slow down before the heart attack. The motorist was unconscious and thus not in control of the instrumentality. The issue is not one of inferring negligence but of determining if the motorist had a duty to take precautions against having a heart attack while driving.

Question 1067 - Torts - Negligence

The question was:

In a trial by jury, a restaurant owner proved that a power company's negligent maintenance of a transformer caused a fire that destroyed his restaurant. The jury returned a verdict for the owner in the amount of $450,000 for property loss and $500,000 for emotional distress. The trial judge entered judgment in those amounts. The power company appealed the part of the judgment awarding $500,000 for emotional distress.

On appeal, the judgment should be

A: affirmed, because the power company negligently caused the owner's emotional distress.
B: affirmed, because harm arising from emotional distress is as real as harm caused by physical impact.
C: reversed, because the law does not recognize a claim for emotional distress incident to negligently caused property loss.
D: reversed, because the owner suffered physical harm as a consequence of the emotional distress caused by his property loss.

The explanation for the answer is:

C is correct. Emotional distress damages can be tacked on as parasitic damages caused by another tort. However, the recovery for emotional distress resulting from a tort is only allowed if the plaintiff suffered physical injuries. Therefore, recovery for emotional distress is not recognized where the underlying tort only caused property losses. The owner could only recover pain and suffering if the emotional distress stemmed from his own physical injury during the fire.

A is incorrect because the power company's negligence is irrelevant to whether or not the restaurant owner suffered any physical harm that caused his emotional distress. B is incorrect because the owner suffered no physical injury. D is incorrect because in order to tack on parasitic damages, the owner would need to have suffered emotional distress as a result of physical harm, not physical harm as a result of emotional distress.

Question 1071 - Torts - Negligence

The question was:

A patron ate a spicy dinner at a restaurant on Sunday night. He enjoyed the food and noticed nothing unusual about the dinner.

Later that evening, the patron had an upset stomach. He slept well through the night, went to work the next day, and ate three meals. His stomach discomfort persisted, and by Tuesday morning he was too ill to go to work.

Eventually, the patron consulted his doctor, who found that the patron was infected with a bacterium that can be contracted from contaminated food. Food can be contaminated when those who prepare it do not adequately wash their hands.

The patron sued the restaurant for damages. He introduced testimony from a health department official that various health code violations had been found at the restaurant both before and after the patron's dinner, but that none of the restaurant's employees had signs of bacterial infection when they were tested one month after the incident.

The restaurant's best argument in response to the patron's suit would be that

A: No one else who ate at the restaurant on Sunday complained about stomach discomfort.
B: The restaurant instructs its employees to wash their hands carefully and is not responsible if any employee fails to follow these instructions.
C: The patron has failed to establish that the restaurant's food caused his illness.
D: The patron assumed the risk of an upset stomach by choosing to eat spicy food.

The explanation for the answer is:

C is the defense with the best chance of prevailing. Health code violations can only establish duty and breach; they do not establish the restaurant's causal control over the specific instrumentality that caused the actual food poisoning. In addition, res ipsa loquitur does not apply because the patron was unable to show that the restaurant had exclusive control over everything the patron ate within the period leading up to his illness. As a consequence, the restaurant's negligence cannot be inferred by the circumstances, and C is therefore the strongest defense.

A is incorrect. This is an ineffective defense because it may not include anyone who was not aware of why they might have been ill. The best defense is to show that the patron has not established causation.

B is an inadequate defense. An employer is responsible for enforcing its safety policies and will be vicariously liable if, while in the course of the employer's business, a negligent action of its employee causes an injury.

D is incorrect. The patron did not knowingly undertake to eat food that he was aware would cause him illness. At most, this argument would go to damages. C is the best answer because it would establish that the restaurant had no liability for the patron's injuries.

Question 1075 - Torts - Other Torts

The question was:

When two parents were told that their child should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged $300, determined that their child had a learning disability. Based upon the report, the school board placed the child in special classes. At an open meeting of the school board, the parents asked that the $300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning the child by name. The parents were aware that the reporter was at the meeting.

In a privacy action brought by the child's legal representative against the newspaper, the plaintiff will

A: recover, because the story is not newsworthy.
B: recover, because the child is under the age of consent.
C: not recover, because the story is a fair and accurate report of what transpired at the meeting.
D: not recover, because the parents knew that the reporter was present.

The explanation for the answer is:

C is the correct answer. While the call of the question does not specify which claim is being made, there are only two possible privacy torts available under the facts. The first is defamation, which is defendant's false and defamatory communication of fact, published knowingly or foreseeably to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. Truth, however, is an absolute defense to defamation. The second claim would be for public disclosure of private facts. To prevail, the plaintiff must show that the defendant published private information about the plaintiff, and that the private information being publicized is non-newsworthy and would be highly offensive to a reasonable person. This tort does not require that the information be false. Here, the facts indicate that the meeting was open, so the information disclosed was not private. Additionally, the facts do not indicate that the information was so offensive that it would violate ordinary decency standards.

B is incorrect because the Supreme Court has held that a newspaper cannot be held liable for publicizing a name that is a matter of public record. A is incorrect because any fact disclosed at a public meeting is considered newsworthy. D is incorrect because the parents' knowledge of the reporter's presence is irrelevant because the meeting was open.

Question 1075 - Torts - Other Torts

The question was:

When two parents were told that their child should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged $300, determined that their child had a learning disability. Based upon the report, the school board placed the child in special classes. At an open meeting of the school board, the parents asked that the $300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning the child by name. The parents were aware that the reporter was at the meeting.

In a privacy action brought by the child's legal representative against the newspaper, the plaintiff will

A: recover, because the story is not newsworthy.
B: recover, because the child is under the age of consent.
C: not recover, because the story is a fair and accurate report of what transpired at the meeting.
D: not recover, because the parents knew that the reporter was present.

The explanation for the answer is:

C is the correct answer. While the call of the question does not specify which claim is being made, there are only two possible privacy torts available under the facts. The first is defamation, which is defendant's false and defamatory communication of fact, published knowingly or foreseeably to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. Truth, however, is an absolute defense to defamation. The second claim would be for public disclosure of private facts. To prevail, the plaintiff must show that the defendant published private information about the plaintiff, and that the private information being publicized is non-newsworthy and would be highly offensive to a reasonable person. This tort does not require that the information be false. Here, the facts indicate that the meeting was open, so the information disclosed was not private. Additionally, the facts do not indicate that the information was so offensive that it would violate ordinary decency standards.

B is incorrect because the Supreme Court has held that a newspaper cannot be held liable for publicizing a name that is a matter of public record. A is incorrect because any fact disclosed at a public meeting is considered newsworthy. D is incorrect because the parents' knowledge of the reporter's presence is irrelevant because the meeting was open.

Question 1080 - Torts - Negligence

The question was:

A man's car sustained moderate damage in a collision with a car driven by a woman. The accident was caused solely by the woman's negligence. The man's car was still drivable after the accident. Examining the car the next morning, the man could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

The man then took the car to a mechanic, who owns and operates a body shop, and arranged with the mechanic to repair the damage. During their discussion the man neglected to mention the gasoline leakage. Thereafter, while the mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. The mechanic was severely burned.

The mechanic has brought an action to recover damages against the man and woman. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

In this action, will the mechanic obtain a judgment against the woman?

A: No, because there is no evidence that the woman was aware of the gasoline leak.
B: No, because the mechanic would not have been harmed had the man warned him about the gasoline tank.
C: Yes, because the mechanic was not negligent in failing to discover the gasoline leak himself.
D: Yes, because the mechanic's injury was a proximate consequence of the woman's negligent driving.

The explanation for the answer is:

D is the correct answer. The key sentence is, "The collision had caused a small leak in the gasoline tank." Also, the woman's negligent driving "solely" caused the accident. It is foreseeable that a car accident could rupture a gas tank leading the gasoline to ignite and causing severe burn damage to anyone in or near the car. The manner of the accident is not determinative; the mechanic's injury was a foreseeable result of the accident. The mechanic's injury was not so removed in time and circumstance as to offend fundamental fairness. In addition, courts consider negligent conduct on the part of those who are hired to treat or repair injuries to be foreseeable consequences of the original tortfeasor's negligent conduct, and will not find that the subsequent acts supersede the original liability unless there is some unforeseeable, independently tortious conduct. D is the best choice because it addresses the issue of proximate cause, which will determine the woman's liability to the mechanic.

A is incorrect. The woman is not required to know of the gas leak. It is a foreseeable consequence of the car accident.

B reaches the wrong conclusion. While choice B may contain a true statement, the man's failure to warn the mechanic will not be enough to supersede and preclude recovery from the woman. The igniting gas was a foreseeable injury; the manner in which it occurred is not determinative.

C is incorrect. The mechanic's comparative negligence will affect the amount of damages he may recover from the woman but will not prevent him from prevailing in his claim. A pure comparative negligence jurisdiction allows a plaintiff to recover all of his damages except the portion attributed, by the court, to his own negligence.

Question 1081 - Torts - Negligence

The question was:

A man's car sustained moderate damage in a collision with a car driven by a woman. The accident was caused solely by the woman's negligence. The man's car was still drivable after the accident. Examining the car the next morning, the man could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

The man then took the car to a mechanic, who owns and operates a body shop, and arranged with the mechanic to repair the damage. During their discussion the man neglected to mention the gasoline leakage. Thereafter, while the mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. The mechanic was severely burned.

The mechanic has brought an action to recover damages against the man and woman. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence. The jury found that while a reasonable person in the man's position would have warned the mechanic about the gasoline leak, the man had no actual knowledge of the risk that the gasoline leak presented.

In this action, will the mechanic obtain an judgment against the man?

A: No, because it was the mechanic's job to inspect the vehicle and repair whatever needed repair.
B: No, because the man was not aware of the risk that the gasoline leak presented.
C: Yes, because a reasonable person in the man's position would have warned the mechanic about the gasoline leak.
D: Yes, because the car was unreasonably dangerous when the man delivered it to the mechanic.

The explanation for the answer is:

C is correct. The man's conduct is subject to the objective reasonable person standard. Therefore, the man had a duty to inform the mechanic of the leak, because a reasonably prudent person in the man's position would given a warning. Therefore, C is the correct answer.

A is incorrect. Although the statement is true, the mechanic's negligence, while diminishing his damages, will not prevent him from prevailing on his claim. In a pure comparative negligence jurisdiction, the plaintiff is entitled to all of his damages minus the portion that the court attributes to the plaintiff's negligence. B is incorrect. The man's conduct is subject to the objective reasonable person standard. Under that standard, his actual understanding of the risk is irrelevant. D is incorrect because it combines elements of products liability with a landowner's liability for abnormally dangerous activity on his land. The man is a user, not a manufacturer or seller of the car, so he will not be held strictly liable for the leaking gas tank. Likewise, the man was not conducting ultrahazardous activities that would create a nondelegable duty resulting in strict liability. Instead, the mechanic must prove negligent conduct by the man to prevail.

Question 1089 - Torts - Intentional Torts

The question was:

The warden of a state prison prohibits the photographing of the face of any prisoner without the prisoner's consent. A news photographer wanted to photograph a notorious mobster incarcerated at the state prison. To circumvent the warden's prohibition, the photographer flew over the prison exercise yard and photographed the mobster. A prisoner, who was imprisoned for a technical violation of a regulatory statute, happened to be standing next to the mobster when the photograph was taken.

When the picture appeared in the press, the prisoner suffered severe emotional distress because he believed that his business associates and friends would think he was consorting with gangsters. The prisoner suffered no physical harm as the result of his emotional distress. The prisoner brought an action against the photographer for intentional and reckless infliction of emotional distress.

What is the best argument that the photographer can make in support of a motion for summary judgment?

A: No reasonable person could conclude that the photographer intended to photograph the prisoner.
B: The prisoner did not suffer any physical injury arising from the emotional distress.
C: As a news photographer, the photographer was privileged to take photographs that others could not.
D: No reasonable person could conclude that the photographer's conduct was extreme and outrageous as to the prisoner.

The explanation for the answer is:

D is the correct answer. A motion for summary judgment will be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. For the prisoner to prevail in his claim for intentional and reckless infliction of emotional distress, he must show that: (1) the photographer's intentional (with purpose or knowledge to a substantial certainty) or reckless disregard for the consequences of publishing the photograph was (2) extreme and outrageous conduct, which (3) caused the prisoner severe emotional distress. Thus B is incorrect because severe emotional distress can be evidenced physically, but physical harm is not required. The photographer clearly pointed his lens to take a picture, knowing to a substantial certainty that the mobster and his companions would be photographed as a result, so choice A will not help the photographer. In addition, the issue of a reporter's privilege to photograph is a disputed material fact which gives rise to a question for the jury, so choice C will not support the photographer's motion for summary judgment. Choice D addresses the element of outrageousness that is not answered in the fact pattern and which is an objective standard that can be determined as a matter of law. Thus, D is the best answer because it gives the photographer the strongest grounds upon which he can support his motion for summary judgment. Therefore, A, B and C are incorrect.

Question 1093 - Torts - Negligence

The question was:

A vintner is the owner of a large vineyard and offers balloon rides to visitors who wish to tour the grounds from the air. During one of the rides, the vintner was forced to make a crash landing on his own property due to high winds. Without the vintner's knowledge or consent, a trespasser had entered the vineyard to camp for a couple of days. The trespasser was injured when he was hit by the basket of the descending balloon.

If the trespasser sues the vintner to recover damages for his injuries, will the trespasser prevail?

A: No, because there is no evidence that the crash landing was made necessary by the vintner's negligence.
B: No, because the vintner was unaware of the trespasser's presence until after the injury had occurred.
C: Yes, because even a trespasser may recover for injuries caused by an abnormally dangerous activity.
D: Yes, because the accident occurred at a place which the vintner knew was frequented by intruders.

The explanation for the answer is:

B is correct. The vintner has no duty to an undiscovered trespasser. If the vintner knew or reasonably should have known of the trespasser's presence, under majority law he has a duty of reasonable care to avoid injury to the trespasser. (Under traditional common law a discovered trespasser was only owed the duty to avoid gross negligence or willful and wanton misconduct.)

D is not the best answer because the facts give no indication that the vineyard was frequented by trespassers and specifically states that the trespasser was there without consent or knowledge of the vintner. Choice B appropriately addresses the issue of awareness and the corresponding duty.

A is incorrect. The vintner only has a duty of reasonable care for an activity that has a foreseeably harmful result to a specific plaintiff or a potential plaintiff in the zone of danger. The facts do not indicate that visitors were known to frequent the property where the vintner was forced to land. The vintner has no duty to an unknown and unforeseeable trespasser.

C is incorrect. The facts do not support an inference that ballooning is an ultrahazardous or abnormally dangerous activity. B is the correct answer because it most closely fits the facts given.

Question 1099 - Torts - Other Torts

The question was:

A farmer owns a small farm with several head of cattle which are kept in a fenced grazing area. One day the cattle were frightened by a thunderstorm, an occasional occurrence in the area. The cattle broke through the fence, entered onto the neighbor's property, and severely damaged the neighbor's crops. Because the farmer's cattle had panicked during past thunderstorms, the farmer had been diligent in maintaining the fence. Under the law of the state, landowners are not required to erect fences to prevent the intrusion of livestock.

If the neighbor sues the farmer to recover for the damage done to his crops, will the neighbor prevail?

A: Yes, because the farmer's cattle caused the damage to the neighbor's crops.
B: Yes, because the farmer's cattle had panicked during previous thunderstorms.
C: No, because the fence was not negligently maintained by the farmer.
D: No, because the thunderstorm was a force of nature.

The explanation for the answer is:

A and C were both given credit by the Examiners. The difference in answers reflects the different ways trespassing cattle have been treated in jurisdictions across the United States. Many courts today allow a plaintiff to assert her claim under either a negligence theory or a strict liability theory, or both.

Some states required landowners bordering cattle grazing lands to erect fences by passing "fence-out" statutes; as a result, those states would only hold the cattle *owner* liable for intentionally driving his cattle onto the land of another, but not for strict liability or negligence. Choice C addresses the fact pattern statement that the neighbor was not required to erect a fence to prevent intrusions by cattle, leading to the inference that the farmer was required to do so.

Other states required cattle owners to protect crop-growers from cattle trespass, giving rise to strict liability. Choice A reflects the common law response to a livestock trespass.

Choice B is incorrect. Despite the fact that the Restatement (Second) classifies cattle as domestic animals, thus making the farmer liable only for an intentional tort or ordinary negligence, strict liability would still be imposed upon the farmer for a foreseeable harm resulting from a known (by the farmer), abnormally dangerous propensity by his cattle. The propensity would have to be beyond what is considered normal behavior for cattle in general. This standard is irrelevant under the facts of this question, which does not indicate that the behavior of the cattle was abnormal and thus a dangerous propensity.

D is incorrect. The thunderstorm was not a superseding "Act of God" that will cut short the farmer's liability for the actual damages caused by his cattle. The facts indicate that storms were an "occasional occurrence." The storms were not unforeseeable. The determinative issue is whether the farmer's fence was constructed to adequately confine his cattle, despite their agitation. If not, the farmer would be liable under a claim for negligence. In a claim for strict liability, the neighbor would prevail in an action for his actual crop damages.

Question 1116 - Torts - Negligence

The question was:

A male orderly who worked at a hospital had sexual relations with a patient, who was severely mentally disabled, in her room at the hospital.

In a tort action brought on the patient's behalf against the hospital, the patient will

A: not prevail, if the orderly's actions were outside the scope of his employment.
B: not prevail, if the patient initiated the relationship with the orderly and encouraged his actions.
C: prevail, if the orderly was an employee of the hospital.
D: prevail, if the hospital failed to use reasonable care to protect the patient from such conduct.

The explanation for the answer is:

D is the correct answer. While it is not a settled area of law, courts have tended to recognize that caretaker institutions of those who are helpless to care for themselves may be considered to have a special relationship and an affirmative duty to protect their patients. Thus C is not the best answer. One theory is that the potential for employees to take sexual advantage of the disabled is a normal risk of a caretaking business and the duty cannot be delegated. Thus A is incorrect. Others have held that by removing the disabled from their normal sources of support and keeping them relatively helpless aids the employee in committing a tort. While some courts have found vicarious liability, others have held that the institution is only under a duty of care to protect its residents from foreseeable sexual assault. Because of the unique vulnerabilities of helpless patients, the hospital would have a duty to institute safeguards to protect against sexual assault. D is the best answer because it addresses the particular problem posed by a severely disabled patient's being attacked by a hospital employee in her hospital room. A and C are incorrect.

B is incorrect. The call of the question states that a claim was brought on the patient's behalf, which allows the inference that she had a guardian. While mental incompetence may not remove all capacity for consent, the facts in this situation indicate that the patient was legally incapacitated and was either mentally incapable of consent to the action or else was susceptible to undue influence. At most, the hospital would be able to use the consent as a defense to reduce its damages, but it will likely fail.

Question 1121 - Torts - Negligence

The question was:

A passenger departed on an ocean liner knowing that it would be a rough voyage due to predicted storms. The ocean liner was not equipped with the type of lifeboats required by the applicable statute.

The passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action against the operator of the ocean liner brought by the passenger's representative, will the passenger's representative prevail?

A: Yes, because the ocean liner was not equipped with the statutorily required lifeboats.
B: Yes, because in these circumstances common carriers are strictly liable.
C: No, because the storm was so severe that it would have been impossible to launch a statutorily required lifeboat.
D: No, because the passenger assumed the risk by boarding the ocean liner knowing that it would be a rough voyage.

The explanation for the answer is:

C is the correct answer. In an action for negligence, the plaintiff must allege duty, breach, causation and damages. The key issue here is not whether the ocean liner breached a duty to have a specific type of lifeboat, but whether the storm was so severe that its independent intervention superseded even the launching of a statutorily adequate lifeboat. This is an "act of god" situation. The facts state that the storm was too rough for even a conforming lifeboat to be launched, thus breaking the causal connection between the ship's duty to have a certain type of lifeboat and the passenger's death.

A is incorrect. The lifeboats could not have been launched in the storm even if the ocean liner had been properly equipped. B is incorrect. Common carriers are subject to a higher standard of care, not strict liability. Even a claim in strict liability, however, must show that the defendant's activity or condition is a proximate (legal) cause of the harm in order to prevail; this is a conclusion which is not supported by the facts. D is incorrect. Assumption of risk is no longer a complete bar to recovery in a negligence claim, absent instructions to follow the common law. Even if it could be shown that the passenger was fully aware and expressedly or impliedly agreed to accept a known risk of deadly storms, it would only go to damages and would not prevent the passenger from prevailing.

Question 1130 - Torts - Negligence

The question was:

A driver was driving his car near a homeowner's house when the homeowner's child darted into the street in front of the driver's car. As the driver swerved and braked his car to avoid hitting the child, the car skidded up into the homeowner's driveway and stopped just short of the homeowner, who was standing in the driveway and had witnessed the entire incident. The homeowner suffered from serious emotional distress from witnessing the danger to his child and to himself. Neither the homeowner nor his property was physically harmed.

If the homeowner asserts a claim for damages against the driver but is unable to establish that the driver was negligent, will the homeowner still be able to prevail?

A: Yes, because the driver's entry onto the homeowner's land was unauthorized.
B: Yes, because the homeowner suffered serious emotional distress by witnessing the danger to his child and to himself.
C: No, because the homeowner failed to show that the driver was negligent.
D: No, because the homeowner's child was not exercising reasonable care.

The explanation for the answer is:

C is the correct answer. The homeowner is most likely bringing a claim for negligent infliction of emotional distress against the driver. A stand-alone claim for emotional distress requires a negligent act (1) that results in a personally witnessed injury to a close family member (such as parent & child), or (2) where the plaintiff had been within the "zone of danger" for injury himself. Certainly in this case, the homeowner witnessed the near injury to his own child and then his own near injury. In both cases, however, there was no actual physical injury. And, with the driver merely reacting to the sudden presence of a child in the road, there is also the key issue of whether the driver was negligent at all. Unless there is a negligent act, there cannot be a recovery, so C is the appropriate answer, and B is incorrect.

A is incorrect. The driver's entry onto the homeowner's land was privileged due to the emergency and caused no property damage. Where entry is necessary due to an emergency (private necessity), such as avoiding hitting a child in the road, only actual damages may be awarded.

D is irrelevant. The child's reasonable care will not be imputed to the homeowner as a parent. The homeowner's own comparative negligence may be considered (as a reduction of damages) for failure to exercise control over the child if the child had a known propensity to dart into the street. This issue, however, is a defense and will not be reached if the homeowner cannot first show that the driver breached a duty of care, causing injury to the homeowner.

Question 1142 - Torts - Negligence

The question was:

A traveler was a passenger on a commercial aircraft owned and operated by an airline. The aircraft crashed into a mountain, killing everyone on board. The flying weather was good.

The traveler's legal representative brought a wrongful death action against the airline. At trial, the legal representative offered no expert or other testimony as to the cause of the crash.

On the airline's motion to dismiss at the conclusion of the legal representative's case, the court should

A: grant the motion, because the legal representative has offered no evidence as to the cause of the crash.
B: grant the motion, because the legal representative has failed to offer evidence negating the possibility that the crash may have been caused by mechanical failure that the airline could not have prevented.
C: deny the motion, because the jury may infer that the aircraft crashed due to the airline's negligence.
D: deny the motion, because in the circumstances common carriers are strictly liable.

The explanation for the answer is:

C is correct. A motion to dismiss may be granted when the facts, as viewed in favor of the plaintiff, do not present a claim upon which relief can be granted. The traveler's representative is making a claim based upon res ipsa loquitur (*RIL*). The doctrine of *RIL* is generally applied in situations where negligence clearly occurred and (1) the defendant had exclusive control of the instrumentality during the relevant time, and (2) the plaintiff shows that he was not responsible for the injury. The court is not required to infer negligence and a presumption is not created; *RIL* merely permits the fact finder to infer negligence from the facts. The facts indicate that weather was good and that the airline both owned and operated the aircraft. The fact that the airline had exclusive control of the instrumentality and that it crashed is sufficient to infer that the airline was negligent, without knowing exactly how the crash occurred; thus A is incorrect. In such a situation, the court, viewing the facts in favor of the plaintiff, could infer that negligence occurred, which presents a claim upon which relief can be granted.

B is incorrect. In a claim based on *RIL*, the airline can respond in its defense by showing proof that the cause of the crash was beyond the airline's control, but the traveler's representative is not required to prove what caused the crash in a situation where negligence clearly occurred and the airline had exclusive control of the instrumentality at the time of the crash.

D is incorrect. Negligence must still be shown in a claim against a common carrier. The standard of care threshold is higher for a common carrier, but it does not result in strict liability.

Question 1152 - Torts - Products Liability

The question was:

Because of a farmer's default on his loan, the bank foreclosed on the farm and equipment that secured the loan. Among the items sold at the resulting auction was a new tractor recently delivered to the farmer by the retailer. Shortly after purchasing the tractor at the auction, the buyer was negligently operating the tractor on a hill when it rolled over due to a defect in the tractor's design. He was injured as a result. The buyer sued the auctioneer, alleging strict liability in tort. The jurisdiction has not adopted a comparative fault rule in strict liability cases.

In this suit, the result should be for the

A: plaintiff, because the defendant sold a defective product that injured the plaintiff.
B: plaintiff, because the defendant failed to inspect the tractor for defects prior to sale.
C: defendant, because he should not be considered a "seller" for purposes of strict liability in tort.
D: defendant, because the accident was caused in part by the buyer's negligence.

The explanation for the answer is:

C is the correct answer. An auctioneer disposes of property on behalf of the true owner, generally retaining only a fee or commission for his services. B is incorrect because the auctioneer is not a seller of tractors in the normal course of his business and therefore does not have the duties that a seller of tractors would have. A is incorrect because strict liability can only be imposed on a seller (and on up the chain to the manufacturer) for the sale of any product which is in a defective condition or unreasonably dangerous to the user and results in injury if: (1) the seller is engaged in the business of selling the product in its normal course of business, and (2) the product was not substantially changed by anyone else before the plaintiff used it. Here, the sale of the tractor was a one-time occurrence; the auctioneer was not in the business of selling tractors. Choice C appropriately addresses the issue that will determine whether the auctioneer will be liable. Therefore, choices A and B are incorrect.

D is incorrect. The auctioneer is not a seller of tractors in his normal course of business and so cannot be held in strict liability for the sale of the defective product. Therefore the issue of contributory negligence will not be reached.

Question 1158 - Torts - Other Torts

The question was:

A homeowner owns a house on a lake. A neighbor owns a house across a driveway from the homeowner's property. The neighbor's house sits on a hill and the neighbor can see the lake from his living room window.

The homeowner and the neighbor got into an argument and the homeowner erected a large spotlight on his property that automatically comes on at dusk and goes off at sunrise. The only reason the homeowner installed the light was to annoy the neighbor. The glare from the light severely detracts from the neighbor's view of the lake.

In a suit by the neighbor against the homeowner, will the neighbor prevail?

A: Yes, because the homeowner installed the light solely to annoy the neighbor.
B: Yes, but only because the neighbor's property value was adversely affected.
C: No, because the neighbor's view of the lake is not always obstructed.
D: No, because the spotlight provides added security to the homeowner's property.

The explanation for the answer is:

A is the correct answer because the neighbor will most likely be able to get an injunction requiring the homeowner to remove the large spotlight, or at least to redirect its beam. Private nuisance is defined as a condition or activity that substantially interferes with the possessor's use and enjoyment of his land to such an extent that the landowner cannot reasonably be expected to bear the condition without compensation. The standard of interference is generally personal discomfort to the occupants or tangible harm to property, resulting in a diminution of its market value. Nuisance does not require proof of negligence, only interference. Where the nuisance cannot be removed without undue burden, and the nuisance has utility, damages for the reduction in property value of the affected plaintiff may be ordered. In this situation, the neighbor's use and enjoyment of his property is severely affected by the spotlight. Because the facts indicate that the spotlight has no utility other than as a means to harass the neighbor, an injunction will be available as a remedy instead of damages. A is the best choice because it describes facts that remove the issue of utility from the equation, allowing the neighbor an injunction to remove the nuisance entirely.

B is incorrect. An answer choice that includes the language "but only because" is rarely the correct answer because it is too restrictive. Showing an adverse impact on the neighbor's property value is not the only way he will be allowed to prevail; if the nuisance has no utility but substantially interferes with the neighbor's use and enjoyment of his property, an injunction is available as a remedy.

C is incorrect. The nuisance does not have to be continuous to substantially interfere with the neighbor's use and enjoyment of his property.

D is incorrect. If the homeowner makes that argument, the court will then weigh the utility of the light against the neighbor's right to enjoy his property free of the interference to determine if an injunction or an award of damages for diminished value is appropriate. The facts specifically state that the light's purpose is to annoy the neighbor, however, so this consideration is irrelevant to the analysis.

Question 1163 - Torts - Negligence

The question was:

A driver negligently drove his car into a pedestrian, breaking her leg. The pedestrian's leg was put in a cast, and she used crutches to get around. While shopping at her local supermarket, the pedestrian non-negligently placed one of her crutches on a banana peel that had been negligently left on the floor by the manager of the supermarket's produce department. The pedestrian's crutch slipped on the peel, and she fell to the floor, breaking her arm. Had the pedestrian stepped on the banana peel at a time when she did not have to use crutches, she would have regained her balance.

The pedestrian sued the driver and the supermarket for her injuries.

The pedestrian will be able to recover from

A: the driver, for her broken leg only.
B: the driver, for both of her injuries.
C: the supermarket, for both of her injuries.
D: the driver, for her broken leg only, and the supermarket, for her broken arm only.

The explanation for the answer is:

B is the correct answer. The pedestrian's broken arm is proximately connected to the driver's negligent driving. Injuries stemming from being hit by a car include broken bones. The manner in which the arm was broken is not considered, only the injury itself. Courts generally hold that subsequent negligent actions, which may add to the plaintiff's injuries, are a foreseeable consequence of the original action and will not break the chain of causation. The facts clearly state that the pedestrian would not have lost her balance had she not been on crutches as the result of being hit by the driver. Because it is foreseeable that walking on crutches would make the pedestrian less stable on her feet and more vulnerable to subsequent injury from falling, the driver is the proximate (legal) cause of both injuries (although responsibility for the broken arm alone may be apportioned between the driver and the supermarket as concurrent tortfeasors). Thus A is incorrect.

C and D are incorrect. The supermarket will not be liable for both injuries because the injuries are clearly divisible, and the supermarket's negligence is the factual and legal cause of only the broken arm. The supermarket, therefore, will have apportioned responsibility for the broken arm. On the other hand, the driver will be liable for all foreseeable consequences of his negligent driving, including the pedestrian's injuries from a fall sustained because of her previous injury from the driver.

Question 1166 - Torts - Intentional Torts

The question was:

A professional football player signed a written consent for his team's physician to perform a knee operation. After the athlete was under a general anesthetic, the doctor asked a world famous orthopedic surgeon to perform the operation. The surgeon's skills were superior to the doctor's, and the operation was successful.

In an action for battery by the athlete against the surgeon, the athlete will

A: prevail, because the athlete did not agree to allow the surgeon to perform the operation.
B: prevail, because the consent form was in writing.
C: not prevail, because the surgeon's skills were superior to the doctor's.
D: not prevail, because the operation was successful.

The explanation for the answer is:

A is correct. Battery requires harmful or offensive contact to the plaintiff's person, intent, and causation. Contact to the plaintiff's person is considered offensive if it is not expressly or impliedly consented to by the plaintiff. Unlike a medical malpractice claim, a prima facie case for battery does not require proof of damages to prevail. In this case, the athlete signed a consent form specifically allowing the team doctor to perform the surgery, not the surgeon. Regardless of any superior skill level, the surgeon touched the athlete without his consent, which constitutes offensive contact, and thus meets the requirements for a battery. Therefore, B, C, and D are incorrect.

Question 1176 - Torts - Intentional Torts

The question was:

As a seller, an encyclopedia salesman, approached the grounds on which a homeowner's house was situated, he saw a sign that said, "No salesmen. Trespassers will be prosecuted. Proceed at your own risk." Although the seller had not been invited to enter, he ignored the sign and drove up the driveway toward the house. As he rounded a curve, a powerful explosive charge buried in the driveway exploded, and the seller was injured.

Can the seller recover damages from the homeowner for his injuries?

A: Yes, because the homeowner was responsible for the explosive charge under the driveway.
B: Yes, because the homeowner, when he planted the charge, intended to harm a possible intruder.
C: No, because the seller ignored the sign, which warned him against proceeding further.
D: No, because the homeowner reasonably feared that intruders would come and harm him or his family.

The explanation for the answer is:

A is correct. The homeowner may not use deadly force, such as explosives, to keep trespassers from entering his property. The homeowner would have had a limited privilege to use direct force, equal to the threat against him, if there was also a threat to the homeowner's own personal safety. The facts do not place the homeowner in any type of jeopardy at all. The result to the seller is therefore an intentional act of battery, which was not privileged. The seller's action in ignoring the sign and the homeowner's motives for planting the charge will not negate his liability for the seller's injury. Therefore, B, C and D are incorrect.

Question 1179 - Torts - Negligence

The question was:

A sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at the shop did not go off because the shop's owner had negligently forgotten to activate the alarm's motion detector.

Shortly thereafter, the inmate used the rifle ammunition stolen from the shop in a shooting spree that caused injury to several people, including the plaintiff.

If the plaintiff sues the shop's owner for the injury she suffered, will the plaintiff prevail?

A: Yes, because the plaintiff's injury could have been prevented had the motion detector been activated.
B: Yes, because the shop's owner was negligent in failing to activate the motion detector.
C: No, because the storage and sale of firearms and ammunition is not an abnormally dangerous activity.
D: No, because there is no evidence of circumstances suggesting a high risk of theft and criminal use of firearms stocked by the shop's owner.

The explanation for the answer is:

D is the correct answer. The commission of a criminal act often supersedes the liability of the original negligent actor. An exception occurs if the negligent act creates a condition such that a criminal act is the foreseeable consequence of that action. The shop owner didn't forget to lock his door; he just forgot to set the alarm on his gun shop. Because there is no evidence that the store is in a high crime area or that theft is common, D is the best answer.

A is incorrect because the store owner did not have a duty to prevent the criminal acts of another unless those criminal acts were foreseeable. B is incorrect because the commission of the criminal act will supersede the store owner's liability. C does not address the appropriate theory of recovery. This is an issue of negligence, not strict liability.

Question 1206 - Torts - Negligence

The question was:

A driver, returning from a long shift at a factory, fell asleep at the wheel and lost control of his car. As a result, his car collided with a police car driven by an officer who was returning to the station after having responded to an emergency. The police officer was injured in the accident. The police officer sued the driver in negligence for her injuries. The driver moved for summary judgment, arguing that the common-law firefighters' rule barred the suit.

Should the court grant the motion?

A: No, because the firefighters' rule does not apply to police officers.
B: No, because the police officer's injuries were not related to any special dangers of her job.
C: Yes, because the accident would not have occurred but for the emergency.
D: Yes, because the police officer was injured on the job.

The explanation for the answer is:

Answer B is correct. The driver could be held liable for his negligence because being struck by a car in normal traffic is not one of the special risks inherent to dangerous police work.

Answer A is incorrect. This answer correctly states that the driver's motion should be denied, but it misstates the legal basis for this conclusion. The firefighters' rule, although named with reference to firefighters, also covers police officers. They, too, are public servants at risk of injury by the perils that they have been employed to confront. Instead, the motion should be denied because being struck by a car in normal traffic is not one of the special risks inherent to dangerous police work.

Answer C is incorrect. But-for causation is not sufficient to support the firefighters' rule defense when the risk that materialized was not one of the unique risks inherent to the officer's dangerous work. The fact that the officer was returning from an emergency when she was struck is just a coincidence. The driver could still be held liable for his negligence because being struck by a car in normal traffic is not one of the special risks inherent in dangerous police work.

Answer D is incorrect. The firefighters' rule only bars claims for injuries that result from risks that are unique or special to the plaintiff's inherently dangerous work. Workers' compensation, not the common law of torts, is the compensation system for on-the-job injuries.

Question 1211 - Torts - Negligence

The question was:

During a comprehensive evaluation of an adult patient's psychiatric condition, the psychiatrist failed to diagnose the patient's suicidal state. One day after the misdiagnosis, the patient committed suicide. The patient's father, immediately after having been told of his son's suicide, suffered severe emotional distress, which resulted in a stroke. The patient's father was not present at his son's appointment with the psychiatrist and did not witness the suicide. The father brought an action against the psychiatrist to recover for his severe emotional distress and the resulting stroke.

Will the father prevail?

A: No, because the father did not sustain a physical impact.
B: No, because the psychiatrist's professional duty did not extend to the harms suffered by the patient's father.
C: Yes, because the father was a member of the patient's immediate family.
D: Yes, because the psychiatrist reasonably could have foreseen that a misdiagnosis would result in the patient's suicide and the resulting emotional distress of the patient's father.

The explanation for the answer is:

Answer B is correct because a medical professional's duty of care extends only to his or her patient. This case is distinguishable from *Tarasoff v. The Regents of California* because, unlike in that case, the patient here posed no threat to others. Considerations of privacy and confidentiality usually lead courts to deny a duty on the part of therapists to non-patients when only the patient himself is at risk.

Answer A is incorrect because the existence of a physical impact, or lack thereof, is irrelevant (physical impact is distinct from the "zone of danger" or physical manifestation requirements of negligent infliction of emotional distress actions). If recovery for emotional distress were permissible in this situation, a showing of physical impact would not be required. Virtually all jurisdictions have rejected the idea that physical contact must be made with the plaintiff in cases involving negligent infliction of emotional distress. Instead, the father will lose because, when a patient does not pose a threat to others, a medical professional's duty of care usually extends only to the patient.

Answer C is incorrect because the fact that the father was a member of the patient's immediate family is irrelevant in this kind of emotional distress case. It might well be relevant in a different sort of case, for example, in a case brought by a bystander who suffers emotional distress upon witnessing a negligently caused injury to a family member or in a case where a psychiatrist might prevent harm to a family member who is threatened by the patient by warning the patient's family. In this case, however, the psychiatrist's duty of care extended only to the patient.

Answer D is incorrect because even if the father's emotional distress is foreseeable, it is not ordinarily sufficient to create a duty to the father, who is not a patient of the doctor. Foreseeability alone, even when the risk is high and the cost of precautions is relatively low, is not enough in negligent infliction of emotional distress cases; the duty is more limited than when physical injury is involved.

Question 1220 - Torts - Negligence

The question was:

A car owner washed her car while it was parked on a public street, in violation of a statute that prohibits the washing of vehicles on public streets during rush hours. The statute was enacted only to expedite the flow of automobile traffic. Due to a sudden and unexpected cold snap, the car owner's waste water formed a puddle that froze. A pedestrian slipped on the frozen puddle and broke her leg. The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the statute. At the conclusion of the proofs, both parties moved for a directed verdict.

How should the trial judge proceed?

A: Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
B: Deny both motions and submit the case to the jury, because the jury may consider the statutory violation as evidence that the car owner was negligent.
C: Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.
D: Grant the pedestrian's motion, because of the car owner's admitted statutory violation.

The explanation for the answer is:

Answer C is correct. To bring a claim for negligence, a plaintiff must show that the defendant owed the plaintiff a duty of care, that the defendant breached that duty of care, that the defendant's breach of that duty of care was the actual and proximate cause of the plaintiff's injuries, and that the plaintiff suffered damages as a result of the defendant's conduct. Here, the pedestrian offered no evidence supporting the claim of negligence except the statute. The defendant's violation of a statute may establish a prima facie case of negligence if the statute was meant to protect from the type of harm that resulted as a consquence of the breach of the statute. Here, the statute does not speak to the risk that materialized in this case--the statute was designed to protect the flow of traffic, not prevent slip-and-fall accidents on the sidewalk. Accordingly, the car owner's motion should be granted.

Answer A is incorrect. Negligence creating the risk of an icy surface cannot be inferred from the mere fact that the car owner allowed the water to accumulate; the cold snap was "sudden and unexpected." Because there is no reasonable inference of negligence and no evidence of negligence (the statute is irrelevant because it does not speak to the risk that materialized in this case), the car owner's motion should be granted.

Answer B is incorrect. The statute was not enacted to reduce the risk of accumulating ice on the public walkways. In fact, complying with the statute by washing the car in a private driveway would not have reduced the risk of accumulating ice on pedestrian walkways and may even have increased that risk. Therefore, violation of the statute says nothing about whether the car owner was negligent. The statute is irrelevant to the cause of action, and because the pedestrian offered no evidence supporting the claim of negligence except the statute, the car owner's motion should be granted.

Answer D is incorrect. In this case, the statute was enacted solely to reduce a particular safety risk (congested traffic lanes) that neither materialized nor caused the pedestrian's injury. In fact, the car owner's motion should be granted, because the pedestrian offered no evidence supporting the claim of negligence except the statute, and the statute does not speak to the risk that materialized in this case.

Question 1228 - Torts - Intentional Torts

The question was:

A host pointed an unloaded revolver at her guest, threatening to shoot him. The guest knew that the revolver was not loaded and that the ammunition for the revolver was stored in a locked basement closet, two stories below where the two were then standing.

In an action brought by the guest against the host for assault, will the guest prevail?

A: No, because the host did not intend to shoot her guest.
B: No, because the host did not put her guest in apprehension of an imminent contact.
C: Yes, because the ammunition was accessible to the host.
D: Yes, because the host threatened her guest with a revolver.

The explanation for the answer is:

Answer B is correct. The tort of assault requires that the plaintiff have an apprehension of an imminent bodily contact. That result did not occur here, because the guest knew that the revolver was not loaded and that the ammunition was in a locked basement closet.

Answer A is incorrect. This answer correctly states that the guest will lose, but it misstates the legal basis for this conclusion. Even though the host did not intend to shoot her guest, she may well have intended to cause the guest to fear being shot. That apprehension, if it had been created, would have been adequate to support the intent of assault.

Answer C is incorrect. Assault requires that the apprehended bodily contact be imminent. It would take the host some time to retrieve the ammunition from a locked closet two floors below, so the guest had no reasonable fear of imminent contact.

Answer D is incorrect. A threat is not enough to support a case for assault unless it actually results in an apprehension of immediate bodily contact. In this case, the guest knew that the revolver was not loaded and that the ammunition was in a locked basement closet, so there was no reasonable fear of imminent contact.

Question 1232 - Torts - Negligence

The question was:

A construction company was digging a trench for a new sewer line in a street in a high-crime neighborhood. During the course of the construction, there had been many thefts of tools and equipment from the construction area. One night, the construction company's employees neglected to place warning lights around the trench. A delivery truck drove into the trench and broke an axle. While the delivery driver was looking for a telephone to summon a tow truck, thieves broke into the delivery truck and stole $350,000 worth of goods. The delivery company sued the construction company to recover for the $350,000 loss and for $1,500 worth of damage to its truck. The construction company stipulated that it was negligent in failing to place warning lights around the trench, and admits liability for damage to the truck, but denies liability for the loss of the goods.

On cross-motions for summary judgment, how should the court rule?

A: Deny both motions, because there is evidence to support a finding that the construction company should have realized that its negligence could create an opportunity for a third party to commit a crime.
B: Grant the construction company's motion, because no one could have foreseen that the failure to place warning lights could result in the loss of a cargo of valuable goods.
C: Grant the construction company's motion, because the criminal acts of third persons were a superseding cause of the loss.
D: Grant the delivery company's motion, because but for the construction company's actions, the goods would not have been stolen.

The explanation for the answer is:

Answer A is correct. A negligent tortfeasor is not generally liable for the criminal acts of third parties made possible by his negligence, but there is an exception when the tortfeasor should have realized the likelihood of the crime at the time of his negligence. The issue of foreseeability is generally a question for the jury. In this case, there had been many thefts from the construction area during the course of construction. Accordingly, there was enough evidence to support a jury verdict for the plaintiff, but it was not so overwhelming as to require the judge to take the rare step of granting summary judgment for the plaintiff.

Answer B is incorrect. The issue of foreseeability is generally a question for the jury. In this case, there had been many thefts from the construction area during the course of construction. The jury should be asked to consider whether the failure to place warning lights could foreseeably create a situation in which a damaged vehicle would be left vulnerable to theft.

Answer C is incorrect. While a negligent tortfeasor is not generally liable for the criminal acts of third parties made possible by his negligence, there is an exception when the tortfeasor should have realized the likelihood of the crime at the time of his negligence. In this case, there had been many thefts from the construction area during the course of construction, and the foreseeability of the theft from the truck is a question for the jury.

Answer D is incorrect. Even a negligent tortfeasor is not liable for the criminal acts of third parties made possible by his negligence unless he should have realized the likelihood of such a crime at the time of his negligence. Therefore, there remains a jury question as to whether the pattern of past thefts from the construction site made the theft of the goods from the delivery truck foreseeable.

Question 1253 - Torts - Products Liability

The question was:

A dentist was anesthetizing a patient's gum before pulling a tooth. Although the dentist used due care, the hypodermic needle broke off in the patient's gum, causing injury. The needle broke because of a manufacturing defect that the dentist could not have detected.

Is the patient likely to recover damages in an action against the dentist based on strict products liability and malpractice?

A: No, on neither basis.
B: Yes, based on malpractice, but not on strict products liability.
C: Yes, based on strict products liability, but not on malpractice.
D: Yes, on both bases.

The explanation for the answer is:

Answer A is correct. To succeed on a claim for strict products liability, the plaintiff must establish the defendant owed a strict duty as a commercial supplier, that the product created or sold was defective, causation, and damage. Here, the strict products liability suit would fail because the dentist was not in the business of selling the product, and thus he is not a commercial supplier of the needles. Rather, he is a service provider. The malpractice suit would fail because the plaintiff could not establish that the defendant departed from the professional standard of care. Thus, answer A is correct and answer B is incorrect.

Answer C is incorrect. The dentist is not in the business of selling needles. He is a service provider. Therefore, he would not be an appropriate defendant in a suit for strict products liability. In fact, the patient cannot recover against the dentist based on either strict products liability or malpractice.

Answer D is incorrect. The patient cannot recover on the basis of products liability because the dentist is not in the business of selling needles. He is a service provider. Therefore, he would not be an appropriate defendant in a suit for strict products liability. In addition, the patient cannot recover on the basis of malpractice because there is no evidence (nor could there be on these facts) that the dentist departed from a professional standard of care. In fact, the patient cannot recover against the dentist on either basis.

Question 1259 - Torts - Negligence

The question was:

In a civil action, the plaintiff sued a decedent's estate to recover damages for the injuries she suffered in a collision between her car and one driven by the decedent. At trial, the plaintiff introduced undisputed evidence that the decedent's car swerved across the median of the highway, where it collided with an oncoming car driven by the plaintiff. The decedent's estate introduced undisputed evidence that, prior to the car's crossing the median, the decedent suffered a fatal heart attack, which she had no reason to foresee, and that, prior to the heart attack, the decedent had been driving at a reasonable speed and in a reasonable manner. A statute makes it a traffic offense to cross the median of a highway.

In this case, for whom should the court render judgment?

A: The decedent's estate, because its evidence is undisputed.
B: The decedent's estate, because the plaintiff has not established a prima facie case of liability.
C: The plaintiff, because the accident was of a type that does not ordinarily happen in the absence of negligence on the actor's part.
D: The plaintiff, because the decedent crossed the median in violation of the statute.

The explanation for the answer is:

Answer A is correct. The plaintiff's evidence that the decedent violated the statute and crossed over into her lane of traffic does establish a prima facie case of negligence. However, the prima facie case of negligence may be rebutted by showing that compliance with the statute was beyond the defendant's control. Here, the decedent's estate successfully rebutted the plaintiff's evidence by providing an undisputed explanation of how the accident happened that is inconsistent with a finding of negligence (the decedent's unforeseeable heart attack made her unable to comply with the statute, or indeed with any standard of care).

Answer B is incorrect. This answer correctly states that the decedent's estate will prevail, but it misstates the legal basis for this conclusion. As explained above, the decedent's estate successfully rebutted the plaintiff's prima facie case of negligence by providing an uncontested explanation of how the accident happened that is inconsistent with a finding of negligence (the decedent's unforeseeable heart attack made her unable to comply with the statute, or indeed with any standard of care).

Answer C is incorrect. It may or may not be true that accidents of this type do not ordinarily happen in the absence of negligence, but that is beside the point. As explained above, the decedent's estate successfully rebutted the plaintiff's prima facie case of negligence by providing an uncontested explanation of how the accident happened that is inconsistent with a finding of negligence (the decedent's unforeseeable heart attack made her unable to comply with the statute, or indeed with any standard of care).

Answer D is incorrect. As explained above, the decedent's estate successfully rebutted the plaintiff's prima facie case of negligence by providing an uncontested explanation of how the accident happened that is inconsistent with a finding of negligence (the decedent's unforeseeable heart attack made her unable to comply with the statute, or indeed with any standard of care).

Question 1263 - Torts - Intentional Torts

The question was:

A bus passenger was seated next to a woman whom he did not know. The woman stood to exit the bus, leaving a package on the seat. The passenger lightly tapped the woman on the back to get her attention and to inform her that she had forgotten the package. Because the woman had recently had back surgery, the tap was painful and caused her to twist and seriously injure her back.

If the woman sues the passenger to recover for the back injury, will she prevail?

A: No, because she is presumed to have consented to the ordinary contacts of daily life.
B: No, because she was not put in apprehension because of the touching.
C: Yes, because the passenger intentionally touched her.
D: Yes, because the passenger's intentional touching seriously injured her.

The explanation for the answer is:

Answer A is correct. The woman gave no indication that she did not want to be subjected to the ordinary touches that are part of life in a crowded society. In the absence of such an indication from her, the passenger was entitled to believe that she implicitly consented to a light tap to get her attention. The passenger's touch was neither unreasonable nor inconsistent with ordinary social norms privileging such contacts, and would not amount to offensive or harmful contact sufficient to give rise to a claim for battery.

Answer B is incorrect. This answer correctly states that the woman cannot prevail, but it misstates the legal basis for this conclusion. It is true that the woman would have to prove that she thought that she was about to be touched in order to recover in an action for assault. But the elements of a negligence or a battery action could be established without any reference to whether she had an apprehension of this or contact of any other sort. The reason she cannot recover, despite being seriously injured, is because she gave no indication that she did not want to be subjected to the ordinary touches that are part of life in a crowded society. The passenger's touch was neither unreasonable nor inconsistent with ordinary social norms privileging such contacts.

Answer C is incorrect. People are presumed to have consented to the ordinary contacts of daily life. Although the passenger intended to touch the woman, he did not intend a harmful or offensive touching, and the woman gave no indication that she did not want to be subjected to the ordinary touches that are part of life in a crowded society. The touch was neither unreasonable nor inconsistent with ordinary social norms privileging such contacts.

Answer D is incorrect. Serious injury is neither necessary nor sufficient to support either battery or negligence, although some damage would be required to recover in negligence. Here, although the woman was seriously injured, she will not prevail because she gave no indication that she did not want to be subjected to the ordinary touches that are part of life in a crowded society. The passenger's touch was neither unreasonable nor inconsistent with ordinary social norms privileging such contacts.

Question 1267 - Torts - Products Liability

The question was:

A consumer became physically ill after drinking part of a bottle of soda that contained a large decomposed snail. The consumer sued the store from which she bought the soda to recover damages for her injuries. The parties agreed that the snail was put into the bottle during the bottling process, over which the store had no control. The parties also agreed that the snail would have been visible in the bottle before the consumer opened it.

Will the consumer prevail in her action against the store?

A: No, because the consumer could have seen the snail in the bottle.
B: No, because the store was not responsible for the bottling process.
C: Yes, because the consumer was injured by a defective product sold to her by the store.
D: Yes, because the store had exclusive control over the bottle before selling it to the consumer.

The explanation for the answer is:

Answer C is correct. The seller of a product with a manufacturing defect that is dangerous to the health of a consumer is strictly liable for the injuries it causes. Thus, answer C is correct. Furthermore, because the store sold the bottle in a defective condition to the consumer, it can be held strictly liable even though it did not bottle the soda. Thus, answer B is incorrect. Also, there is nothing to indicate that the consumer actually saw the snail, and contributory negligence, if any, is no defense to a strict products liability action. Thus, answer A is incorrect.

Answer D is incorrect. This answer correctly states that the consumer will prevail, but it misstates the legal basis for this conclusion. Liability is not based on exclusive control but on the sale to the consumer. In fact, the store did not have exclusive control over the bottle. Res ipsa loquitur is neither necessary nor appropriate here; if anyone was negligent, it was the bottler. Nevertheless, the store will be liable because the seller of a product with a manufacturing defect that is dangerous to the health of a consumer is strictly liable for the injuries it causes.

Question 1272 - Torts - Negligence

The question was:

A four-year-old child sustained serious injuries when a playmate pushed him from between two parked cars into the street, where he was struck by a car. The child, by his representative, sued the driver of the car, the playmate's parents, and his own parents. At trial, the child's total injuries were determined to be $100,000. The playmate's parents were determined to be 20% at fault because they had failed to adequately supervise her. The driver was found to be 50% at fault. The child's own parents were determined to be 30% at fault for failure to adequately supervise him. The court has adopted the pure comparative negligence doctrine, with joint and several liability, in place of the common-law rules relating to plaintiff's fault. In addition, the common-law doctrines relating to intra-family liability have been abrogated.

How much, if anything, is the child's representative entitled to recover from the driver?

A: $30,000.
B: $50,000.
C: $100,000.
D: Nothing.

The explanation for the answer is:

Answer C is correct. Under joint and several liability, the entire amount can be collected from any one of the defendants. That defendant, in turn, can seek to recover a proportional share of the damages from the other defendants. Thus, the child's representative will be able to collect the full $100,000 from the driver.

Answer A is incorrect. This might be correct under a pro rata allocation of damages, but it is not correct under comparative negligence with joint and several liability.

Answer B is incorrect. This would be correct if liability were only several, rather than joint and several.

Answer D is incorrect. This might be the rule under a traditional contributory negligence regime where the negligence of the parent is imputed to the child and bars all recovery, but it is not the approach under comparative negligence with joint and several liability.

Question 1283 - Torts - Negligence

The question was:

A customer fell and injured himself when he slipped on a banana peel while shopping at a grocer's store. The banana peel was fresh and clean except for a mark made by the heel of the customer's shoe. In an action brought by the customer against the grocer, these are the only facts in evidence.

Should the trial judge permit the case to go to the jury?

A: No, because the customer had an obligation to watch where he stepped.
B: No, because there is not a reasonable basis for inferring that the grocer knew or should have known of the banana peel.
C: Yes, because it is more likely than not that the peel came from a banana offered for sale by the grocer.
D: Yes, because the grocer could foresee that a customer might slip on a banana peel.

The explanation for the answer is:

Answer B is correct. Unlike slip-and-fall cases in which res ipsa loquitur is appropriate, the condition of the banana peel does not indicate that it has been on the ground for any significant period of time. Therefore, there is not enough evidence to support a jury verdict that the store staff was negligent in failing to remove it before the customer's fall.

Answer A is incorrect. This answer correctly states that the judge should not let the case go to the jury, but it misstates the legal basis for this conclusion. In slip-and-fall cases, even if a customer was negligent, he could recover some of his damages under a system of pure comparative negligence if a jury determines that the grocer was also negligent. The case at issue, however, should not go to the jury, because there is no evidence to support a finding of negligence on the part of store staff, as explained above.

Answer C is incorrect. Strict products liability is not applicable here because the banana was not defective. Moreover, the case at issue should not go to the jury, because there is no evidence to support a finding of negligence on the part of store staff. The fact that the peel came from a banana offered for sale by the grocer is not evidence of negligence. Unlike cases in which res ipsa loquitur is appropriate, the condition of the banana in the present case indicates that it had not been on the floor for a significant amount of time. Therefore, there is not enough evidence to support a jury verdict that the store staff was negligent in failing to remove it before the customer's fall.

Answer D is incorrect. Foreseeability alone is not sufficient to establish that the grocer was negligent. The plaintiff must also offer evidence that the grocer fell below the standard of care, i.e., that he failed to adopt the precautions that a reasonably prudent person in his situation would adopt to avoid the foreseeable risk. There is no such evidence here. Moreover, unlike cases in which res ipsa loquitur is appropriate, the condition of the banana in the present case indicates that it had not been on the floor for a significant amount of time. Therefore, there is not enough evidence to support a jury verdict that the store staff was negligent in failing to remove it before the customer's fall.

Question 1288 - Torts - Intentional Torts

The question was:

A law student rented a furnished apartment. His landlord began to solicit his advice about her legal affairs, but he refused to provide it. The landlord then demanded that he vacate the apartment immediately. The landlord also engaged in a pattern of harassment, calling the student at home every evening and entering his apartment without his consent during times when he was at school. During these unauthorized visits she removed the handles from the bathroom and kitchen sinks, but did not touch anything belonging to the student. The lease has a year to run, and the student is still living in the apartment. The student has sued the landlord for trespass to land.

Is he likely to prevail?

A: No, because he has no standing to sue for trespass.
B: No, because the landlord caused no damage to his property.
C: Yes, for compensatory damages only.
D: Yes, for injunctive relief, compensatory damages, and punitive damages.

The explanation for the answer is:

D is correct. The student is in legal possession of the apartment and thus has an interest that can be vindicated in a trespass action. Under these facts demonstrating a pattern of ongoing malicious behavior, the law student is unlikely to be limited to compensatory damages. In addition to compensatory damages for emotional distress and the removal of the faucets, the student is entitled to punitive damages (demonstrated by the landlord's malicious intent and ill will). Because the lease is still in effect and the trespasses are repeated and ongoing, injunctive relief should also be available. Thus, answer D is correct, and answers A, B, and C are incorrect.

Question 1293 - Torts - Negligence

The question was:

A bright nine-year-old child attended a day care center after school. The day care center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice skating when conditions were suitable. At a time when the pond was only partially frozen, the child sneaked away from the center and walked out onto the ice covering the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby. At the time of the incident, the pond was clearly marked with signs that stated, "THIN ICE - NO SKATING." When the child left the day care center, the center was staffed with a reasonable number of qualified personnel, and the center's employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. The jurisdiction follows a rule of pure comparative negligence.

In a suit brought on the child's behalf against the corporation, who is likely to prevail?

A: The child, because the corporation owes a duty to keep its premises free of dangerous conditions.
B: The child, because the pond was an attractive nuisance.
C: The corporation, because the danger of thin ice may reasonably be expected to be understood by a nine-year-old child.
D: The corporation, because the day care center had a duty to keep the child off the ice.

The explanation for the answer is:

Answer C is correct. This is not a case in which the trespasser failed to appreciate the risk. The obviousness of the risk was buttressed by a warning sign written in words that a "bright nine-year-old child" should be able to read and understand.

Answer A is incorrect. The duty of a landowner for dangerous artificial conditions exists only where the owner has reason to know that trespassers are in dangerous proximity to the condition and that they are unlikely to appreciate the risk. Even then, the duty is only to exercise reasonable care to warn trespassers of the danger, which was done here. The corporation will prevail because the obviousness of the risk, buttressed by a warning sign, would have been appreciated by a "bright nine-year-old child."

Answer B is incorrect. For a condition on land to be considered an attractive nuisance, there must be evidence that the possessor has reason to know that children are likely to trespass, as well as evidence that the plaintiff did not appreciate the risk involved. No such evidence is mentioned in the facts; there is no suggestion that children often stray from the day care center. The corporation will prevail because the obviousness of the risk, buttressed by a warning sign, would have been appreciated by a "bright nine-year-old child."

Answer D is incorrect. This answer correctly states that the corporation will prevail, but it misstates the legal basis for this conclusion. Even if the day care center had a duty to keep children from the ice, the corporation could also be liable if it was negligent. The reason the corporation will prevail is because the obviousness of the risk, buttressed by a warning sign, would have been appreciated by a "bright nine-year-old child."

Question 1305 - Torts - Intentional Torts

The question was:

A smoker and a nonsmoker were seated at adjoining tables in a small restaurant. The smoker's table was in the smoking section, and the nonsmoker's table was in the nonsmoking section. When the smoker lit a cigarette, the nonsmoker politely requested that he not smoke, explaining that she had a severe allergy to cigarette smoke. The smoker ignored the nonsmoker's request and continued to smoke. As a result, the nonsmoker was hospitalized with a severe allergic reaction to the smoke.

The nonsmoker brought a battery action against the smoker.

Which of the following questions will NOT be an issue in the battery action?

A: Did the smoker intend to cause the nonsmoker's contact with the cigarette smoke?
B: Does smoke have the physical properties necessary for making the kind of contact required for battery?
C: Is contact with cigarette smoke from a lawful smoking section in a restaurant the kind of contact one must endure as a voluntary restaurant patron?
D: Was the smoker's conduct unreasonable under the circumstances?

The explanation for the answer is:

Answer D is correct. Whether the defendant's conduct was reasonable under the circumstances is irrelevant if in fact the defendant intended to make a harmful or offensive contact with the plaintiff. It would be relevant in a negligence action, but not in a battery action.

Answer A is incorrect. The plaintiff in a battery action must establish that the defendant intended to inflict a contact on the plaintiff.

Answer B is incorrect. The plaintiff in a battery action must establish that some sort of bodily contact occurred. It is debatable whether smoke is sufficiently physical to create the necessary touching.

Answer C is incorrect. The defendant may argue that the legislative determination to allow restaurants to retain some space where patrons may smoke is evidence that this sort of touching is not offensive in context.

Question 1311 - Torts - Strict Liability

The question was:

Under the Federal Tort Claims Act, with certain exceptions not relevant here, the federal government is liable only for negligence. A federally owned and operated nuclear reactor emitted substantial quantities of radioactive matter that settled on a nearby dairy farm, killing the dairy herd and contaminating the soil. At the trial of an action brought against the federal government by the farm's owner, the trier of fact found that the nuclear plant had a sound design, but that a valve made by the Acme Engineering Company had malfunctioned and allowed the radioactive matter to escape, that Acme Engineering Company is universally regarded as a quality manufacturer of components for nuclear plants, and that there was no way the federal government could have anticipated or prevented the emission of the radioactive matter.

If there is no other applicable statute, for whom should the trial judge enter judgment?

A: The plaintiff, on the ground that the doctrine of res ipsa loquitur applies.
B: The plaintiff, on the ground that one who allows dangerous material to escape to the property of another is liable for the damage done.
C: The defendant, on the ground that a case under the Federal Tort Claims Act has not been proved.
D: The defendant, on the ground that the Acme Engineering Company is the proximate cause of the owner's damage.

The explanation for the answer is:

Answer C is correct. The trier of fact has found no evidence of negligence on the part of the defendant. The defendant selected a reliable manufacturer for the component part and could not have anticipated or prevented the malfunction. The court should therefore enter judgment for the defendant, on the ground that a case under the Federal Tort Claims Act has not been proved.

Answer A is incorrect. Res ipsa loquitur applies only to situations in which a lay jury could say that the accident would not ordinarily occur in the absence of the defendant's negligence. This is not such a situation because it involves complex machinery beyond the ordinary experience of a lay jury. Also, another potential defendant is involved, and the findings of the jury are inconsistent with a conclusion that this is the sort of accident that would not ordinarily occur in the absence of the government's negligence.

Answer B is incorrect. This is the principle of *Rylands v. Fletcher*, a case based on strict liability rather than on negligence, and the Federal Tort Claims Act only permits actions based on negligence. *See Rylands v. Fletcher*, [1868] All E.R. 1.

Answer D is incorrect. Proximate cause is necessary to establish liability in negligence, but it is not sufficient. Given the findings of the trier of fact, the plaintiff has not established breach of a duty by the defendant.

Question 1319 - Torts - Negligence

The question was:

The owner of a shopping mall hired a construction company to design and construct the entryway to the mall. The construction company negligently selected an unusually slippery material for the floor covering. A customer at the mall slipped on the floor of the entryway, sustaining injuries. The customer sued the mall owner for the construction company's negligent design of the mall's entryway.

At trial the following facts were established: the construction company was an independent contractor, no customers had previously slipped on the floor, the customer intended to make a purchase at the mall and the mall's duty to maintain safe conditions was nondelegable.

Given these findings, will the injured customer recover damages?

A: No, because the construction company was an independent contractor.
B: No, because no customers had previously slipped on the floor.
C: Yes, because the customer intended to make a purchase at the mall.
D: Yes, because the mall's duty to maintain safe conditions was nondelegable.

The explanation for the answer is:

Answer D is correct. Although employers are not usually liable for the negligence of independent contractors, there are limits on the ability of employers to circumvent liability in this way. Work in public places often gives rise to a nondelegable duty on the part of the landowner. Here, the mall's duty to maintain safe conditions is nondelegable, so the mall--not the independent contractors--will be liable for the customer's injuries. Thus, Answer D is correct.

Answer A is incorrect because, as stated above, the fact that the construction company was an independent contractor will not shield the mall from liability because the mall had a nondelegable duty to maintain safe conditions while work was being performed in a public place.

Answer B is incorrect. Proof that prior accidents have occurred is neither necessary nor sufficient to establish negligence or the existence of a nondelegable duty.

Answer C is incorrect. The status of the injured plaintiff is irrelevant to whether the duty is nondelegable. Also, when a business is open to the public generally, members of the public are typically treated as invitees whether or not they intend to make a purchase on any particular visit.

Question 1324 - Torts - Negligence

The question was:

A hiker sustained a head injury when he was struck by a limb that fell from a tree. At the time of his injury, the hiker was walking through a forest on private property without the property owner's knowledge or permission. It was determined that the limb fell because the tree was infested with termites.

In an action by the hiker against the property owner to recover for his head injury, will the hiker prevail?

A: No, because the property owner could not foresee that anyone would be injured.
B: No, because the property owner breached no duty to the hiker, who was a trespasser.
C: Yes, because the property owner had a duty to prevent the trees on his property from becoming dangerous.
D: Yes, because the property owner is liable for hidden dangers on his property.

The explanation for the answer is:

Answer B is correct. A possessor of land is not required to exercise reasonable care to make his land safe for undiscovered trespassers. Here, there are no facts that indicate the owner knew or had reason to know of the trespasser's presence on the property. Therefore, the owner owed no duty to the trespasser to make his land safe. Thus, Answer B is correct, and Answer C is incorrect.

Answer A is incorrect. Nothing in the fact situation suggests that the weakness of the limb could not have been discovered by the exercise of reasonable care. If the property owner had owed a duty to take reasonable care to protect the hiker, he might have been required to make regular inspections of the conditions on his land.

Answer D is incorrect. A property owner is liable only for artificial conditions highly dangerous to trespassers and only when he knows about the trespasser or has some reason to anticipate the trespasser's presence. Restatement (Second) of Torts §§ 334-336.

Question 1330 - Torts - Other Torts

The question was:

A cigarette maker created and published a magazine advertisement that featured a model dressed as a race-car driver standing in front of a distinctive race car. In fact, the car looked almost exactly like the very unusually marked one driven by a famous and popular driver. The driver in the ad was not identified, and his face was not shown in the advertisement. The cigarette maker published the advertisement without obtaining the famous driver's permission. The race-car driver sued the cigarette maker for economic loss only, based on common law misappropriation of the right of publicity. The cigarette maker moved to dismiss the complaint.

Will the cigarette maker's motion to dismiss the complaint be granted?

A: No, because there are sufficient indicia of the driver's identity to support a verdict of liability.
B: Yes, because the driver is a public figure.
C: Yes, because there was no mention of the driver's name in the ad.
D: Yes, because the driver did not claim any emotional or dignitary loss.

The explanation for the answer is:

Answer A is correct. A common law right of publicity can be violated when an advertisement, viewed as a whole, leaves little doubt that the ad is intended to depict a specific celebrity who has not consented to the use of his identity. Here, the cigarette maker's motion to dismiss should be denied. The facts tend to indicate a misappropriation of the driver's identity. Thus, Answer A is correct.

Answer B is incorrect. The fact that a celebrity is a "public figure" is irrelevant to whether he is owed compensation for the use of his identity. In fact, his celebrity may increase the value of the identity that has been misappropriated.

Answer C is incorrect. The person whose identity has been misappropriated need not be identified by name so long as it is clear that the ad is meant to depict that person.

Answer D is incorrect. The injury in a right of publicity case is based on the commercial exploitation of someone's name or likeness. The plaintiff need not prove that he or she suffered any emotional or dignitary loss.

Question 1335 - Torts - Strict Liability

The question was:

A manufacturing plant located near a busy highway uses and stores highly volatile explosives. The owner of the plant has imposed strict safety measures to prevent an explosion at the plant. During an unusually heavy windstorm, a large tile was blown off the roof of the plant and crashed into the windshield of a passing car, damaging it. The driver of the car brought a strict liability action against the owner of the plant to recover for the damage to the car's windshield.

Is the driver likely to prevail?

A: No, because the damage to the windshield did not result from the abnormally dangerous aspect of the plant's activity.
B: No, because the severity of the windstorm was unusual.
C: Yes, because the plant's activity was abnormally dangerous.
D: Yes, because the plant's location near a busy highway was abnormally dangerous.

The explanation for the answer is:

Answer A is correct. Although the manufacture of explosives may be an abnormally dangerous activity, strict liability for injuries caused by such activities is limited to the kind of harm that makes the activity abnormally dangerous. This accident could have occurred when a roof tile fell from a building that housed a perfectly safe and ordinary activity. The owner may, however, be liable for negligence. Thus, Answer A is correct and Answer C is incorrect.

Answer B is incorrect. The fact that the windstorm was unusually severe may be relevant to whether the owner took reasonable precautions to prevent the accident, but it is not relevant to a claim of strict liability where the risk that materialized was not of the sort that makes the activity abnormally dangerous.

Answer D is incorrect. Strict liability is based on the abnormally dangerous nature of the activity and is limited to the realization of the kind of harm that makes the activity abnormally dangerous. The inappropriateness of the activity to the place where it is carried on may be one factor in deciding whether the activity is abnormally dangerous, but it is not the only factor, and in this case, the harm that occurred was not related to the dangerous nature of the explosives plant.

Question 1342 - Torts - Products Liability

The question was:

A consumer bought an electric kitchen blender from the manufacturer. Soon after the purchase, the consumer was using the blender in an appropriate way when the blender jar shattered, throwing a piece of glass into the consumer's eye.

The consumer brought an action against the manufacturer based solely on strict product liability. The consumer's expert testified that the blender was defectively designed. However, because the blender jar was destroyed in the accident, the expert could not determine whether the accident was caused by the design defect or a manufacturing defect. The manufacturer's expert testified that the blender was not defective.

If, at the conclusion of the evidence, both parties move for directed verdicts, how should the trial judge rule?

A: Direct a verdict for the manufacturer, because the consumer's expert was unable to specify the nature of the defect.
B: Direct a verdict for the manufacturer, because the consumer's action was brought solely on a strict liability theory.
C: Direct a verdict for the consumer, because the blender was new when the jar shattered.
D: Deny both motions and send the case to the jury, because a jury reasonably could conclude that the harm probably was caused by a defect present in the product when it was sold.

The explanation for the answer is:

Answer D is correct. A jury could conclude that the blender was defective at the time of sale because the accident is the sort of accident that ordinarily occurs as a result of a defect and no other cause was identified, but the jury is not required to draw that conclusion. Thus, Answer D is correct and Answer A is incorrect.

Answer B is incorrect. A jury could conclude that the blender was defective at the time of sale, and such a conclusion would support a claim based on strict product liability.

Answer C is incorrect. The jury may conclude that the blender was defective at the time of sale based on the circumstantial evidence presented, but it is not required to draw that conclusion.

Question 1346 - Torts - Negligence

The question was:

A driver negligently ran over a pedestrian. A bystander witnessed the accident from across the street. The bystander ran to the pedestrian, whom he did not know, and administered first aid, but the pedestrian died in the bystander's arms. The bystander suffered serious emotional distress as a result of his failure to save the pedestrian's life, but he experienced no resulting physical manifestations. The bystander brought a negligence action against the driver.

Is the bystander likely to prevail?

A: No, because the bystander assumed the risk.
B: No, because the bystander had no familial or other preexisting relationship with the pedestrian.
C: Yes, because danger invites rescue.
D: Yes, because the bystander was in the zone of danger.

The explanation for the answer is:

Answer B is correct. Individuals have a duty to avoid causing emotional distress in others. That duty is breached when the defendant creates a foreseeable risk of physical injury to the plaintiff. The risk of physical injury is created either by (i) causing a threat of physical impact that leads to emotional distress or (ii) directly causing severe emotional distress that by itself is likely to result in physical symptoms.

Normally, a plaintiff can recover only if the defendant's conduct caused a physical injury to the plaintiff. If the plaintiff's distress is caused by threat of physical impact (i.e., if the plaintiff is in the "zone of danger" created by the defendant's conduct), most courts require that the threat be directed at the plaintiff or someone in his immediate presence. On the contrary, a bystander outside the "zone of danger" of physical injury who sees the defendant negligently injuring another cannot recover damages for her own distress. However, some states will allow a bystander to recover based on foreseeability factors rather than a "zone of danger" theory if (i) the plaintiff and the person injury by the defendant are closely related, (ii) if the plaintiff was present at the scene, and (iii) if the plaintiff observed or perceived the injury. Therefore, Answer B is correct because even states that allow witnesses who are not in the zone of danger to recover for the emotional distress of observing an accident limit recovery to witnesses who are closely related to the injured person.

Answer A is incorrect. One who negligently injures another is liable to rescuers even when the rescuer voluntarily comes to the aid of the injured person.

Answer C is incorrect. One who negligently injures another is liable to rescuers who are physically injured in the course of the rescue, but pure emotional distress is not usually recoverable in a negligence action in the absence of physical harm or a close relationship with the injured person.

Answer D is incorrect. The bystander observed the accident from across the street. He was not in the path of the car so was not in the zone of danger.

Question 1359 - Torts - Other Torts

The question was:

A recently established law school constructed its building in a quiet residential neighborhood. The law school had obtained all of the necessary municipal permits for the construction of the building, which included a large clock tower whose clock chimed every hour. The chimes disturbed only one homeowner in the neighborhood, who had purchased her house prior to the construction of the building. The homeowner was abnormally sensitive to ringing sounds, such as bells and sirens, and found the chimes to be extremely annoying.

In a nuisance action by the homeowner against the law school, will the homeowner prevail?

A: Yes, because the chimes interfere with the homeowner's use and enjoyment of her property.
B: Yes, because the homeowner purchased her house prior to the construction of the building.
C: No, because the chimes do not disturb the other residents of the neighborhood.
D: No, because the law school had the requisite municipal permits to erect the clock tower.

The explanation for the answer is:

Answer C is correct. Private nuisance is a substantial, unreasonable interference with another's use or enjoyment of property. The person claiming nuisance must actually possess, or have a right of immediate possession to, the property. A substantial interference is an interference that is offensive or annoying to the average person in the community--the plaintiff's hypersensitivities are irrelevant. An unreasonable interference is an interference where the severity of the inflicted injury outweighs the utility of the defendant's conduct.

Answer A is incorrect. The interference with the homeowner's use and enjoyment of her property must be substantial and unreasonable. It is not enough that the chimes interfered with the homeowner's use and enjoyment of the property.

Answer B is incorrect. Priority in time may be a factor in determining the character of a neighborhood, but it is not determinative of whether an invasion is a nuisance.

Answer C is correct. Whether an invasion constitutes a nuisance turns on whether it causes significant harm of a kind that would be suffered by a normal member of the community. Here, the plaintiff is hypersensitive to the chimes. However, no other members of the community are bothered by the noise, and thus, the chimes are not a nuisance.

Answer D is incorrect. Compliance with government requirements is not a defense to a claim of private nuisance.

Question 1365 - Torts - Products Liability

The question was:

A company manufactured metal stamping presses that were usually sold with an installed safety device that made it impossible for a press to close on a worker's hands. The company strongly recommended that its presses be purchased with the safety device installed, but would sell a press without the safety device at a slightly reduced price.

Rejecting the company's advice, a worker's employer purchased a stamping press without the safety device. The press closed on the worker's hand, crushing it.

In an action brought by the worker against the company, will the worker prevail?

A: Yes, because the company's press was the cause in fact of the worker's injury.
B: Yes, because the company sold the press to the worker's employer without an installed safety device.
C: No, because the failure of the worker's employer to purchase the press with a safety device was a superseding intervening cause of the worker's injury.
D: No, because the company strongly recommended that the worker's employer purchase the press with the safety device.

The explanation for the answer is:

Answer B is correct. Products liability may be based on a design defect in the product. A product is defective if it fails to include a feasible safety device that would prevent injuries foreseeably incurred in ordinary use. Here, there was a feasible safety device that would have prevented the worker's injury. The company sold two kinds of presses--one with a safety device and another without the safety device. The model without the safety device was sold at a slightly reduced price, indicating that it was feasible to include the safety device for a small price. Furthermore, the safety device would have prevented the injury to the worker's hand. Accordingly, the product was defective because it was sold without a safety device.

Answer A is incorrect. The worker must prove more than the fact that the company's press was the cause in fact of the injury. The worker must also prove that the press was either negligently made or defective in order to recover from its manufacturer. *See* Restatement (Second) of Torts § 281; Restatement (Third) (Products Liability) § 1.

Answer C is incorrect. The possibility that an employer would purchase the press without a safety device in order to save money is not only foreseeable but known to have occurred here, and it is precisely this possibility that should lead the manufacturer to install a safety device that cannot be removed.

Answer D is incorrect. Where it is feasible to install a safety device, a manufacturer does not fulfill its obligation to make a safe product by warning the purchaser that the product is unsafe.

Question 1367 - Torts - Negligence

The question was:

While driving his open-bed truck with a friend in the open bed, the driver swerved, throwing his friend to the pavement. The friend sustained severe injuries. The friend had often ridden in the open bed of the driver's truck, and on some of those occasions the driver had swerved to frighten his friend. The friend sued the driver to recover both compensatory damages for his injuries and punitive damages.

Which cause of action would NOT permit the friend to recover punitive damages?

A: Assault.
B: Battery.
C: Negligence.
D: Recklessness.

The explanation for the answer is:

Answer C is correct. Punitive damages are available to victims of intentional torts. Punitive damages are not available in ordinary negligence cases. Thus, Answer C is correct--punitive damages are not available in an ordinary negligence case. Answers A and B are incorrect because they are both causes of action based on intentional torts. Answer D is incorrect because punitive damages may be available to victims of reckless conduct.

Question 1375 - Torts - Intentional Torts

The question was:

In a plaintiff's action for battery, the evidence established that the plaintiff was bad-tempered and, the defendant knew, carried a gun and used it often; that the plaintiff struck the defendant first; that during the altercation, the plaintiff repeatedly tried to get to his gun; and that the blows inflicted upon the plaintiff by the defendant resulted in the plaintiff being hospitalized.

Which finding of fact would be most likely to result in a verdict for the defendant?

A: The defendant used no more force than he actually believed was necessary to protect himself against death or serious bodily harm.
B: The defendant used no more force than he reasonably believed was necessary to protect himself against death or serious bodily harm.
C: The defendant, in fact, feared death or serious bodily harm.
D: The defendant was justified in retaliating against the plaintiff because the plaintiff struck the first blow.

The explanation for the answer is:

Answer B is correct. The privilege of self-defense permits the use of force when a person reasonably believes that he or she is being, or is about to be, attacked by another. In such cases, a person may use such force as is reasonably necessary given the threat posed by the plaintiff. *See* Restatement (Second) of Torts § 63(1). Thus, Answer B is correct and Answer A is incorrect.

Answer C is incorrect. Actual fear is insufficient to support the privilege of self-defense. The defendant is privileged to use only that force which is objectively reasonable given the threat. *See* Restatement (Second) of Torts § 63(1).

Answer D is incorrect. The privilege of self-defense does not permit retaliation or revenge, but only the use of force reasonably believed necessary to prevent further attacks. *See* Restatement (Second) of Torts § 63 & cmt. g.

Question 1383 - Torts - Intentional Torts

The question was:

A man owned a much-loved cat, worth about $25, that frequently trespassed on a neighbor's property. The neighbor repeatedly asked the man to keep the cat on his own property, but the trespasses did not diminish. Aware of the man's attachment to the cat, the neighbor killed the cat with a shotgun in full view of the man. As a consequence, the man suffered great emotional distress.

In an action by the man against the neighbor, which of the following claims would be likely to result in the greatest monetary recovery?

A: Battery.
B: Intentional infliction of mental suffering.
C: Trespass to a chattel.
D: Conversion.

The explanation for the answer is:

The tort of intentional infliction of mental suffering or emotional distress allows recovery for personal injury despite the absence of physical injury or touching. The prima facie elements of a claim for the intentional infliction of emotional distress are (i) an act by the defendant constituting extreme and outrageous conduct, (ii) intent or recklessness by the defendant, (iii) causation, and (iv) damages amounting to severe emotional distress. On these facts, the neighbor was aware that his conduct would cause severe emotional distress, and he could be asked to compensate the man for the man's emotional suffering, as well as for the value of the cat. Thus, Answer B is correct.

Answer A is incorrect. The neighbor did not touch the man, so the neighbor is not liable for battery.

Answer C is incorrect. Trespass to chattels provides an action for intentional interference with the plaintiff's chattel in a way that causes recognizable harm to the chattel, which was the case here. In this action, though, the plaintiff could recover only $25, the value of the cat, and the question asks for the claim that would result in the greatest monetary recovery.

Answer D is incorrect. Conversion provides a cause of action for interference with a chattel that is substantial enough to amount to the exercise of dominion or control, which was the case here. The standard remedy in conversion is a forced sale, however, so the plaintiff could recover no more than $25, the value of the cat.

Question 1396 - Torts - Negligence

The question was:

A child was bitten by a dog while playing in a fenced-in common area of an apartment complex owned by a landlord. The child was the guest of a tenant living in the complex, and the dog was owned by another tenant. The owner of the dog knew that the dog had a propensity to bite, but the landlord did not have any notice of the dog's vicious propensities.

In an action by the child against the landlord, will the child prevail?

A: Yes, because in these circumstances a landlord is strictly liable.
B: Yes, because a landlord's duty to protect a tenant's guests from dangerous conditions is nondelegable.
C: No, because the landlord did not have any notice of the dog's vicious propensities.
D: No, because a landlord owes no duty to a tenant's gratuitous guests.

The explanation for the answer is:

Answer C is correct. A landlord owes a duty to those who are foreseeably on the land, including guests of his tenants. Because this is a business venture of the landlord, guests of his tenants would be the landlord's invitees. Thus, Answer D is incorrect. Any duty that the landlord may have is at most a duty to act reasonably. If the landlord had no reason to know that the dog posed a risk to those on his property, his failure to take precautions against that risk was not negligent. Thus, Answer C is correct.

Answer A is incorrect. The possessor of a vicious dog may be strictly liable to those injured by the dog, but the landlord here is not in possession of the dog. Moreover, the liability, where it exists, is limited to cases in which the possessor has reason to know that the dog is unusually dangerous.

Answer B is incorrect. A landlord may have a nondelegable duty to protect persons who come upon the land from dangerous conditions of the property, such as cracked walks and broken stairs, but the presence of the dog is not such a condition. Also the duty is only a duty to act reasonably, and there is no evidence here that the landlord acted unreasonably.

Question 1400 - Torts - Other Torts

The question was:

A food company contracted with a delivery service to supply food to remote areas. The contract between the food company and the delivery service was terminable at will. The delivery service then entered into a contract with an airline company to provide an airplane to deliver the food. The contract between the delivery service and the airline company was also terminable at will.

The food company was displeased with the airline company because of a previous business dispute between them. Upon learning of the delivery service's contract with the airline company, the food company terminated its contract with the delivery service in order to cause the airline company to lose the business. When the food company terminated the delivery service's contract, the delivery service had no choice but to terminate the airline company's contract.

If the airline company sues the delivery service for tortious interference with contract, will the airline company prevail?

A: No, because the airline company and the delivery service were the parties to the contract.
B: No, because the airline company was not in privity with the food company.
C: Yes, because the delivery service did not terminate the contract because of poor performance.
D: Yes, because the delivery service's termination of the contract made it a party to the food company's acts.

The explanation for the answer is:

Answer A is correct. The airline company sued the delivery service based on a theory of the tortious interference with its contract. The tort of interference with contract provides a cause of action against those who improperly interfere with the performance of a contract between another and a third person. Here, however, the plaintiff and the defendant were parties to the same contract, and any action between them would be based on the contract, rather than on a tort. The proper defendant in the tort action would be the food company. *See* Restatement (Second) of Torts § 766.

Answer B is incorrect. The airline could sue the food company for tortious interference even though it was not in privity with the food company, but it did not do so. It sued the delivery service instead. Thus, privity between the airline company and the food company will be irrelevant to the airline's claim against the delivery service. *See* Restatement (Second) of Torts § 766.

Answer C is incorrect. There are two reasons why this answer choice is incorrect. First, the delivery service was a party to the contract with the airline company. Any claim of breach is governed by contract law, rather than tort law. Thus, the airline company cannot win on a theory of tortious interference with contract. Second, even assuming that the airline brought a proper cause of action based on contract law, the contract was terminable at will. Thus, the delivery service could have terminated the contract regardless of the quality of performance without breaking the contract. *See* Restatement (Second) of Torts § 766.

Answer D is incorrect. There is no indication here that the delivery service encouraged or otherwise abetted the food company's decision to cancel its contract. In fact, the delivery service lost business because of that cancellation. *See* Restatement (Second) of Torts § 766.

Question 1401 - Torts - Products Liability

The question was:

A homeowner was using a six-foot stepladder to clean the furnace in his home. The homeowner broke his arm when he slipped and fell from the ladder. The furnace had no warnings or instructions on how it was to be cleaned.

In a suit by the homeowner against the manufacturer of the furnace to recover for his injury, is the homeowner likely to prevail?

A: No, because the danger of falling from a ladder is obvious.
B: No, because the homeowner should have hired a professional to clean the furnace.
C: Yes, because the furnace did not have a ladder attached to it for cleaning purposes.
D: Yes, because the lack of warnings or instructions for how to clean the furnace made the furnace defective.

The explanation for the answer is:

Answer A is correct. A manufacturer has no obligation to warn against obvious dangers. There appears to be nothing unique to the furnace that would add to the ordinary dangers of working on a ladder.

Answer B is incorrect. Furnaces should be built for ordinary use, including routine maintenance by homeowners. In addition, there is no indication that a professional would be more adept than the homeowner in maintaining his balance on the ladder; maintaining one's balance on a six-foot stepladder is not a professional technical skill. The homeowner will likely not prevail, but the reason is that the manufacturer had no duty to warn of the obvious risks of working on a ladder.

Answer C is incorrect. Because a ladder is an easily available household product that can be used for a variety of tasks, there is no reason to expect a furnace manufacturer to include a ladder with the furnace. Furthermore, there is no indication that the homeowner's fall was due to anything special about the ladder he used; he could just as easily have fallen from a ladder provided by the furnace manufacturer. The homeowner will likely not prevail, because the manufacturer had no duty to warn of the obvious risks of working on a ladder.

Answer D is incorrect. A manufacturer is not obliged to include warnings about obvious or patent dangers; nor is a manufacturer obliged to include instructions about how to conduct ordinary activities such as working on a ladder. There is no indication that anything said by the manufacturer would have reduced the obvious risk that materialized here because the homeowner was working on a ladder.

Question 1419 - Torts - Negligence

The question was:

When a tire of a motorist's car suffered a blowout, the car rolled over and the motorist was badly injured. Vehicles made by the manufacturer of the motorist's car have been found to be negligently designed, making them dangerously prone to rolling over when they suffer blowouts. A truck driver who was driving behind the motorist when the accident occurred stopped to help. Rescue vehicles promptly arrived, and the truck driver walked along the side of the road to return to his truck. As he approached his truck, he was struck and injured by a speeding car. The truck driver has sued the manufacturer of the injured motorist's car.

Is the truck driver likely to prevail in a suit against the car manufacturer?

A: No, because the car manufacturer's negligence was not the proximate cause of the truck driver's injuries.
B: No, because the truck driver assumed the risk of injury when he undertook to help the motorist.
C: Yes, because it is foreseeable that injuries can result from rollovers.
D: Yes, because the car manufacturer's negligence caused the dangerous situation that invited the rescue by the truck driver.

The explanation for the answer is:

Answer D is correct. The truck driver will likely prevail in a suit against the car manufacturer. The facts establish that the car manufacturer's vehicles were negligently designed. The issue is whether the truck driver's injuries were sufficiently foreseeable to support proximate cause.

In order to establish proximate cause, something more specific than "injuries" broadly defined must be foreseeable. The kind of injury that had to be foreseeable to the manufacturer in this case is that someone engaged in a rescue attempt after a car accident might be struck by a speeding vehicle on the road. Here, even though the chain of causation is lengthy, it is well established that injury to rescuers is sufficiently foreseeable to support proximate cause. As Cardozo said, "Danger invites rescue." Thus, Answer A is incorrect, and Answer D is correct.

Answer C is incorrect because it fails to address the correct cause of injury suffered by the truck driver. While it is true that injuries are foreseeable as the result of a rollover, the truck driver was not injured by the rollover. Rather, the truck driver was injured while attempting to rescue the driver of the rolled over vehicle.

Answer B is incorrect. The danger to pedestrians of speeding cars on a highway is foreseeable. But the defense of assumption of risk requires more specific knowledge of the risk that is run, as well as either agreement to take responsibility for the risk or unreasonable risk-taking on the part of the plaintiff. There is no indication here that the truck driver agreed to take full responsibility for the risk of being struck by a speeding car or unreasonably exposed himself to that risk.

Question 1425 - Torts - Other Torts

The question was:

A gas company built a large refining facility that conformed to zoning requirements on land near a landowner's property. The landowner had his own home and a mini-golf business on his property.

In a nuisance action against the gas company, the landowner established that the refinery emitted fumes that made many people feel quite sick when they were outside on his property for longer than a few minutes. The landowner's mini-golf business had greatly declined as a consequence, and the value of his property had gone down markedly.

Is the landowner likely to prevail?

A: No, because the landowner has offered no evidence demonstrating that the gas company was negligent.
B: No, because the refinery conforms to the zoning requirements.
C: Yes, because the refinery has substantially and unreasonably interfered with the landowner's use and enjoyment of his property.
D: Yes, because the value of the landowner's property has declined.

The explanation for the answer is:

Answer C is correct. To succeed in a nuisance action, the plaintiff must show that the defendant's activity has substantially and unreasonably interfered with the plaintiff's use and enjoyment of his property. The evidence that there has been a significant decrease in the value of the landowner's property and that his business is suffering a marked decline would support a claim that the intrusion by the gas company is both substantial and unreasonable.

Answer A is incorrect. A showing of negligent behavior on the part of the defendant is not required to prevail on a nuisance claim. Instead, the plaintiff must show that the defendant's activity has substantially and unreasonably interfered with the plaintiff's use and enjoyment of his property.

Answer B is incorrect. The character of the neighborhood may be considered in evaluating whether a property owner has created a nuisance, but compliance with zoning requirements does not defeat a nuisance claim if the defendant's activity substantially and unreasonably interferes with the landowner's use and enjoyment of his property, which appears to have happened in this case.

Answer D is incorrect. A mere decline in property value is not enough to establish a nuisance claim. The intrusion that has caused the decline must be both substantial and unreasonable.

Question 1433 - Torts - Negligence

The question was:

A schizophrenic patient who was institutionalized in a psychiatric facility pushed a nurse down a stairwell at the facility. The nurse, a paid employee of the facility who was trained to care for schizophrenic patients, was injured. The patient is an indigent whose care is paid for by the government.

The jurisdiction generally follows the rule that a person with a mental deficiency is held to the standard of a reasonable person. In a negligence action brought by the nurse against the patient, the patient's lawyer will argue that the patient should not be held responsible for the nurse's injury.

Which of the following facts will be LEAST helpful to the patient's lawyer's argument?

A: The nurse was a professional caregiver.
B: The nurse was trained to care for patients with schizophrenia.
C: At the time she pushed the nurse, the patient thought she was being attacked by an elephant.
D: The patient is an indigent whose care is paid for by the government.

The explanation for the answer is:

Answer D is correct. Whether the patient has the resources to satisfy an adverse judgment is irrelevant to the judgment itself and should not be a subject of argument on the issue of liability in the case, although the patient's financial situation might affect a lawyer's decision to take on the case.

Answer A is incorrect. The nurse's professional role is relevant because it might support a defense based on assumption of risk.

Answer B is incorrect. The nurse's specialty training is relevant because it might support a defense based on either assumption of risk or contributory negligence. The patient could argue that a professional with the nurse's training should have foreseen the risk of this happening and taken steps to protect herself.

Answer C is incorrect. The patient's mental state is relevant because the patient's actions were no doubt caused by the mental illness and thus fell within the risks likely assumed and anticipated by the nurse.

Question 1439 - Torts - Strict Liability

The question was:

A mining company that operated a copper mine in a remote location kept dynamite in a storage facility at the mine. The storage facility was designed and operated in conformity with state-of-the-art safety standards. In the jurisdiction, the storage of dynamite is deemed an abnormally dangerous activity.

Dynamite that was stored in the mining company's storage facility and that had been manufactured by an explosives manufacturer exploded due to an unknown cause. The explosion injured a state employee who was at the mine performing a safety audit. The employee brought an action in strict liability against the mining company.

What would be the mining company's best defense?

A: The mine was in a remote location.
B: The mining company did not manufacture the dynamite.
C: The state employee assumed the risk of injury inherent in the job.
D: The storage facility conformed to state-of-the-art safety standards.

The explanation for the answer is:

Answer C is correct. Assumption of risk can be an affirmative defense to strict liability, and in this case, the state employee willingly took on auditing duties in potentially dangerous environments.

Answer A is incorrect. The location of the activity and whether the activity is common for the area are factors that might be considered in determining whether an activity is "abnormally dangerous," but the facts specify that the state has already determined that the activity of storing dynamite is abnormally dangerous without reference to the location at which it is conducted. Moreover, the storage of dynamite even in remote locations is often considered to be abnormally dangerous.

Answer B is incorrect. In a products liability action, the defendant's status as a manufacturer or other "seller" of the product would be important, but this strict liability action is based on an abnormally dangerous activity rather than on a defective product. In a strict liability action based on engaging in an abnormally dangerous activity, a defendant can be held liable for all the risks inherent in the activity, whatever other actors might be involved in creating those risks.

Answer D is incorrect. The storage facility's conformity to the highest safety standards would be relevant if the action were based on negligence. But in an action based on strict liability for engaging in an abnormally dangerous activity, the defendant will be held responsible even for those risks that could not have been avoided through the use of extraordinary care.

Question 1446 - Torts - Negligence

The question was:

A driver negligently ran into a pedestrian who was walking along a road. The pedestrian sustained an injury to his knee, causing it to buckle from time to time. Several months later, the pedestrian sustained an injury to his shoulder when his knee buckled, causing him to fall down a flight of stairs. The pedestrian then brought an action against the driver for the injuries to his knee and shoulder.

In the pedestrian's action against the driver, assume that the jury finds that the pedestrian's fall was a normal consequence of the original injury, but that the driver could not have foreseen that his negligence would cause the pedestrian's fall. For which of his injuries may the pedestrian recover damages?

A: For the injuries to his knee and shoulder, because the driver takes the victim as he finds him.
B: For the injuries to his knee and shoulder, because the pedestrian's fall down a flight of stairs was a normal consequence of his original injury.
C: For the injury to his knee only, because the injury to the pedestrian's shoulder is separable.
D: For the injury to his knee only, because the driver could not have foreseen that his negligent driving would cause the pedestrian to fall down a flight of stairs.

The explanation for the answer is:

Answer B is correct. The driver is liable for the full extent of the consequential damages arising from injuries to the pedestrian even if some of the injuries did not materialize for some time after the accident. While mere passage of time may cause statute of limitations problems if substantially longer than several months is involved, the passage of time in itself will not give rise to a proximate cause limitation.

Answer A is incorrect. The phrase "takes the victim as he finds him" refers to the principle that a negligent defendant must pay for the full extent of the injuries to the plaintiff even if the plaintiff was unusually vulnerable to injury. There is no indication in the facts that the pedestrian was unusually vulnerable before the accident.

Answer C is incorrect. The separability of an injury becomes an issue when two or more defendants cause harm to the plaintiff; separability relates to the question of whether damages for specific injuries can be allocated among the defendants. Here we are dealing with the consequences of multiple injuries caused by a single defendant, not the question of whether responsibility should be apportioned among several defendants.

D is incorrect. In this case, there is no proximate cause or foreseeability limitation on the extent of damages. However, whether the pedestrian's fall down the flight of stairs was a natural consequence of the original injury is a question of fact for the jury to decide. Because the jury found that the fall was a natural consequence of the original injury, the pedestrian can recover for both injuries.

Question 1459 - Torts - Intentional Torts

The question was:

A driver was traveling along a highway during an unusually heavy rainstorm when the roadway began to flood. To protect his car from water damage, the driver pulled his car up a steep, unmarked driveway abutting the highway that led to a homeowner's residence. The driver left his car parked in the driveway and walked home, intending to return when the floodwater had subsided. Shortly after the driver started to walk home, the homeowner carefully rolled the car back down his driveway and parked it on the highway shoulder. The floodwater continued to rise and caused damage to the driver's car.

If the driver sues the homeowner to recover for damage to the car, is the driver likely to prevail?

A: Yes, because the driver was privileged to park his car on the homeowner's property.
B: Yes, because there were no "no trespassing" signs posted.
C: No, because the driver intentionally drove his car onto the homeowner's property.
D: No, because the homeowner was privileged to remove the car from his property.

The explanation for the answer is:

Answer A is correct. The driver's intentional intrusion on the homeowner's property was indeed a trespass, but the trespass was privileged by the necessity created by the storm. A landowner has no right to forcibly expel a trespasser or a trespasser's property when the trespasser was driven by necessity to trespass on his land, and the landowner is liable for any damage to property of the trespasser that results from an expulsion. If the car had damaged the homeowner's property, the homeowner could have collected damages from the driver. Thus, Answer A is correct, and Answers D and C are incorrect.

The driver was privileged to trespass on the homeowner's land whether or not signs discouraging trespassers had been posted. The critical question is whether the driver's trespass was privileged by necessity, not whether the driver had been put on notice that he was an unwanted trespasser. In fact, the driver would have been privileged to seek refuge on the land even if the homeowner had posted "no trespassing" signs, and the homeowner is liable to the driver for the damage to the driver's car. Thus, Answer B is incorrect.

Question 1464 - Torts - Negligence

The question was:

A hotel employed a carefully selected independent contractor to rebuild its swimming pool. The hotel continued to operate while the pool was being rebuilt. The contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts. A guest of the hotel fell into the excavation, which the contractor had negligently left unguarded.

In an action by the guest against the hotel to recover for his injuries, what would be the most likely outcome?

A: Liability, because the hotel had a nondelegable duty to the guest to keep a safe premises.
B: Liability, because the contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts.
C: No liability, because the contractor was the actively negligent party.
D: No liability, because the hotel exercised reasonable care in employing the contractor.

The explanation for the answer is:

Answer A is correct. Ordinarily, someone who hires an independent contractor would not be vicariously liable for the contractor's negligence. However, a landowner who holds his land open to the public has a nondelegable duty to keep the premises safe for business visitors. Such a landowner is liable for any negligence that causes a guest to be injured by unsafe conditions on the premises, even the negligence of an independent contractor.

Answer B is incorrect. While it is true that the hotel would most likely be liable, the contract between the hotel and the contractor is irrelevant to the hotel's potential liability to the guest. Should the guest successfully sue the hotel, the contract would allow the hotel to bring an action for indemnification against the contractor, but the contract does not affect the hotel's liability to its guests. The hotel's liability, as stated above, would arise from its nondelegable duty to the guest to keep a safe premises.

Answer C is incorrect. Because the hotel had a nondelegable duty to keep the premises safe for business visitors, the court will hold the hotel liable for the contractor's negligence, whether that negligence was active or passive. Distinctions based on active, as opposed to passive, negligence are outmoded, and, even if they applied, they address the apportionment of damages between defendants, not the responsibility of a defendant to a plaintiff.

Answer D is incorrect. If the hotel had not exercised reasonable care in selecting a contractor, that would be an alternative basis for imposing liability on the hotel. However, even when a hotel has carefully selected an independent contractor, it still has a nondelegable duty to keep the premises safe for business visitors such as hotel guests and will be held vicariously liable for the contractor's negligence.

Question 1467 - Torts - Other Torts

The question was:

A newspaper published an editorial in which an editor asserted that a candidate for high political office was a user of illegal drugs. The accusation was untrue. The editor acted unreasonably in not investigating the accusation before publishing it; however, the editor honestly believed that the accusation was true.

The candidate sued the editor for defamation.

Is the candidate entitled to recover?

A: No, because the accusation appeared in an editorial and was, therefore, merely an opinion.
B: No, because the editor honestly believed that the accusation was true.
C: Yes, because calling someone an illegal drug user is defamatory per se.
D: Yes, because the accusation was false and was injurious to the candidate's reputation.

The explanation for the answer is:

Answer B is correct. To bring a claim for defamation, a plaintiff must establish the following common law elements: (i) defamatory language, (ii) "of or concerning" the plaintiff, (iii) publication of the defamatory language by the defendant to a third person, and (iv) damage to the plaintiff's reputation. However, in a defamation action that involves a matter of public concern--here, a claim brought by a candidate for public office--the plaintiff must establish more than mere negligence with regard to the truth or falsity of the allegedly defamatory statement of fact. The plaintiff must establish that the defendant acted with actual malice, that is, that the defendant in fact knew the statement to be false or entertained serious doubts as to the truth of the statement. Here, the candidate cannot establish actual malice on the part of the editor in publishing the statement because the editor honestly believed the accusation was true. Thus, Answer B is correct.

Answer A is incorrect. The assertion that the candidate used illegal drugs purported to be a statement of fact, not a statement of opinion. Defamation turns on what is conveyed in the statement published by the defendant. The context may influence what is conveyed, but facts may be stated in editorials or advertisements as well as in news reports. In this case, it is true that the candidate will not recover, but the reason is that he cannot show the actual malice required to defame a political candidate because the editor believed the statement about the candidate's drug use to be true.

Answer C is incorrect. The plaintiff in a defamation action must establish that a statement is defamatory, and accusing someone of a criminal act is indeed "defamatory per se." However, a political candidate, like a political official, must also establish that the defendant acted with actual malice, that is, that the defendant in fact knew the statement to be false or entertained serious doubts as to the truth of the statement. Here, the candidate cannot establish that essential element of his case.

Answer D is incorrect. A political candidate who brings a defamation action must establish not only that the statement was defamatory but also that the defendant acted with actual malice. To show actual malice, the plaintiff must demonstrate that the defendant in fact knew the statement to be false or entertained serious doubts as to the truth of the statement. The evidence does not support a finding of actual malice in this case.

Question 1470 - Torts - Negligence

The question was:

An elderly neighbor hired a 17-year-old boy with a reputation for reckless driving to drive the neighbor on errands once a week. One day the teenager, driving the neighbor's car, took the neighbor to the grocery store. While the neighbor was in the store, the teenager drove out of the parking lot and headed for a party on the other side of town.

While on his way to the party, the teenager negligently turned in front of a moving car and caused a collision. The other driver was injured in the collision.

The injured driver has brought an action for damages against the neighbor, based on negligent entrustment, and against the teenager.

The jury has found that the injured driver's damages were $100,000, that the injured driver was 10% at fault, that the teenager was 60% at fault, and that the neighbor was 30% at fault for entrusting his car to the teenager.

Based on these damage and responsibility amounts, what is the maximum that the injured driver could recover from the neighbor?

A: $100,000.
B: $90,000.
C: $60,000.
D: $30,000.

The explanation for the answer is:

Answer B is correct. In a system of pure comparative negligence with joint and several liability (the default system of liability on the MBE, unless stated otherwise), a plaintiff can recover all the damages due, after discounting for the plaintiff's negligence, from any one of the defendants, and that defendant must pursue the other defendants for contribution. Here, the injured driver's recovery from the defendants would be reduced by an amount that reflects his own negligence (10% of the $100,000, or $10,000). The driver would be able to recover the full $90,000 from the neighbor, and the neighbor would have to pursue the teenager for contribution of his $60,000 share. Thus, Answer B is correct, and Answers A, C, and D are incorrect.

Question 1474 - Torts - Intentional Torts

The question was:

A patient received anesthesia while giving birth. Upon awakening from the anesthesia, she discovered a severe burn on the inner portion of her right knee. The patient has brought a medical malpractice action in which she has joined all of the physicians and nurses who exercised control over her person, the delivery room, the medical procedures, and the equipment used during the period in which she was unconscious.

The defendants have jointly moved for summary judgment. The patient has produced affidavits that establish that the applicable professional standard of care was violated.

What would be the patient's best argument against the motion?

A: At least one of the defendants had control over whatever agency or instrumentality caused the patient's injury.
B: The defendants were acting in concert.
C: The patient has produced affidavits that establish that the applicable professional standard of care was violated.
D: The patient was in no way responsible for her injury.

The explanation for the answer is:

Answer A is correct. *Ybarra v. Spangard* and cases that follow its approach have relied on this extension of res ipsa loquitur to establish causation in situations in which the plaintiff was treated by a medical team that, as a group, had exclusive control of the patient and in which the patient, because she was unconscious, cannot identify what went wrong. The doctrine may be limited to medical cases in which there may be a concern that none of the medical professionals would be willing to testify against another. Thus, Answer A is correct.

Answer B is incorrect. "Acting in concert" refers to jointly engaging in negligent activity. There is no evidence here that the mishap that caused the injury was the result of any joint negligent activity; a single actor may have caused the burn.

Answer C is incorrect. Even though the plaintiff can establish that there was negligence by someone, she must also establish that the defendants caused her injury. It is proof that the defendants caused the injury that seems to be lacking here. Evidence that the standard of care was breached establishes that someone was negligent, but it does not establish that all the defendants or any particular defendant was responsible. The plaintiff must make an additional argument that would either establish causal responsibility or justify loosening the normal requirement that cause be established.

Answer D is incorrect. In *Ybarra v. Spangard*, the court rested its decision to hold the group of medical professionals liable in part on the fact that the patient was unconscious during his treatment. That meant that the patient was clearly not responsible for his own injury and that he was not in a position to identify what went wrong. But excluding the patient as a cause is ordinarily not enough to establish liability if a responsible injurer cannot be identified. The plaintiff needs an additional doctrine to make the causal connection.

Question 1484 - Torts - Intentional Torts

The question was:

A customer pledged a stock certificate to a bank as security for a loan. A year later, when the customer fully repaid the loan, the bank refused the customer's demand to return the stock certificate because the officer dealing with the loan had the mistaken belief that there was still a balance due. No one at the bank reviewed the records until two months later, at which time the error was discovered. The bank then offered to return the stock certificate. However, the customer refused to accept it.

At the time the customer pledged the certificate, the shares were worth $10,000; at the time the customer repaid the loan, the shares were worth $20,000; and at the time the bank offered to return the certificate, the shares were worth $5,000.

If the customer brings an action against the bank based on conversion, how much, if anything, should the customer recover?

A: Nothing, because the bank lawfully came into possession of the certificate.
B: $5,000, because that was the value of the shares when the customer refused to accept the certificate back.
C: $10,000, because that was the value of the shares when the bank came into possession of the certificate.
D: $20,000, because that was the value of the shares when the customer was entitled to the return of the certificate.

The explanation for the answer is:

Answer D is correct. Conversion is equivalent to a forced sale of the chattel to the defendant, who is liable for the full value of the chattel at the time of the tort. The tort occurred when the bank refused to relinquish the stock certificate in response to the customer's lawful demand, and at that time the shares were worth $20,000. Thus, Answer D is correct, and Answers B and C are incorrect.

Answer A is incorrect. Someone who refuses to surrender a chattel to another person who is entitled to its immediate possession is liable for conversion even if the one holding the chattel originally came into possession lawfully. The bank is liable to the customer for the value of the shares at the time the bank refused the customer's lawful demand for return of the certificate--$20,000.

Question 1493 - Torts - Negligence

The question was:

A man rented a car from a car rental agency. Unbeknownst to the rental agency, the car had a bomb hidden in it at the time of the rental. The bomb exploded an hour later, injuring the man.

Immediately prior to renting the car to the man, the rental agency had carefully inspected the car to be sure it was in sound operating condition. The rental agency did not inspect for hidden explosive devices, but such an inspection for explosives would have revealed the bomb.

There had been no previous incidents of persons hiding bombs in rental cars.

In a negligence action by the man against the car rental agency, is the man likely to prevail?

A: No, because the rental agency could not have reasonably foreseen the likelihood of someone placing a bomb in the car it was about to rent to the man.
B: No, because the rental agency did not hide the bomb in the car.
C: Yes, because an inspection for explosive devices would have revealed the bomb.
D: Yes, because the bomb made the car abnormally dangerous.

The explanation for the answer is:

Answer A is correct. The standard to be applied in a negligence action is whether the defendant acted with ordinary care. The presence of a bomb in a rental car is sufficiently unlikely that a reasonable rental agency would not routinely inspect for such a device. In the absence of evidence that the agency should have foreseen that there might be a bomb in the car, the man cannot prove a negligence claim. Thus, Answer A is correct.

Answer B is incorrect. Under some circumstances, the rental agency could be liable even though it did not hide the bomb. If it were reasonably foreseeable that a bomb might be planted in a rental car (for example, because that practice had become a common terrorist tactic in the area), a reasonably prudent rental agency would routinely search for such a device before renting out the car. In that situation, even though the agency did not hide a bomb itself, it would be liable for failing to take reasonable precautions. In this case, the agency will not be liable to the man, because it took all reasonable precautions under the circumstances.

Answer C is incorrect. Even if an untaken precaution (such as an inspection for explosive devices) would have revealed a danger, the defendant in a negligence action is responsible only for taking those precautions that are reasonably necessary. An explosive device has a high potential for inflicting serious injury, but in most cases it is so unlikely to be found in a rental car that the time and effort needed for a routine search for bombs would not be justified. If incidents involving bombs in rental cars began to occur, that calculation might change, but in this case, the agency will not be liable to the man, because it took all reasonable precautions under the circumstances.

Answer D is incorrect. The car may well have become abnormally dangerous once the bomb was planted, but the agency did not intentionally engage in an abnormally dangerous activity. Moreover, even if the court decided that the agency had engaged in an abnormally dangerous activity, that conclusion would support strict liability, not negligence. Unreasonable conduct, rather than abnormal danger, is the key to liability in negligence. And in this negligence action, the agency will not be liable to the man, because it took all reasonable precautions under the circumstances.

Question 1500 - Torts - Negligence

The question was:

In an action by a man against a pharmacy, the man offered only the following evidence:

The man took a clearly written prescription to a pharmacy. The pharmacy's employee filled the prescription by providing pills with 30 milligrams of the active ingredient instead of 20 milligrams, as was prescribed. Shortly after taking the pills as directed, the man, who had no previous history of heart problems, suffered a heart attack. Overdoses of the active ingredient had previously been associated with heart problems.

Does the man have a valid claim against the pharmacy?

A: No, because pharmacies are not strictly liable for injuries caused by incorrectly filled prescriptions.
B: No, because the man offered no specific proof as to the pharmacy's negligence.
C: Yes, because a jury could reasonably conclude that the man would not have suffered a heart attack had the pharmacy provided the correct dosage.
D: Yes, because by providing the 30-milligram pills rather than the 20-milligram pills, the pharmacy sold the man a defective product.

The explanation for the answer is:

Answer C is correct. Although the evidence does not specify exactly how the pharmacy's employee erred, there is sufficient circumstantial evidence to support a conclusion that the pharmacy's employee was negligent in filling the prescription and that the consequent overdose caused the heart attack. The pharmacy would be vicariously liable for its employee's negligence under respondeat superior principles. Thus, Answer C is correct, and Answer B is incorrect.

Answer A is incorrect. Under some theories, pharmacies might be held strictly liable for incorrectly filled prescriptions. That fact is irrelevant here, however, because in this case, the evidence of the employee's negligence, while circumstantial, is sufficient to support a negligence claim against the pharmacy under respondeat superior principles.

Answer D is incorrect. It is not necessary to establish that a product was defective in order to establish a claim in negligence. Here, there is no evidence demonstrating that the product itself was defective. If the pill bottle had been improperly labeled, the product would have been considered defective, but there is no mention of mislabeling in the facts.

Question 1506 - Torts - Other Torts

The question was:

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email on her personal computer.

Can the writer recover damages from the assistant?

A: No, because the assistant was an invitee on the premises.
B: No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
C: Yes, because the assistant invaded the writer's privacy.
D: Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

The explanation for the answer is:

A is incorrect. The assistant exceeded the scope of any invitation, whether through his employment as an assistant or through the invitation to work on the premises. The writer did not leave the emails exposed so that others might see them. An invitation to enter premises does not normally include permission to access personal email, especially when the email is password-protected.

B is incorrect. Truth is a common law defense to defamation but not to invasion of privacy. In some circumstances, the First Amendment or a common law defense based on the public interest in the material disclosed can provide a defense to an action for disclosure of private matters. However, even if these defenses were applicable to the disclosure aspect of this case, they would not provide a defense to the privacy action based on intrusion. News-gathering does not provide general immunity from tort law.

C is correct. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

D is incorrect. The appropriate privacy action here would be for "intrusion" rather than for "public disclosure of embarrassing private facts." Publication is irrelevant to whether a cause of action for intrusion has been established. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

Question 1506 - Torts - Other Torts

The question was:

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email on her personal computer.

Can the writer recover damages from the assistant?

A: No, because the assistant was an invitee on the premises.
B: No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
C: Yes, because the assistant invaded the writer's privacy.
D: Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

The explanation for the answer is:

A is incorrect. The assistant exceeded the scope of any invitation, whether through his employment as an assistant or through the invitation to work on the premises. The writer did not leave the emails exposed so that others might see them. An invitation to enter premises does not normally include permission to access personal email, especially when the email is password-protected.

B is incorrect. Truth is a common law defense to defamation but not to invasion of privacy. In some circumstances, the First Amendment or a common law defense based on the public interest in the material disclosed can provide a defense to an action for disclosure of private matters. However, even if these defenses were applicable to the disclosure aspect of this case, they would not provide a defense to the privacy action based on intrusion. News-gathering does not provide general immunity from tort law.

C is correct. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

D is incorrect. The appropriate privacy action here would be for "intrusion" rather than for "public disclosure of embarrassing private facts." Publication is irrelevant to whether a cause of action for intrusion has been established. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

Question 1506 - Torts - Other Torts

The question was:

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email on her personal computer.

Can the writer recover damages from the assistant?

A: No, because the assistant was an invitee on the premises.
B: No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
C: Yes, because the assistant invaded the writer's privacy.
D: Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

The explanation for the answer is:

A is incorrect. The assistant exceeded the scope of any invitation, whether through his employment as an assistant or through the invitation to work on the premises. The writer did not leave the emails exposed so that others might see them. An invitation to enter premises does not normally include permission to access personal email, especially when the email is password-protected.

B is incorrect. Truth is a common law defense to defamation but not to invasion of privacy. In some circumstances, the First Amendment or a common law defense based on the public interest in the material disclosed can provide a defense to an action for disclosure of private matters. However, even if these defenses were applicable to the disclosure aspect of this case, they would not provide a defense to the privacy action based on intrusion. News-gathering does not provide general immunity from tort law.

C is correct. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

D is incorrect. The appropriate privacy action here would be for "intrusion" rather than for "public disclosure of embarrassing private facts." Publication is irrelevant to whether a cause of action for intrusion has been established. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

Question 1506 - Torts - Other Torts

The question was:

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email on her personal computer.

Can the writer recover damages from the assistant?

A: No, because the assistant was an invitee on the premises.
B: No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
C: Yes, because the assistant invaded the writer's privacy.
D: Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

The explanation for the answer is:

A is incorrect. The assistant exceeded the scope of any invitation, whether through his employment as an assistant or through the invitation to work on the premises. The writer did not leave the emails exposed so that others might see them. An invitation to enter premises does not normally include permission to access personal email, especially when the email is password-protected.

B is incorrect. Truth is a common law defense to defamation but not to invasion of privacy. In some circumstances, the First Amendment or a common law defense based on the public interest in the material disclosed can provide a defense to an action for disclosure of private matters. However, even if these defenses were applicable to the disclosure aspect of this case, they would not provide a defense to the privacy action based on intrusion. News-gathering does not provide general immunity from tort law.

C is correct. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

D is incorrect. The appropriate privacy action here would be for "intrusion" rather than for "public disclosure of embarrassing private facts." Publication is irrelevant to whether a cause of action for intrusion has been established. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

Question 1506 - Torts - Other Torts

The question was:

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email on her personal computer.

Can the writer recover damages from the assistant?

A: No, because the assistant was an invitee on the premises.
B: No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
C: Yes, because the assistant invaded the writer's privacy.
D: Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

The explanation for the answer is:

A is incorrect. The assistant exceeded the scope of any invitation, whether through his employment as an assistant or through the invitation to work on the premises. The writer did not leave the emails exposed so that others might see them. An invitation to enter premises does not normally include permission to access personal email, especially when the email is password-protected.

B is incorrect. Truth is a common law defense to defamation but not to invasion of privacy. In some circumstances, the First Amendment or a common law defense based on the public interest in the material disclosed can provide a defense to an action for disclosure of private matters. However, even if these defenses were applicable to the disclosure aspect of this case, they would not provide a defense to the privacy action based on intrusion. News-gathering does not provide general immunity from tort law.

C is correct. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

D is incorrect. The appropriate privacy action here would be for "intrusion" rather than for "public disclosure of embarrassing private facts." Publication is irrelevant to whether a cause of action for intrusion has been established. By accessing the writer's email, the assistant was intruding upon her privacy. "Intrusion upon seclusion" is one category of the tort of invasion of privacy that is recognized in many states. The assistant did not have permission to access the emails, and the writer did not leave the emails exposed so that others might see them.

Question 1512 - Torts - Other Torts

The question was:

A man sued his neighbor for defamation based on the following facts:

The neighbor told a friend that the man had set fire to a house in the neighborhood. The friend, who knew the man well, did not believe the neighbor's allegation, which was in fact false. The friend told the man about the neighbor's allegation. The man was very upset by the allegation, but neither the man nor the neighbor nor the friend communicated the allegation to anyone else.

Should the man prevail in his lawsuit?

A: No, because the friend did not believe what the neighbor had said.
B: No, because the man cannot prove that he suffered pecuniary loss.
C: Yes, because the man was very upset at hearing what the neighbor had said.
D: Yes, because the neighbor communicated to the friend the false accusation that the man had committed a serious crime.

The explanation for the answer is:

A is incorrect. A successful defamation action does not depend on whether a third party actually believed the defamatory statement. It is enough that the defamatory statement was communicated to a third party.

B is incorrect. The statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception.

C is incorrect. Proof of emotional distress is not required to establish a cause of action for defamation, whether the action is in libel or slander. The man should prevail, but it is because the defamatory statement was communicated to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

D is correct. The core of a defamation action is the communication of a defamatory statement about the plaintiff to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

Question 1512 - Torts - Other Torts

The question was:

A man sued his neighbor for defamation based on the following facts:

The neighbor told a friend that the man had set fire to a house in the neighborhood. The friend, who knew the man well, did not believe the neighbor's allegation, which was in fact false. The friend told the man about the neighbor's allegation. The man was very upset by the allegation, but neither the man nor the neighbor nor the friend communicated the allegation to anyone else.

Should the man prevail in his lawsuit?

A: No, because the friend did not believe what the neighbor had said.
B: No, because the man cannot prove that he suffered pecuniary loss.
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D is correct. The core of a defamation action is the communication of a defamatory statement about the plaintiff to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

Question 1512 - Torts - Other Torts

The question was:

A man sued his neighbor for defamation based on the following facts:

The neighbor told a friend that the man had set fire to a house in the neighborhood. The friend, who knew the man well, did not believe the neighbor's allegation, which was in fact false. The friend told the man about the neighbor's allegation. The man was very upset by the allegation, but neither the man nor the neighbor nor the friend communicated the allegation to anyone else.

Should the man prevail in his lawsuit?

A: No, because the friend did not believe what the neighbor had said.
B: No, because the man cannot prove that he suffered pecuniary loss.
C: Yes, because the man was very upset at hearing what the neighbor had said.
D: Yes, because the neighbor communicated to the friend the false accusation that the man had committed a serious crime.

The explanation for the answer is:

A is incorrect. A successful defamation action does not depend on whether a third party actually believed the defamatory statement. It is enough that the defamatory statement was communicated to a third party.

B is incorrect. The statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception.

C is incorrect. Proof of emotional distress is not required to establish a cause of action for defamation, whether the action is in libel or slander. The man should prevail, but it is because the defamatory statement was communicated to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

D is correct. The core of a defamation action is the communication of a defamatory statement about the plaintiff to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

Question 1512 - Torts - Other Torts

The question was:

A man sued his neighbor for defamation based on the following facts:

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Should the man prevail in his lawsuit?

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C: Yes, because the man was very upset at hearing what the neighbor had said.
D: Yes, because the neighbor communicated to the friend the false accusation that the man had committed a serious crime.

The explanation for the answer is:

A is incorrect. A successful defamation action does not depend on whether a third party actually believed the defamatory statement. It is enough that the defamatory statement was communicated to a third party.

B is incorrect. The statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception.

C is incorrect. Proof of emotional distress is not required to establish a cause of action for defamation, whether the action is in libel or slander. The man should prevail, but it is because the defamatory statement was communicated to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

D is correct. The core of a defamation action is the communication of a defamatory statement about the plaintiff to a third party. Here, the statement was spoken rather than written, so the rules of slander apply. Often an action in slander requires that pecuniary loss be shown, but there is no such requirement where the statement accuses the plaintiff of engaging in serious criminal conduct. Arson is a crime of moral turpitude, so the neighbor's statement falls within the exception, and special harm need not be shown.

Question 1520 - Torts - Other Torts

The question was:

A manufacturing plant emitted a faint noise even though the owner had installed state-of-the-art sound dampeners. The plant operated only on weekdays and only during daylight hours. A homeowner who lived near the plant worked a night shift and could not sleep when he arrived home because of the noise from the plant. The other residents in the area did not notice the noise.

Does the homeowner have a viable nuisance claim against the owner of the plant?

A: No, because the homeowner is unusually sensitive to noise during the day.
B: No, because the plant operates only during the day.
C: Yes, because the noise is heard beyond the boundaries of the plant.
D: Yes, because the operation of the plant interferes with the homeowner's quiet use and enjoyment of his property.

The explanation for the answer is:

A is correct. A landowner is liable for nuisance only when his invasion of another's use and enjoyment is both substantial and unreasonable. Under the norms of the area, the plant owner is not imposing an unreasonable degree of noise upon his neighbors. An unusually noise-sensitive neighbor will not be permitted to block the plant owner's use of his own land.

B is incorrect. If the noise were too loud given the normal expectations of residents in the area, it could still constitute a nuisance even if limited to daylight hours. The homeowner does not have a valid nuisance claim, but it is because he is unusually sensitive to noise during the day.

C is incorrect. Recovery in nuisance requires evidence of substantial and unreasonable interference with the plaintiff's use and enjoyment of his own land. Merely showing that a noise can be heard beyond the boundaries of the defendant's land is not enough to establish a nuisance, especially when the noise can be heard only by an unusually noise-sensitive person.

D is incorrect. It is not enough to demonstrate interference with quiet use and enjoyment. The interference also must be shown to be both substantial and unreasonable. The noise emitted by the plant interferes only with one unusually noise-sensitive neighbor, so it is unlikely to be found to be unreasonable.

Question 1520 - Torts - Other Torts

The question was:

A manufacturing plant emitted a faint noise even though the owner had installed state-of-the-art sound dampeners. The plant operated only on weekdays and only during daylight hours. A homeowner who lived near the plant worked a night shift and could not sleep when he arrived home because of the noise from the plant. The other residents in the area did not notice the noise.

Does the homeowner have a viable nuisance claim against the owner of the plant?

A: No, because the homeowner is unusually sensitive to noise during the day.
B: No, because the plant operates only during the day.
C: Yes, because the noise is heard beyond the boundaries of the plant.
D: Yes, because the operation of the plant interferes with the homeowner's quiet use and enjoyment of his property.

The explanation for the answer is:

A is correct. A landowner is liable for nuisance only when his invasion of another's use and enjoyment is both substantial and unreasonable. Under the norms of the area, the plant owner is not imposing an unreasonable degree of noise upon his neighbors. An unusually noise-sensitive neighbor will not be permitted to block the plant owner's use of his own land.

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Does the homeowner have a viable nuisance claim against the owner of the plant?

A: No, because the homeowner is unusually sensitive to noise during the day.
B: No, because the plant operates only during the day.
C: Yes, because the noise is heard beyond the boundaries of the plant.
D: Yes, because the operation of the plant interferes with the homeowner's quiet use and enjoyment of his property.

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A is correct. A landowner is liable for nuisance only when his invasion of another's use and enjoyment is both substantial and unreasonable. Under the norms of the area, the plant owner is not imposing an unreasonable degree of noise upon his neighbors. An unusually noise-sensitive neighbor will not be permitted to block the plant owner's use of his own land.

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Question 1525 - Torts - Negligence

The question was:

Toxic materials being transported by truck from a manufacturer's plant to a warehouse leaked from the truck onto the street a few miles from the plant. A driver lost control of his car when he hit the puddle of spilled toxic materials on the street, and he was injured when his car hit a stop sign.

In an action for damages by the driver against the manufacturer based on strict liability, is the driver likely to prevail?

A: No, because the driver's loss of control was an intervening cause.
B: No, because the driver's injury did not result from the toxicity of the materials.
C: Yes, because the manufacturer is strictly liable for leaks of its toxic materials.
D: Yes, because the leak occurred near the manufacturer's plant.

The explanation for the answer is:

A is incorrect. The driver's loss of control was not intentional, nor was it either unforeseeable or unusual. For that reason, it should raise no proximate cause problem.

B is correct. Strict liability in this situation would be based on the abnormally dangerous nature of the toxic materials. But a successful strict liability action requires that the risk that materializes be the same risk that led courts to label the activity "abnormally dangerous" in the first place. Here, the toxicity of the materials did not contribute to the driver's injury, so his only cause of action would be in negligence.

C is incorrect. Strict liability in this situation would be based on the abnormally dangerous nature of the toxic materials. But a successful strict liability action requires that the risk that materializes be the same risk that led courts to label the activity "abnormally dangerous" in the first place. Here, the toxicity of the materials did not contribute to the driver's injury, so his only cause of action would be in negligence.

D is incorrect. The manufacturer would be strictly liable for injuries caused by its toxic materials regardless of where the leak occurred, so long as the manufacturer could be said to be responsible for the leak. However, in this situation the toxicity of the materials did not contribute to the driver's injury, so his only cause of action would be in negligence.

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Question 1532 - Torts - Negligence

The question was:

A man and his friend, who were both adults, went to a party. The man and the friend had many drinks at the party and became legally intoxicated. They decided to play a game of chance called "Russian roulette" using a gun loaded with one bullet. As part of the game, the man pointed the gun at the friend and, on her command, pulled the trigger. The man shot the friend in the shoulder.

The friend has brought a negligence action against the man. Traditional defenses based on plaintiff's conduct apply.

What is likely to be the dispositive issue in this case?

A: Whether the game constituted a joint venture.
B: Whether the friend could validly consent to the game.
C: Whether the friend was also negligent.
D: Whether the man was legally intoxicated when he began playing the game.

The explanation for the answer is:

A is incorrect. The fact that the man and the friend might have been engaged in a joint venture would be relevant if the action were being brought by a third party who was not part of the venture but who had been injured as a consequence of their activities. It is irrelevant to a suit among participants in a joint venture unless it indicates an assumption of risk.

B is incorrect. It is likely that consent to this activity would be routinely found to be against public policy, although the consequences of such a determination would vary from state to state. But consent is a defense more appropriately raised in an intentional tort case, not a case for negligence. There is no indication that the friend consented to any negligence, and in any case she was too intoxicated to give a valid consent.

C is correct. Contributory negligence is an appropriate defense to a negligence action, and here both parties seem to have been acting unreasonably in exactly the same way. Whether the argument is put in the form of the friend's carelessness in engaging in the activity or in her unreasonable assumption of risk, many states would now evaluate the defense under comparative negligence principles.

D is incorrect. The man's intoxication would not insulate him from liability to those he injured while in that state. He would still be held to the "reasonably prudent person" standard.

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Question 1539 - Torts - Negligence

The question was:

A woman signed up for a bowling class. Before allowing the woman to bowl, the instructor required her to sign a waiver explicitly stating that she assumed all risk of injuries that she might suffer in connection with the class, including injuries due to negligence or any other fault. After she signed the waiver, the woman was injured when the instructor negligently dropped a bowling ball on the woman's foot.

The woman brought a negligence action against the instructor. The instructor has filed a motion for summary judgment based on the waiver.

What is the woman's best argument in opposition to the instructor's motion?

A: Bowling is an inherently dangerous activity.
B: In circumstances like these, it is against public policy to enforce agreements that insulate people from the consequences of their own negligence.
C: It was unreasonable to require the woman to sign the waiver before she was allowed to bowl.
D: When she signed the form, the woman could not foresee that the instructor would drop a bowling ball on her foot.

The explanation for the answer is:

A is incorrect. Bowling is not inherently dangerous; virtually no one is seriously injured while bowling. Even if bowling were inherently dangerous, that characterization would support an argument for permitting recreational participants who appreciate the risks of the activity to assume the risks by signing a waiver rather than constituting a reason for ignoring the waiver.

B is correct. Waivers are most easily justified when an activity poses inherent risks that are familiar to the participants and cannot be entirely eliminated without removing the pleasure from the activity. The risk that materialized here is not inherent to bowling but could arise whenever someone is careless while holding a heavy object. A court might find that it is against public policy to permit individuals or businesses to insulate themselves from the deterrent incentives provided by the threat of negligence liability. For that reason, the court might find that the waiver did not present the woman with a fair choice and could hold the waiver ineffective.

C is incorrect. Although the court might find that the waiver did not present the woman with a fair choice and therefore hold the waiver to be no bar when the harm was due to the instructor's negligence, asking the woman to sign the waiver was not in itself negligent or unreasonable. For example, the waiver might have barred recovery against the instructor if the woman were injured by the negligence of another class participant, or the court might have decided that the waiver was not inconsistent with public policy given the recreational nature of the activity.

D is incorrect. Pre-injury waivers are often enforced despite the fact that the precise injury that materializes is virtually never foreseen with a high level of specificity at the time of the signing of the waiver. The problem here is that the risk that materialized was not inherent to the enjoyment of bowling.

Question 1539 - Torts - Negligence

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C is incorrect. Although the court might find that the waiver did not present the woman with a fair choice and therefore hold the waiver to be no bar when the harm was due to the instructor's negligence, asking the woman to sign the waiver was not in itself negligent or unreasonable. For example, the waiver might have barred recovery against the instructor if the woman were injured by the negligence of another class participant, or the court might have decided that the waiver was not inconsistent with public policy given the recreational nature of the activity.

D is incorrect. Pre-injury waivers are often enforced despite the fact that the precise injury that materializes is virtually never foreseen with a high level of specificity at the time of the signing of the waiver. The problem here is that the risk that materialized was not inherent to the enjoyment of bowling.

Question 1539 - Torts - Negligence

The question was:

A woman signed up for a bowling class. Before allowing the woman to bowl, the instructor required her to sign a waiver explicitly stating that she assumed all risk of injuries that she might suffer in connection with the class, including injuries due to negligence or any other fault. After she signed the waiver, the woman was injured when the instructor negligently dropped a bowling ball on the woman's foot.

The woman brought a negligence action against the instructor. The instructor has filed a motion for summary judgment based on the waiver.

What is the woman's best argument in opposition to the instructor's motion?

A: Bowling is an inherently dangerous activity.
B: In circumstances like these, it is against public policy to enforce agreements that insulate people from the consequences of their own negligence.
C: It was unreasonable to require the woman to sign the waiver before she was allowed to bowl.
D: When she signed the form, the woman could not foresee that the instructor would drop a bowling ball on her foot.

The explanation for the answer is:

A is incorrect. Bowling is not inherently dangerous; virtually no one is seriously injured while bowling. Even if bowling were inherently dangerous, that characterization would support an argument for permitting recreational participants who appreciate the risks of the activity to assume the risks by signing a waiver rather than constituting a reason for ignoring the waiver.

B is correct. Waivers are most easily justified when an activity poses inherent risks that are familiar to the participants and cannot be entirely eliminated without removing the pleasure from the activity. The risk that materialized here is not inherent to bowling but could arise whenever someone is careless while holding a heavy object. A court might find that it is against public policy to permit individuals or businesses to insulate themselves from the deterrent incentives provided by the threat of negligence liability. For that reason, the court might find that the waiver did not present the woman with a fair choice and could hold the waiver ineffective.

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D is incorrect. Pre-injury waivers are often enforced despite the fact that the precise injury that materializes is virtually never foreseen with a high level of specificity at the time of the signing of the waiver. The problem here is that the risk that materialized was not inherent to the enjoyment of bowling.

Question 1541 - Torts - Negligence

The question was:

A pedestrian was crossing a street in a crosswalk when a woman walking just ahead of him was hit by a truck. The pedestrian, who had jumped out of the way of the truck, administered CPR to the woman, who was a stranger. The woman bled profusely, and the pedestrian was covered in blood. The woman died in the ambulance on the way to the hospital. The pedestrian became very depressed immediately after the incident and developed physical symptoms as a result of his emotional distress.

The pedestrian has brought an action against the driver of the truck for negligent infliction of emotional distress. In her defense, the driver asserts that she should not be held liable, because the pedestrian's emotional distress and resulting physical symptoms are not compensable.

What is the strongest argument that the pedestrian can make in response to the driver's defense?

A: The pedestrian saw the driver hit the woman.
B: The pedestrian was acting as a Good Samaritan.
C: The pedestrian was covered in the woman's blood and developed physical symptoms as a result of his emotional distress.
D: The pedestrian was in the zone of danger.

The explanation for the answer is:

A is incorrect. Most states allow plaintiffs to recover damages for the emotional distress of seeing another person injured or killed by a negligent driver, but they usually require that there be a close relationship between the plaintiff and the injured person before recovery is allowed.

B is incorrect. Normally, the fact that someone chooses to come to the aid of another neither insulates that person from liability for his or her own negligence nor provides that person with a cause of action for the pure emotional distress suffered as a consequence of providing the aid.

C is incorrect. The negligent driver did not herself touch or impact the pedestrian, so the fact that the pedestrian became covered in blood and ultimately suffered physical symptoms as a result of emotional distress is not alone sufficient to support a claim for damages.

D is correct. Because the pedestrian was in the path of the truck, he was under a direct physical threat from the driver's negligence. He could recover for the emotional distress that he suffered as a result of his fear for his own safety, and many courts would also allow him to recover for all other emotional distress that he suffered in connection with the event.

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The pedestrian has brought an action against the driver of the truck for negligent infliction of emotional distress. In her defense, the driver asserts that she should not be held liable, because the pedestrian's emotional distress and resulting physical symptoms are not compensable.

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Question 1547 - Torts - Products Liability

The question was:

Upon the recommendation of her child's pediatrician, a mother purchased a vaporizer for her child, who had been suffering from respiratory congestion. The vaporizer consisted of a gallon-size glass jar, which held water to be heated until it became steam, and a metal heating unit into which the jar fit. The jar was covered by a plastic cap with an opening to allow the steam to escape. At the time the vaporizer was manufactured and sold, there was no safer alternative design.

The booklet that accompanied the vaporizer read: "This product is safe, spillproof, and practically foolproof. It shuts off automatically when the water is gone." The booklet had a picture of a vaporizer sending steam over a baby's crib.

The mother used the vaporizer whenever the child was suffering from congestion. She placed the vaporizer on the floor near the child's bed.

One night, the child got out of bed to get a drink of water and tripped over the cord of the vaporizer as she crossed the room. The top of the vaporizer separated from the base, and boiling water from the jar spilled on the child when the vaporizer tipped over. The child suffered serious burns as a consequence.

The child's representative brought an action for damages against the manufacturer of the vaporizer. The manufacturer moved to dismiss after the representative presented the evidence above.

Should the manufacturer's motion be granted?

A: No, because a jury could find that the manufacturer expressly represented that the vaporizer was spillproof.
B: No, because the vaporizer caused a serious injury to the child.
C: Yes, because it should have been obvious to the mother that the water in the jar would become boiling hot.
D: Yes, because there was no safer alternative design.

The explanation for the answer is:

A is correct. The vaporizer may not have been "defective," in that there was no reasonable alternative design, but the express promise by the manufacturer that it was "safe" and "spillproof," especially when combined with the manufacturer's picture suggesting that it was safe to place the vaporizer near a child's bed, could be the basis of recovery on the ground of misrepresentation.

B is incorrect. The fact that a product poses a danger to a user or a bystander will not support the manufacturer's liability in the absence of negligence, defect, or misrepresentation. The manufacturer's motion should not be granted, but it is because the express promise by the manufacturer that the vaporizer was "safe" and "spillproof," especially when combined with the manufacturer's picture suggesting that it was safe to place the vaporizer near a child's bed, could be the basis of recovery on the ground of misrepresentation.

C is incorrect. The mother could be found to have reasonably relied upon the manufacturer's express promise that the vaporizer was "safe" and "spillproof," especially when those words were combined with the manufacturer's picture suggesting that it was safe to place the vaporizer near a child's bed. The mother could have believed that the boiling water posed no danger if it could not be spilled. She would have an action against the manufacturer for misrepresentation.

D is incorrect. The fact finder may conclude that the vaporizer could not be found to be "defective" because there was no reasonable alternative design, but the manufacturer's express promise that the vaporizer was "safe" and "spillproof," combined with the manufacturer's picture suggesting that it was safe to place the vaporizer near a child's bed, could still be the basis of recovery on the ground of misrepresentation.

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One night, the child got out of bed to get a drink of water and tripped over the cord of the vaporizer as she crossed the room. The top of the vaporizer separated from the base, and boiling water from the jar spilled on the child when the vaporizer tipped over. The child suffered serious burns as a consequence.

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Question 1555 - Torts - Negligence

The question was:

A man was admitted to a hospital after complaining of persistent severe headaches. While he was there, hospital staff failed to diagnose his condition, and he was discharged. Two days later, the man died of a massive brain hemorrhage due to a congenital defect in an artery.

The man's wife has brought a wrongful death action against the hospital. The wife offers expert testimony that the man would have had a "reasonable chance" (not greater than 50%) of surviving the hemorrhage if he had been given appropriate medical care at the hospital.

In what type of jurisdiction would the wife's suit most likely be successful?

A: A jurisdiction that applies traditional common law rules concerning burden of proof.
B: A jurisdiction that allows recovery based on strict liability.
C: A jurisdiction that allows recovery for the loss of the chance of survival.
D: A jurisdiction that recognizes loss of spousal consortium.

The explanation for the answer is:

A is incorrect. If traditional common law rules concerning burden of proof were applied, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

B is incorrect. Cause in fact is a necessary element of a plaintiff's case in strict liability as well as in negligence. Under either theory, the wife must establish that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival were greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

C is correct. Jurisdictions that allow recovery for the loss of the chance of survival have created an exception to the traditional common law rules for establishing cause in fact. Under the traditional rules, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. A jurisdiction that allows recovery for loss of the chance of survival, however, would allow the wife to recover for the reduction in her husband's chance of surviving that was caused by the failure to properly diagnose.

D is incorrect. Cause in fact is a necessary element of a plaintiff's case for loss of spousal consortium, as well as in cases in which a plaintiff is suing for personal injury. In a loss of consortium action, the wife must establish that the hospital's negligence was the cause of her husband's death. Traditional rules of proof regarding causation would require that the wife prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to her husband's survival. Here, the wife cannot establish that the chances of her husband's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction and she could not recover for loss of spousal consortium.

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The question was:

A man was admitted to a hospital after complaining of persistent severe headaches. While he was there, hospital staff failed to diagnose his condition, and he was discharged. Two days later, the man died of a massive brain hemorrhage due to a congenital defect in an artery.

The man's wife has brought a wrongful death action against the hospital. The wife offers expert testimony that the man would have had a "reasonable chance" (not greater than 50%) of surviving the hemorrhage if he had been given appropriate medical care at the hospital.

In what type of jurisdiction would the wife's suit most likely be successful?

A: A jurisdiction that applies traditional common law rules concerning burden of proof.
B: A jurisdiction that allows recovery based on strict liability.
C: A jurisdiction that allows recovery for the loss of the chance of survival.
D: A jurisdiction that recognizes loss of spousal consortium.

The explanation for the answer is:

A is incorrect. If traditional common law rules concerning burden of proof were applied, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

B is incorrect. Cause in fact is a necessary element of a plaintiff's case in strict liability as well as in negligence. Under either theory, the wife must establish that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival were greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

C is correct. Jurisdictions that allow recovery for the loss of the chance of survival have created an exception to the traditional common law rules for establishing cause in fact. Under the traditional rules, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. A jurisdiction that allows recovery for loss of the chance of survival, however, would allow the wife to recover for the reduction in her husband's chance of surviving that was caused by the failure to properly diagnose.

D is incorrect. Cause in fact is a necessary element of a plaintiff's case for loss of spousal consortium, as well as in cases in which a plaintiff is suing for personal injury. In a loss of consortium action, the wife must establish that the hospital's negligence was the cause of her husband's death. Traditional rules of proof regarding causation would require that the wife prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to her husband's survival. Here, the wife cannot establish that the chances of her husband's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction and she could not recover for loss of spousal consortium.

Question 1555 - Torts - Negligence

The question was:

A man was admitted to a hospital after complaining of persistent severe headaches. While he was there, hospital staff failed to diagnose his condition, and he was discharged. Two days later, the man died of a massive brain hemorrhage due to a congenital defect in an artery.

The man's wife has brought a wrongful death action against the hospital. The wife offers expert testimony that the man would have had a "reasonable chance" (not greater than 50%) of surviving the hemorrhage if he had been given appropriate medical care at the hospital.

In what type of jurisdiction would the wife's suit most likely be successful?

A: A jurisdiction that applies traditional common law rules concerning burden of proof.
B: A jurisdiction that allows recovery based on strict liability.
C: A jurisdiction that allows recovery for the loss of the chance of survival.
D: A jurisdiction that recognizes loss of spousal consortium.

The explanation for the answer is:

A is incorrect. If traditional common law rules concerning burden of proof were applied, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

B is incorrect. Cause in fact is a necessary element of a plaintiff's case in strict liability as well as in negligence. Under either theory, the wife must establish that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival were greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

C is correct. Jurisdictions that allow recovery for the loss of the chance of survival have created an exception to the traditional common law rules for establishing cause in fact. Under the traditional rules, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. A jurisdiction that allows recovery for loss of the chance of survival, however, would allow the wife to recover for the reduction in her husband's chance of surviving that was caused by the failure to properly diagnose.

D is incorrect. Cause in fact is a necessary element of a plaintiff's case for loss of spousal consortium, as well as in cases in which a plaintiff is suing for personal injury. In a loss of consortium action, the wife must establish that the hospital's negligence was the cause of her husband's death. Traditional rules of proof regarding causation would require that the wife prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to her husband's survival. Here, the wife cannot establish that the chances of her husband's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction and she could not recover for loss of spousal consortium.

Question 1555 - Torts - Negligence

The question was:

A man was admitted to a hospital after complaining of persistent severe headaches. While he was there, hospital staff failed to diagnose his condition, and he was discharged. Two days later, the man died of a massive brain hemorrhage due to a congenital defect in an artery.

The man's wife has brought a wrongful death action against the hospital. The wife offers expert testimony that the man would have had a "reasonable chance" (not greater than 50%) of surviving the hemorrhage if he had been given appropriate medical care at the hospital.

In what type of jurisdiction would the wife's suit most likely be successful?

A: A jurisdiction that applies traditional common law rules concerning burden of proof.
B: A jurisdiction that allows recovery based on strict liability.
C: A jurisdiction that allows recovery for the loss of the chance of survival.
D: A jurisdiction that recognizes loss of spousal consortium.

The explanation for the answer is:

A is incorrect. If traditional common law rules concerning burden of proof were applied, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

B is incorrect. Cause in fact is a necessary element of a plaintiff's case in strict liability as well as in negligence. Under either theory, the wife must establish that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, however, the wife cannot establish that the chances of the man's survival were greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction.

C is correct. Jurisdictions that allow recovery for the loss of the chance of survival have created an exception to the traditional common law rules for establishing cause in fact. Under the traditional rules, the wife would be required to prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to the man's survival. Here, the wife cannot establish that the chances of the man's survival would have been greater than 50% even if he had been given appropriate medical care. A jurisdiction that allows recovery for loss of the chance of survival, however, would allow the wife to recover for the reduction in her husband's chance of surviving that was caused by the failure to properly diagnose.

D is incorrect. Cause in fact is a necessary element of a plaintiff's case for loss of spousal consortium, as well as in cases in which a plaintiff is suing for personal injury. In a loss of consortium action, the wife must establish that the hospital's negligence was the cause of her husband's death. Traditional rules of proof regarding causation would require that the wife prove that reasonable action on the part of the hospital (presumably a correct diagnosis) would, more likely than not, have led to her husband's survival. Here, the wife cannot establish that the chances of her husband's survival would have been greater than 50% even if he had been given appropriate medical care. Therefore, the wife could not carry her burden of proof on the issue of cause in fact in such a jurisdiction and she could not recover for loss of spousal consortium.

Question 1560 - Torts - Negligence

The question was:

A mother purchased an expensive television from an appliance store for her adult son. Two years after the purchase, a fire started in the son's living room in the middle of the night. The fire department concluded that the fire had started in the television. No other facts are known.

The son sued the appliance store for negligence. The store has moved for summary judgment.

Should the court grant the store's motion?

A: No, because televisions do not catch fire in the absence of negligence.
B: No, because the store sold the television.
C: Yes, because the son is not in privity with the store.
D: Yes, because there is no evidence of negligence on the part of the store.

The explanation for the answer is:

A is incorrect. Even if it were true that televisions do not catch fire in the absence of negligence, the fact that this television did is insufficient to establish that the store acted negligently. This is not an appropriate case for res ipsa loquitur, because the manufacturer, rather than the store, may have been negligent or the negligence may have occurred after the sale (for example, during a repair or while the television was being used by the son). Because the son cannot establish the store's negligence, the court should grant the store's motion.

B is incorrect. The son sued the store for negligence, not for strict liability. To recover on a negligence claim, the son must establish that the store itself was negligent. If the son had sued under strict liability, he would have had to establish that the television was defective at the time it was sold to his mother. Because the son cannot establish the store's negligence, the court should grant the store's motion.

C is incorrect. A lack of privity is not a barrier to negligence claims based on malfunctioning products. Anyone foreseeably put at risk by a defective product and actually injured by the product's defective condition can sue for negligence. The court should grant the store's motion, but it is because the son cannot establish that the store was the negligent actor.

D is correct. The son is suing in negligence, not in strict liability. To make out a prima facie case in negligence, the son must introduce evidence that the store was negligent. However, the son has not pointed to any negligent action or omission by the store. This is not an appropriate case for res ipsa loquitur, because the manufacturer, rather than the store, may have been negligent or the negligence may have occurred after the sale (for example, during a repair or while the television was being used by the son).

Question 1560 - Torts - Negligence

The question was:

A mother purchased an expensive television from an appliance store for her adult son. Two years after the purchase, a fire started in the son's living room in the middle of the night. The fire department concluded that the fire had started in the television. No other facts are known.

The son sued the appliance store for negligence. The store has moved for summary judgment.

Should the court grant the store's motion?

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B: No, because the store sold the television.
C: Yes, because the son is not in privity with the store.
D: Yes, because there is no evidence of negligence on the part of the store.

The explanation for the answer is:

A is incorrect. Even if it were true that televisions do not catch fire in the absence of negligence, the fact that this television did is insufficient to establish that the store acted negligently. This is not an appropriate case for res ipsa loquitur, because the manufacturer, rather than the store, may have been negligent or the negligence may have occurred after the sale (for example, during a repair or while the television was being used by the son). Because the son cannot establish the store's negligence, the court should grant the store's motion.

B is incorrect. The son sued the store for negligence, not for strict liability. To recover on a negligence claim, the son must establish that the store itself was negligent. If the son had sued under strict liability, he would have had to establish that the television was defective at the time it was sold to his mother. Because the son cannot establish the store's negligence, the court should grant the store's motion.

C is incorrect. A lack of privity is not a barrier to negligence claims based on malfunctioning products. Anyone foreseeably put at risk by a defective product and actually injured by the product's defective condition can sue for negligence. The court should grant the store's motion, but it is because the son cannot establish that the store was the negligent actor.

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Question 1560 - Torts - Negligence

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Should the court grant the store's motion?

A: No, because televisions do not catch fire in the absence of negligence.
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C: Yes, because the son is not in privity with the store.
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The explanation for the answer is:

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Should the court grant the store's motion?

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The explanation for the answer is:

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D is correct. The son is suing in negligence, not in strict liability. To make out a prima facie case in negligence, the son must introduce evidence that the store was negligent. However, the son has not pointed to any negligent action or omission by the store. This is not an appropriate case for res ipsa loquitur, because the manufacturer, rather than the store, may have been negligent or the negligence may have occurred after the sale (for example, during a repair or while the television was being used by the son).

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The son sued the appliance store for negligence. The store has moved for summary judgment.

Should the court grant the store's motion?

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D is correct. The son is suing in negligence, not in strict liability. To make out a prima facie case in negligence, the son must introduce evidence that the store was negligent. However, the son has not pointed to any negligent action or omission by the store. This is not an appropriate case for res ipsa loquitur, because the manufacturer, rather than the store, may have been negligent or the negligence may have occurred after the sale (for example, during a repair or while the television was being used by the son).

Question 1568 - Torts - Negligence

The question was:

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

A: No, because the finder of fact could infer that the escalator malfunction was due to negligence.
B: No, because the store is strictly liable for the shopper's injuries.
C: Yes, because an independent contractor maintained the escalator.
D: Yes, because the shopper has not produced evidence of negligence.

The explanation for the answer is:

A is correct. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

B is incorrect. Landowners and occupiers are not strictly liable even for injuries to their business invitees. The court should not grant the motion, but it is because the fact finder could infer negligence on the part of the store.

C is incorrect. Even if the malfunction were due to the negligence of the independent contractor, the store would also be responsible under the nondelegable duty doctrine. These facts illustrate a common situation in which that doctrine is applied: the defendant owns a building and invites the public to enter the building for the defendant's financial benefit. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

D is incorrect. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

Question 1568 - Torts - Negligence

The question was:

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

A: No, because the finder of fact could infer that the escalator malfunction was due to negligence.
B: No, because the store is strictly liable for the shopper's injuries.
C: Yes, because an independent contractor maintained the escalator.
D: Yes, because the shopper has not produced evidence of negligence.

The explanation for the answer is:

A is correct. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

B is incorrect. Landowners and occupiers are not strictly liable even for injuries to their business invitees. The court should not grant the motion, but it is because the fact finder could infer negligence on the part of the store.

C is incorrect. Even if the malfunction were due to the negligence of the independent contractor, the store would also be responsible under the nondelegable duty doctrine. These facts illustrate a common situation in which that doctrine is applied: the defendant owns a building and invites the public to enter the building for the defendant's financial benefit. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

D is incorrect. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

Question 1568 - Torts - Negligence

The question was:

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

A: No, because the finder of fact could infer that the escalator malfunction was due to negligence.
B: No, because the store is strictly liable for the shopper's injuries.
C: Yes, because an independent contractor maintained the escalator.
D: Yes, because the shopper has not produced evidence of negligence.

The explanation for the answer is:

A is correct. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

B is incorrect. Landowners and occupiers are not strictly liable even for injuries to their business invitees. The court should not grant the motion, but it is because the fact finder could infer negligence on the part of the store.

C is incorrect. Even if the malfunction were due to the negligence of the independent contractor, the store would also be responsible under the nondelegable duty doctrine. These facts illustrate a common situation in which that doctrine is applied: the defendant owns a building and invites the public to enter the building for the defendant's financial benefit. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

D is incorrect. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

Question 1568 - Torts - Negligence

The question was:

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

A: No, because the finder of fact could infer that the escalator malfunction was due to negligence.
B: No, because the store is strictly liable for the shopper's injuries.
C: Yes, because an independent contractor maintained the escalator.
D: Yes, because the shopper has not produced evidence of negligence.

The explanation for the answer is:

A is correct. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

B is incorrect. Landowners and occupiers are not strictly liable even for injuries to their business invitees. The court should not grant the motion, but it is because the fact finder could infer negligence on the part of the store.

C is incorrect. Even if the malfunction were due to the negligence of the independent contractor, the store would also be responsible under the nondelegable duty doctrine. These facts illustrate a common situation in which that doctrine is applied: the defendant owns a building and invites the public to enter the building for the defendant's financial benefit. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

D is incorrect. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

Question 1568 - Torts - Negligence

The question was:

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

A: No, because the finder of fact could infer that the escalator malfunction was due to negligence.
B: No, because the store is strictly liable for the shopper's injuries.
C: Yes, because an independent contractor maintained the escalator.
D: Yes, because the shopper has not produced evidence of negligence.

The explanation for the answer is:

A is correct. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

B is incorrect. Landowners and occupiers are not strictly liable even for injuries to their business invitees. The court should not grant the motion, but it is because the fact finder could infer negligence on the part of the store.

C is incorrect. Even if the malfunction were due to the negligence of the independent contractor, the store would also be responsible under the nondelegable duty doctrine. These facts illustrate a common situation in which that doctrine is applied: the defendant owns a building and invites the public to enter the building for the defendant's financial benefit. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

D is incorrect. There is enough evidence here to support an inference of negligence on the part of the store. A jury could find that the malfunction was due to the negligent installation, maintenance, or operation of the escalator; the store would be responsible for all these possible causes under the nondelegable duty doctrine.

Question 1573 - Torts - Negligence

The question was:

A 14-year-old teenager of low intelligence received her parents' permission to drive their car. She had had very little experience driving a car and did not have a driver's license. Although she did the best she could, she lost control of the car and hit a pedestrian.

The pedestrian has brought a negligence action against the teenager.

Is the pedestrian likely to prevail?

A: No, because only the teenager's parents are subject to liability.
B: No, because the teenager was acting reasonably for a 14-year-old of low intelligence and little driving experience.
C: Yes, because the teenager was engaging in an adult activity.
D: Yes, because the teenager was not old enough to obtain a driver's license.

The explanation for the answer is:

A is incorrect. The parents and the teenager may both be liable. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care and can be sued for the injuries caused by her negligent driving.

B is incorrect. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

C is correct. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

D is incorrect. In the absence of a statute setting a different standard, the teenager's failure to obtain a license ordinarily would not be evidence that she was actually negligent at the time of the accident. The plaintiff would have to prove actual negligence, which should be easy given that the teenager lost control of the car and given the fact that the teenager will be held to an adult standard of care because she was engaging in an adult activity.

Question 1573 - Torts - Negligence

The question was:

A 14-year-old teenager of low intelligence received her parents' permission to drive their car. She had had very little experience driving a car and did not have a driver's license. Although she did the best she could, she lost control of the car and hit a pedestrian.

The pedestrian has brought a negligence action against the teenager.

Is the pedestrian likely to prevail?

A: No, because only the teenager's parents are subject to liability.
B: No, because the teenager was acting reasonably for a 14-year-old of low intelligence and little driving experience.
C: Yes, because the teenager was engaging in an adult activity.
D: Yes, because the teenager was not old enough to obtain a driver's license.

The explanation for the answer is:

A is incorrect. The parents and the teenager may both be liable. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care and can be sued for the injuries caused by her negligent driving.

B is incorrect. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

C is correct. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

D is incorrect. In the absence of a statute setting a different standard, the teenager's failure to obtain a license ordinarily would not be evidence that she was actually negligent at the time of the accident. The plaintiff would have to prove actual negligence, which should be easy given that the teenager lost control of the car and given the fact that the teenager will be held to an adult standard of care because she was engaging in an adult activity.

Question 1573 - Torts - Negligence

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The pedestrian has brought a negligence action against the teenager.

Is the pedestrian likely to prevail?

A: No, because only the teenager's parents are subject to liability.
B: No, because the teenager was acting reasonably for a 14-year-old of low intelligence and little driving experience.
C: Yes, because the teenager was engaging in an adult activity.
D: Yes, because the teenager was not old enough to obtain a driver's license.

The explanation for the answer is:

A is incorrect. The parents and the teenager may both be liable. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care and can be sued for the injuries caused by her negligent driving.

B is incorrect. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

C is correct. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

D is incorrect. In the absence of a statute setting a different standard, the teenager's failure to obtain a license ordinarily would not be evidence that she was actually negligent at the time of the accident. The plaintiff would have to prove actual negligence, which should be easy given that the teenager lost control of the car and given the fact that the teenager will be held to an adult standard of care because she was engaging in an adult activity.

Question 1573 - Torts - Negligence

The question was:

A 14-year-old teenager of low intelligence received her parents' permission to drive their car. She had had very little experience driving a car and did not have a driver's license. Although she did the best she could, she lost control of the car and hit a pedestrian.

The pedestrian has brought a negligence action against the teenager.

Is the pedestrian likely to prevail?

A: No, because only the teenager's parents are subject to liability.
B: No, because the teenager was acting reasonably for a 14-year-old of low intelligence and little driving experience.
C: Yes, because the teenager was engaging in an adult activity.
D: Yes, because the teenager was not old enough to obtain a driver's license.

The explanation for the answer is:

A is incorrect. The parents and the teenager may both be liable. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care and can be sued for the injuries caused by her negligent driving.

B is incorrect. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

C is correct. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

D is incorrect. In the absence of a statute setting a different standard, the teenager's failure to obtain a license ordinarily would not be evidence that she was actually negligent at the time of the accident. The plaintiff would have to prove actual negligence, which should be easy given that the teenager lost control of the car and given the fact that the teenager will be held to an adult standard of care because she was engaging in an adult activity.

Question 1573 - Torts - Negligence

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Is the pedestrian likely to prevail?

A: No, because only the teenager's parents are subject to liability.
B: No, because the teenager was acting reasonably for a 14-year-old of low intelligence and little driving experience.
C: Yes, because the teenager was engaging in an adult activity.
D: Yes, because the teenager was not old enough to obtain a driver's license.

The explanation for the answer is:

A is incorrect. The parents and the teenager may both be liable. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care and can be sued for the injuries caused by her negligent driving.

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C is correct. The teenager was engaging in a dangerous adult activity, so she will be held to the adult standard of care. No adjustment will be made to that standard to reflect her low intelligence and lack of experience. Her lack of intelligence and her inexperience put others at risk, and she will be held to the standard of a reasonably prudent driver even if she is not capable of reasonable prudence.

D is incorrect. In the absence of a statute setting a different standard, the teenager's failure to obtain a license ordinarily would not be evidence that she was actually negligent at the time of the accident. The plaintiff would have to prove actual negligence, which should be easy given that the teenager lost control of the car and given the fact that the teenager will be held to an adult standard of care because she was engaging in an adult activity.

Question 1579 - Torts - Negligence

The question was:

A firstborn child was examined as an infant by a doctor who was a specialist in the diagnosis of speech and hearing impairments. Although the doctor should have concluded that the infant was totally deaf due to a hereditary condition, the doctor negligently concluded that the infant's hearing was normal. After the diagnosis, but before they learned that the infant was in fact deaf, the parents conceived a second child who also suffered total deafness due to the hereditary condition.

The parents claim that they would not have conceived the second child had they known of the high probability of the hereditary condition. They have sought the advice of their attorney regarding which negligence action against the doctor is most likely to succeed.

What sort of action against the doctor should the attorney recommend?

A: A medical malpractice action seeking damages on the second child's behalf for expenses due to his deafness, on the ground that the doctor's negligence caused him to be born deaf.
B: A wrongful birth action by the parents for expenses they have incurred due to the second child's deafness, on the ground that but for the doctor's negligence, they would not have conceived the second child.
C: A wrongful life action by the parents for expenses for the entire period of the second child's life, on the ground that but for the doctor's negligence, the second child would not have been born.
D: A wrongful life action on the second child's behalf for expenses for the entire period of his life, on the ground that but for the doctor's negligence, he would not have been born.

The explanation for the answer is:

A is incorrect. The parents assert that they would not have conceived a second child had the doctor properly diagnosed the first child's deafness. Under that theory, the second child would never have been born had the doctor acted properly. Most courts are unwilling to say that it is worse to be born deaf than to never be born at all. Where that approach is taken, the second child has suffered no injury under this theory.

B is correct. This cause of action will be permitted in many states. The parents sought an accurate assessment of their first child, which the doctor failed to provide. Unaware of the hereditary condition, the parents conceived a second child and incurred unexpected expenses that could have been avoided had the doctor acted properly.

C is incorrect. A wrongful life action would be brought by a child who would not have been born. An action by the parents based on advice that would have avoided a conception of a child is a wrongful birth action. Also, most courts would not permit the parents to recover all of the expenses for the second child's life even in a proper action, but only those additional expenses attributable to the child's disability.

D is incorrect. Most states reject this claim, and of the few states that do permit it, some would limit recovery to the special damages attributable to the disability. The parents' wrongful birth action is more likely to be successful in almost all jurisdictions.

Question 1579 - Torts - Negligence

The question was:

A firstborn child was examined as an infant by a doctor who was a specialist in the diagnosis of speech and hearing impairments. Although the doctor should have concluded that the infant was totally deaf due to a hereditary condition, the doctor negligently concluded that the infant's hearing was normal. After the diagnosis, but before they learned that the infant was in fact deaf, the parents conceived a second child who also suffered total deafness due to the hereditary condition.

The parents claim that they would not have conceived the second child had they known of the high probability of the hereditary condition. They have sought the advice of their attorney regarding which negligence action against the doctor is most likely to succeed.

What sort of action against the doctor should the attorney recommend?

A: A medical malpractice action seeking damages on the second child's behalf for expenses due to his deafness, on the ground that the doctor's negligence caused him to be born deaf.
B: A wrongful birth action by the parents for expenses they have incurred due to the second child's deafness, on the ground that but for the doctor's negligence, they would not have conceived the second child.
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The explanation for the answer is:

A is incorrect. The parents assert that they would not have conceived a second child had the doctor properly diagnosed the first child's deafness. Under that theory, the second child would never have been born had the doctor acted properly. Most courts are unwilling to say that it is worse to be born deaf than to never be born at all. Where that approach is taken, the second child has suffered no injury under this theory.

B is correct. This cause of action will be permitted in many states. The parents sought an accurate assessment of their first child, which the doctor failed to provide. Unaware of the hereditary condition, the parents conceived a second child and incurred unexpected expenses that could have been avoided had the doctor acted properly.

C is incorrect. A wrongful life action would be brought by a child who would not have been born. An action by the parents based on advice that would have avoided a conception of a child is a wrongful birth action. Also, most courts would not permit the parents to recover all of the expenses for the second child's life even in a proper action, but only those additional expenses attributable to the child's disability.

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The explanation for the answer is:

A is incorrect. The parents assert that they would not have conceived a second child had the doctor properly diagnosed the first child's deafness. Under that theory, the second child would never have been born had the doctor acted properly. Most courts are unwilling to say that it is worse to be born deaf than to never be born at all. Where that approach is taken, the second child has suffered no injury under this theory.

B is correct. This cause of action will be permitted in many states. The parents sought an accurate assessment of their first child, which the doctor failed to provide. Unaware of the hereditary condition, the parents conceived a second child and incurred unexpected expenses that could have been avoided had the doctor acted properly.

C is incorrect. A wrongful life action would be brought by a child who would not have been born. An action by the parents based on advice that would have avoided a conception of a child is a wrongful birth action. Also, most courts would not permit the parents to recover all of the expenses for the second child's life even in a proper action, but only those additional expenses attributable to the child's disability.

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The parents claim that they would not have conceived the second child had they known of the high probability of the hereditary condition. They have sought the advice of their attorney regarding which negligence action against the doctor is most likely to succeed.

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Question 1582 - Torts - Intentional Torts

The question was:

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied the boat to the pier. The pier was clearly marked with "NO TRESPASSING" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to the pier. The boater offered to pay the owner for the use of the pier. Regardless, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

A: No, because the owner told the boater that she could not tie the boat to the pier.
B: No, because there was a possibility that the boat would not be damaged by the storm.
C: Yes, because the boater offered to pay the owner for the use of the pier.
D: Yes, because the boater was privileged to enter the owner's property to save her boat.

The explanation for the answer is:

A is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. In telling the boater that she could not tie the boat to the pier, the owner was asserting a right that he did not possess. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

B is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because her property was at risk. In order to establish that privilege, the boater need not establish that harm to the boat was inevitable, but only that her actions were reasonable given the circumstances. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

C is incorrect. The boater is likely to prevail, but it is because the boater was privileged to trespass on the owner's property under the doctrine of private necessity. Because the boater's property was at risk, her intrusion onto the pier was privileged, and the owner had no right to exclude her or her boat from the pier. Whether or not the boater offered to pay the owner is irrelevant to the privilege of private necessity. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

D is correct. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

Question 1582 - Torts - Intentional Torts

The question was:

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied the boat to the pier. The pier was clearly marked with "NO TRESPASSING" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to the pier. The boater offered to pay the owner for the use of the pier. Regardless, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

A: No, because the owner told the boater that she could not tie the boat to the pier.
B: No, because there was a possibility that the boat would not be damaged by the storm.
C: Yes, because the boater offered to pay the owner for the use of the pier.
D: Yes, because the boater was privileged to enter the owner's property to save her boat.

The explanation for the answer is:

A is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. In telling the boater that she could not tie the boat to the pier, the owner was asserting a right that he did not possess. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

B is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because her property was at risk. In order to establish that privilege, the boater need not establish that harm to the boat was inevitable, but only that her actions were reasonable given the circumstances. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

C is incorrect. The boater is likely to prevail, but it is because the boater was privileged to trespass on the owner's property under the doctrine of private necessity. Because the boater's property was at risk, her intrusion onto the pier was privileged, and the owner had no right to exclude her or her boat from the pier. Whether or not the boater offered to pay the owner is irrelevant to the privilege of private necessity. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

D is correct. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

Question 1582 - Torts - Intentional Torts

The question was:

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied the boat to the pier. The pier was clearly marked with "NO TRESPASSING" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to the pier. The boater offered to pay the owner for the use of the pier. Regardless, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

A: No, because the owner told the boater that she could not tie the boat to the pier.
B: No, because there was a possibility that the boat would not be damaged by the storm.
C: Yes, because the boater offered to pay the owner for the use of the pier.
D: Yes, because the boater was privileged to enter the owner's property to save her boat.

The explanation for the answer is:

A is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. In telling the boater that she could not tie the boat to the pier, the owner was asserting a right that he did not possess. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

B is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because her property was at risk. In order to establish that privilege, the boater need not establish that harm to the boat was inevitable, but only that her actions were reasonable given the circumstances. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

C is incorrect. The boater is likely to prevail, but it is because the boater was privileged to trespass on the owner's property under the doctrine of private necessity. Because the boater's property was at risk, her intrusion onto the pier was privileged, and the owner had no right to exclude her or her boat from the pier. Whether or not the boater offered to pay the owner is irrelevant to the privilege of private necessity. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

D is correct. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

Question 1582 - Torts - Intentional Torts

The question was:

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied the boat to the pier. The pier was clearly marked with "NO TRESPASSING" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to the pier. The boater offered to pay the owner for the use of the pier. Regardless, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

A: No, because the owner told the boater that she could not tie the boat to the pier.
B: No, because there was a possibility that the boat would not be damaged by the storm.
C: Yes, because the boater offered to pay the owner for the use of the pier.
D: Yes, because the boater was privileged to enter the owner's property to save her boat.

The explanation for the answer is:

A is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. In telling the boater that she could not tie the boat to the pier, the owner was asserting a right that he did not possess. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

B is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because her property was at risk. In order to establish that privilege, the boater need not establish that harm to the boat was inevitable, but only that her actions were reasonable given the circumstances. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

C is incorrect. The boater is likely to prevail, but it is because the boater was privileged to trespass on the owner's property under the doctrine of private necessity. Because the boater's property was at risk, her intrusion onto the pier was privileged, and the owner had no right to exclude her or her boat from the pier. Whether or not the boater offered to pay the owner is irrelevant to the privilege of private necessity. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

D is correct. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

Question 1582 - Torts - Intentional Torts

The question was:

A boater, caught in a sudden storm and reasonably fearing that her boat would capsize, drove the boat up to a pier, exited the boat, and tied the boat to the pier. The pier was clearly marked with "NO TRESPASSING" signs. The owner of the pier ran up to the boater and told her that the boat could not remain tied to the pier. The boater offered to pay the owner for the use of the pier. Regardless, over the boater's protest, the owner untied the boat and pushed it away from the pier. The boat was lost at sea.

Is the boater likely to prevail in an action against the owner to recover the value of the boat?

A: No, because the owner told the boater that she could not tie the boat to the pier.
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C: Yes, because the boater offered to pay the owner for the use of the pier.
D: Yes, because the boater was privileged to enter the owner's property to save her boat.

The explanation for the answer is:

A is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. In telling the boater that she could not tie the boat to the pier, the owner was asserting a right that he did not possess. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

B is incorrect. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because her property was at risk. In order to establish that privilege, the boater need not establish that harm to the boat was inevitable, but only that her actions were reasonable given the circumstances. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

C is incorrect. The boater is likely to prevail, but it is because the boater was privileged to trespass on the owner's property under the doctrine of private necessity. Because the boater's property was at risk, her intrusion onto the pier was privileged, and the owner had no right to exclude her or her boat from the pier. Whether or not the boater offered to pay the owner is irrelevant to the privilege of private necessity. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

D is correct. The boater was privileged to trespass on the owner's property under the doctrine of private necessity, because the boater's property was at risk. Because the boater's intrusion onto the pier was privileged, the owner had no right to exclude her or her boat from the pier. When the owner untied the boat, he committed an unprivileged trespass upon the boater's property, so the owner must pay for the loss of the boat.

Question 1591 - Torts - Intentional Torts

The question was:

Unaware that a lawyer was in the county courthouse library late on a Friday afternoon, when it was unusual for anyone to be using the library, a clerk locked the library door and left. The lawyer found herself locked in when she tried to leave the library at 7 p.m. It was midnight before the lawyer's family could find out where she was and get her out. The lawyer was very annoyed by her detention but was not otherwise harmed by it.

Does the lawyer have a viable claim for false imprisonment against the clerk?

A: No, because it was unusual for anyone to be using the library late on a Friday afternoon.
B: No, because the clerk did not intend to confine the lawyer.
C: Yes, because the clerk should have checked to make sure no one was in the library before the clerk locked the door.
D: Yes, because the lawyer was aware of being confined.

The explanation for the answer is:

A is incorrect. The fact that it was unusual for anyone to be using the library at the time the clerk locked the door might lead a fact finder to conclude that the clerk was not negligent in failing to detect the lawyer. However, because false imprisonment is an intentional tort, the reasonableness of the clerk's conduct is irrelevant. If the clerk had intended to lock the lawyer in the library, the lawyer would have a claim for false imprisonment even if it was unusual for anyone to be using the library at the time. Under these facts, however, the clerk did not intend to lock the lawyer in the library, so the lawyer does not have a viable claim for false imprisonment.

B is correct. Intent to confine the claimant (or to commit some other intentional tort) is essential to establishing liability for false imprisonment. There is no evidence that the clerk had such an intent.

C is incorrect. Whether a reasonable person in the clerk's position would have checked before locking the door is irrelevant to a claim for false imprisonment. False imprisonment is an intentional tort requiring intent to confine the claimant (or to commit some other intentional tort). What a reasonable person would have done is relevant to a negligence claim, but not to a false imprisonment claim.

D is incorrect. In cases involving false imprisonment, courts often hold that the plaintiff must have been aware of the confinement at the time of the imprisonment or else must have sustained actual harm. It is also essential, however, that the defendant have had an intent to confine the plaintiff (or to commit some other intentional tort). If the clerk had had such an intent, the lawyer's awareness that she was confined might have completed the prima facie case, but the clerk had no such intent.

Question 1591 - Torts - Intentional Torts

The question was:

Unaware that a lawyer was in the county courthouse library late on a Friday afternoon, when it was unusual for anyone to be using the library, a clerk locked the library door and left. The lawyer found herself locked in when she tried to leave the library at 7 p.m. It was midnight before the lawyer's family could find out where she was and get her out. The lawyer was very annoyed by her detention but was not otherwise harmed by it.

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Question 1595 - Torts - Intentional Torts

The question was:

A man tied his dog to a bike rack in front of a store and left the dog there while he went inside to shop. The dog was usually friendly and placid.

A five-year-old child started to tease the dog by pulling gently on its ears and tail. When the man emerged from the store and saw what the child was doing to the dog, he became extremely upset.

Does the man have a viable claim against the child for trespass to chattels?

A: No, because the child did not injure the dog.
B: No, because the child was too young to form the requisite intent.
C: Yes, because the child touched the dog without the man's consent.
D: Yes, because the child's acts caused the man extreme distress.

The explanation for the answer is:

A is correct. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

B is incorrect. Even a small child can commit an intentional tort, such as trespass to chattels, so long as the child is old enough to form an intent to touch. But trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

C is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man (because they were without his consent), but the acts did not result in harm to the man's material interest in the dog.

D is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

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Does the man have a viable claim against the child for trespass to chattels?

A: No, because the child did not injure the dog.
B: No, because the child was too young to form the requisite intent.
C: Yes, because the child touched the dog without the man's consent.
D: Yes, because the child's acts caused the man extreme distress.

The explanation for the answer is:

A is correct. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

B is incorrect. Even a small child can commit an intentional tort, such as trespass to chattels, so long as the child is old enough to form an intent to touch. But trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

C is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man (because they were without his consent), but the acts did not result in harm to the man's material interest in the dog.

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Does the man have a viable claim against the child for trespass to chattels?

A: No, because the child did not injure the dog.
B: No, because the child was too young to form the requisite intent.
C: Yes, because the child touched the dog without the man's consent.
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C is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man (because they were without his consent), but the acts did not result in harm to the man's material interest in the dog.

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Does the man have a viable claim against the child for trespass to chattels?

A: No, because the child did not injure the dog.
B: No, because the child was too young to form the requisite intent.
C: Yes, because the child touched the dog without the man's consent.
D: Yes, because the child's acts caused the man extreme distress.

The explanation for the answer is:

A is correct. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

B is incorrect. Even a small child can commit an intentional tort, such as trespass to chattels, so long as the child is old enough to form an intent to touch. But trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

C is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man (because they were without his consent), but the acts did not result in harm to the man's material interest in the dog.

D is incorrect. Trespass to chattels requires that the plaintiff show actual harm to or deprivation of the use of the chattel for a substantial time. Here the child's acts caused emotional distress to the man, but the acts did not result in harm to the man's material interest in the dog.

Question 1597 - Torts - Intentional Torts

The question was:

A mother and her six-year-old child were on a walk when the mother stopped to talk with an elderly neighbor. Because the child resented having his mother's attention diverted by the neighbor, the child angrily threw himself against the neighbor and knocked her to the ground. The neighbor suffered a broken wrist as a result of the fall.

In an action for battery by the neighbor against the child, what is the strongest argument for liability?

A: The child intended to throw himself against the neighbor.
B: The child was old enough to appreciate that causing a fall could inflict serious injury.
C: The child was old enough to appreciate the riskiness of his conduct.
D: The child was not justified in his anger.

The explanation for the answer is:

A is correct. To recover on a claim for battery, it is sufficient for the neighbor to show that the child intended to touch the neighbor in a way that would be considered harmful or offensive, even though the child may have been too young to understand that what he was doing was wrong or to appreciate that the neighbor might be unusually vulnerable to injury.

B is incorrect. Proof of intent to cause injury or knowledge that injury may result is not necessary to recover on a claim of battery. Instead, it is sufficient that the child intended to touch the neighbor in a way that would be considered harmful or offensive, even though the child may have been too young to understand that what he was doing was wrong or to appreciate that the neighbor might be unusually vulnerable to injury.

C is incorrect. Whether the child was old enough to appreciate the riskiness of his conduct is irrelevant to the neighbor's battery claim. It is sufficient that the child intended to touch the neighbor in a way that would be considered harmful or offensive, even though the child may have been too young to understand that what he was doing was wrong. Whether a child is old enough to appreciate a given risk would be relevant in a negligence action, but not in an action for battery.

D is incorrect. It is sufficient that the child intended to touch the neighbor in a way that would be considered harmful or offensive, whether or not the child was justifiably angry. The motive for a defendant's actions may be relevant to an affirmative defense in some situations, but even justified anger is not a defense to an intentional tort.

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The question was:

A mother and her six-year-old child were on a walk when the mother stopped to talk with an elderly neighbor. Because the child resented having his mother's attention diverted by the neighbor, the child angrily threw himself against the neighbor and knocked her to the ground. The neighbor suffered a broken wrist as a result of the fall.

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