1. 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 clearly follows the test that the man must meet to justify his use of deadly force.
2. 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.
3. D is the best response. The call of the question asks for possible vicarious liability claims against the university. Of the various theories available to the subject, none match the facts that are given. The students were not employees or agents of the university and were not authorized or substantially encouraged to try the experiment without first clearing it with the professor.
4. 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.
5. 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.
6. 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.
7. C is correct. A judgment against the homeowner based on vicarious liability is a finding that the homeowner is not at fault, but must pay for the wrong committed by the contractor. Such a finding does not absolve the contractor of liability; rather the homeowner has a right of indemnity from the contractor for the amount of the judgment. As a result, B is incorrect.
8. D is the correct answer. Innkeepers have an affirmative duty to use reasonable care in conducting their activities, so as not to injure guests on the premises or persons not on their land. If a trier of fact determines that the owner's staff exercised due care by patrolling the hallways and telling guests to refrain from throwing things out of the windows, then the owner has met his standard of care burden and cannot be found liable (via a theory of respondeat superior) if, despite the actions of the hotel employees, a guest threw an ashtray out of a hotel window.
9. D is correct. The labor leader's first wife is a private person suing for defamation on an issue of public concern. Because the first wife is not a public figure, she does not need to prove the New York Times (New York Times v. Sullivan) standard of malice, but rather the Gertz (Gertz v. Robert Welch) standard: that the newspaper (1) published false information and, that the newspaper (2) was negligent in investigating the accuracy of the information, resulting in (3) actual harm to the first wife. Consequently, D is the best answer because it gives the correct outcome if the plaintiff cannot meet the Gertz burden of proof. C is incorrect because it gives the New York Times standard.
10. 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. In addition, it was located far from the city it served because it was aware of the invisible fumes it generated. Because the utility company met its burden of care, the farmer will not prevail in a negligence action. C assumes that the farmer's damages can be calculated based on the failure of the utility company to use the prohibitively expensive scrubbing equipment; but, since the utility company did not have the duty to install that equipment, C is incorrect.
11. A is the best answer. The issue here is the company's duty to known child trespassers (sometimes called the attractive nuisance doctrine). The company is subject to liability to the children for dangers caused by an artificial condition on its land because the company (1) knew that the children played on the chute by removing the plywood, (2) knew the children would slide down to the street below, (3)knew that the children would not realize that sliding into a street could be dangerous, and (4) the activity posed a high risk of harm to the children compared to the slight burden of eliminating the danger. A court would most likely find that the children were too young to appreciate the danger and that the company needed to exercise reasonable care to protect the children. Therefore, the child will prevail against the company in a negligence action if the child can prove by a preponderance of the evidence that there was an effective means of securing the chute at a moderate cost; for instance, by placing locks on the plywood screen. Therefore B and D are incorrect.
12. B is correct. The question is asking for the commuter's best chance at limiting her liability to the child. Completely avoiding liability is not the issue here. A and C can be eliminated immediately. A is untrue and, because the commuter saw the child leave the chute and had time to apply her brakes, the issue of foreseeability (answer C) is irrelevant to the commuter's defense. By proving that she used reasonable care in the maintenance of her brakes, however, the commuter will reduce her proportionate share of liability by increasing the mechanic's share of responsibility for the child's harm. D gives the recklessness standard, which the facts do not support. This is an ordinary care negligence issue. So, A, C and D are incorrect.
13. 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. D correctly states the test the man must meet to succeed in his claim. Since an objective belief is needed, it is not determinative that the mechanic was not actually the aggressor, so A and C are incorrect.
14. 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 a majority state, such a violation would be negligence per se; in a minority state it would be merely evidence of negligence. B is the best choice because it correctly identifies the relevance of the safety statute to the claim against the trucker.
15. A is the correct answer. The neighbor only intended to commit the tort of assault upon the wife with the dog by placing her in apprehension of an imminent harmful or offensive contact, but then the dog actually bit her. The rule of extended liability (also known as transferred intent) holds that, when the neighbor acted by threatening the wife with his dog in such a way that the intended injury (assault) would be actionable, the neighbor then became liable for all direct consequences even if they were not intended. As a result, the neighbor is liable to the wife for battery, and D is incorrect.
16. 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.
17. C is correct. For assumption of risk to apply, the buyer must voluntarily undertake a known risk. For the undertaking to be voluntary, there must be a reasonable alternative course of action available. C correctly states that, if the buyer had no other means of escape before Monday, his actions were not voluntary and the defense of assumption of risk would not be applicable. Therefore, the negligence standard in choice A is incorrect.
18. A is the correct answer. Although public nuisances generally must be prosecuted by public authorities, action against a public nuisance is possible by a private party if (1) the public nuisance is also a private nuisance in that it substantially and unreasonably diminishes the private use and enjoyment of the plaintiff's land, and (2) the public nuisance causes a special harm to plaintiff that differs from the general harm to the public. Choice A correctly expresses what plaintiffs must prove to prevail on a public nuisance claim. Consequently, C is incorrect.
19. A correctly states the appropriate test. Private nuisance is defined as a condition or activity that 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 or activity without compensation. The scope of interference is personal discomfort to the occupants or tangible harm to land, resulting in a diminution of its market value.
20. 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.
21. B correctly states the appropriate standard, which will allow the motorist's wife to recover from the woman, proportionate to her percentage of fault, because the wife's negligence in failing to tell the motorist about the faulty brakes likely contributed to the collision - if the motorist had known, he may have swerved or driven slower. Even if the wife is 90% at fault and the woman only 10% at fault, the wife will recover 10% of her damages under the "pure" comparative negligence standard.
22. 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 canned tuna (or groceries, generally), 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. Privity of contract is not required; therefore, the guest has standing to sue, and D is incorrect.
23. A is correct. The facts place the boater in a rowboat during a sudden storm, which qualifies as an emergency sufficient to invoke the private necessity privilege. The private necessity privilege means that the boater (1) is only liable for actual damages (unlike traditional trespass, which is a dignitary tort and does not require actual damage), that he (2) is not legally a trespasser while the danger exists, and that (3) the owner has no privilege to "protect his property" from the boater's use until the dangerous situation has passed. The owner's actions, therefore, have no defense and the boater will prevail in a claim for loss of his boat.
24. 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.
25. A addresses the next element of negligence that must be proven for the city's cause of action in negligence to prevail against the driver. Clearly the driver had an ordinary, reasonable duty to drive carefully, which he breached when he swerved and sideswiped the man's car. The driver had no statutory right to expect an empty lane to swerve into just because the hydrant was there. The question establishes that basis and asks what is next. The issue of causation is what must be addressed to establish liability for the damage to the city's property. But for the driver's sideswiping of the man's car, the car (which was properly, although illegally, parked) would not have overturned onto the hydrant, causing damage and establishing cause in fact. Likewise, the city's property damage was a foreseeable type of injury, resulting from the driver's negligent handling of his car near a fire hydrant (the unforeseeable manner in which it occurred is not determinative). In addition, the chain of connection was not severed by the resulting damage to the city's property being too remote in time, space, or circumstance so as to offend a rough sense of justice. Therefore, B, C and D are incorrect.
26. D is correct because it addresses the appropriate standard the company will have to meet. The issue is liability to infant trespassers (sometimes called the attractive nuisance doctrine). The child is only 10 years of age. For the company to be liable to the child for dangers caused by an artificial condition on its land, the company must (1) know or have reason to know that children enter the unfenced area, that (2) children play on the equipment, and that (3) the children would not realize that playing on the equipment was dangerous, which results in (4) a high risk of harm to the children compared to the slight burden of eliminating the danger. From ages 8 to 10, any jurisdiction would hold that the infant trespassers are too young to appreciate the danger and that the company needed to exercise reasonable care to protect the children. Therefore, the most significant issue in determining whether the company breached its duty to the child would be whether there was an effective means of securing the machinery at a cost that would not be an undue burden on the company's business operations.
27. B is correct. The man will be liable to the rescuer. Most jurisdictions construe legal causation in favor of recovery more broadly when the tort is intentional. The man's intentionally wrongful actions render him liable for all consequences of those acts, even if unintended and unforeseen. Thus, D is incorrect.
28. B is the best answer. Remember that the city is a municipality with tort immunity limitations set by the state as a sovereign. The instruction is to determine the theory with the best chance of prevailing against the city. Municipalities are generally immune from tort liability with the following exceptions: (1) torts committed in a proprietary capacity (as opposed to governmental), (2) municipality-created nuisances, and in some states, (3) negligently maintained municipal property, roads, streets and sewers. While it may not succeed, a claim arguing municipal property includes a broken light pole that was negligently left for three days (without the minimal maintenance of at least erecting temporary stop signs) would have the best chance of success. The other choices leave no chance of success at all.
29. C is the correct answer. 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) that causes the plaintiff severe emotional distress. The defendant acted with knowledge to a substantial certainty that his former wife would discover the hidden microphone and be distressed, because it was clearly located in a place that has personal security implications. The defendant's goal was accomplished when his former wife was made aware of the microphone, regardless of how that discovery occurred. D is a trap. Beware of rules that are too broadly worded. They are usually wrong. The conduct of a third person may have relevance in an emotional distress case (depending on the action and the intention of the third party), even though there is no third party liability on this particular set of facts.
30. B 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. An exception to the general rule occurs when the parent knowingly provides substantial aid or encouragement to the child's commission of a tort. The parent may then be held jointly and severally liable for the tort along with the child. The encouragement to "be aggressive and tough" can be considered substantial, especially since the facts indicate that the child had a "well-deserved" reputation as a bully. The parents clearly were aware of their son's dangerous propensities and actively encouraged them, thereby subjecting the parents to liability.
31. 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 only necessary to the analysis if the statement was false; therefore they are irrelevant to the resolution of this issue. B, C and D are incorrect.
32. 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.
33. C is correct. But for the man's own negligence in failing to keep his brakes in working order, the car would not have crashed. The man's negligence is the legal cause of his own injuries because, when the doctor first released the parking brake, she could not have foreseen the subsequent failure of the brakes as she coasted the car into a parking space. Thus, the doctor breached no duty; only the man did. Violation of the statute requiring working brakes, as a safety statute with driver and passenger safety in mind, would provide proof of negligence per se in a majority jurisdiction or evidence of negligence in a minority jurisdiction, leaving the issue of causation as being determinative with regard to the success or failure of this claim.
34. B is correct. The plaintiff will bring a claim based on res ipsa loquitur, because proof of negligence must be inferred. 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 facts clearly state that the door was in good working order and only two switches could operate it, both being in control of the automobile company employees at the time the door came down. The reasonable inference therefore is that one of the employees was negligent, and therefore the plaintiff will prevail on his claim.
35. B provides the correct test. Strict liability can be imposed upon the local retailer (and up the chain to manufacturer) for the sale of any product which is in a defective condition or unreasonably dangerous to the user and results in physical harm. The retailer is liable for any resulting physical harm to the child, provided that (1) the retailer is engaged in the business of selling stoves (and/or in addition to other products), and (2) the condition of the stove was not substantially changed as from when it was sold. The retailer is clearly a seller of stoves, so the second element must be proven by the child to prevail on a strict liability claim. The additional elements stated in A, C or D might have been necessary to prove negligence, but are not required in a strict liability claim based on sale of defective product, so A, C and D are incorrect
36. 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.
37. D states the appropriate standard for private prosecution of a public nuisance. Although public nuisances generally must be prosecuted by public authorities, action against a public nuisance is possible by a private party if (1) the public nuisance is also a private nuisance in that it substantially and unreasonably diminishes the private use and enjoyment of the plaintiff's land; and (2) the public nuisance causes a special harm to plaintiff that differs from the general harm to the public. Until the day the man was injured by the sidewalk obstruction, the cluttered sidewalk was not impacting the man's use or enjoyment of his apartment and he had no harm that differed from the general harm to the public. Thus, the store owner's defense would have been the man's lack of special damages.
38. 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.
39. B is correct. The invalid driver's license is only relevant as a driving violation, not a safety violation. Safety statutes are used to establish duty and breach 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 meets the test, in a majority jurisdiction it then establishes duty and breach (negligence per se), while in a minority jurisdiction it only serves as evidence of negligence. The purpose of a driver's license is for registration and identification of drivers. The licensing statute was not designed to prevent pedestrians in crosswalks from being hit by licensed drivers. The statute therefore would not establish negligence per se and will not furnish a basis for liability. Likewise, the lack of a license does not establish incompetence, so C is incorrect.
40. 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.
41. C is correct. Don't let the examiners trick you with particularly sympathetic facts. There is no affirmative duty by physicians to assist non-patient strangers in need, even in jurisdictions with "Good Samaritan" physician immunity statutes. The only exceptions would be: (1) if the physician had a special duty (such as husband to wife or parent to child) that imposed an affirmative duty to aid the victim, (2) if the physician had affirmatively acted in some way, thus undertaking a duty to exercise reasonable prudent care (commensurate with the physician's knowledge, experience and training) in aiding the victim, or (3) if the physician had caused the original harm to the victim. Therefore, A, B and D are all incorrect.
42. D is the correct answer. The seller was not physically responsible for the dangerous ventilation system designed by Mobilco but can still be liable under a negligence theory if a reasonable inspection by the seller would have revealed the system's defects and the seller unreasonably failed to protect possible plaintiffs from those dangers. Additional issues would need to be determined, including the system's safety history, any physical evidence of the danger, and the practical ability of the seller to inspect the system as compared to the potential dangerousness of the system. The question, however, asks for the minimum proof necessary. D states the threshold rule and is the best answer. A and B state an incomplete version of the standard, and C is a defense, not a standard. Thus, A, B and C are incorrect.
43. A is the correct answer. This is not a defective product case. Courts have held that the transmission of electricity is either only a service or else is not a product until the electricity has been metered and enters the consumer's home, so strict liability does not apply to this situation. B is incorrect. In the performance of services, negligence must be shown. A is a better answer than C because it correctly addresses the burden surrounding the need to prevent the lines from falling, which is the source of the injury. The child will only prevail if he can show that light company's ability to prevent the foreseeable and significant dangers from falling wires, due to broken insulators, became a duty because the burden to prevent was reasonable. D is incorrect because the facts indicate that shooting the insulators was a foreseeable act, and the actual source of the injury was not the broken insulators but the fallen wires. B, C and D are incorrect.
44. C is the correct answer. The key words in the fact pattern are "**The police officer did not know that the father had observed**..." The claim is for an intentional tort. 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) causes the plaintiff severe emotional distress. If the police officer did not know the father was observing, he could not have intended to inflict emotional distress on him. Intent is an essential element that must be met, so A and B are incorrect. D refers to negligent infliction of emotional distress, which is irrelevant to this issue. A, B and D are incorrect.
45. 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.
46. D is correct because it applies a negligence standard. Strict liability for defective or unreasonably dangerous products can be imposed on the supplier up the chain to the manufacturer. But, unless the performance of the service applying the product is conducted by the same entity that sells the product, negligence must be proved, and strict liability will not apply.
47. 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.
48. A is the correct answer. The toy company was found vicariously liable as the manufacturer and distributor of a defectively designed product. The engineer is an independent designer who contracted with the toy company. The toy company exercised no control over the actual design of the game; its only duties were to make the game according to the engineer's specifications and market it. A finding that the toy company was liable based on the engineer's defective design was a finding that the toy company was not an active wrongdoer.
49. 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, even in the absence of negligence and where all the proper precautions have been taken. Consequently, the farmer will prevail in a claim for damages against the gas company as owner of the storage facility, whether or not the gas company was negligent in the operation of the property.
50. C is the correct answer. 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. C gives the appropriate standard as it relates to the duty between the business and its invitees.
51. D is the correct answer.
52. A is the appropriate test for the applicable causation issue. The facts indicate aid had been undertaken and, but for the driver's negligent driving, the damage to the plaintiff's home would have been reduced because the fire engine would have arrived sooner. Where the defendant's negligent act unites with another event, the defendant's concurrent negligence will be considered the cause of at least part of the harm. His is a separate act of negligence that caused a portion of the fire damage severity, so the driver is only responsible for the portion of harm he is causally connected to.
53. D is the correct outcome. The rancher's damages resulted from the acts of two independent companies, neither of which alone would have been sufficient to poison the cattle, and in circumstances that make it impossible to determine if either defendant alone caused the injury. This is a concurrent cause of harm, and majority courts will hold that where the defendant's negligent act unites with another event, the acts of both defendants will be considered the cause of at least part of the harm, and the defendants will be held jointly and severally liable. The effect is that both companies are liable for the entire amount of the rancher's damages. Thus, A and B are incorrect.
54. 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 defective or 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. Choice A gives the appropriate standard the bicyclist must meet to prevail against the retailer.
55. B is the correct answer. Under a theory of strict liability, the trailer company is the manufacturer of an unreasonably dangerous truck. The driver's knowledge as a user and his failure to install the restraining device is irrelevant to the issue of the trailer company's liability for its manufactured product. Thus, D is incorrect. Because the man qualifies as a foreseeable plaintiff (under Restatement (Second) § 395 and subsequent case law extending liability to bystanders and persons in other vehicles which are caused injury by the defective vehicle), he is entitled to recover under strict liability. Privity of contract is not necessary in a products liability suit; therefore, C is incorrect. A is incorrect because contributory negligence is not a complete bar on the MBE unless specific instructions are included in the question. The man's negligence will go to damages, not prevent recovery.
56. 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. Choice D therefore states the appropriate standard the purchaser must meet to prevail.
57. 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 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 purpose or knowledge to a substantial certainty that the offensive or harmful touching would result. If the defendant knew the politician was about to sit when he pushed the chair, he has committed a battery, and the politician will prevail.
58. C is the correct answer. The call of the question is for assault. For his claim to prevail, the neighbor's apprehension must be reasonable: 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. Facts indicate that only threats were given.
59. 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.
60. D correctly provides the appropriate standard. 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, with resulting harm to the plaintiff. A qualified privilege, which is a defense to defamation, may protect employers who provide statements regarding prior employees, provided that such statements were not made with knowledge of their falsity or with reckless disregard for their truth. If 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, with or without the nurse's consent. Thus, A, B and C are incorrect.
61. 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.
62. C is the correct answer. This is a reading comprehension question. A motion to dismiss for failure to state a claim upon which relief can be granted alleges that, while all the plaintiff's allegations must be taken as true, they are legally insufficient to state a claim for damages. This is a very low standard that should cause you to immediately eliminate A and B, which grant the motion. That leaves C and D. D is irrelevant to a motion to dismiss because it is a defense, and all the plaintiff's allegations are to be taken as true. That leaves C by default. C is the correct answer because it addresses the appropriate issue of the plaintiff alleging sufficient facts that a jury could grant relief. A, B and D are incorrect.
63. 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 should be held liable for battery when the ball passed through the mesh and hit the plaintiff because he had intent to commit assault.
64. A is the correct answer. The answers allude to the understanding that most respondeat superior claims against employers for the intentional torts of their employees will fail ("a frolic of one's own") unless the employment itself includes a proclivity for the act in question (by advancing the master's business, even if directed not to) or if the employer knew of the employee's propensity for the particular type of wrongful conduct but failed to act (negligence in hiring, supervision). Thus B, C and D are incorrect. If the appeals court holds that the defendant committed a battery, however, a reasonable jury question arises as to whether the act falls into one of the respondeat superior exceptions.
65. D addresses the appropriate standard at issue for the plaintiff to prevail. Safety statutes to establish negligence per se (or evidence of negligence in a minority jurisdiction) are used 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. Thus, A is incorrect. The ordinance creating a parking restriction in front of fire hydrants is generally to protect access by fire department vehicles, so an invocation of the statute is most likely inappropriate on this set of facts.
66. 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.
67. D is correct. The pedestrian's personal representative made a claim based on res ipsa loquitur, because proof of negligence must be inferred. 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. 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. The pedestrian died after being struck by the defendant's car, driven by the defendant. The pedestrian was on the side of the road at the time he was hit. A reasonable inference therefore is that the defendant was driving negligently. Therefore, the pedestrian's estate will prevail because a reasonable person could determine that the defendant was negligent. Thus A is incorrect.
68. D is correct. Any time negligence must be inferred, there is a res ipsa loquitur issue. 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. 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. Defense's motion for a directed verdict (also called Judgment as a Matter of Law) judgment should be granted because the evidence, when viewed in the light most favorable to the pedestrian, is such that a reasonable person/jury could not disagree that the landlord was not in exclusive control of the instrumentality, and negligence could not be inferred as a result.
69. 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.
70. 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.
71. 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 the parent's minor children. A parent who is physically present and who fails to exercise control of her child is generally not vicariously liable for the child's tortious behavior; rather the parent may be liable for his or her own negligence in failing to control the child. If the customer can show that the child's mother was not adequately supervising her daughter, such that it was foreseeable that the child would potentially injure someone, then the customer is likely to prevail.
72. A is the correct answer. The defendant, a bill collector, came to the house of the plaintiff, a severely ill person, and intentionally (and outrageously) threatened the plaintiff with criminal fraud charges over the payment of a bill. This is an intentional tort, so D can be eliminated. The call of the question is for infliction of emotional distress, not defamation, so B can be eliminated. 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. Severe emotional distress can be evidenced physically, but physical injuries are not necessary, so C can be eliminated. Choice A addresses the issue of severe emotional distress, which is the last element of the tort, and the only element that is not established in the fact pattern. The plaintiff's resulting distress is the issue of the question. B, C and D are incorrect.
73. A is the correct answer. Trespass is an entry on to the land of another, without permission, with intent or by some abnormally dangerous activity. Intent refers only to the intent to enter the land; the defendant need not know that the land belongs to the plaintiff. If the defendant negligently or unintentionally entered the land, the plaintiff would have to also prove actual damages, so II would not be a sufficient basis for a claim. For trespass to land, damage is not required; the court will award nominal damages based on the trespass alone. If the plaintiff wants more than nominal damages, he will have to prove actual damages, so III is not a sufficient basis for a claim without additional facts and allegations. Only claim I is a sufficient basis for a claim of trespass to land without any further allegations or evidence. Thus A is the only possible answer. B, C and D are incorrect.
74. 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.
75. 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.
76. 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.
77. 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.
78. B is the correct answer. In a claim for assault, the vice president must show that the president had the apparent present physical ability to immediately complete his threatened battery in order for the vice president to have had an apprehension of an imminent harmful or offensive contact. Words alone are not sufficient. Actual contact and intent to cause severe emotional distress are not required. Thus C is incorrect. Because the president gave the vice president ten minutes to remove himself, the element of apprehension of imminent harm is not met. B is the best answer because it describes the facts that, in this situation, would cause a claim for assault to fail. A, C and D are incorrect.
79. B gives the applicable standard. 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.
80. 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.
81. B is the correct answer. In general, an independent contractor is liable for his own torts. An exception would exist in a case where the contractor is carrying out an inherently dangerous activity on the property of his employer. The facts indicate that a piece of lumber falling from the homeowner's roof was capable of hitting a pedestrian on a public sidewalk. Therefore, the homeowner had a nondelegable duty of care to the pedestrian because the repairman's repair of the roof was inherently dangerous. Answer B gives the correct standard and is the best choice.
82. 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.
83. C is correct. The mausoleum did not intentionally act in an extreme and outrageous way. This is a negligent infliction of emotional distress issue. Thus B is incorrect. 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 assumed a duty of care regarding the child's body and in such cases, most courts today would allow stand-alone emotional harm to be recoverable where: there has been a mishandling of a dead body, the person affected was in a special relationship to the deceased, and the emotional suffering was severe. Thus D is incorrect. B and D are incorrect.
84. C is the correct answer. A person has the privilege to use deadly force in self-defense if he has the reasonable belief that he is being attacked with deadly force. The facts state that the robber shot his gun at the guard. The guard's response was therefore privileged with regard to firing back at the robber. Because the original privilege is valid, the guard will be shielded from liability for the battery to the plaintiff through the doctrine of transferred privilege. Transferred privilege applies as a defense when, in the reasonable exercise of self-defense by the defendant, a third party is accidentally injured. Choice A is a reference to criminal law and not the best answer. Thus, A, B and D are incorrect.
85. 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.
86. 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.
87. B is the correct answer because it states what is known as "The Firefighter's Rule." The officer was injured by a peril that he was employed to confront. If the peril was created through negligence or was caused by a strict liability activity, the officer generally has no claim against the landowner (the defendant). Most states use the rule to treat the officer as a mere licensee who must take the premises as he finds them. This would allow the officer to recover in limited cases involving premises open to the public. In the facts of this situation, however, the officer was called to the defendant's private residence, where recovery would be barred. Thus, D is incorrect.
88. 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. The issue that would determine whether the customer would prevail is whether posting signs warning of danger would be considered "reasonable steps to protect customers" in the supermarket's parking lot. Thus, C is incorrect.
89. 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. A claim for nuisance is the neighbor's best chance at recovery for his economic damages assuming that he can show that the electrical interference is a substantial and unreasonable interference with his use and enjoyment of his property. He could then receive damages for diminution of the value of his business. In some cases the company would be required to purchase the neighbor's property to absorb the risk of diminution itself.
90. B is the correct answer because it states the appropriate standard at issue. In an action for negligence, the defendant only has a duty to act in a reasonably prudent manner with regard to foreseeable harm. When the fire was negligently started in his own home, the defendant's duty to avoid foreseeable risks posed by a fire would not have included sun damage to his neighbor's trees. While the defendant's negligence may be the cause-in-fact of his neighbor's damages, a court would most likely find that there was no legal (or proximate) causation. The injury was unforeseeable and too remote from the action. In a motion to dismiss, if the plaintiff cannot show foreseeable risk, then there is no duty and no claim for negligence. Thus A and C are incorrect.
91. 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.
92. B is the correct answer. The plaintiff is a private party and not a public figure, despite being "well-known" in the community. (The plaintiff is not an elected official or a celebrity, and has not placed himself at the forefront of a public controversy). Therefore, the standard the plaintiff must meet to show defamation is the negligence standard of ordinary care. The plaintiff must prove that the newspaper published a false statement about the plaintiff that it knew or reasonably should have known was a false and defamatory communication of fact, to a third person, who understood it was defamatory and which, as a result, caused harm to the plaintiff. The issue is not the falsity, which is provided by the facts, but whether the newspaper knew or reasonably should have known the statement was false. (As a publication, the newspaper has a duty to reasonably investigate before printing.) A directed verdict (also called Judgment as a Matter of Law) will be granted 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. Choice B correctly addresses the issue that, for the defendant's motion to be granted, the plaintiff must have failed to prove defendant's negligence.
93. 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.
94. D is the correct answer. Under the facts, the plaintiff's damages resulted from the negligence of two independent entities, neither of which alone would have been sufficient to flood the plaintiff's manufacturing plant. The railroad's failure to keep its storm drain properly maintained was a material element and, therefore, a substantial factor in bringing about the flooding. The plaintiff does not need to join the city in the suit and is not required to prove damages against the city. The railroad can argue the city's negligence in an effort to apportion or limit damages, implead the city as a third party defendant, or pursue an action for contribution from the city after the railroad's judgment. The city's absence from the plaintiff's action will not affect the railroad's liability as a jointly liable concurrent tortfeasor, for the entire amount of the plaintiff's awarded damages. Thus, A, B and C are incorrect.
95. B is the correct answer. The manager had a "shopkeeper's (or merchant's) privilege" to detain the customer. For the privilege to be valid, the manager must have had reasonable grounds to believe that the customer was stealing or attempting to steal store property, the detention must be for a reasonable period of time, and it must be conducted in a reasonable manner. If the manager had held the customer after the issue of the stolen scarf had been settled, or after the goods had been recovered in an attempt to obtain a signed confession, the customer's claim for false imprisonment would prevail. B is the best defense because it addresses the elements of the privilege as they pertain to the facts of the situation.
96. 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.
97. 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.
98. 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.
99. 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.
100. A is the correct answer. Because all four conclusions start with "No," scrutiny must be directed to which of the choices is the most appropriate reason why the plaintiff's claim cannot prevail against the defendant. The issue here is the defendant's duty to known child trespassers (sometimes called the attractive nuisance doctrine). The defendant would be subject to liability to the children for dangers caused by use of the trampoline on his land if he (1) knew or should have known that the children came on to his property when the defendant and his family were not home; knew that the children (2) played on the trampoline, and that (3) the children would not realize that using the trampoline without the protective mats could be dangerous, which was (4) a high risk of harm to the children compared to the slight burden of eliminating the danger.
101. 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.
102. A is the correct answer. The college student warned his roommate to "be careful" not to use "too much" of the shampoo. The college student has the duty of a reasonably prudent person to warn his roommate that the shampoo has risks associated with it; this duty is unaffected by the fact that his roommate did not pay for the use of the shampoo. Thus C is incorrect. Once he did, the roommate did not assume the risk because he was unaware of the dangers and so could not expressly or impliedly agree to them by using the product. Thus B is incorrect. The roommate, however, cannot take refuge in willful ignorance. He had a duty to read the warning on the label of the bottle, which clearly said no more than one capful per day should be used on his head. The roommate had a duty to himself to act in a reasonable and prudent way, which he breached. Under the facts of this problem, a finding of contributory negligence would be a complete bar to recovery because this is a common-law rule jurisdiction. A is correct because it is the college student's best chance at eliminating any liability to his roommate for damages. B and C are incorrect.
103. 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.
104. 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.
105. 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 it was taken from the homeowner's garage. It is irrelevant that, at the time the saw broke, the neighbor was cutting branches from the homeowner's trees, an action which may give rise to a claim for trespass to chattels, as well. A is incorrect because 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.
106. 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. 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.
107. 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.
108. C is the correct answer. The hospital has a duty to its business invitees and persons accompanying them to keep the premises in a reasonably safe condition for their use. Thus, A and D can be eliminated immediately; A because the mother's status alone does not mean the hospital has blanket liability 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 incorrect because while the metal fixture might have been protruding from the wall, its dangerous condition was not necessarily open and obvious.
109. A is the correct answer. While the call of the question does not provide a specific claim, the choices are aspects of nuisance. Private nuisance is defined as a condition or activity that interferes with the possessor's use and enjoyment of his land to such an extent that the landowner cannot reasonably be expected to bear it without compensation. Thus D is incorrect. 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 or fault, only actual damages. Thus B is incorrect. Then neighbor's intentions and the (red-herring) statement that the vacationer was afraid of water will not be determinative in a nuisance suit. Thus C is incorrect. The vacationer can most likely show that the loss of the stream interferes with his use and enjoyment of it such that a reasonable person would find the loss of the stream affects its market value. A is the best choice because it provides the nuisance standard. B, C and D are incorrect.
110. Choice B is correct. The instructions stated that contributory negligence is a complete bar in this jurisdiction. This is a red flag to look for one of the exceptions to that harsh rule. Choice C is the "sucker" answer because it is the contributory negligence rule, but it does not consider any exceptions as they apply to the fact pattern. The defendant was (1) aware that the plaintiff's car stopped perpendicularly in the roadway ahead of him, (2) knew the plaintiff would not have time to get out of his way, and (3) although the defendant had time to come to a slow, controlled stop, he chose to continue at a high rate of speed and just swerve around the plaintiff's car. The defendant then crashed into the other car, causing the plaintiff serious injury. Because the defendant's conduct met the last clear chance test, most courts (that still follow contributory negligence as a complete bar) would allow the plaintiff a complete recovery despite her own contributory negligence. Choice C is incorrect.
111. 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 I will not prevail. 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 II cannot prevail. 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. Thus III is the only cause of action the applicant will prevail under. Choices B, C and D are incorrect.
112. 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.
113. C is the correct answer. While the call of the question does not specify which claim it intends, 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 gave publicity to a matter concerning the private life of the plaintiff that was highly offensive to a reasonable person and which is not of legitimate public concern. This tort does not require that the information be false, only that it be offensive and non-newsworthy. The facts do not indicate that the information was offensive such that it would violate ordinary decency standards.
114. 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.)
115. 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 factfinder 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.
116. 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.
117. 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.
118. A is correct. This is not a medical malpractice issue, which would require proof of damages to prevail. Instead, a battery only requires a harmful or offensive intentional touching by the defendant, without consent or privilege. The athlete signed a consent form specifically allowing the doctor to perform the surgery, not the surgeon. Regardless of any superior skill level, the surgeon touched the athlete without his consent, which was offensive to the athlete, and thus a battery. Therefore, B, C and D are incorrect.
119. C is the correct answer. Commercial appropriation of the actor's likeness for Vineyard's benefit is subject to damages in a claim for invasion of privacy. The actor, as a well-known movie star, has a property right in his name and likeness. Vineyard cannot use the photograph without being granted a license to do so by the actor. The actor consented to a private photograph by an amateur but not to the commercial exploitation of his likeness by Vineyard. Thus A is incorrect.
120. 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.
121. D is the correct answer. The commission of an intentional/criminal tort 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. While a thief who breaks into a sporting goods shop may foreseeably be looking for guns to commit a crime, the issue is whether the presence of an activated burglar alarm was necessary to prevent a high risk of theft and criminal activity by potential burglars. D is the best choice because it addresses the appropriate issue of foreseeability that would create the duty to maintain an active alarm.
122. 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.
123. 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. Thus, answer A is correct, and answers C and D are incorrect.
124. Answer A is correct. The professor can state a prima facie case of defamation, but he cannot prevail because the dean has a valid defense based on his reasonable belief that the professor invited him to speak. By authorizing his agents to investigate his case, the professor apparently consented to limited publication in response to their inquiries. Ill will, if it existed, would be irrelevant to this defense.
125. 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.
126. 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.
127. D is correct. An owner of a wild animal or an abnormally dangerous animal is strictly liable for harm caused by that animal's dangerous nature. Even though the snake was defanged, the worker had no reason to know this; his injury falls within the risk run by the homeowner because it was caused by the worker's foreseeable reaction to seeing the escaped snake.
128. 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.
129. 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, if the mall is considered a public place, then its duty to maintain safe conditions is nondelegable, and 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 if the mall had a nondelegable duty to maintain safe conditions while work was being performed in a public place.
130. 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.
131. 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.

132. 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.

133. 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.

134. 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.

135. Answer D is correct. Under the theory of res ipsa loquitur, the jury can infer negligence where an accident would ordinarily not occur in the absence of negligence and the defendant is responsible for the instrumentality that inflicted the injury. Restatement (Second) of Torts § 328D. Thus, Answer D is correct, and Answer C is incorrect.

136. 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.

137. Answer B is correct. To establish a claim for assault, a plaintiff must demonstrate that he reasonably apprehended that a harmful or offensive touch was imminent. In this case, because he was asleep, the student did not have the apprehension necessary for an assault claim.

138. 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.

139. 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. A showing of negligent behavior on the part of the defendant is not required to prevail on a nuisance claim. Thus, Answer A is incorrect.

140. Answer D is correct. A criminal statute can be used to set the standard of care in a negligence action if it was intended to protect against the type of harm that occurred by specifying preventive steps that should be taken. In that case, violation of the statute is negligence per se. Thus, Answer D is correct, and Answer A is incorrect.

141. 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.

142. 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. 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 will be a question of fact for the jury to decide. Thus, Answer B is correct and Answer D is incorrect.

143. Answer D is correct. While the rancher's belief that deadly force was necessary to protect himself from harm may have been actual, it was not reasonable. To justify the use of force sufficient to cause death or serious bodily injury, a defendant must have more than a subjective suspicion that such force is necessary. A defendant must have an actual and reasonable belief that he himself is threatened with force of that sort. In this case, the rancher's belief that the neighbor was armed was not reasonable, nor did he have a reasonable belief that the neighbor meant to harm him. Thus, Answer D is correct and Answer B is incorrect.

144. 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.

145. 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. Thus, Answer A is correct.

146. 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.

147. 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.

148. 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.

149. 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.

150. D is the only possible answer. This is a reading comprehension question. The saw was completely disassembled and then rebuilt by the storekeeper's employees. While the chain of strict liability goes up from seller to the manufacturer, in this case, the defect was not one of manufacturing or design or failure to warn. The fact pattern's statements about the blade and saw manufacturer are irrelevant here because the storekeeper's actions alone created a claim for products liability negligence when his failure to exercise due care in reconditioning the saw and changing the blade caused the product to differ from its intended design, rendering it more dangerous than other saws of its type. Consequently, an action in strict liability against Power Saw will fail.

151. A is the correct response. The friend had a duty of reasonable care to inform the motorist of the faulty brakes. The friend's failure to do so was a breach of that duty, causing injury to the motorist, which was not superseded by the wife's foreseeable failure to warn. The motorist will prevail in a negligence claim against the friend.

152. C is the correct answer. This is a reading comprehension question. 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 customer is asserting a claim against the canning company. This claim will not prevail because the canning company did not have exclusive control over the cans of tuna at the time they were damaged. The facts emphasize this point when they state that undamaged cans from the same shipment were "fit for consumption." Therefore, A is incorrect.

153. 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.

154. 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.

155. 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. B gives the appropriate result if the bicycle company breaches that duty. Thus, C is incorrect.

156. 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.

157. Choice B provides the best theory of relief. Private nuisance is defined as a condition or activity that 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 interference without compensation. The scope of interference is personal discomfort to the occupants and/or tangible harm to land resulting in a diminution of its market value, thus providing the company's best chance at recovering damages for its financial losses.

158. A is the correct answer. This is a reading comprehension question. Winery could be subject to strict liability if their champagne bottles were unreasonably dangerous (even without a defect) and there was a failure to warn of that danger or to give proper directions on how to open the bottles. The facts clearly indicate, however, that the bartender has dealt with this type of bottle and had bottle stoppers unexpectedly pop out before. In addition, the plaintiff is a bartender, which indicates training in the use of different types of alcoholic beverages and their containers. The test for strict products liability comparative fault is that the bartender was actually (subjectively) aware (or, should have been, in light of his age, experience, knowledge and understanding as well as the obviousness) of the danger, but proceeded to open the champagne bottles unreasonably (i.e., while directing them at his face). If the bartender meets the test, which under the facts he would, his actions in the face of his knowledge could bar him from recovery. Choice A presents the possibility that the jury will be considering a defense to strict liability, and A appropriately gives a legal description of why the defense would cut short Winery's liability.C is incorrect. A finding of assumption of risk within comparative fault in a strict liability claim will generally bar recovery, particularly if there was an alternative way to perform the task that was not as dangerous. The warning would have made no difference because the plaintiff (as a bartender who had used these bottles before) was already aware of the danger, yet continued to open the champagne bottles in an unreasonable way (most likely by pointing the bottle toward himself rather than away), resulting in injury to himself. He is, therefore, barred from recovery.

159. 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.

160. D is the correct answer. In general, a business has a duty of inspection and a duty to warn of or repair known hazards on the premises. The duty to protect applies to defects known to the business and to defects the invitee could discover, on his own, using ordinary care. This liability may be abated if the danger was open and obvious to the business invitee, or 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 then owes is to refrain from willful and wanton conduct.

161. B is the correct answer. Don't fall for the red-herring of the "fraudulent polygraph test." Thus A is incorrect! The call of the question tells you this is a straightforward defamation/slander case between two private individuals. 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.

162. 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.

163. A is the correct answer. The sports car performed exactly as it was designed to. This is a defective design case. For strict liability to apply in defective design, the driver must prevail in a risk-utility balancing test where she must show that the risk and severity of her injuries were predictable to her as the driver of the sports car. 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. The driver provided evidence that an alternative engine design of equal cost and performance was possible without the stalling flaw. Under the facts, the judge could find that the driver met her burden to show injury to herself as the result of a design flaw that was not technologically and economically burdensome for Rapido Company to correct. 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. Therefore, the defendant's motion should be denied, and A is the best answer.

164. 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.

165. Answer A is correct. The situations in which a plaintiff can recover for purely emotional distress caused by negligence are limited, and this is not one of them. Recovery for negligent misrepresentation is usually limited to pecuniary loss unless it involves a risk of physical harm. In this case, the applicant found a comparable position promptly, so he suffered no harm from the personnel director's misrepresentation other than his emotional distress.

166. 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.

167. 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.

168. Answer D is correct. The farmer was privileged to use reasonable force to prevent or end a trespasser's intrusion upon his land or to protect his property, but he was not privileged to use force that threatened serious bodily injury unless he was himself in danger of serious bodily harm. The force the farmer used was sufficient to and did in fact cause serious bodily injury. The child appeared to pose no threat of bodily harm to the farmer and could have been deterred by less forceful means.

169. 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.

170. 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."

171. 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; there would thus have been no duty to act any differently in repairing the sidewalk. Although this defense is not particularly strong, it is the only answer choice that leaves the contractor any chance of success. Being paid for services does not limit one's liability for negligence. If the homeowner were deemed to be vicariously liable for the contractor's negligence, the homeowner would then be entitled to indemnification or contribution from the contractor, so A, B and D are all incorrect.

172. C is correct. This answer can be reached through the process of elimination. A does not address the facts - the farmer has already sold his farm. Likewise for D. That leaves B and C. B is inaccurate because although public nuisances generally must be prosecuted by public authorities, action against a public nuisance is possible by a private party if (1) the public nuisance is also a private nuisance in that it substantially and unreasonably diminishes the private use and enjoyment of the plaintiff's land, or (2) the public nuisance causes a special harm to plaintiff that differs from the general harm to the public. The facts, however, pointedly state that the utility company built the plant far from the city, but it was adjacent to the farmer's land. This is a private nuisance situation, which leaves C. Private nuisance is defined as a condition or activity that interferes with the possessor's use and enjoyment of his land to such an extent that the landowner cannot reasonably be expected to bear it without compensation. The scope of interference is personal discomfort to the occupants and/or tangible harm to land resulting in a diminution of its market value. The farmer's damages fall within this scope of nuisance liability and he should prevail.

173. B is the only possible answer. A is a products liability standard and the mechanic only inspected the brakes; he did not install new ones. C can be eliminated immediately because the child was physically injured and bystander claims only apply to witnesses to accidents. D misstates the facts. The company's conduct can't supersede because it is the original negligent act in the chain of causation leading to the child's injury, while the brake failure was an intervening cause which rendered the commuter's appropriately executed stop ineffective. B provides the relevant burden of proof that the child must meet to prevail against the mechanic. A, C and D are incorrect.

174. B is the correct answer. The pedestrian's failure to be in the crosswalk will be used as a comparative negligence defense by the driver to reduce or negate the driver's liability to the pedestrian once the pedestrian has met his burden of proof by showing that the driver breached a duty of care, resulting in causation of harm and damages. 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. Under the majority rule, such a violation would be negligence per se; under the minority rule it would merely be evidence of negligence. The violation, and whether the pedestrian's conduct was excused due to traffic conditions, will be relevant in determining the extent of the driver's liability for damages to the pedestrian.

175. B is correct. For the tort of assault, the husband's apprehension must be reasonable; the neighbor must have the apparent present ability to complete the battery. The neighbor ran towards both the husband and the wife, not just the wife. If the husband believed that, without prevention by an intervening force, the dog would bite him as well, he will prevail in a claim for assault against the neighbor. Thus C is incorrect.

176. A is the correct answer. Economic damages are beyond the scope of strict liability and courts usually subject claims for economic loss to special rules or statutes (such as wrongful death). Generally, there must be privity of contract between buyer and seller and liability is limited to the terms of the contract between them. The facts do not indicate any contractual relationship between the storekeeper and the purchaser that contemplated economic damages.

177. C is the correct answer. In contributory negligence states, assumption of the risk is only a defense to strict liability if the employee (or the purchaser) (1) discovers the defect and is aware of the danger, and (2) nevertheless proceeds unreasonably to make use of the product. If the employee knew the shaft was loose on a power saw and continued to use it, he would be barred from recovery for his injury.

178. A is correct as the theory that the employee is most likely to prevail on. Strict liability can be imposed upon the storekeeper for the sale of any product which is in a defective condition or unreasonably dangerous to the user. Liability for physical harm to the employee is available provided that (1) the storekeeper is engaged in the business of selling reconditioned power saws, and (2) the power saw was not substantially changed by anyone else before the employee used it.

179. B is the correct answer because it states the best defense available to Saw-Blade. If Saw-Blade can establish that the employee's use of a plywood saw to cut a sheet of hard plastic was an unforeseeably improper use of the saw, then a court would hold that there was no breach of duty to the employee, and the action for strict liability would fail. This defense is tenuous, however, because the misuse must be unforeseeable to prevail. The other choices, however, leave Saw-Blade with no chance of prevailing at all. C is not the best answer because it is more difficult to prove. Contributory negligence is only a defense to strict liability if the employee (or the purchaser) (1) discovers the defect and is aware of the danger, and (2) nevertheless proceeds unreasonably to make use of the product. Under the facts, it is not clear that the blade was defective. The purchaser asked for a blade that would cut plywood, however, so it would be easier to prove improper use than defect under this set of facts.

180. A is the correct answer as it provides the appropriate standard that the athlete must meet to prove defamation (libel). As a public figure who has received a great deal of press coverage, the athlete must show that the shoe store's use of the athlete's photo as a statement of endorsement was false and that the assertion of endorsement was made with knowledge of the falsity or with reckless disregard of whether it was false or true. Because the athlete can clearly show that the assertion of endorsement was false, A is the best statement of what is still required of the athlete for him to prevail.

181, B is correct. There are four invasion of privacy torts: (1) intrusion into seclusion, (2) public disclosure of private facts, (3) false light publicity, and in this case, (4) appropriation of another's name or likeness. The facts of this problem clearly state that the athlete's likeness was used for profit without his knowledge or permission. The athlete, as a nationally known figure, has a property right in his name and likeness and may grant a license to others to use them. The athlete may also sue to enjoin third parties from using his name and likeness without his permission.

182. D is the best answer because it points to the one element that the buyer is missing in his claim for false imprisonment. The confinement must be intentional. The fact pattern gives no indication that the guard knew anyone was left when the gates were locked for the weekend.

183. C is the correct answer. This is a reading comprehension question. 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 customer is asserting a claim against the canning company. This claim will not prevail because the canning company did not have exclusive control over the cans of tuna at the time they were damaged. The facts emphasize this point when they state that undamaged cans from the same shipment were "fit for consumption." Therefore, A is incorrect.

184. 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 product liability claim. Therefore A is out. 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 negligently used tainted tuna and breached her duty of ordinary care. A, C and D are incorrect.

185. D, the correct answer, is reached through the process of elimination. A, B, and C are all saying essentially the same thing - that the property was private. This leaves D. The question asks for a necessary element to create trespass liability, but the issue here is private necessity and temporary loss of privilege to protect on the part of the landowner. The boater had the privilege of private necessity, which allows trespass onto the property of another to avoid a serious threat to life or property. The facts place the boater in a rowboat during a sudden storm, which qualifies as an emergency sufficient to invoke the privilege. The private necessity privilege means that the boater (1) is only liable for actual damages (unlike traditional trespass, which is a dignitary tort and does not require actual damage), that he (2) is not legally a trespasser while the danger exists, and that (3) the owner has no privilege to "protect his property" from the boater's use until the dangerous situation has passed. On the facts, the boater's reasonable belief that his boat might be swamped and sink is the necessary element that gives him privilege from trespass liability for the duration of the storm. A, B and C are all incorrect.

186. 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.

187. 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.

188. C is the only possible answer under the facts. The neighbor's car was innocently parked in his garage. The man's intentionally tortious and criminal act of siphoning gas from the neighbor's car was the cause of the fire and the rescuer's injuries, not any voluntary or negligent act of the neighbor. The facts given do not indicate any action or duty by the neighbor that would render him liable in negligence. The rescuer's heroism and injuries do not give him an actionable claim against an innocent victim. Thus, A, B and D are incorrect.

189. C is the correct answer. To prevail on a claim for negligence, the plaintiff must establish duty, breach, causation, and damages. The call of the question states that negligence has been established, which means that the elements of duty and breach have been met. The plaintiff must now establish 2-prong causation and damages. The trucker was a substantial factor in the visitor's inability to see, and by blocking other motorists' view of the intersection, it was foreseeable that this type of vehicular accident and injury would occur. Cause-in-fact is established within the fact pattern, and the legal cause chain of connection does not offend justice. C gives the likely result in establishing the trucker's negligence. Therefore A, B and D are incorrect.

190. A is correct. Children as young as four have been held capable of forming a tortious intent and can be held liable for their own actions. Upon proof of either purpose or knowledge to a substantial certainty that his actions would cause harm, the question then becomes one of whether the child's intent was acted upon in fact. The facts clearly indicate that the child's actions were intentional ("well-deserved reputation" & "for no reason") and without privilege, causing severe injuries to a much younger child. Therefore, C is wrong.

191. 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.

192. 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 liabile 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.

193. 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.

194. D is the correct answer. This is a simple "Good Samaritan rule" question. A can be eliminated immediately, because there is no general duty to render aid to another. The exceptions to this include (1) if the person had a special duty (such as husband to wife or parent to child) that imposed an affirmative duty to aid victim (the person does not have a special relationship to a cousin or a neighbor, so B and C are incorrect), or (2) if the person had affirmatively acted in some way, thus undertaking a duty to exercise reasonable care in continuing the assistance, or (3) if the person's own negligence had caused the original harm to the victim. D's response falls into the category of the third exception, which makes it the only possible answer. A, B and C are incorrect. ( IMPUTED NEGLIGENCE).

195. 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.

196. 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.

197. D is the correct answer and can be reached by the process of elimination. A is factually incorrect. The construction company is a specialist in the construction of these facilities, but, since the facts do not specifically say who designed the facility, A can be eliminated. B is an incorrect statement of law because an independent contractor can be held liable for the work it performed. 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 was only the contractor. That leaves D, which correctly gives the appropriate standard needed for the farmer to prevail. The construction company, as builder/seller, was physically responsible for the facility's dangerous condition under a negligence theory if it discovered a defect and unreasonably failed to protect possible plaintiffs from the dangers of the defect.

198. A 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 that 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 conditional (also called "qualified") privilege. The man's conditional 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, if the man reasonably believed his statement to be true, the restaurant owner would not prevail.

199. 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.

200. 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.

201. Choice B gives the appropriate test. The issue is whether the purchaser acted with the purpose or 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.

202. A is the correct answer. 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. Severe emotional distress can be evidenced physically, but is not required. Facts clearly indicate that the defendant's threats were intentional as well as extreme and outrageous. The issue would then be whether the neighbor suffered severe emotional distress as a result of the defendant's conduct. Answer A appropriately addresses this issue.

203. 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.

204. D is correct. 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, published to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. D appropriately addresses the determinative issue of publication. There can be no publication to a third party if no one within hearing understood the slanderous accusation. Thus, B is incorrect.

205. 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.

206. 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.

207. A is the correct answer. This is a reading comprehension question. Winery could be subject to strict liability if their champagne bottles were unreasonably dangerous (even without a defect) and there was a failure to warn of that danger or to give proper directions on how to open the bottles. The facts clearly indicate, however, that the bartender has dealt with this type of bottle and had bottle stoppers unexpectedly pop out before. In addition, the plaintiff is a bartender, which indicates training in the use of different types of alcoholic beverages and their containers. The test for strict products liability comparative fault is that the bartender was actually (subjectively) aware (or, should have been, in light of his age, experience, knowledge and understanding as well as the obviousness) of the danger, but proceeded to open the champagne bottles unreasonably (i.e., while directing them at his face). If the bartender meets the test, which under the facts he would, his actions in the face of his knowledge could bar him from recovery. Choice A presents the possibility that the jury will be considering a defense to strict liability, and A appropriately gives a legal description of why the defense would cut short Winery's liability.

208. D is the correct answer. This is a tricky question that can be answered by process of elimination. The governor is a public figure. A public figure cannot prevail in a claim for defamation unless malice is shown. Malice is defined as making a false statement with knowledge or in reckless disregard of its truth or falsity. Therefore, A and C can be eliminated immediately because they do not deal with the test a public figure must meet.

209. D is the correct answer. This is a tricky question. To answer it you must keep in mind that the plaintiff is a governor and a public figure. XYZ, the defendant, is a public television station that has certain First Amendment rights. Because of this, 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. Severe emotional distress can be evidenced physically, but this is not required. The issue in this question is whether the broadcast is extreme and outrageous. To be extreme and outrageous, the conduct must be defamatory in order to overcome XYZ's First Amendment rights. To prove defamation, a public figure must show that the defendant was at fault: that the information was a false and defamatory communication of fact about the plaintiff, published with malice to a third person who understood it was defamatory and which, as a result, caused harm to the plaintiff. Finally, malice is defined as making a false statement with knowledge or in reckless disregard of its truth or falsity. By breaking down the situation into its various issues and elements while keeping in mind the status of the parties, every choice can be eliminated except D. Choice D is the only choice that gives the appropriate standard a public official must meet under these facts. Thus, A, B and C are incorrect.

210. D is the correct answer. This is a reading comprehension question. Case law regarding exposure to cancer-causing toxins has held that, absent a reason for punitive damages (which would not occur in a strict liability claim), a plaintiff cannot recover for emotional distress unless he can also recover for the cancer itself, (which must be proven more likely than not to occur in order for a claim for fear of future cancer to proceed).B is incorrect becuase the call of the question simply asks, however, if the plaintiff would recover for emotional damages if the supplier was found liable. If the supplier is found liable, emotional damages (including fear of cancer) arising from the physical injury to the user are recoverable. Choice A is incorrect. The claim is one for strict product liability, not intentional infliction of emotional distress. C is inaccurate because it is too broad. Always beware of a sweeping generalization.

211. A is the correct answer. This choice may seem tricky because it is a policy argument, not a rule. The reasoning in A, however, dates back to Summers v. Tice, 33 Cal.2d 80, 199 P.2d 1 (1948), when two negligent hunters fired but only one bullet hit the plaintiff. The issue is cause-in-fact, which requires proof of actual cause of harm, and is impossible for the plaintiff to prove under the facts of this question. Without cause-in-fact, the plaintiff will not recover, despite clear injury and evidence of negligence (breach of duty of ordinary care in driving) by the defendants. Where the requirement of actual proof under these facts would result in a harsh result on an innocent victim, courts have traditionally held the defendants to be jointly and severally liable for the cause-in-fact, considering the injury to be indivisible as a matter of policy. Thus A, which states the applicable policy, is the better answer.

212. A is correct. The repair of the airplane was both a service and a sale. Strict liability does not apply to services (only negligence actions), but in this fact situation, Airco's services were not at issue. Airco installed a defective engine as part of its normal course of business in maintaining and repairing private airplanes for customers. Therefore, Airco is also a seller of a defective product. Airco, as a supplier of the defective and unreasonably dangerous engine, can be held strictly liable for the damages caused to the pilot as the result of the pilot's use of the defective engine. Since strict liability can be applied here, the pilot will recover against Airco for the full amount of the pilot's damages, including the judgment against him.

213. 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.

214. D is the correct answer. In general, a business has a duty of inspection and a duty to warn of or repair known hazards on the premises. The duty to protect applies to defects known to the business and to defects the invitee could discover, on his own, using ordinary care. This liability may be abated if the danger was open and obvious to the business invitee, or 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 then owes is to refrain from willful and wanton conduct.

215. C is the correct answer. The man and the woman were two private individuals engaging in a personal conversation about a matter of the man's business competence. While facts state that the woman's statement was made to him alone as part of the conversation, their conversation took place in a room filled with professionals in the same line of work as the man and the woman. A claim for defamation between private parties must meet a negligence standard. The man must prove that the woman was at fault, specifically that her 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 man. The man does not need to show the woman intended to cause him emotional distress. Thus D is incorrect. Because the statement was verbal (slander), the man would also normally need to plead and prove special damages (pecuniary). The man's comment fell into one of four categories of exceptions, however, which do not require special damages. Thus A is incorrect. (Exceptions include allegations regarding (1) criminal activity, (2) misconduct or incompetence in plaintiff's trade or occupation, (3) sexual misconduct, and (4) plaintiff having a "loathsome" disease.) Choices B and C appropriately address the determinative issue of publication, but choice C utilizes the negligence standard, which is the correct test under the facts. A, B and D are incorrect.

216. 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.

217. C is the correct answer. Mental disability does not generally provide immunity for intentionally tortious conduct. The call of the question asks which supported claim would be the defendant's best defense. The issue, however, is which of the defenses addresses whether the defendant had formed the intent necessary to complete the battery. If the defendant threw the rock with the purpose of hitting the plaintiff or with the knowledge that he would hit the plaintiff with the rock, he has formed intent, regardless of his understanding or motive. The only defense that has a chance of prevailing is one where the defendant did not intend to hit the plaintiff at all. Thus C is the best choice. A and B are incorrect because they do not negate intent. D is incorrect because self-defense is a defense to a claim of battery only if the defendant's belief that force is necessary is reasonable. Here, the defendant had no reason to believe he was under attack.

218. C is the correct answer. Trespass is an entry onto the land of another, without permission, with intent or by some abnormally dangerous activity. Intent only refers to the intent to enter (or, in this case, build on) the property; the defendant need not know that it was the neighbor's land. For an intentional trespass to land, damage is not required, and the trespass does not need to be continuing; the court will award nominal damages based on the trespass alone. Actual damages, if shown, can be awarded as well. Therefore, choice A is incorrect.

219. 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.

220. D is the correct answer. It is difficult to recover damages for emotional distress when the plaintiff is only a witness to another's harm. Courts will find that the defendant owed no duty to the witness and generally only allow recovery in two instances: (1) if the plaintiff was in the zone of danger and thus placed in fear of her own safety, or (2) if there was a close family relationship between the plaintiff and the injured party (usually parent and child) and the plaintiff was present at the scene to physically witness the impact. The facts here do not indicate whether the woman was related to the child that was hit, but D presents the only choice that allows the possibility of recovery for damages resulting from witnessing the harm of another. Thus, A, B and C are incorrect.

221. 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.

222. 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.

223. 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.

224. B is the correct answer. Don't fall for the red-herring of the "fraudulent polygraph test." Thus A is incorrect! The call of the question tells you this is a straightforward defamation/slander case between two private individuals. 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.

225. 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.

226. 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. 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.

227. 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 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. The facts state only that the widow was "frightened" and "outraged." C addresses the issue of severe emotional distress, which is the last element of the tort and the only element that is not met by the fact pattern. Thus, A, B and D are incorrect.

228. 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. C is not the issue. Even if 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.

229. 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.

230. D is correct. Any user who is injured by a defective product can bring a strict liability claim against the manufacturer. Therefore III is incorrect. The shampoo company must establish an unforeseeable misuse of the product by the roommate before the court will hold that it had no duty to the roommate in strict products liability. The defect issue here is the inadequate warning, but the roommate's use and misuse would both be considered foreseeable given the product's purpose. Thus I and II are incorrect. The defect renders No-Flake unreasonably dangerous in its intended use or any unintended but foreseeable use. Therefore none of the defenses listed would be effective against the roommate. A, B and C are incorrect.

231. B is the correct answer. The key phrases here are "common-law rules governing defenses" and "the plaintiff read and understood the signs," but "entered the area." His decision to enter the dangerous area was made after being properly warned. Whether he was merely contributorily negligent by failing to act in a reasonably prudent manner to keep himself safe, or if his entering the area was the result of implied and informed consent in full knowledge of the risk of harm he would encounter, both defenses result in a complete bar to the plaintiff's recovery under the common-law. Thus, D is incorrect.

232. B is the correct answer. The facts indicate clearly 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 conditional privilege to talk about the law review editor's authorship during his job interview. The law review editor can only overcome conditional privilege if she can show that the other student made the statement with knowledge that it was false or with reckless disregard for its truth. Thus A is incorrect. Recklessness is shown by providing sufficient evidence that the student with the higher GPA in fact entertained serious doubts about the truth of his allegation as he made it. C is incorrect. A claim for slander generally requires proof of special or pecuniary damages. The allegation against the law review editor, however, is one of trade or professional misconduct, and special damages are presumed. D is incorrect. The question by the interviewer triggered the conditional 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.

233. 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.

234. B is the correct answer. Negligence (including medical malpractice) requires proof of duty, breach, causation, and damages. It is not a dignitary tort. If the plaintiff did not suffer an actual injury, he cannot prevail in an action for negligence against his doctor. Without actual harm, choices A, C, and D are irrelevant.

235. B is the correct answer. The bystander acted intentionally to push the pedestrian. That push resulted in a harmful contact, and thus the bystander is liable for battery. Therefore D is incorrect. The issue, which makes B the correct answer, 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 of the hypo, a speeding car was headed for the pedestrian and a push was the only thing that would get her out of the way; therefore, the bystander's actions are likely privileged. However, if the bystander's belief was not reasonable, as described in the additional fact supplied by answer B, he has no privilege and will be liable for battery. Thus B is the best choice, and A and D are incorrect.

236. 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.

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

238. 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.

239. C is correct. 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. 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. On cross-motions for directed verdicts, the issue will be whether the motorist's health history created a duty to take precautions so that he would not become unconscious from a heart attack while driving. Choice C appropriately applies the facts to the directed verdict standard. Thus D is incorrect.

240. C is correct. Recovery for emotional distress is only available if the plaintiff suffered personal injuries. Therefore, recovery for emotional distress is not recognized for business losses. The owner could only recover pain and suffering if the psychological injuries stemmed from his own personal injury during the fire, not a business loss.

241. 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.

242. C is correct. The man had a duty to inform the mechanic of the leak, because it was foreseeable that his failure to do so could result in severe harm to the mechanic. C states the applicable standard of care arising from that duty.

243. 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.

244. 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.

245. C is the correct answer. To prevail in a claim for medical malpractice (negligence), the patient must prove the elements of duty, breach, causation, and damages. Standard of care is generally established through the expert testimony of a fellow practitioner in the same field of medicine, according to local or national "school of practice" standards. The critical issue in this question is whether the lack of a cardiology review is the cause in fact and the legal cause of the injury the patient suffered. There can be no claim for negligence if there is no injury. Likewise, a failure to observe a medical standard is irrelevant if it did not result in an injury. Thus A is incorrect. Therefore, to prevail in her claim, the patient will need to establish, through expert testimony, both the surgeon's duty (via appropriate medical standards for his profession and the procedure in question), the medical standard of care, and the fact that the surgeon's breach of that specific standard caused the patient's stroke. The practice of medicine does not infer malpractice if the patient does not recover as hoped; there must be proof of a medical standard that was breached, resulting in a chain of causation to the injury. Thus B is incorrect. Choice C is the only answer that addresses the need to provide evidence of the causal link between the surgeon's breach of duty and the subsequent medical injury to the patient. A and B are incorrect.

246. B is correct. The seller had a duty of reasonable care for the safety of those outside the land to prevent harm resulting from conditions on the land. The facts indicate that ordinary windstorms had previously caused tile loss. Despite the fact that the seller just sold the home, he was or should have been aware of the dangerous condition of the roof and the foreseeability of harm to persons outside the premises from windswept falling tiles. Instead, he left the dangerous conditions without taking precautionary measures to protect against dislodged tiles. It is irrelevant that the seller was no longer the owner or occupier of the house; the seller's negligent conduct was a breach of his duty of care and proximately caused the pedestrian's injuries, thus choice C is incorrect.

247. 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.

248. 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.

249. 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.

250. 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.

251. 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.

252. 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.

253. Answer A is correct. The situations in which a plaintiff can recover for purely emotional distress caused by negligence are limited, and this is not one of them. Recovery for negligent misrepresentation is usually limited to pecuniary loss unless it involves a risk of physical harm. In this case, the applicant found a comparable position promptly, so he suffered no harm from the personnel director's misrepresentation other than his emotional distress.

254. 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 complaince 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).

255. 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.**

256. 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.

257. 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.

258. Answer D is correct. The landowner is privileged to protect her property from intrusion by a means not intended or likely to cause death or serious bodily harm. The fact that the barbed wire presents its own warning and is not a hidden trap makes it a reasonable device for discouraging trespassers. The plaintiff will not recover because the potential for harm created by the presence of the barbed wire was apparent, and the photographer assumed the risk of injury by trespassing onto the landowner's property despite the barbed wire fence.Answer A is incorrect. Although barbed wire did cause death in this case, it is not considered to be "deadly force." The statement is true but not applicable to these facts.

259. 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 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.

260. 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.

261. 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.

262. 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.

263. 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 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.

264. 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.

265. 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.

266. 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.

267. 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.

268. 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 or peculiar risk is unreasonably high when weighed against their social utility. While B is the best answer, it is unlikely to succeed; ultra-hazardous activities typically include activities involving firearms, explosives, dangerous chemicals, etc. Cutting back the roots of a tree to lay new sidewalk does not rise to the level of being ultra-hazardous. Furthermore, nothing in the facts indicate any awareness by the homeowner that the activity was ultra-hazardous (note the caveat "if, to the homeowner's knowledge"). Consequently, A is incorrect.

269. B correctly states the appropriate standard, which will allow the motorist's wife to recover from the woman, proportionate to her percentage of fault, because the wife's negligence in failing to tell the motorist about the faulty brakes likely contributed to the collision - if the motorist had known, he may have swerved or driven slower. Even if the wife is 90% at fault and the woman only 10% at fault, the wife will recover 10% of her damages under the "pure" comparative negligence standard.

270. 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 product liability claim. Therefore A is out. 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 negligently used tainted tuna and breached her duty of ordinary care. A, C and D are incorrect.

271. 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 canned tuna (or groceries, generally), 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. Privity of contract is not required; therefore, the guest has standing to sue, and D is incorrect.

272. 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.

273. B 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. An exception to the general rule occurs when the parent knowingly provides substantial aid or encouragement to the child's commission of a tort. The parent may then be held jointly and severally liable for the tort along with the child. The encouragement to "be aggressive and tough" can be considered substantial, especially since the facts indicate that the child had a "well-deserved" reputation as a bully. The parents clearly were aware of their son's dangerous propensities and actively encouraged them, thereby subjecting the parents to liability.

274. 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.

275. 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.

276. D is correct. The effect of joint and several liability is that both the car owner and the mechanic are liable for the entire amount of the plaintiff's damages. (A few jurisdictions hold defendants severally liable for only their personal percentage of the damages.) The plaintiff can only collect one entire award but can do so from one or more of the defendants, forcing the paying defendant to pursue an action for contribution from the other defendants. In most jurisdictions, contribution is based on the number of defendants, not responsibility of injury, although minority jurisdictions base contribution on the percentages of negligence by each. The fact pattern's statute creates vicarious liability in the owner of a car for the actions of known and permitted drivers, but not for fault. Therefore, since the court found that the mechanic was 100% responsible for the accident, the car owner would be entitled, through her cross-claim, to indemnification by the mechanic for any award she paid to the plaintiff.

277. A 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 that 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 conditional (also called "qualified") privilege. The man's conditional 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, if the man reasonably believed his statement to be true, the restaurant owner would not prevail.

278. C is the correct answer. The call of the question is for assault. For his claim to prevail, the neighbor's apprehension must be reasonable: 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. Facts indicate that only threats were given.

279. 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.

280. A is the correct answer. The answers allude to the understanding that most respondeat superior claims against employers for the intentional torts of their employees will fail ("a frolic of one's own") unless the employment itself includes a proclivity for the act in question (by advancing the master's business, even if directed not to) or if the employer knew of the employee's propensity for the particular type of wrongful conduct but failed to act (negligence in hiring, supervision). Thus B, C and D are incorrect. If the appeals court holds that the defendant committed a battery, however, a reasonable jury question arises as to whether the act falls into one of the respondeat superior exceptions.

281. D is the correct answer. This is a reading comprehension question. Case law regarding exposure to cancer-causing toxins has held that, absent a reason for punitive damages (which would not occur in a strict liability claim), a plaintiff cannot recover for emotional distress unless he can also recover for the cancer itself, (which must be proven more likely than not to occur in order for a claim for fear of future cancer to proceed).

282. A is correct. The repair of the airplane was both a service and a sale. Strict liability does not apply to services (only negligence actions), but in this fact situation, Airco's services were not at issue. Airco installed a defective engine as part of its normal course of business in maintaining and repairing private airplanes for customers. Therefore, Airco is also a seller of a defective product. Airco, as a supplier of the defective and unreasonably dangerous engine, can be held strictly liable for the damages caused to the pilot as the result of the pilot's use of the defective engine. Since strict liability can be applied here, the pilot will recover against Airco for the full amount of the pilot's damages, including the judgment against him.

283. B is the correct answer. In general, an independent contractor is liable for his own torts. An exception would exist in a case where the contractor is carrying out an inherently dangerous activity on the property of his employer. The facts indicate that a piece of lumber falling from the homeowner's roof was capable of hitting a pedestrian on a public sidewalk. Therefore, the homeowner had a nondelegable duty of care to the pedestrian because the repairman's repair of the roof was inherently dangerous. Answer B gives the correct standard and is the best choice.

284. C is correct. The mausoleum did not intentionally act in an extreme and outrageous way. This is a negligent infliction of emotional distress issue. Thus B is incorrect. 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 assumed a duty of care regarding the child's body and in such cases, most courts today would allow stand-alone emotional harm to be recoverable where: there has been a mishandling of a dead body, the person affected was in a special relationship to the deceased, and the emotional suffering was severe. Thus D is incorrect. B and D are incorrect.

285. 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.

286. D is the correct answer. This is a tricky question that can be answered by process of elimination. The facts state that the patient wanted to be sterilized but did not give a reason. In addition, the birth defect was "unknown and undiscoverable by the surgeon." This is a wrongful pregnancy case. The call of the question asks for the relevant issue that is currently the most difficult to answer. The suit is by the patient (who must be owed a duty of care), not the baby, so choice A is easily discarded.Choice B can be eliminated because it is the wrong suit. A wrongful birth is asserted by the mother when, but for the defendant's negligence in testing or counseling, the mother would have terminated a pregnancy to avoid the birth of a child with serious genetic defects. Choice C can be eliminated as well because it is a clear and settled area of law; the surgeon had a duty to inform the patient that her surgery had failed once the surgeon possessed that knowledge.

287. B is the correct answer. Don't fall for the red-herring of the "fraudulent polygraph test." Thus A is incorrect! The call of the question tells you this is a straightforward defamation/slander case between two private individuals. 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.

288. D is the correct answer. No-Flake was being used for its intended purpose according to its design and the facts do not indicate that the bottle of shampoo itself was somehow defective. Thus A is incorrect. This is not a design defect situation. Thus B is incorrect. The shampoo company may still be held strictly liable, however, if the product is unreasonably dangerous (for its or any unintended but foreseeable use), and the company failed to give adequate warnings or directions as to No-Flake's use. It is recognized that some products are unavoidably unsafe, but the need for the product justifies its marketing. Those products are not considered defective or unreasonably dangerous, as long as they are accompanied by proper warnings and directions. The shampoo company may argue that its dandruff product is needed, despite its inherent dangers, and could not be reformulated in a safer manner. Thus C is not the best answer. Therefore, D is the best answer because it addresses the fact that only the box contained the full warning and it was foreseeable that the box would be discarded and only the bottle kept. A, B and C are incorrect.

289. B is the correct answer. The key phrases here are "common-law rules governing defenses" and "the plaintiff read and understood the signs," but "entered the area." His decision to enter the dangerous area was made after being properly warned. Whether he was merely contributorily negligent by failing to act in a reasonably prudent manner to keep himself safe, or if his entering the area was the result of implied and informed consent in full knowledge of the risk of harm he would encounter, both defenses result in a complete bar to the plaintiff's recovery under the common-law. Thus, D is incorrect.

290. 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 it was taken from the homeowner's garage. It is irrelevant that, at the time the saw broke, the neighbor was cutting branches from the homeowner's trees, an action which may give rise to a claim for trespass to chattels, as well. A is incorrect because 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.

291. C is the correct answer. While the call of the question does not specify which claim it intends, 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 gave publicity to a matter concerning the private life of the plaintiff that was highly offensive to a reasonable person and which is not of legitimate public concern. This tort does not require that the information be false, only that it be offensive and non-newsworthy. The facts do not indicate that the information was offensive such that it would violate ordinary decency standards.

292. C is correct. The man had a duty to inform the mechanic of the leak, because it was foreseeable that his failure to do so could result in severe harm to the mechanic. C states the applicable standard of care arising from that duty.

293. 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.

294. Answer A is correct. The professor can state a prima facie case of defamation, but he cannot prevail because the dean has a valid defense based on his reasonable belief that the professor invited him to speak. By authorizing his agents to investigate his case, the professor apparently consented to limited publication in response to their inquiries. Ill will, if it existed, would be irrelevant to this defense.

295. Answer C is correct. Under the facts as described, there is no evidence of lack of reasonable care by the day care center.

296. 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.

297. 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.

298. 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.