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

A. Yes, because the man threatened to use deadly force.

B. Yes, unless the man was related to the borrower.

C. No, if it was apparent that the lender was about to inflict serious bodily harm upon the borrower.

D. No, because the lender was the original aggressor by threatening the borrower with a battery.

1. A professor, in a lecture in her psychology course at a private university, described an experiment in which a group of college students in a neighboring city rushed out and washed cars stopped at traffic lights during rush hour. She described how people reacted differently--with shock, joy, and surprise. At the conclusion of her report, she said, "You understand, of course, that you are not to undertake this or any other experiment unless you first clear it with me." Four of the professor's students decided to try the same experiment but did not clear it with the professor. One subject of their experiment said, "I was shocked. There were two people on each side of the car. At first I thought negatively. I thought they were going to attack me and thought of driving away. Then I quieted down and decided there were too many dirty cars in the city anyway." Charitable immunity has been abolished in the jurisdiction.

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

A. assault.

B. negligence.

C. invasion of privacy.

D. false imprisonment.

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Charitable immunity has been abolished in the jurisdiction.

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

A. Yes, if the students would not have performed the experiment but for the professor's lecture.

B. Yes, if the subject's claim against the students is based on negligence.

C. No, because the students were not the professor's employees.

D. No, because the professor did not authorize the car wash as a class project.

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

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

A. Yes, because by stopping and examining the man, the truck driver assumed a duty to aid him.

B. Yes, if a reasonably prudent person under the circumstances would have aided the man.

C. No, if the truck driver did not, in any way, make the man's situation worse.

D. No, because the man himself created the risk of harm by becoming intoxicated.

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

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

A. Yes, because the traveler was negligent in going off the road.

B. Yes, because the man was in a helpless condition.

C. No, because the traveler did not see the man before he was struck.

D. No, because the man's intoxication was the cause in fact of his harm.

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

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

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

A. would have, but for her lawyers' negligence, recovered from the motorist.

B. had a good faith claim against the motorist that was lost by her lawyers' negligence.

C. was severely and permanently injured when struck by the motorist's automobile.

D. did not negligently contribute to the failure to have the complaint filed.

1. A homeowner owns a house in a city. On the lawn in front of his home and within five feet of the public sidewalk there was a large tree. The roots of the tree caused the sidewalk to buckle severely and become dangerous. An ordinance of the city requires adjacent landowners to keep sidewalks in safe condition. The homeowner engaged a contractor to repair the sidewalk, leaving it to the contractor to decide how the repair should be made. The contractor dug up the sidewalk, cut back the roots of the tree, and laid a new sidewalk. Two days after the homeowner had paid the contractor the agreed price of the repair, the tree fell over onto the street and damaged a parked car belonging to a driver.

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

If the driver recovers a judgment against the homeowner, does the homeowner have any recourse against the contractor?

A. No, if payment by the homeowner was an acceptance of the work.

B. No, because the homeowner selected the contractor to do the work.

C. Yes, if the judgment against the homeowner was based on vicarious liability.

D. Yes, because the homeowner's conduct was not a factual cause of the harm.

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

Will the pedestrian prevail in his claim against the owner?

A. Yes, because a property owner is strictly liable for acts on his premises if such acts cause harm to persons using the adjacent public sidewalks.

B. Yes, if the person who threw the ashtray cannot be identified.

C. No, because the owner had no personal knowledge of the conduct of the hotel guests.

D. No, if the trier of fact determines that the hotel employees had taken reasonable precautions to prevent such an injury.

1. A labor leader in a city was divorced ten years ago. Both he and his first wife have since married other persons. Recently, a newspaper in another city ran a feature article on improper influences it asserted had been used by labor officials to secure favorable rulings from government officials. The story said that in 1990 the labor leader's first wife, with his knowledge and concurrence, gave sexual favors to the mayor of the city and then persuaded him to grant concessions to the labor leader's union, with which the city was then negotiating a labor contract. The story named the labor leader and identified his first wife by her former and current surnames. The reporter for the newspaper believed the story to be true, since it had been related to him by two very reliable sources. The labor leader's first wife suffered emotional distress and became very depressed. If she asserts a claim based on defamation against the newspaper, she will

A. prevail, because the story concerned her personal, private life.

B. prevail if the story was false.

C. not prevail, because the newspaper did not print the story with knowledge of its falsity or with reckless disregard for its truth or falsity.

D. not prevail if the newspaper exercised ordinary care in determining the story was true or false.

1. In 2006, a utility company constructed a new plant for the generation of electricity. The plant burns lignite, a low grade fuel which is available in large quantities. Although the plant was constructed in accordance with the best practicable technology, the plant emits a substantial quantity of invisible fumes. The only way the utility company can reduce the fumes is by the use of scrubbing equipment that would cost $50,000,000 to install and would increase the retail price of generated electricity by 50 percent while reducing the volume of fumes by only 20 percent. Because of the expense of such equipment and its relative ineffectiveness, no other generating plants burning lignite use such equipment. The plant was located in a sparsely settled rural area, remote from the large city served by the utility company. A farmer owned a farm adjacent to the plant. He had farmed the land for forty years and lived on the premises. The prevailing winds carried fumes from the new plant over the farmer's land. His 2006 crop was less than half the average size of this crop over the five years immediately preceding the construction of the plant. It can be established that the fumes caused the crop reduction. The farmer's hay fever, from which he had long suffered, became worse in 2006. Physicians advised him that the lignite fumes were affecting it and that serious lung disease would soon result unless he moved away from the plant. He did so, selling his farm at its reasonable market value, which was then $10,000 less than before the construction of the plant.

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

A. No, because the utility company was not negligent.

B. No as to 2006 crop damage, because the farmer did not mitigate damages by selling his farm in 2005.

C. Yes as to 20 percent of his crop damage, because use of available equipment would have reduced the fumes by 20 percent.

D. Yes, because operation of the plant constitutes a nuisance.

1. A company operated an installation for distributing sand and gravel. The installation was adjacent to a residential area. On the company's grounds there was a chute with polished metal sides for loading sand and gravel into trucks. The trucks being loaded stopped on the public street below the chute. After closing hours, a plywood screen was placed in the chute and the ladder used for inspection was removed to another section of the installation. For several months, however, a number of children, 8 to 10 years of age, had been playing on the company's property and the adjoining street after closing hours and had figured out how to use the chute as a slide. The company knew of this activity. One evening, as children were playing on the chute, a commuter driving by the chute hit an 8-year-old boy who slid down in front of the automobile. The commuter applied her brakes, but they suddenly failed, and she hit and injured the child. The commuter saw the child in time to have avoided hitting him if her brakes had worked properly. Two days earlier, the commuter had taken her car to a mechanic to have her brakes inspected, and the mechanic had told her that the brakes were in perfect condition. Claims were asserted on behalf of the child by his proper legal representative against the company, the commuter, and the mechanic.

With respect to the child's claim against the company, will the child prevail?

A. Yes, if the company could have effectively secured the chute at moderate cost.

B. Yes, because the company is strictly liable for harm resulting from an artificial condition on its property.

C. No, if the commuter had the last clear chance to avoid the injury.

D. No, because the child was a trespasser.

1. A company operated an installation for distributing sand and gravel. The installation was adjacent to a residential area. On the company's grounds there was a chute with polished metal sides for loading sand and gravel into trucks. The trucks being loaded stopped on the public street below the chute. After closing hours, a plywood screen was placed in the chute and the ladder used for inspection was removed to another section of the installation. For several months, however, a number of children, 8 to 10 years of age, had been playing on the company's property and the adjoining street after closing hours and had discovered the chute could be used as a slide. The company knew of this activity. One evening, as children were playing on the chute, a commuter driving by the chute hit an 8-year-old boy who slid down in front of the automobile. The commuter applied her brakes, but they suddenly failed, and she hit and injured the child. The commuter saw the child in time to have avoided hitting him if her brakes had worked properly. Two days earlier, the commuter had taken her car to a mechanic to have her brakes inspected, and the mechanic had told her that the brakes were in perfect condition. Claims were asserted on behalf of the child by his proper legal representative against the company, the commuter, and the mechanic.

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

A. her conduct was not the cause in fact of the harm.

B. she used reasonable care in the maintenance of her brakes.

C. she could not reasonably foresee the child's presence in the street.

D. she did not act willfully and wantonly.

1. A salesman and a mechanic are identical twins. The salesman, angry at a man, said, "You'd better stay out of my way. The next time I find you around here, I'll beat you up." Two days later, while in the neighborhood, the man saw the mechanic coming toward him. As the mechanic came up to the man, the mechanic raised his hand. Thinking he was the salesman and fearing bodily harm, the man struck the mechanic. If the mechanic asserts a claim against the man and the man relies on the privilege of self-defense, will the man prevail?

A. No, because the mechanic was not an aggressor.

B. No, unless the mechanic intended his gesture as a threat.

C. Yes, if the man honestly believed that the mechanic would attack him.

D. Yes, only if a reasonable person under the circumstances would have believed that the mechanic would attack him.

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

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

A. prevail, because the trucker's violation of a state statute makes him strictly liable for all injuries caused thereby.

B. prevail, because the probable purpose of Section 2 of the Vehicle Code of State was to safeguard pedestrians in using crosswalk.

C. not prevail, because the pedestrian assumed the risk of injury when he crossed the street outside the crosswalk.

D. not prevail, because the driver's conduct was the actual cause of the pedestrian's harm.

1. A husband and a wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by the neighbor. After climbing over the fence, the husband and wife damaged some of the neighbor's plants which were near the fence. The fence was posted with a large sign, "No Trespassing." The neighbor saw the husband and the wife and came toward them with his large watchdog on a long leash. The dog rushed at the wife. The neighbor had intended only to frighten the husband and the wife, but the leash broke, and before the neighbor could restrain the dog, the dog bit the wife.

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

A. Yes, because the neighbor intended that the dog frighten the wife.

B. Yes, because the breaking of the leash establishes liability under res ipsa loquitur.

C. No, because the wife made an unauthorized entry on the neighbor's land.

D. No, because the neighbor did not intend to cause any harmful contact with the wife.

1. A husband and a wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by the neighbor. After climbing over the fence, the husband and wife damaged some of the neighbor's plants which were near the fence. The fence was posted with a large sign, "No Trespassing." The neighbor saw the husband and the wife and came toward them with his large watchdog on a long leash. The dog rushed at the wife. The neighbor had intended only to frighten the husband and the wife, but the leash broke, and before the neighbor could restrain the dog, the dog bit the wife.

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

A. Yes, because the wife and the husband entered on his land without permission.

B. Yes, because the neighbor had posted his property with a "No Trespassing" sign.

C. No, because the wife and the husband were confronted by an emergency situation.

D. No, because the neighbor used excessive force toward the wife and the husband.

1. A buyer wanted to purchase a used motor vehicle. The used car lot of a car company, in a remote section away from town, was enclosed by a ten-foot chain link fence. While the buyer and a sales representative of the car company were in the used car lot looking at cars, a security guard locked the gate at 1:30 p.m., because it was Saturday and the lot was supposed to be closed after 1:00 p.m. Saturday until Monday morning. At 1:45 p.m. the buyer and the sales representative discovered they were locked in. There was no traffic in the vicinity and no way in which help could be summoned. After two hours, the buyer began to panic at the prospect of remaining undiscovered and without food and water until Monday morning. The sales representative decided to wait in a car until help should come. The buyer tried to climb over the fence and, in doing so, fell and was injured. The buyer asserts a claim against the car company for damages for his injuries.

If the buyer's claim is based on negligence, is the defense of assumption of the risk applicable?

A. Yes, if a reasonable person would have recognized that there was some risk of falling while climbing the fence.

B. Yes, because the sales representative, as the car company's agent, waited for help.

C. No, if it appeared that there was no other practicable way of getting out of the lot before Monday.

D. No, because the buyer was confined as the result of a volitional act.

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

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

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

A. prevail if plaintiffs sustained harm different from that suffered by the public at large.

B. prevail if the cattle company's acts interfered with any person's enjoyment of his property.

C. not prevail, because only the state may bring an action based on public nuisance.

D. not prevail, because plaintiffs came to the nuisance.

1. In 1970, a cattle company bought a 150-acre tract of agricultural land well suited for a cattle feed lot. The tract was ten miles from the city. By 2006, the city limits extended to the cattle company's feed lot. About 10,000 people lived within three miles of the cattle-feeding operation. The cattle company land is outside the city limits and no zoning ordinance applies. The cattle company, conscious of its obligations to its neighbors, uses the best and most sanitary feed lot procedures, including chemical sprays, to keep down flies and odors and frequently removes manure. Despite these measures, residents of the city complain of flies and odors. An action has been filed by five individual homeowners who live within half a mile of the cattle company feed lot. Flies in the area are five to ten times more numerous than in other parts of the city, and extremely obnoxious odors are frequently carried by the wind to the plaintiffs' homes. The flies and odors are a substantial health hazard.

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

A. prevail, because the cattle company's activity unreasonably interferes with plaintiffs' use and enjoyment of their property.

B. prevail, because the cattle company's activity constitutes an inverse condemnation of their property.

C. not prevail, because the cattle company had operated the feed lot for more than 25 years.

D. not prevail, because the cattle company uses the most reasonable procedures to keep down flies and odors.

1. A motorist arranged to borrow his friend's car to drive for one day while the motorist's car was being repaired. The friend knew that the brakes on his car were faulty and might fail in an emergency. The friend forgot to tell the motorist about the brakes when the motorist picked up the car, but the friend did telephone the motorist's wife and told her about them. The wife, however, forgot to tell the motorist. The motorist was driving the friend's car at a reasonable rate of speed and within the posted speed limit with the motorist's wife as a passenger. Another car, driven by a woman, crossed in front of the motorist at an intersection and in violation of the traffic signal. The motorist tried to stop, but the brakes failed, and the two cars collided. If the brakes had been in proper working order, the motorist could have stopped in time to avoid the collision. The motorist and his wife were injured.

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

A. recover the full amount of his damages, because the motorist himself was not at fault.

B. recover only a proportion of his damages, because the wife was also at fault.

C. not recover, because the wife was negligent and a wife's negligence is imputed to her husband.

D. not recover, because the failure of the brakes was the immediate cause of the collision.

1. A motorist arranged to borrow his friend's car to drive for one day while the motorist's car was being repaired. The friend knew that the brakes on his car were faulty and might fail in an emergency. The friend forgot to tell the motorist about the brakes when the motorist picked up the car, but the friend did telephone the motorist's wife and told her about them. The wife, however, forgot to tell the motorist. The motorist was driving the friend's car at a reasonable rate of speed and within the posted speed limit with the motorist's wife as a passenger. Another car, driven by a woman, crossed in front of the motorist at an intersection and in violation of the traffic signal. The motorist tried to stop, but the brakes failed, and the two cars collided. If the brakes had been in proper working order, the motorist could have stopped in time to avoid the collision. The motorist and his wife were injured.

If the jurisdiction has adopted "pure" comparative negligence and the motorist's wife asserts a claim against the woman, the wife will

A. recover in full for her injuries, because the motorist, who was driving the car in which she was riding, was not himself at fault.

B. recover a proportion of her damages based on the respective degrees of her negligence and that of the woman.

C. not recover, because but for the failure of the brakes the collision would not have occurred.

D. not recover, because she was negligent and her negligence continued until the moment of impact.

1. A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale. Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price." The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. Before the guest arrived, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna's being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

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

A. recover on the theory of res ipsa loquitur.

B. recover on the theory of strict liability.

C. not recover, because the grocery store gave proper warning.

D. not recover, because the guest was not the purchaser of the cans.

1. A boater was rowing a boat on a mountain lake when a storm suddenly arose. Fearful that the boat might sink, the boater rowed to a boat dock on shore and tied the boat to the dock. The shore property and dock were on private property. While the boat was tied at the dock, the dock owner came down and ordered the boater to remove the boat because the action of the waves was causing the boat to rub against a bumper on the dock. When the boater refused, the owner untied the boat and cast it adrift. The boat sank. The boater was wearing a pair of swimming trunks, nothing else. He had a pair of shoes and a parka in the boat, but they were lost when the owner set it adrift. The boater was staying at a cabin one mile from the owner's property. The only land routes back were a short rocky trail that was dangerous during the storm, and a 15-mile road around the lake. The storm continued with heavy rain and hail, and the boater having informed the owner of the location of his cabin, asked the owner to take him back there in the owner's car. The owner said, "You got here by yourself and you'll have to get back home yourself." After one hour the storm stopped, and the boater walked home over the trail

If the boater asserts a claim against the owner for loss of the boat, the most likely result is that the owner will

A. have no defense under the circumstances.

B. prevail, because the boater was a trespasser ab initio.

C. prevail, because the boat might have damaged the dock.

D. prevail, because the boater became a trespasser when he refused to remove the boat.

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

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

A. recover, because the purpose of the ordinance is to provide access to the fire hydrant.

B. recover, because the driver's negligence was later in time than the man's act of parking.

C. not recover, because the man was contributorily negligent as a matter of law.

D. not recover, because the man's action in parking unlawfully was a continuing wrong.

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

A. a cause in fact and a legal cause of the city's harm.

B. a cause in fact, but not a legal cause, of the city's harm because the man parked illegally.

C. a legal cause, but not a cause in fact, of the city's harm because the man's car struck the hydrant.

D. neither a legal cause nor a cause in fact of the city's harm.

1. A 10-year-old boy lived near a company that sold new and used machinery. The company stored discarded machinery, pending sale for scrap, on a large vacant area it owned. This area was unfenced and was one-quarter mile from the housing development where the child lived. The company knew that children frequently played in the area and on the machinery. The child's parents had directed him not to play on the machinery because it was dangerous. One day the child was playing on the press in the company's storage area. The press had several wheels, each geared to the other. The child climbed on the largest wheel, which was about five feet in diameter. The child's weight caused the wheel to rotate, his foot was caught between two wheels that were set in motion, and he was severely injured. A claim for relief was asserted by the child through a duly appointed guardian. The company denied liability and pleaded the child's contributory fault as a defense.

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

A. Whether the press on which the child was injured was visible from a public way.

B. Whether the maintenance of the area for the storage of discarded machinery was a private nuisance.

C. Whether the maintenance of the area for the storage of discarded machinery was a public nuisance.

D. Whether the company could have eliminated the risk of harm without unduly interfering with the company's normal operations.

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

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

A. prevail, because he saved the man's life.

B. prevail, because the man was at fault in causing the fire.

C. not prevail, because the rescuer knowingly assumed the risk.

D. not prevail, because the rescuer's action was not a foreseeable consequence of the man's conduct.

1. Maple Street is a local public thoroughfare, designated as a one-way street for northbound traffic. Pine Street is a public thoroughfare, designated as a one-way street for eastbound traffic. Maple and Pine Streets intersect at right angles. The intersection is controlled by traffic lights. There are two sets of lights, one at the northeast corner and one at the northwest corner, for traffic on Maple Street. There are two sets of lights, one at the northeast corner and one at the southeast corner, for traffic on Pine Street. A trucker was making a delivery to a market on the east side of Maple Street, just north of its intersection with Pine Street. There being insufficient space for his truck and enclosed trailer, he parked it with the rear of the trailer extending entirely across the crosswalk on the north side of the intersection. The height of the trailer was such that it entirely obscured the traffic light on the northeast corner from the view of traffic moving east on Pine Street. Unknown to the trucker, the traffic light at the southeast corner was not functioning, because a collision seventy-two hours earlier had knocked down the pole from which the light was suspended. A visitor, on his first trip to the city, was driving east on Pine Street. Not seeing any traffic light or pole, he entered the intersection at a time when the light was red for eastbound traffic and green for northbound traffic. A driver, proceeding north on Maple Street and seeing the green light, entered the intersection without looking for any cross traffic and struck the visitor's car. The driver received personal injuries, and the visitor's car was damaged severely as a result of the impact. State statutes make it a misdemeanor (1) to park a motor vehicle so that any part projects into a crosswalk, and (2) to enter an intersection contrary to a traffic signal. If the driver asserts a claim against the city, the theory on which he has the best chance of prevailing is that the city

A. is strictly liable for harm caused by a defective traffic signal.

B. was negligent in not replacing the broken pole within seventy-two hours.

C. had an absolute duty to maintain installed traffic signals in good operating order.

D. created a dangerous trap by not promptly replacing the broken pole.

1. The defendant hated his former wife for divorcing him and marrying another man a short time thereafter. About a month after his former wife remarried, the defendant secretly entered the couple's rented apartment during their absence by using a master key. The defendant placed a microphone behind the book stand in the bedroom of the apartment, drilled a hole in the nearby wall and poked the wires from the microphone through the hole into the space in the wall, with the result that the microphone appeared to be connected with wires going into the adjoining apartment. Actually the microphone was not connected to any thing. The defendant anticipated that his former wife would discover the microphone in a few days and would be upset by the thought that someone had been listening to her conversations with her new husband in their bedroom. Shortly thereafter, as he was putting a book on the stand, the new husband noticed the wires behind the book stand and discovered the hidden microphone. He then called his wife and showed her the microphone and wires. She fainted and, in falling, struck her head on the book stand and suffered a mild concussion. The next day the new husband telephoned the defendant and accused him of planting the microphone. The defendant laughingly admitted it. Because of his concern about his wife and his anger at the defendant, the new husband is emotionally upset and unable to go to work. If the defendant's former wife asserts a claim against the defendant based on infliction of mental distress, the fact that her current husband was the person who showed her the microphone will

A. relieve the defendant of liability, because the new husband was careless in so doing.

B. relieve the defendant of liability, because the new husband's conduct was the immediate cause of the wife's harm.

C. not relieve the defendant of liability, because the defendant's goal was achieved.

D. not relieve the defendant of liability, because the conduct of a third person is irrelevant in emotional distress cases.

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

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

A. liable, because parents are strictly liable for the torts of their children.

B. liable, because the child's parents encouraged him to be aggressive and tough.

C. not liable, because a six-year old cannot commit a tort.

D. not liable, because parents cannot be held liable for the tort of a child.

1. A suitor had been unsuccessfully pursuing a woman, who had recently announced her engagement to a different man. Angered by her engagement, the suitor sent the woman the following letter: "I hope you know what you are doing. The man you think you love wears women's clothes when at home. A Friend." The receipt of this letter caused the woman great emotional distress. She hysterically telephoned her fiance, read him the letter, and told him that she was breaking their engagement. The contents of the letter were not revealed to others. The fiance, who was a young attorney in the state attorney's office, suffered serious humiliation and emotional distress as a result of the broken engagement. If the fiance asserts a claim against the suitor based on defamation, and it is proved that the suitor's statement was true, such proof will be

A. a defense by itself.

B. a defense only if the suitor was not motivated by malice.

C. a defense only if the suitor reasonably believed it to be true.

D. no defense by itself.

1. A construction company contracted to build a laundry for a laundry company on the latter's vacant lot in a residential area. As a part of its work, the construction company dug a trench from the partially completed laundry to the edge of a public sidewalk; waterlines were to be installed in the trench. Because of the contour of the land, the trench was dug to a depth ranging from 7 to 9 feet. The construction company did not place any barriers around the trench and permitted it to lie open for almost a week while waiting for the delivery of water pipes. This was known to the laundry company, but it raised no objection. During the time the trench was open, a series of heavy rains fell, causing 5 feet of surface water to gather in the bottom of the trench. While this condition existed, a 5-year-old child, who was playing on the vacant lot with friends, stumbled and fell into the trench. An adult passerby, saw this and immediately lowered himself into the trench to rescue the child. However, his doing so caused the rain-soaked walls of the trench to collapse, killing both him and the child.

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

A. recover, because the defendant left the open trench unprotected.

B. recover, because construction companies are strictly liable for inherently dangerous conditions.

C. not recover, because the child was a trespasser.

D. not recover, because the child's death was a result of the collapse of the trench, an independent intervening cause.

1. A doctor resided in her own home. The street in front of the home had a gradual slope. The doctor's garage was on the street level, with a driveway entrance from the street. At two in the morning, the doctor received an emergency call. She dressed and went to the garage to get her car and found a car parked in front of her driveway. That car was occupied by a man, who, while intoxicated, had driven to that place and now was in a drunken stupor in the front seat. Unable to rouse the man, the doctor pushed him into the passenger's side of the front seat and got in on the driver's side. The doctor released the brake and coasted the car down the street, planning to pull into a parking space that was open. When the doctor attempted to stop the car, the brakes failed to work, and the car crashed into the wall of a homeowner's home, damaging the home and the man's car and injuring the doctor and the man. Subsequent examination of the car disclosed that the brake linings were badly worn. A state statute prohibits the operation of a motor vehicle unless the brakes are capable of stopping the vehicle within specified distances at specified speeds. The brakes on the man's car were incapable of stopping the vehicle within the limits required by the statute. Another state statute makes it a criminal offense to be intoxicated while driving a motor vehicle.

If the man asserts a claim against the doctor for his injuries, the man will probably

A. recover, because the doctor was negligent as a matter of law.

B. recover, because the doctor had no right to move the car.

C. not recover, because his brakes were defective.

D. not recover, because he was in a drunken stupor when injured.

1. An automobile company was a small dealer in big new cars and operated a service department. The plaintiff wanted to ask the service manager whether the automobile company would check the muffler on his small foreign car. The plaintiff parked on the street near the service department with the intention of entering that part of the building by walking through one of the three large entrances designed for use by automobiles. There was no street entrance to the service department for individuals, and customers as well as company employees often used one of the automobile entrances. As the plaintiff reached the building, he glanced behind him to be sure no vehicle was approaching that entrance. Seeing none, he walked through the entrance, but immediately he was struck on the back of the head and neck by the large overhead door which was descending. The blow knocked the plaintiff unconscious and caused permanent damage. The plaintiff did not know how the door was raised and lowered; however, the overhead door was operated by the use of either of two switches in the building. One switch was located in the office of the service manager and the other was located near the door in the service work area for the convenience of the mechanics. On this occasion, no one was in the service work area except three mechanics employed by the automobile company. The service manager, who had been in his office, and the three mechanics denied having touched a switch that would have lowered the door. Subsequent investigation showed, however, that the switches were working properly and that all of the mechanisms for moving the door were in good working order. If the plaintiff asserts a claim based on negligence against the automobile company, the plaintiff probably will

A. recover, because the automobile company is strictly liable under the circumstance.

B. recover, because an employee of the automobile company was negligent.

C. not recover, because the plaintiff was a licensee.

D. not recover, because the plaintiff assumed the risk.

1. A widow recently purchased a new uncrated electric range for her kitchen from a local retailer. The range has a wide oven with a large oven door. The crate in which the manufacturer shipped the range carried a warning label that the stove would tip over with a weight of 25 pounds or more on the oven door. The widow has one child, aged 3. Recently, the child was playing on the floor of the kitchen while the widow was heating water in a pan on the stove. The widow left the kitchen for a moment, and the child opened the oven door and climbed on it to see what was in the pan. The child's weight (25 pounds) on the door caused the stove to tip over forward. The child fell to the floor and the hot water spilled over her, burning her severely. The child screamed. The widow ran to the kitchen and immediately gave her first aid treatment for burns. The child thereafter received medical treatment. The child's burns were painful. They have now healed and do not bother her, but she has ugly scars on her legs and back. The child's claim is asserted on her behalf by the proper party.

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

A. the local retailer did not inform the widow of the warning on the crate.

B. the stove was substantially in the same condition at the time it tipped over as when it was purchased from the local retailer.

C. the local retailer made some change in the stove design or had improperly assembled it so that it tipped over more easily.

D. the local retailer knew or should have known that the stove was dangerous because of the ease with which it tipped over.

1. A woman's 12-year-old daughter had some difficulty getting along with other children in the neighborhood, especially with the younger ones. Thinking the experience would be good for her, the woman recommended her daughter to a parent as a baby sitter for his five-year-old child but did not mention her daughter's difficulties or her lack of prior experience as a baby sitter. The woman and the parents were longstanding social acquaintances. On the evening the daughter was to sit, the parents told the daughter that she should treat their child firmly, but that it would be preferable not to spank him since he did not take kindly to it. They did not tell the daughter sitter they had experienced trouble retaining baby sitters because of their child's temper tantrums. Later in the evening when the child became angry upon being told to go to his room for being naughty, the daughter spanked him, but only moderately hard. The child then threw a hardbacked book at the daughter, hitting her in the eye. As the daughter tried to catch the child to take him to his room, the child fled around the house and out the back door, knocking over and breaking an expensive lamp. The back yard was completely dark. The daughter heard the child screaming and banging at the back door, which had closed and locked automatically, but she did nothing. After twenty minutes had passed, she heard a banging and crying at the front door, but still she did nothing. Then the noise stopped. In a few minutes the daughter went outside and found the child lying on the steps unconscious and injured. If a claim is asserted on behalf of the child against the woman for damages based on her daughter's conduct, the woman will probably be liable, because

A. parents are vicariously liable for the intentional torts of their children.

B. she has a nondelegable duty to control the actions of her child.

C. respondeat superior applies.

D. she was negligent.

1. A store owner owned a secondhand goods store. He often placed merchandise on the sidewalk, sometimes for short intervals, sometimes from 7:00 a.m. until 6:00 p.m. Pedestrians from time to time stopped and gathered to look at the merchandise. A man had moved into an apartment which was situated immediately above the store; a street-level stairway entrance was located about twenty feet to the east. On several occasions, the man had complained to the store owner about the situation because not only were his view and peace of mind affected, but his travel on the sidewalk was made more difficult. The man owned and managed a restaurant two blocks to the west of his apartment and made frequent trips back and forth. There was a back entrance to his apartment through a parking lot; this entrance was about two hundred feet farther in walking distance from his restaurant. Once the man complained to the police, whereupon the store owner was arrested under a local ordinance which prohibited the placing of goods or merchandise on public sidewalks and imposed, as its sole sanction, a fine for its violation. One day, the sidewalk in front of the store owner's store was unusually cluttered because he was cleaning and mopping the floor of his shop. The man and his fifteen-year-old son saw a bus they wished to take, and they raced down the stairs and onto the cluttered sidewalk in front of the store, the man in the lead. While dodging merchandise and people, the man fell. The son tripped over him and suffered a broken arm. The man also suffered broken bones and was unable to attend to his duties for six weeks. If, prior to the day of his personal injuries, the man had asserted a claim based on public nuisance for injunctive relief against the store owner for his obstruction of the sidewalk in violation of the ordinance, the defense on which the store owner would have most likely prevailed is that

A. the man consented to the obstruction by continuing to rent his apartment.

B. the violation of the ordinance was not unreasonable.

C. remedy of abatement by self-help was adequate.

D. there was no claim for special damage.

1. A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident. The pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

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

A. the driver violated the traffic light statute at a later point in time than the pedestrian's violation.

B. pedestrians are entitled to assume that automobile drivers will obey the law.

C. the pedestrian was hit while in the crosswalk.

D. the risks that the statute was designed to protect against probably did not include an earlier arrival at another point.

1. A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident. A pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

The failure of the driver to have a valid driver's license has which of the following effects?

A. It makes the driver liable to the pedestrian because the driver is a trespasser on the highway.

B. It would not furnish a basis for liability.

C. It proves that the driver is an unfit driver in this instance.

D. It makes the driver absolutely liable for the pedestrian's injury.

1. A pedestrian started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. The pedestrian was in a hurry, and so before reaching the north curb on the street, she cut to her left diagonally across the street to the east-west crosswalk and started across it. Just after reaching the east-west crosswalk, the traffic light turned green in her favor. She proceeded about five steps further across the street to the west in the crosswalk when she was struck by a car approaching from her right that she thought would stop, but did not. The car was driven by a driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. The pedestrian had a bone disease, resulting in very brittle bones, that is prevalent in only 0.02 percent of the population. As a result of the impact, the pedestrian suffered a broken leg and the destruction of her family heirloom, a Picasso original painting that she was taking to her bank for safekeeping. The painting had been purchased by the pedestrian's grandmother for $750 but was valued at $500,000 at the time of the accident. The pedestrian had filed suit against the driver. The driver's attorney has alleged that the pedestrian violated a state statute requiring that pedestrians stay in crosswalks, and that if the pedestrian had not violated the statute, she would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where she could have been hit by the driver. The pedestrian's attorney ascertains that there is a statute as alleged by the driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that the driver's license expired two years prior to the collision.

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

A. there is no dispute in the evidence about factual cause.

B. as a matter of law the violation of the statute results in liability for all resulting harm.

C. as a matter of law the driver's conduct was an independent intervening cause.

D. as a matter of law the injury to the pedestrian was not the result of a risk the statute was designed to protect against.

1. The plaintiff was eating in a restaurant when he began to choke on a piece of food that had lodged in his throat. A physician who was sitting at a nearby table did not wish to become involved and did not render any assistance, although prompt medical attention would have been effective in removing the obstruction from the plaintiff's throat. Because of the failure to obtain prompt medical attention, the plaintiff suffered severe brain injury from lack of oxygen.

If the plaintiff asserts a claim against the physician for his injuries, will the plaintiff prevail?

A. Yes, if the jurisdiction relieves physicians of malpractice liability for emergency first aid.

B. Yes, if a reasonably prudent person with the physician's experience, training, and knowledge would have assisted the plaintiff.

C. No, because the physician was not responsible for the plaintiff's condition.

D. No, because the physician knew that the plaintiff was substantially certain to sustain serious injury.

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

Claims have been asserted by the child, through a duly appointed guardian, against Mobilco, the seller, Heatco, and Coolco. If the child's claim against the seller is based on negligence, the minimum proof necessary to establish the seller's liability is that the ventilating system

A. was defective.

B. was defective and had not been inspected by the seller.

C. was defective and had been inspected by the seller, and the defect was not discovered.

D. was defective, and the defect would have been discovered if the seller had exercised reasonable care in inspecting the system.

1. A light company is the sole distributor of electrical power in a city. The company owns and maintains all of the electric poles and equipment in the city. The company has complied with the National Electrical Safety Code, which established minimum requirements for the installation and maintenance of power poles. The code has been approved by the federal and state governments. The company has had to constantly replace insulators on its poles because unknown people repeatedly shoot at and destroy them. This causes the power lines to fall to the ground. On one of these occasions, a 5-year-old child wandered out of his yard, intentionally touched a downed wire, and was seriously burned. If a claim on the child's behalf is asserted against the light company, the probable result is that the child will

A. recover if the light company could have taken reasonable steps to prevent the lines from falling when the insulators were destroyed.

B. recover, because a supplier of electricity is strictly liable in tort.

C. not recover unless the light company failed to exercise reasonable care to stop the destruction of the insulators.

D. not recover, because the destruction of the insulators was intentional.

1. A city has an ordinance that makes it an offense, punishable by fine, for the owner of a dog to permit the dog to run unleashed on a public way. A police officer observed a small dog running loose in the street. As he picked the dog up, the dog's owner, who was seated in her car lawfully parked on the curb, called out, "Oh, thank you Officer for returning Fido." The police officer asked the owner whether the dog was hers, and when she acknowledged ownership, he asked to see her driver's license. The owner gave her name and address, but she refused to produce a driver's license. The police officer then told her that if she didn't produce her driver's license then she would go to jail. The owner responded by saying, "Isn't this ridiculous?" The police officer took her by the arm and said, "Let's go. You are under arrest." The owner cried out that the police officer was hurting her but he refused to release her arm, so she struck him with her free hand. The police officer then dragged the owner from her car, forced her into his squad car, and took her to the police station. The incident took place on the street in front of the apartment where the owner and her aged father lived. The police officer did not know that the father had observed what took place from a window in the apartment.

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

A. Yes, if the police officer's acts caused the father severe emotional distress.

B. Yes, if it is found that the police officer's behavior was extreme and outrageous with respect to the dog owner.

C. No, because the police officer did not know that the father was watching.

D. No, because the father was not within the zone of physical danger.

1. A group of children, ranging from 8 to 15, regularly played football on the common area of an apartment complex. Most of the children lived in the apartment complex, but some lived elsewhere. The owner of the apartment complex knew that the children played on the common area and had not objected. The plaintiff, a 13-year-old who did not live in the apartment complex, fell over a sprinkler head while running for a pass and broke his leg. Although the plaintiff had played football on the common area before, he had never noticed the sprinkler heads, which protruded one inch above the ground and were part of a permanently installed underground sprinkler system.

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

A. prevail if the sprinkler head was a hazard that the plaintiff probably would not discover.

B. prevail, because the apartment complex owner had not objected to children playing on the common area.

C. not prevail, because the plaintiff did not live in the apartment complex.

D. not prevail unless the sprinkler heads were abnormally dangerous to users of the common area.

1. A woman worked as a secretary in an office in a building occupied partly by her employer and partly by a retail store. The two areas were separated by walls and were in no way connected, except that the air conditioning unit served both areas and there was a common return-air duct. The retail store began remodeling, and its employees did the work, which included affixing a plastic surfacing material to counters. To fasten the plastic to the counters, the employees purchased glue from a manufacturer that was packaged in a sealed container by the manufacturer and retailed by a paint company. In the course of the remodeling job, one of the retail store's employees turned on the air conditioning and caused fumes from the glue to travel from the retail store through the air conditioning unit and into the woman's office. The employees did not know that there was common duct work for the air conditioners. The woman was permanently blinded by the fumes from the glue. The label on the container of glue read, "DANGER. Do not smoke near this product. Extremely flammable. Contains Butanone, Tuluol and Hexane. Use with adequate ventilation. Keep out of the reach of children." The three chemicals listed on the label are very toxic and harmful to human eyes. The manufacturer had received no reports of eye injuries during the ten years that the product had been manufactured and sold.

If the woman asserts a claim against the retail store, the most likely result is that she will

A. recover, because a user of a product is held to the same standard as the manufacturer.

B. recover, because the employees of the retail store caused the fumes to enter her area of the building.

C. not recover, because the retail store used the glue for its intended purposes.

D. not recover, because the employees of the retail store had no reason to know that the fumes could injure the woman.

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

If the nurse asserts a claim based on defamation against the hospital, the nurse will

A. recover, because the hospital accused the nurse of improper professional conduct.

B. recover if the nurse did not take the narcotics.

C. not recover if narcotics disappeared during the nurse's shifts.

D. not recover if the hospital reasonably believed that the nurse took the narcotics.

1. An electrical engineer designed an electronic game. The engineer entered into a licensing agreement with a toy company under which the toy company agreed to manufacture the game according to the engineer's specifications and to market it and pay a royalty to the engineer. A gamer, whose parents had purchased the game for her, was injured while playing the game. The gamer recovered a judgment against the toy company on the basis of a finding that the game was defective because of the engineer's improper design.

In a claim for indemnity against the engineer, will the toy company prevail?

A. Yes, because as between the engineer and the toy company, the engineer was responsible for the design of the game.

B. Yes, because the toy company and the engineer were joint tortfeasors.

C. No, because the toy company, as the manufacturer, was strictly liable to the gamer.

D. No, if the toy company, by reasonable inspection, could have discovered that defect in the design of the game.

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

A. Yes, because the operation of the storage facility was an abnormally dangerous activity.

B. Yes, because the intrusion of the smoke onto the farmer's farm amounted to a trespass.

C. No, if the explosion was caused by internal corrosion that reasonable inspection procedures would not have disclosed.

D. No, if the explosion was caused by negligent construction on the construction company's part.

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

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

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

A. Yes, because the bowling alley owed the child the highest degree of care.

B. Yes, because a 2-year old is incapable of contributory negligence.

C. No, unless the bowling alley or his employees failed to exercise reasonable care to assure the son's safety.

D. No, if the mother assumed the risk by leaving her son in the nursery.

1. A car owner left her car at a mechanic's garage to have repair work done. After completing the repairs, the mechanic took the car out for a test drive and was involved in an accident that caused damages to the plaintiff. A statute imposes liability on the owner of an automobile for injuries to a third party that are caused by the negligence of any person driving the automobile with the owner's consent. The statute applies to situations of this kind, even if the owner did not specifically authorize the mechanic to test-drive the car. The plaintiff sued the car owner and the mechanic jointly for damages arising from the accident. In that action, the car owner cross-claims to recover from the mechanic the amount of any payment the car owner may be required to make to the plaintiff. The trier of fact has determined that the accident was caused solely by negligent driving on the mechanic's part, and that the plaintiff's damages were $100,000.

In this action, the proper outcome will be that

A. The plaintiff should have judgment for $50,000 each against the car owner and the mechanic; the car owner should recover nothing from the mechanic.

B. The plaintiff should have judgment for $100,000 against the mechanic only.

C. The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for 50 percent of an amount collected from the car owner by the plaintiff.

D. The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for any amount collected from the car owner by the plaintiff.

1. A driver drove his car into an intersection and collided with a fire engine that had entered the intersection from the driver's right. The accident was caused by negligence on the driver's part. As a result of the accident, the fire engine was delayed in reaching the plaintiff's house, which was entirely consumed by fire. The plaintiff's house was located about ten blocks from the scene of the accident. If the plaintiff asserts a claim against the driver, the plaintiff will recover

A. the part of his loss that would have been prevented if the collision had not occurred.

B. the value of his house before the fire.

C. nothing if the driver had nothing to do with causing the fire.

D. nothing, because the driver's conduct did not create an apparent danger to the plaintiff.

1. Two companies each manufacture pesticide. Their plants are located along the same river. During a specific 24-hour period, each plant discharged pesticide into the river. Both plants were operated negligently and such negligence caused the discharge of pesticide into the river. A rancher operated a cattle ranch downstream from the companies' plants. The rancher's cattle drank from the river and were poisoned by the pesticide. The amount of the discharge from either plant alone would not have been sufficient to cause any harm to the rancher's cattle.

If the rancher asserts a claim against the two companies, what, if anything, will the rancher recover?

A. Nothing, because neither company discharged enough pesticide to cause harm to the rancher's cattle.

B. Nothing, unless the rancher can establish how much pesticide each plant discharged.

C. One-half of the rancher's damages from each company.

D. The entire amount of the rancher's damages, jointly and severally, from the two companies.

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

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

A. Yes, if the brake failed because of a defect present when the bicycle left the factory of the bicycle company.

B. Yes, because the brake failed while the bicyclist was riding the bicycle.

C. No, if the bicyclist contributed to his own injury by speeding up.

D. No, if retail dealer carefully inspected the bicycle before selling it.

55. X--A man was driving north on an interstate highway at about 50 miles per hour when a tractor-trailer rig, owned and driven by a driver, passed him. The tractor was pulling a refrigerated meat trailer fully loaded with beef carcasses hanging freely from the trailer ceiling. When the driver cut back in front of the man, the shifting weight of the beef caused the trailer to overturn. The man was unable to avoid a collision with the overturned trailer and was injured. The trailer had been manufactured by a trailer company. A number of truckers had complained to the trailer company that the design of the trailer, which allowed the load to swing freely, was dangerous. The driver knew of the dangerous propensity of the trailer. A restraining device that could be installed in the trailer would prevent the load from shifting and was available at nominal cost. The driver knew of the restraining device but had not installed it.

If the man asserts a claim based on strict liability against the trailer company, he will

A. recover unless the man was negligently driving when the truck overturned.

B. recover, because the driver's knowledge of the dangerous propensity of the trailer does not relieve the trailer company of liability.

C. not recover, because there was no privity of contract between the man and the trailer company.

D. not recover if the driver was negligent in failing to install the restraining device in the trailer.

56. A purchaser ordered some merchandise from a store. When the merchandise was delivered, the purchaser decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the purchaser's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection. The bill collector showed up at the purchaser's house at 7 p.m. on a summer evening while many of the purchaser's neighbors were seated on their porches. When the purchaser opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the purchaser a "deadbeat" and asked him when he intended to pay his bill to the store.

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

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

A. Yes, if the bill collector's remarks were heard by any of the purchaser's neighbors.

B. Yes, because the bill collector's conduct was extreme and outrageous.

C. No, unless the bill collector knew that the purchaser owed no money to the store.

D. No, unless the purchaser suffered some special damage.

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

If the politician asserts a claim against the defendant for damages because of his embarrassment, will the politician prevail?

A. Yes, if the defendant knew that the politician was about to sit on the chair.

B. Yes, if the defendant negligently failed to notice that the politician was about to sit on the chair.

C. No, because the politician suffered no physical harm along with his embarrassment.

D. No, if in moving the chair the defendant intended only a good-natured practical joke on the politician.

58. When a defendant heard that his neighbor intended to sell his home to a minority purchaser, the defendant told his neighbor that the neighbor and his wife and children would meet with 'accidents" if he did so. The neighbor then called the prospective purchaser and told him that he was taking the house off the market.

If the neighbor asserts a claim against the defendant for assault, the neighbor will

A. recover if the defendant intended to place the neighbor in fear of physical harm.

B. recover because the defendant's conduct was extreme and outrageous.

C. not recover if the defendant took no action that threatened immediate physical harm to the neighbor.

D. not recover because the neighbor's action removed any threat of harmful force.

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

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

A. Yes, against the telephone company but not the driver.

B. Yes, against the driver but not the telephone company.

C. Yes, against the telephone company and the driver, each for one-half of his damages.

D. Yes, against both the telephone company and the driver for the full amount of his damages.

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

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

A. Yes, because the doctor was mistaken in the facts on which he based his opinion of the nurse's competence.

B. Yes, because the doctor's statement reflected adversely on the nurse' professional competence.

C. No, if the nurse authorized the hospital to make inquiry of her former employer.

D. No, if the doctor had reasonable grounds for his belief that the nurse was not competent.

61. A chemical company designed and built a large tank on its premises for the purpose of storing highly toxic gas. The tank developed a sudden leak and escaping toxic gas drifted into the adjacent premises where a neighbor lived. The neighbor inhaled the gas and died as a result. In a suit brought by the neighbor's personal representative against the chemical company, which of the following must be established if the claim is to prevail?

I. The toxic gas that escaped from the chemical company's premises was the cause of the neighbor's death.

II. The tank was built in a defective manner.

III. The chemical company was negligent in designing the tank.

A. I only

B. I and II only

C. I and III only

D. I, II, and III

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

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

A. Yes, because it was the driver, not the defendant, who collided with the plaintiff's car and caused the plaintiff's injuries.

B. Yes, if the plaintiff could have safely passed the disabled vehicles in the traffic lane that remained open.

C. No, because a jury could find that the plaintiff's injury arose from a risk that was a continuing consequence of the defendant's negligence.

D. No, because the defendant was driving in excess of the statutory limit when he negligently caused the first accident.

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

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

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

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

A. affirmed, because the jury found on the evidence that the defendant could not foresee that the ball would pass through the fence.

B. affirmed, if there was evidence that the defendant was mentally ill and that his act was the product of his mental illness.

C. reversed and the case remanded, if a jury could find on the evidence that the defendant intended to cause the hecklers to fear being hit.

D. reversed and the case remanded, because a jury could find that the defendant's conduct was extreme and outrageous, and the cause of physical harm to the plaintiff.

64. The defendant was a pitcher for the City Robins, a professional baseball team. While the defendant was throwing warm-up pitches on the sidelines during a game, he was continuously heckled by some spectators seated in the stands above the dugout behind a wire mesh fence. On several occasions, the defendant turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. The defendant wound up as though he was preparing to pitch in the direction of his catcher; however the ball traveled from his hand at high speed, at a 90-degree angle from the line to the catcher and directly toward the hecklers in the stands. The ball passed through the wire mesh fence and struck the plaintiff, one of the hecklers. The plaintiff brought an action for damages against the defendant and the City Robins, based upon negligence and battery. The trial court directed a verdict for the defendant and the City Robins on the battery count. The jury found for the defendant and the City Robins on the negligence count because the jury determined that the defendant could not foresee that the ball would pass through the wire mesh fence. The plaintiff has appealed the judgments on the battery counts, contending that the trial court erred in directing verdicts for the defendant and the City Robins.

On appeal, the court holds that the question of whether the defendant committed a battery is a jury issue. The judgment entered on the directed verdict in favor of the City Robins should then be

A. reversed and the case remanded, because a jury could find the City Robins vicariously liable for a battery committed by the defendant in the course of his employment.

B. reversed and the case remanded, only if a jury could find negligence on the part of the Robins' management.

C. affirmed, because an employer is not vicariously liable for a servant's battery.

D. affirmed, if the defendant's act was a knowing violation of team rules.

65. The defendant parked her car in violation of a city ordinance that prohibits parking within ten feet of a fire hydrant. Because a man was driving negligently, his car sideswiped the defendant's parked car. The plaintiff, a passenger in the man's car, was injured in the collision. If the plaintiff asserts a claim against the defendant to recover damages for his injuries, basing his claim on the defendant's violation of the parking ordinance, will the plaintiff prevail?

A. Yes, because the defendant was guilty of negligence per se.

B. Yes, if the plaintiff would not have been injured had the defendant's car not been parked where it was.

C. No, because the defendant's parked car was not an active or efficient cause of the plaintiff's injury.

D. No, if prevention of traffic accidents was not a purpose of the ordinance.

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

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

The plaintiff purchased some Restorall and used it on his cabinet, being very careful to follow the accompanying instructions exactly. Despite the plaintiff's care, the original Morenci finish was irreparably damaged. When finally refinished, the cabinet was worth less than 20% of what it would have been worth if the Morenci finish had been preserved.

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

A. Yes, unless no other known removal technique would have preserved the Morenci finish.

B. Yes, if the loss would not have occurred had the statement in the brochure been true.

C. No, unless the product was defective when sold by Restorall, Inc.

D. No, if the product was not dangerous to persons.

67. In an action brought against a defendant by a pedestrian's legal representative, the only proof that the legal representative offered on liability were that: (1) the pedestrian was killed instantly while walking on the shoulder of the highway; (2) the defendant was driving the car that struck the pedestrian; and (3) there were no living witnesses to the accident other than the defendant, who denied negligence.

The jurisdiction has adopted a rule of pure comparative negligence. If, at the end of the plaintiff's case, the defendant moves for directed verdict, the trial judge should

A. grant the motion, because the legal representative has offered no specific evidence from which reasonable jurors may conclude that the defendant was negligent.

B. grant the motion, because it is just as likely that the pedestrian was negligent as that the defendant was negligent.

C. deny the motion, unless the pedestrian was walking with his back to traffic, in violation of the state highway code.

D. deny the motion, because, in the circumstances, negligence on the part of the defendant may be inferred.

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

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

A. Yes, because the pedestrian was injured by an artificial condition of the premises while using an adjacent public way.

B. Yes, because such an accident does not ordinarily happen in the absence of negligence.

C. No, if the landlord is in no better position than the pedestrian to explain the accident.

D. No, because there is no basis for a reasonable inference that the landlord was negligent.

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

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

A. prevail, because the defendant knew that the cake would be harmful or offensive to the plaintiff.

B. prevail, only if the ambulance driver was negligent.

C. not prevail, because the defendant could not reasonably be expected to foresee injury to the plaintiff's leg.

D. not prevail, because the ambulance driver's heart attack was a superseding cause of the plaintiff's broken leg.

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

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

A. a store owes no duty to its customers to control the use of its shopping carts.

B. a store owes no duty to its customers to control the conduct of other customers.

C. any negligence of the store was not the proximate cause of the customer's injury.

D. a supervised child pushing a cart does not pose an unreasonable risk to other customers.

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

If the customer brings an action, based on negligence, against the child's mother, will the customer prevail?

A. Yes, if the child was negligent.

B. Yes, because the child's mother is responsible for any harm caused by the child.

C. Yes, because the child's mother assumed the risk of her child's actions.

D. Yes, if the child's mother did not adequately supervise the child's actions.

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

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

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

If the plaintiff asserts a claim against the defendant based on infliction of emotional distress, will the plaintiff prevail?

A. Yes, if the plaintiff suffered severe emotional distress as a result of the defendant's conduct.

B. Yes, unless the bill for medical services was valid and past due.

C. No, unless the plaintiff suffered physical harm as a result of the defendant's conduct.

D. No, if the defendant's conduct created no risk of physical harm to the plaintiff.

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

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

I. The defendant intentionally drove his car onto the plaintiff's land.

II. The defendant negligently drove his car onto the plaintiff's land.

III. The defendant's car damaged the plaintiff's land.

A. I only.

B. III only.

C. I, II, or III.

D. Neither I, nor II, nor III.

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

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

A. the equestrian, for trespass to her chattel property.

B. the equestrian, for battery and assault.

C. the defendant, because the equestrian suffered no physical harm.

D. the defendant, because he was privileged to exclude trespassers from his property.

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

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

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

A. Nothing, and then D-1 can collect nothing from D-2.

B. $30,000, and then D-1 can collect nothing from D-2.

C. $40,000, and then D-1 can collect $10,000 from D-2.

D. $60,000, and then D-1 can collect $30,000 from D-2.

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

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

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

A. Yes, if his rescue attempt was reasonable.

B. Yes, because the law should not discourage attempts to assist persons in helpless peril.

C. No, unless the hiker's peril arose from his own failure to exercise reasonable care.

D. No, because the plaintiff's rescue attempt failed and therefore did not benefit the hiker.

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

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

A. No, unless the retailer could have discovered the defect by a reasonable inspection of the safety device.

B. No, because the rescuer did not rely on the representation of safety implied from the sale of the safety device by the retailer.

C. Yes, unless the climber was negligent in failing to test the safety device.

D. Yes, because injury to a person in the rescuer's position was foreseeable if the safety device failed.

78. A bank vice president took substantial kickbacks to approve certain loans that later proved worthless. Upon learning of the kickbacks, the bank's president fired the vice president, telling him, "If you are not out of this bank in ten minutes, I will have the guards physically throw you out." The vice president left at once.

If the vice president asserts a claim against the president based on assault, will the vice president prevail?

A. No, because the guards never touched the vice president.

B. No, because the president gave the vice president ten minutes to leave.

C. Yes, if the president intended to cause the vice president severe emotional distress.

D. Yes, because the president threatened the vice president with a harmful or offensive bodily contact.

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

If the plaintiff asserts a claim against the defendant, will the plaintiff prevail?

A. Yes, because the defendant's dog was a cause in fact of the plaintiff's injury.

B. Yes, if the defendant knew his dog had a propensity to chase cars and did not restrain it.

C. No, because a dog is a domestic animal.

D. No, unless a statute or ordinance made it unlawful for the owner to allow a dog to be unleashed on a public street.

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

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

A. $12,000.

B. $3,000.

C. $3,000 plus damages for the loss of the use of the car during its repair.

D. nothing, unless the defendant was negligent and his negligence was a substantial cause of the collision.

81. While walking on a public sidewalk, a pedestrian was struck by a piece of lumber that fell from the roof of a homeowner's house. The homeowner had hired a repairman to make repairs to his roof, and the lumber fell through due to negligence on the repairman's part. If the pedestrian brings an action against the homeowner to recover damages for the injury caused to him by the repairman's negligence, will the pedestrian prevail?

A. Yes, under the res ipsa loquitur doctrine.

B. Yes, if the repairman's act was a breach of a nondelegable duty owed by the homeowner to the pedestrian.

C. No, if the repairman was an independent contractor rather than the homeowner's servant.

D. No, if the homeowner exercised reasonable care in hiring the repairman to do the repair.

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

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

A. Yes, because the defendant's negligence was the cause in fact of the supporting actor's loss.

B. Yes, unless the supporting actor failed to take reasonable measures to mitigate his loss.

C. No, unless the defendant should have foreseen that by injuring the lead actress he would cause harm to the supporting actor.

D. No, because the defendant's liability does not extend to economic loss to the supporting actor that arises solely from physical harm to the lead actress.

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

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

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

A. No, because the plaintiff experienced no threat to her own safety.

B. No, unless the mausoleum's behavior was extreme and outrageous.

C. Yes, if the mausoleum failed to use reasonable care to safeguard the body.

D. Yes, unless the plaintiff suffered no physical harm as a consequence of her emotional distress.

84. In the course of a bank holdup, a robber fired a gun at a guard. The guard drew his revolver and returned the fire. One of the bullets fired by the guard ricocheted, striking the plaintiff.

If the plaintiff asserts a claim against the guard based upon battery, will the plaintiff prevail?

A. Yes, unless the plaintiff was the robber's accomplice.

B. Yes, under the doctrine of transferred intent.

C. No, if the guard fired reasonably in his own defense.

D. No, if the guard did not intend to shoot the plaintiff.

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

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

The plaintiff should recover

A. nothing, if the plaintiff was more negligent than either the defendant or the man.

B. nothing, unless the total of the defendant's and the man's negligence was greater than the plaintiff's.

C. from the defendant and the man, jointly and severally, the amount of damages the plaintiff suffered reduced by the percentage of the total negligence that is attributed to the plaintiff.

D. from the defendant and the man, severally, a percentage of the plaintiff's damages equal to the percentage of fault attributed to each of the defendants.

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

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

A. Judgment for the plaintiff for nominal damages, because the defendant intentionally used the channel.

B. Judgment for the defendant, if he did not use the channel after learning of the plaintiff's ownership claim.

C. Judgment for the defendant, because he caused no harm to the plaintiff's land.

D. Judgment for the defendant, because when he used the channel he believed it was a public waterway.

87. A defendant and a group of his friends are fanatical basketball fans who regularly meet at each others' homes to watch basketball games on television. Some of the group are fans of team A, and others are fans of team B. When the group has watched televised games between these two teams, fights sometimes have broken out among the group. Despite this fact, the defendant invited the group to his home to watch a championship game between teams A and B.

During the game, the defendant's guests became rowdy and antagonistic. Fearing that they would begin to fight, and that a fight would damage his possessions, the defendant asked his guests to leave. They refused to go and soon began to fight. The defendant called the police, and a police officer was sent to the defendant's home. The officer sustained a broken nose in his efforts to stop the fighting.

The officer brought an action against the defendant alleging that the defendant was negligent in inviting the group to his house to watch this championship game. The defendant has moved to dismiss the complaint.

The best argument in support of this motion would be that

A. a rescuer injured while attempting to avert a danger cannot recover damages from the endangered person.

B. a police officer is not entitled to a recovery based upon the negligent conduct that created the need for the officer's professional intervention.

C. as a matter of law, the defendant's conduct was not the proximate cause of the officer's injury.

D. The defendant did not owe the officer a duty to use reasonable care, because the officer was a mere licensee on the defendant's property.

88. A supermarket is in a section of town where there are sometimes street fights and where pedestrians are occasionally the victims of pickpockets and muggers. In recognition of the unusual number of robberies in the area, the supermarket posted signs in the store and in its parking lot that read:

Warning: There are pickpockets and muggers at work in this part of the city. The supermarket is not responsible for the acts of criminals.

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

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

A. plaintiff, if the supermarket failed to take reasonable steps to protect customers against criminal attack in its parking lot.

B. plaintiff, because the supermarket is liable for harm to business invitees on its premises.

C. defendant, if the warning signs were plainly visible to the customer.

D. defendant, because the rapist was the proximate cause of the customer's injuries.

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

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

A. Yes, because the company's activity is abnormally dangerous.

B. Yes, for loss suffered by the neighbor after the company was made aware of the harm its activity was causing to the neighbor.

C. No, unless the company caused a substantial and unreasonable interference with the neighbor's business.

D. No, because the neighbor's harm was purely economic and did not arise from physical harm to his person or property.

90. A defendant negligently caused a fire in his house, and the house burned to the ground. As a result, the sun streamed into the plaintiff's yard next door, which previously had been shaded by the defendant's house. The sunshine destroyed some delicate and valuable trees in the plaintiff's yard that could grow only in the shade. The plaintiff has brought a negligence action against the defendant for the loss of the plaintiff's trees. The defendant has moved to dismiss the complaint.

The best argument in support of this motion would be that

A. the defendant's negligence was not the active cause of the loss of the plaintiff's trees.

B. the defendant's duty to avoid the risks created by a fire did not encompass the risk that sunshine would damage the plaintiff's trees.

C. the loss of the trees was not a natural and probable consequence of the defendant's negligence.

D. the plaintiff suffered a purely economic loss, which is not compensable in a negligence action.

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

The plaintiff's motion should be

A. granted, because it is more likely than not that the defendant's negligent conduct was the legal cause of the plaintiff's injuries.

B. granted, because the evidence does not support the verdict.

C. denied, because, given the defendant's evidence, the jury was not required to draw an inference of negligence from the circumstances of the accident.

D. denied, if the defendant was in no better position than the plaintiff to explain the accident.

92. A newspaper, printed an article that stated:

"Kitchen, the popular restaurant on the town square, has closed its doors. Kitchen employees have told [the newspaper] that the closing resulted from the owner's belief that Kitchen's general manager has embezzled thousands of dollars from the restaurant over the last several years. A decision on reopening the restaurant will be made after the completion of an audit of Kitchen's books."

The plaintiff, who is Kitchen's general manager, brought a libel action against the newspaper based on the publication of this article. The parties stipulated that the plaintiff never embezzled any funds from Kitchen. They also stipulated that the plaintiff is well known among many people in the community because of his job with Kitchen.

The case went to trial before a jury.

The defendant's motion for a directed verdict in its favor, made at the close of the evidence, should be granted if the

A. record contains no evidence that the plaintiff suffered special harm as a result of the publication.

B. record contains no evidence that the defendant was negligent as to the truth or falsity of the charge of embezzlement.

C. evidence is not clear and convincing that the defendant published the article with "actual malice."

D. record contains uncontradicted evidence that the article accurately reported what the employees told the newspaper.

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

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

If the facts stated above are undisputed, the judge should

A. deny the motion, because pursuant to the doctrine of res ipsa loquitur, a jury could infer that the rancher was negligent.

B. deny the motion, because an animal dangerous to highway users escaped from the rancher's property and caused the collision.

C. grant the motion, because there is no evidence that the rancher was negligent.

D. grant the motion, because the rancher did not knowingly permit the horse to run at large.

94. A plaintiff suffered a severe loss when his manufacturing plant, located in a shallow ravine, was flooded during a sustained rainfall. The flooding occurred because the city had failed to maintain its storm drain, which was located on city land above the plaintiff's premises, and because a railroad had failed to maintain its storm drain, which was located on railroad land below the plaintiff's premises. The flooding would not have occurred if either one of the two storm drains had been maintained properly.

The plaintiff sued the railroad to recover compensation for his loss. The evidence in the case established that the failures of the two drains were caused by the respective negligence of the city and the railroad. There is no special rule insulating the city from liability.

In his action against the railroad, the plaintiff should recover

A. nothing, because he should have joined the city, without whose negligence he would have suffered no loss.

B. nothing, unless he introduces evidence that enables the court reasonably to apportion responsibility between the city and the railroad.

C. one-half his loss, in the absence of evidence that enables the court to allocate responsibility fairly between the city and the railroad.

D. all of his loss, because but for the railroad's negligence none of the flooding would have occurred.

95. The manager of a department store noticed that a customer was carrying a scarf with her as she examined various items in the blouse department. The manager recognized the scarf as an expensive one carried by the store. The customer was trying to find a blouse that matched a color in the scarf, and, after a while, found one. The manager then saw the customer put the scarf into her purse, pay for the blouse, and head for the door. The manager, who was eight inches taller than the customer, blocked the customer's way to the door and asked to see the scarf in the customer's purse. The customer produced the scarf, as well as a receipt for it, showing that it had been purchased from the store on the previous day. The manager then told the customer there was no problem and stepped out of her way.

If the customer brings a claim against the store based on false imprisonment, the store's best defense would be that

A. by carrying the scarf in public view and then putting it into her purse, the customer assumed the risk of being detained.

B. the manager had a reasonable belief that the customer was shoplifting and detained her only briefly for a reasonable investigation of the facts.

C. the customer should have realized that her conduct would create a reasonable belief that facts existed warranting a privilege to detain.

D. the customer was not detained, but was merely questioned about the scarf.

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

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

A. prevail, because, although occasioned by necessity, the golfer's entry onto the gardener's property was for the golfer's benefit.

B. prevail, for nominal damages only, because the golfer was privileged to enter the gardener's property.

C. not prevail, because the lightning was an act of God.

D. not prevail, because the golfer's entry onto the gardener's property was occasioned by necessity and therefore privileged.

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

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

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

A. not recover, because a person is not required by law to come to the assistance of another who is imperiled by a third party.

B. not recover, if the plaintiff could easily have moved to another seat.

C. recover, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.

D. recover, if the flight attendants should have perceived the man's condition and acted to protect the plaintiff before the blow was struck.

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

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

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

A. prevail, because she suffered an intentionally inflicted harmful or offensive contact.

B. prevail, if the flight attendant acted recklessly in continuing to serve liquor to the man.

C. not prevail, because the man was not acting as an agent or employee of the airline.

D. not prevail, unless she can establish some permanent injury from the contact.

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

If the defendant moves for a directed verdict in her favor at the end of the plaintiff's case, that motion should be

A. granted, because the grandmother is not legally responsible for the acts of her grandson.

B. granted, because the grandmother did not recall that the gun cabinet was unlocked.

C. denied, because a firearm is an inherently dangerous instrumentality.

D. denied, because a jury could find that the grandmother breached a duty of care she owed to the plaintiff.

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

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

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

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

A. No, if children likely to be attracted by the trampoline would normally realize the risk of using it without mats.

B. No, if the plaintiff failed to exercise reasonable care commensurate with his age, intelligence, and experience.

C. No, because the plaintiff entered the defendant's yard and used the trampoline without the defendant's permission.

D. No, because the plaintiff did not know about the trampoline before entering the defendant's yard and thus was not "lured" onto the premises.

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

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

In this action, will the employee prevail?

A. Yes, because the safety glasses were defective in that they did not protect him from the disintegrating wheel.

B. Yes, because the glasses were sold under the trade name "Safety Glasses."

C. No, because the glasses were not designed or sold for protection against the kind of hazard the employee encountered.

D. No, if the employee will be compensated under the workers' compensation law.

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

If the roommate asserts a claim against the college student for his dermatitis injuries, the college student's best defense will be that

A. the roommate was contributorily negligent.

B. the roommate assumed the risk.

C. the college student had no duty toward the roommate, who was a gratuitous donee.

D. the college student had no duty toward the roommate, because the shampoo company created the risk and had a nondelegable duty to foreseeable users.

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

The driver's motion should be

A. denied, because the record shows that the pedestrian apprehended an imminent, harmful contact, with the driver's car.

B. denied, because a jury could find that the driver negligently caused the pedestrian to suffer a legally compensible injury.

C. granted, because the proximate cause of the pedestrian's injury was his own voluntary act.

D. granted, because it is not unreasonable for a person to be distracted momentarily.

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

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

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

A. $70,000 from driver #1, and then driver #1 will be entitled to collect $40,000 from driver #2.

B. $30,000 from driver #1, and then driver #1 will be entitled to collect $10,000 from driver #2.

C. $30,000 from driver #1, and then driver #1 will be entitled to collect nothing from driver #2.

D. nothing from driver #1, because the percentage of fault for driver #1 is not greater than that of the plaintiff.

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

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

A. Yes, for the actual damage to the saw.

B. Yes, for the value of the saw before the neighbor borrowed it.

C. No, because when the saw broke the neighbor was using it to benefit the homeowner.

D. No, because the neighbor did not intend to keep the saw.

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

The arsonist brought an action against the manufacturer of the lighter based on strict product liability. Under applicable law, the rules of pure comparative fault apply in such actions.

Will the arsonist prevail?

A. Yes, if the lighter exploded because of a defect caused by a manufacturing error.

B. Yes, if the arsonist can establish that the lighter was the proximate cause of his injury.

C. No, because the lighter was not being used for an intended or reasonably foreseeable purpose.

D. No, because the arsonist was injured in the course of committing a felony by the device used to perpetrate the felony.

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

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

In that action, will the plaintiff prevail?

A. Yes, if the engineer signed, sealed, and submitted a blueprint that showed the design defect.

B. Yes, because all of the plant's designers are jointly and severably liable for the defect.

C. No, because the engineer owed no duty to the plaintiff to prevent the particular risk of harm.

D. No, if the engineer was an independent contractor.

108. A mother rushed her eight-year-old daughter to the emergency room at a local hospital after the child fell off her bicycle and hit her head on a sharp rock. The wound caused by the fall was extensive and bloody.

The mother was permitted to remain in the treatment room, and held the child's hand while the emergency room physician cleaned and sutured the wound. During the procedure, the mother said that she was feeling faint and stood up to leave the room. While leaving the room, the mother fainted and, in falling, struck her head on a metal fixture that protruded from the emergency room wall. She sustained a serious injury as a consequence.

If the mother sues the hospital to recover damages for her injury, will she prevail?

A. Yes, because the mother was a public invitee of the hospital's.

B. Yes, unless the fixture was an obvious, commonly used, and essential part of the hospital's equipment.

C. No, unless the hospital's personnel failed to take reasonable steps to anticipate and prevent the mother's injury.

D. No, because the hospital's personnel owed the mother no affirmative duty of care.

109. For ten years, a vacationer and a neighbor have owned summer vacation homes on adjoining lots. A stream flows through both lots. As a result of a childhood swimming accident, the vacationer is afraid of water and has never gone close to the stream.

The neighbor built a dam on her property that has completely stopped the flow of the stream to the vacationer's property.

In a suit by the vacationer against the neighbor, will the vacationer prevail?

A. Yes, if the damming unreasonably interferes with the use and enjoyment of the vacationer's property.

B. Yes, if the neighbor intended to affect the vacationer's property.

C. No, because the vacationer made no use of the stream.

D. No, if the dam was built in conformity with all applicable laws.

110. A plaintiff, who was driving at an excessive speed, applied her brakes to stop at a traffic light. Due to damp, fallen leaves, her car skidded and came to a halt perpendicular to the roadway. The defendant, who was also driving at an excessive speed and was immediately behind the plaintiff, saw the plaintiff's car perpendicular to the roadway. Although the defendant had sufficient distance to come to a slow, controlled stop, he decided not to slow down but, rather, to swerve to the left in an effort to go around the plaintiff's car. Due to oncoming traffic, the space was insufficient and the defendant's car collided with the plaintiff's car, severely injuring the plaintiff.

The plaintiff filed a personal injury action against the defendant in a jurisdiction in which contributory negligence is a bar to recovery.

Will the plaintiff prevail?

A. Yes, if the jury finds that the defendant was more than 50% at fault.

B. Yes, if the jury finds that the defendant had the last clear chance.

C. No, if the jury finds that the plaintiff's conduct was in any way a legal cause of the accident.

D. No, if the jury finds that, in speeding, the plaintiff assumed the risk.

111. An employer retained a doctor to evaluate medical records of prospective employees. The doctor informed the employer that an applicant, a prospective employee, suffered from AIDS. The employer informed the applicant of this and declined to hire her.

The applicant was shocked by this news and suffered a heart attack as a result. Subsequent tests revealed that the applicant in fact did not have AIDS. The doctor had negligently confused the applicant's file with that of another prospective employee.

If the applicant sued the doctor for damages, on which of the following causes of action would the applicant recover?

I. Invasion of privacy.

II. Negligent misrepresentation.

III. Negligent infliction of emotional distress.

A. III only.

B. I and II only.

C. II and III only.

D. I, II, and III.

112. A patron ate a spicy dinner at a restaurant on Sunday night. He enjoyed the food and noticed nothing unusual about the dinner.

Later that evening, the patron had an upset stomach. He slept well through the night, went to work the next day, and ate three meals. His stomach discomfort persisted, and by Tuesday morning he was too ill to go to work.

\Eventually, the patron consulted his doctor, who found that the patron was infected with a bacterium that can be contracted from contaminated food. Food can be contaminated when those who prepare it do not adequately wash their hands.

The patron sued the restaurant for damages. He introduced testimony from a health department official that various health code violations had been found at the restaurant both before and after the patron's dinner, but that none of the restaurant's employees had signs of bacterial infection when they were tested one month after the incident.

The restaurant's best argument in response to the patron's suit would be that

A. No one else who ate at the restaurant on Sunday complained about stomach discomfort.

B. The restaurant instructs its employees to wash their hands carefully and is not responsible if any employee fails to follow these instructions.

C. The patron has failed to establish that the restaurant's food caused his illness.

D. The patron assumed the risk of an upset stomach by choosing to eat spicy food.

113. When two parents were told that their child should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged $300, determined that their child had a learning disability. Based upon the report, the school board placed the child in special classes. At an open meeting of the school board, the parents asked that the $300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning the child by name.

In a privacy action brought by the child's legal representative against the newspaper, the plaintiff will

A. recover, because the story is not newsworthy.

B. recover, because the child is under the age of consent.

C. not recover, if the story is a fair and accurate report of what transpired at the meeting.

D. not recover, if the parents knew that the reporter was present.

114. A vintner is the owner of a large vineyard and offers balloon rides to visitors who wish to tour the grounds from the air. During one of the rides, the vintner was forced to make a crash landing on his own property. Without the vintner's knowledge or consent, a trespasser had entered the vineyard to camp for a couple of days. The trespasser was injured when he was hit by the basket of the descending balloon.

If the trespasser sues the vintner to recover damages for his injuries, will the trespasser prevail?

A. No, unless the crash landing was made necessary by negligence on the vintner's part.

B. No, unless the vintner could have prevented the injury to the trespasser after becoming aware of the trespasser's presence.

C. Yes, because even a trespasser may recover for injuries caused by an abnormally dangerous activity.

D. Yes, if the accident occurred at a place which the vintner knew was frequented by intruders.

115. A traveler was a passenger on a commercial aircraft owned and operated by an airline. The aircraft crashed into a mountain, killing everyone on board. The flying weather was good.

The traveler's legal representative brought a wrongful death action against the airline. At trial, the legal representative offered no expert or other testimony as to the cause of the crash.

On the airline's motion to dismiss at the conclusion of the legal representative's case, the court should

A. grant the motion, because the legal representative has offered no evidence as to the cause of the crash.

B. grant the motion, because the legal representative has failed to offer evidence negating the possibility that the crash may have been caused by mechanical failure that the airline could not have prevented.

C. deny the motion, because the jury may infer that the aircraft crashed due to the airline's negligence.

D. deny the motion, because in the circumstances common carriers are strictly liable.

116. A homeowner owns a house on a lake. A neighbor owns a house across a driveway from the homeowner's property. The neighbor's house sits on a hill and the neighbor can see the lake from his living room window.

The homeowner and the neighbor got into an argument and the homeowner erected a large spotlight on his property that automatically comes on at dusk and goes off at sunrise. The only reason the homeowner installed the light was to annoy the neighbor. The glare from the light severely detracts from the neighbor's view of the lake.

In a suit by the neighbor against the homeowner, will the neighbor prevail?

A. Yes, because the homeowner installed the light solely to annoy the neighbor.

B. Yes, if, and only if, the neighbor's property value is adversely affected.

C. No, because the neighbor's view of the lake is not always obstructed.

D. No, if the spotlight provides added security to the homeowner's property.

117. A driver negligently drove his car into a pedestrian, breaking her leg. The pedestrian's leg was put in a cast, and she used crutches to get around. While shopping at her local supermarket, the pedestrian **non-negligently** placed one of her crutches on a banana peel that had been negligently left on the floor by the manager of the supermarket's produce department. The pedestrian's crutch slipped on the peel, and she fell to the floor, breaking her arm. Had the pedestrian stepped on the banana peel at a time when she did not have to use crutches, she would have regained her balance.

The pedestrian sued the driver and the supermarket for her injuries.

The pedestrian will be able to recover from

A. the driver, for her broken leg only.

B. the driver, for both of her injuries.

C. the supermarket, for both of her injuries.

D. the driver, for her broken leg only, and the supermarket, for her broken arm only.

118. A professional football player signed a written consent for his team's physician to perform a knee operation. After the athlete was under a general anesthetic, the doctor asked a world famous orthopedic surgeon to perform the operation. The surgeon's skills were superior to the doctor's, and the operation was successful.

In an action for battery by the athlete against the surgeon, the athlete will

A. prevail, because the athlete did not agree to allow the surgeon to perform the operation.

B. prevail, because the consent form was in writing.

C. not prevail, because the surgeon's skills were superior to the doctor's.

D. not prevail, because the operation was successful.

119. A well-known movie star was drinking Vineyard wine at a nightclub. A bottle of the Vineyard wine, with its label plainly showing, was on the table in front of the actor. An amateur photographer asked the actor if he could take his picture and the actor said, "Yes." Subsequently, the photographer sold the photo to Vineyard. Vineyard, without the actor's consent, used the photo in a wine advertisement in a nationally circulated magazine. The caption below the photo stated that the actor "enjoys his Vineyard wine."

If the actor sues Vineyard to recover damages as a result of Vineyard's use of the photograph, will the actor prevail?

A. No, because the actor consented to being photographed.

B. No, because the actor is a public figure.

C. Yes, because Vineyard made commercial use of the photograph.

D. Yes, unless the actor did, in fact, enjoy his Vineyard wine.

120. As a seller, an encyclopedia salesman, approached the grounds on which a homeowner's house was situated, he saw a sign that said, "No salesmen. Trespassers will be prosecuted. Proceed at your own risk." Although the seller had not been invited to enter, he ignored the sign and drove up the driveway toward the house. As he rounded a curve, a powerful explosive charge buried in the driveway exploded, and the seller was injured.

Can the seller recover damages from the homeowner for his injuries?

A. Yes, if the homeowner was responsible for the explosive charge under the driveway.

B. Yes, unless the homeowner, when he planted the charge, intended only to deter, not to harm, a possible intruder.

C. No, because the seller ignored the sign, which warned him against proceeding further.

D. No, if the homeowner reasonably feared that intruders would come and harm him or his family.

121. A sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at the shop did not go off because the shop's owner had negligently forgotten to activate the alarm's motion detector.

Shortly thereafter, the inmate used the rifle ammunition stolen from the shop in a shooting spree that caused injury to several people, including the plaintiff.

If the plaintiff sues the shop's owner for the injury she suffered, will the plaintiff prevail?

A. Yes, if the plaintiff's injury would have been prevented had the motion detector been activated.

B. Yes, because the shop's owner was negligent in failing to activate the motion detector.

C. No, because the storage and sale of firearms and ammunition is not an abnormally dangerous activity.

D. No, unless there is evidence of circumstances suggesting a high risk of theft and criminal use of firearms stocked by the shop's owner.

122. A host pointed an unloaded revolver at her guest, threatening to shoot him. The guest knew that the revolver was not loaded and that the ammunition for the revolver was stored in a locked basement closet, two stories below where the two were then standing.

In an action brought by the guest against the host for assault, will the guest prevail?

A. No, because the host did not intend to shoot her guest.

B. No, because the host did not put her guest in apprehension of an imminent contact.

C. Yes, because the ammunition was accessible to the host.

D. Yes, because the host threatened her guest with a revolver.

123. A construction company was digging a trench for a new sewer line in a street in a high-crime neighborhood. During the course of the construction, there had been many thefts of tools and equipment from the construction area. One night, the construction company's employees neglected to place warning lights around the trench. A delivery truck drove into the trench and broke an axle. While the delivery driver was looking for a telephone to summon a tow truck, thieves broke into the delivery truck and stole $350,000 worth of goods. The delivery company sued the construction company to recover for the $350,000 loss and for $1,500 worth of damage to its truck. The construction company stipulated that it was negligent in failing to place warning lights around the trench, and admits liability for damage to the truck, but denies liability for the loss of the goods.

On cross-motions for summary judgment, how should the court rule?

A. Deny both motions, because there is evidence to support a finding that the construction company should have realized that its negligence could create an opportunity for a third party to commit a crime.

B. Grant the construction company's motion, because no one could have foreseen that the failure to place warning lights could result in the loss of a cargo of valuable goods.

C. Grant the construction company's motion, because the criminal acts of third persons were a superseding cause of the loss.

D. Grant the delivery company's motion, because but for the construction company's actions, the goods would not have been stolen.

124. An associate professor in the pediatrics department of a local medical school was denied tenure. He asked a national education lobbying organization to represent him in his efforts to have the tenure decision reversed. In response to a letter from the organization on the professor's behalf, the dean of the medical school wrote to the organization explaining truthfully that the professor had been denied tenure because of reports that he had abused two of his former patients. Several months later, after a thorough investigation, the allegations were proven false and the professor was granted tenure. He had remained working at the medical school at full pay during the tenure decision review process and thus suffered no pecuniary harm.

In a suit for libel by the professor against the dean of the medical school, will the professor prevail?

A. No, because the professor invited the libel.

B. No, because the professor suffered no pecuniary loss.

C. Yes, because the dean had a duty to investigate the rumor before repeating it.

D. Yes, because the dean's defamatory statement was in the form of a writing.

125. A dentist was anesthetizing a patient's gum before pulling a tooth. Although the dentist used due care, the hypodermic needle broke off in the patient's gum, causing injury. The needle broke because of a manufacturing defect that the dentist could not have detected. Is the patient likely to recover damages in an action against the dentist based on strict products liability and malpractice?

A. No, on neither basis.

B. Yes, based on malpractice, but not on strict products liability.

C. Yes, based on strict products liability, but not on malpractice.

D. Yes, on both bases.

126. A bus passenger was seated next to a woman whom he did not know. The woman stood to exit the bus, leaving a package on the seat. The passenger lightly tapped the woman on the back to get her attention and to inform her that she had forgotten the package. Because the woman had recently had back surgery, the tap was painful and caused her to twist and seriously injure her back.

If the woman sues the passenger to recover for the back injury, will she prevail?

A. No, because she is presumed to have consented to the ordinary contacts of daily life.

B. No, because she was not put in apprehension because of the touching.

C. Yes, because the passenger intentionally touched her.

D. Yes, because the passenger's intentional touching seriously injured her.

127. A homeowner owned a large poisonous snake which had been defanged and was kept in a cage. A storm damaged the homeowner's house and the snake's cage, allowing it to escape. During the cleanup after the storm, a volunteer worker came across the snake. The worker tried to run away from the snake and fell, breaking his arm. In a suit by the worker against the homeowner based on strict liability in tort to recover for his injury, will the worker prevail?

A. No, because the snake's escape was caused by a force of nature.

B. No, because the worker should have anticipated an injury during his volunteer work.

C. Yes, because the homeowner did not take adequate precautions to secure the snake.

D. Yes, because the worker's injury was the result of his fear of the escaped snake.

128. A bright nine-year-old child attended a day care center after school. The day care center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice skating when conditions were suitable. At a time when the pond was only partially frozen, the child sneaked away from the center and walked out onto the ice covering the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby. At the time of the incident, the pond was clearly marked with signs that stated, "THIN ICE - NO SKATING." When the child left the day care center, the center was staffed with a reasonable number of qualified personnel, and the center's employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. The jurisdiction follows a rule of pure comparative negligence.

In a suit brought on the child's behalf against the corporation, who is likely to prevail?

A. The child, because the corporation owes a duty to keep its premises free of dangerous conditions.

B. The child, because the pond was an attractive nuisance.

C. The corporation, because the danger of thin ice may reasonably be expected to be understood by a nine-year-old child.

D. The corporation, because the day care center had a duty to keep the child off the ice.

129. The owner of a shopping mall hired a construction company to design and construct the entryway to the mall. The construction company negligently selected an unusually slippery material for the floor covering. A customer at the mall slipped on the floor of the entryway, sustaining injuries. The customer sued the mall owner for the construction company's negligent design of the mall's entryway.

Will the injured customer recover damages?

A. No, if the construction company was an independent contractor.

B. No, if no customers had previously slipped on the floor.

C. Yes, if the customer intended to make a purchase at the mall.

D. Yes, if the mall's duty to maintain safe conditions was nondelegable.

130. A cigarette maker created and published a magazine advertisement that featured a model dressed as a race-car driver standing in front of a distinctive race car. In fact, the car looked almost exactly like the very unusually marked one driven by a famous and popular driver. The driver in the ad was not identified, and his face was not shown in the advertisement. The cigarette maker published the advertisement without obtaining the famous driver's permission. The race-car driver sued the cigarette maker for economic loss only, based on common law misappropriation of the right of publicity. The cigarette maker moved to dismiss the complaint.

Will the cigarette maker's motion to dismiss the complaint be granted?

A. No, because there are sufficient indicia of the driver's identity to support a verdict of liability.

B. Yes, because the driver is a public figure.

C. Yes, because there was no mention of the driver's name in the ad.

D. Yes, because the driver did not claim any emotional or dignitary loss.

131. A manufacturing plant located near a busy highway uses and stores highly volatile explosives. The owner of the plant has imposed strict safety measures to prevent an explosion at the plant. During an unusually heavy windstorm, a large tile was blown off the roof of the plant and crashed into the windshield of a passing car, damaging it. The driver of the car brought a strict liability action against the owner of the plant to recover for the damage to the car's windshield.

Is the driver likely to prevail?

A. No, because the damage to the windshield did not result from the abnormally dangerous aspect of the plant's activity.

B. No, because the severity of the windstorm was unusual.

C. Yes, because the plant's activity was abnormally dangerous.

D. Yes, because the plant's location near a busy highway was abnormally dangerous.

132. A consumer bought an electric kitchen blender from the manufacturer. Soon after the purchase, the consumer was using the blender in an appropriate way when the blender jar shattered, throwing a piece of glass into the consumer's eye. The consumer brought an action against the manufacturer based solely on strict product liability. The consumer's expert testified that the blender was defectively designed. However, because the blender jar was destroyed in the accident, the expert could not determine whether the accident was caused by the design defect or a manufacturing defect. The manufacturer's expert testified that the blender was not defective.

If, at the conclusion of the evidence, both parties move for directed verdicts, how should the trial judge rule?

A. Direct a verdict for the manufacturer, because the consumer's expert was unable to specify the nature of the defect.

B. Direct a verdict for the manufacturer, because the consumer's action was brought solely on a strict liability theory.

C. Direct a verdict for the consumer, because the blender was new when the jar shattered.

D. Deny both motions and send the case to the jury, because a jury reasonably could conclude that the harm probably was caused by a defect present in the product when it was sold.

133. A driver negligently ran over a pedestrian. A bystander witnessed the accident from across the street. The bystander ran to the pedestrian, whom he did not know, and administered first aid, but the pedestrian died in the bystander's arms. The bystander suffered serious emotional distress as a result of his failure to save the pedestrian's life, but he experienced no resulting physical manifestations. The bystander brought a negligence action against the driver.

Is the bystander likely to prevail?

A. No, because the bystander assumed the risk.

B. No, because the bystander had no familial or other preexisting relationship with the pedestrian.

C. Yes, because danger invites rescue.

D. Yes, because the bystander was in the zone of danger.

134. A recently established law school constructed its building in a quiet residential neighborhood. The law school had obtained all of the necessary municipal permits for the construction of the building, which included a large clock tower whose clock chimed every hour. The chimes disturbed only one homeowner in the neighborhood, who had purchased her house prior to the construction of the building. The homeowner was abnormally sensitive to ringing sounds, such as bells and sirens, and found the chimes to be extremely annoying.

In a nuisance action by the homeowner against the law school, will the homeowner prevail?

A. Yes, because the chimes interfere with the homeowner's use and enjoyment of her property.

B. Yes, because the homeowner purchased her house prior to the construction of the building.

C. No, because the chimes do not disturb the other residents of the neighborhood.

D. No, because the law school had the requisite municipal permits to erect the clock tower.

135. While driving his open-bed truck with a friend in the open bed, the driver swerved, throwing his friend to the pavement. The friend sustained severe injuries. The friend had often ridden in the open bed of the driver's truck, and on some of those occasions the driver had swerved to frighten his friend. The friend sued the driver to recover both compensatory damages for his injuries and punitive damages. Which cause of action would NOT permit the friend to recover punitive damages?

A. Assault.

B. Battery.

C. Negligence.

D. Recklessness.

135. As a shopper was leaving a supermarket, an automatic door that should have opened outward opened inward, striking and breaking the shopper's nose. The owner of the building had installed the automatic door. The lease, pursuant to which the supermarket leased the building, provided that the supermarket was responsible for all maintenance of the premises. The shopper sued the supermarket. At trial, neither the shopper nor the supermarket offered any testimony, expert or otherwise, as to why the door had opened inward. At the conclusion of the proofs, both the shopper and the supermarket moved for judgment. How should the trial judge rule?

A. Grant judgment for the shopper, because it is undisputed that the door malfunctioned.

B. Grant judgment for the supermarket, because the shopper failed to join the owner of the building as a defendant.

C. Grant judgment for the supermarket, because the shopper failed to offer proof of the supermarket's negligence.

D. Submit the case to the jury, because on these facts negligence may be inferred.

136. A child was bitten by a dog while playing in a fenced-in common area of an apartment complex owned by a landlord. The child was the guest of a tenant living in the complex, and the dog was owned by another tenant. The owner of the dog knew that the dog had a propensity to bite, but the landlord did not have any notice of the dog's vicious propensities. In an action by the child against the landlord, will the child prevail?

A. Yes, because in these circumstances a landlord is strictly liable.

B. Yes, because a landlord's duty to protect a tenant's guests from dangerous conditions is nondelegable.

C. No, because the landlord did not have any notice of the dog's vicious propensities.

D. No, because a landlord owes no duty to a tenant's gratuitous guests.

137. A college student was asleep in his bed in a college dormitory when his roommate, in a drunken fury, entered their room intending to attack the student with an ice pick while he slept. Fortunately, the phone rang and awakened the student. The roommate retreated quickly and threw the ice pick under his own bed in the same room. The next day, the student heard from friends about the roommate's murderous plans and later found the ice pick under the roommate's bed. Even though the college expelled his roommate, the student remained extremely upset and afraid to sleep.

In a suit against the roommate for assault, will the student prevail?

A. No, because the roommate did not touch the student.

B. No, because the student was not awake when the roommate entered the room and was unaware until later that the roommate was intending to attack him.

C. Yes, because it was reasonable for the student to feel afraid of sleeping in his room afterward.

D. Yes, because the roommate intended to inflict serious harm.

138. When a tire of a motorist's car suffered a blowout, the car rolled over and the motorist was badly injured. Vehicles made by the manufacturer of the motorist's car have been found to be negligently designed, making them dangerously prone to rolling over when they suffer blowouts. A truck driver who was driving behind the motorist when the accident occurred stopped to help. Rescue vehicles promptly arrived, and the truck driver walked along the side of the road to return to his truck. As he approached his truck, he was struck and injured by a speeding car. The truck driver has sued the manufacturer of the injured motorist's car.

Is the truck driver likely to prevail in a suit against the car manufacturer?

A. No, because the car manufacturer's negligence was not the proximate cause of the truck driver's injuries.

B. No, because the truck driver assumed the risk of injury when he undertook to help the motorist.

C. Yes, because it is foreseeable that injuries can result from rollovers.

D. Yes, because the car manufacturer's negligence caused the dangerous situation that invited the rescue by the truck driver.

139. A gas company built a large refining facility that conformed to zoning requirements on land near a landowner's property. The landowner had his own home and a mini-golf business on his property. In a nuisance action against the gas company, the landowner established that the refinery emitted fumes that made many people feel quite sick when they were outside on his property for longer than a few minutes. The landowner's mini-golf business had greatly declined as a consequence, and the value of his property had gone down markedly.

Is the landowner likely to prevail?

A. No, because the landowner has offered no evidence demonstrating that the gas company was negligent.

B. No, because the refinery conforms to the zoning requirements.

C. Yes, because the refinery has substantially and unreasonably interfered with the landowner's use and enjoyment of his property.

D. Yes, because the value of the landowner's property has declined.

140. A fire that started in the defendant's warehouse spread to the plaintiff's adjacent warehouse. The defendant did not intentionally start the fire, and the plaintiff can produce no evidence as to how the fire started. However, the defendant had failed to install a sprinkler system, which was required by a criminal statute. The plaintiff can produce evidence that had the sprinkler system been installed, it could have extinguished the fire before it spread.

In an action by the plaintiff against the defendant to recover for the fire damage, is it possible for the plaintiff to prevail?

A. No, because the statute provides only for criminal penalties.

B. No, because there is no evidence that the defendant negligently caused the fire to start.

C. Yes, because a landowner is strictly liable for harm to others caused by the spread of fire from his premises under the doctrine of Rylands v. Fletcher .

D. Yes, because the plaintiff was harmed as a result of the defendant's violation of a statute that was meant to protect against this type of occurrence.

141. A schizophrenic patient who was institutionalized in a psychiatric facility pushed a nurse down a stairwell at the facility. The nurse, a paid employee of the facility who was trained to care for schizophrenic patients, was injured. The patient is an indigent whose care is paid for by the government. The jurisdiction generally follows the rule that a person with a mental deficiency is held to the standard of a reasonable person. In a negligence action brought by the nurse against the patient, the patient's lawyer will argue that the patient should not be held responsible for the nurse's injury. Which of the following facts will be LEAST helpful to the patient's lawyer's argument?

A. The nurse was a professional caregiver.

B. The nurse was trained to care for patients with schizophrenia.

C. At the time she pushed the nurse, the patient thought she was being attacked by an elephant.

D. The patient is an indigent whose care is paid for by the government.

142. A driver negligently ran into a pedestrian who was walking along a road. The pedestrian sustained an injury to his knee, causing it to buckle from time to time. Several months later, the pedestrian sustained an injury to his shoulder when his knee buckled, causing him to fall down a flight of stairs. The pedestrian then brought an action against the driver for the injuries to his knee and shoulder. In his action against the driver, for which of his injuries may the pedestrian recover damages?

A. For the injuries to his knee and shoulder, because the driver takes the victim as he finds him.

B. For the injuries to his knee and shoulder, if the jury finds that the pedestrian's fall down a flight of stairs was a normal consequence of his original injury.

C. For the injury to his knee only, because the injury to the pedestrian's shoulder is separable.

D. For the injury to his knee only, if the jury finds that the driver could not have foreseen that his negligent driving would cause the pedestrian to fall down a flight of stairs.

143. A rancher and his neighbor were involved in a boundary dispute. In order to resolve their differences, each drove his truck to an open pasture area on his land where the two properties were separated by a fence. The rancher was accompanied by four friends, and the neighbor was alone. The neighbor got out of his truck and walked toward the fence. The rancher got out but simply stood by his truck. When the neighbor came over the fence, the rancher shot him, inflicting serious injury. In a battery action brought by the neighbor against the rancher, the rancher testified that he actually thought his neighbor was armed, although he could point to nothing that would have reasonably justified this belief.

Is the neighbor likely to prevail?

A. No, because the rancher was standing on his own property and had no obligation to retreat.

B. No, because the rancher suspected that the neighbor was armed.

C. Yes, because deadly force is never appropriate in a property dispute.

D. Yes, because it was unreasonable for the rancher to consider the use of a gun necessary for self-defense.

144. A driver was traveling along a highway during an unusually heavy rainstorm when the roadway began to flood. To protect his car from water damage, the driver pulled his car up a steep, unmarked driveway abutting the highway that led to a homeowner's residence. The driver left his car parked in the driveway and walked home, intending to return when the floodwater had subsided. Shortly after the driver started to walk home, the homeowner carefully rolled the car back down his driveway and parked it on the highway shoulder. The floodwater continued to rise and caused damage to the driver's car.

If the driver sues the homeowner to recover for damage to the car, is the driver likely to prevail?

A. Yes, because the driver was privileged to park his car on the homeowner's property.

B. Yes, because there were no "no trespassing" signs posted.

C. No, because the driver intentionally drove his car onto the homeowner's property.

D. No, because the homeowner was privileged to remove the car from his property.

145. A hotel employed a carefully selected independent contractor to rebuild its swimming pool. The hotel continued to operate while the pool was being rebuilt. The contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts. A guest of the hotel fell into the excavation, which the contractor had negligently left unguarded.

In an action by the guest against the hotel to recover for his injuries, what would be the most likely outcome?

A. Liability, because the hotel had a nondelegable duty to the guest to keep a safe premises.

B. Liability, because the contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts.

C. No liability, because the contractor was the actively negligent party.

D. No liability, because the hotel exercised reasonable care in employing the contractor.

146. A newspaper published an editorial in which an editor asserted that a candidate for high political office was a user of illegal drugs. The accusation was untrue. The editor acted unreasonably in not investigating the accusation before publishing it; however, the editor honestly believed that the accusation was true.

The candidate sued the editor for defamation.

Is the candidate entitled to recover?

A. No, because the accusation appeared in an editorial and was, therefore, merely an opinion.

B. No, because the editor honestly believed that the accusation was true.

C. Yes, because calling someone an illegal drug user is defamatory per se.

D. Yes, because the accusation was false and was injurious to the candidate's reputation.

147. An elderly neighbor hired a 17-year-old boy with a reputation for reckless driving to drive the neighbor on errands once a week. One day the teenager, driving the neighbor's car, took the neighbor to the grocery store. While the neighbor was in the store, the teenager drove out of the parking lot and headed for a party on the other side of town. While on his way to the party, the teenager negligently turned in front of a moving car and caused a collision. The other driver was injured in the collision. The injured driver has brought an action for damages against the neighbor, based on negligent entrustment, and against the teenager. The jury has found that the injured driver's damages were $100,000, that the injured driver was 10% at fault, that the teenager was 60% at fault, and that the neighbor was 30% at fault for entrusting his car to the teenager.

Based on these damage and responsibility amounts, what is the maximum that the injured driver could recover from the neighbor?

A. $100,000.

B. $90,000.

C. $60,000.

D. $30,000.

148. A customer pledged a stock certificate to a bank as security for a loan. A year later, when the customer fully repaid the loan, the bank refused the customer's demand to return the stock certificate because the officer dealing with the loan had the mistaken belief that there was still a balance due. No one at the bank reviewed the records until two months later, at which time the error was discovered. The bank then offered to return the stock certificate. However, the customer refused to accept it.

At the time the customer pledged the certificate, the shares were worth $10,000; at the time the customer repaid the loan, the shares were worth $20,000; and at the time the bank offered to return the certificate, the shares were worth $5,000.

If the customer brings an action against the bank based on conversion, how much, if anything, should the customer recover?

A. Nothing, because the bank lawfully came into possession of the certificate.

B. $5,000, because that was the value of the shares when the customer refused to accept the certificate back.

C. $10,000, because that was the value of the shares when the bank came into possession of the certificate.

D. $20,000, because that was the value of the shares when the customer was entitled to the return of the certificate.

149. In an action by a man against a pharmacy, the man offered only the following evidence:

The man took a clearly written prescription to a pharmacy. The pharmacy's employee filled the prescription by providing pills with 30 milligrams of the active ingredient instead of 20 milligrams, as was prescribed. Shortly after taking the pills as directed, the man, who had no previous history of heart problems, suffered a heart attack. Overdoses of the active ingredient had previously been associated with heart problems.

Does the man have a valid claim against the pharmacy?

A. No, because pharmacies are not strictly liable for injuries caused by incorrectly filled prescriptions.

B. No, because the man offered no specific proof as to the pharmacy's negligence.

C. Yes, because a jury could reasonably conclude that the man would not have suffered a heart attack had the pharmacy provided the correct dosage.

D. Yes, because by providing the 30-milligram pills rather than the 20-milligram pills, the pharmacy sold the man a defective product.

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

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

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

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

A. recover if the shaft that came loose was a part of the saw when it was new.

B. recover, because Power Saw Company was in the business of manufacturing dangerous machines.

C. not recover, because the employee was not the buyer of the power saw.

D. not recover, because the saw has been rebuilt by the storekeeper.

151. A motorist arranged to borrow his friend's car to drive for one day while the motorist's car was being repaired. The friend knew that the brakes on his car were faulty and might fail in an emergency. The friend forgot to tell the motorist about the brakes when the motorist picked up the car, but the friend did telephone the motorist's wife and told her about them. The wife, however, forgot to tell the motorist. The motorist was driving the friend's car at a reasonable rate of speed and within the posted speed limit with the motorist's wife as a passenger. Another car, driven by a woman, crossed in front of the motorist at an intersection and in violation of the traffic signal. The motorist tried to stop, but the brakes failed, and the two cars collided. If the brakes had been in proper working order, the motorist could have stopped in time to avoid the collision. The motorist and his wife were injured.

If the motorist asserts a claim against the friend, will the motorist prevail?

A. Yes, in negligence, because the friend knew the brakes were faulty and failed to tell the motorist.

B. Yes, in strict liability, because the car was defective, and the friend lent it to the motorist.

C. No, because the friend was a gratuitous lender, and thus his duty of care was slight.

D. No, because the failure of the motorist's wife to tell the motorist about the brakes was the cause in fact of the motorist's harm.

152. A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale. Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price." The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. Before the guest arrived, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna's being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

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

A. applicable, because the tuna was packed in a sealed can.

B. applicable, because the canning company, as the packer, is strictly liable.

C. not applicable, because the case of tuna had been knocked over by the workmen.

D. not applicable, because of the sign on the table from which the customer purchased the tuna.

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

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

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

A. not prevail, because truth is a complete defense.

B. not prevail, because of her announcement concerning the birth of her own child.

C. prevail, because the statements hold her up to ridicule and contempt.

D. prevail, because her statements are embarrassing to her.

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

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

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

A. No, since only 0.02 percent of the population have bones as brittle as the pedestrian's.

B. No, unless a person of ordinary health would probably have suffered a broken leg from the impact.

C. Yes, because the driver could foresee that there would be unforeseeable consequences of the impact.

D. Yes, even though the extent of the injury was not a foreseeable consequence of the impact.

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

If the pedestrian asserts a claim based on negligence against the bicycle company and if it is found that the brake failure resulted from a manufacturing defect in the bicycle, will the pedestrian prevail?

A. Yes, because the bicycle company placed a defective bicycle into the stream of commerce.

B. Yes, if the defect could have been discovered through the exercise of reasonable care by the bicycle company.

C. No, because the pedestrian was not a purchaser of the bicycle.

D. No, if the bicyclist was negligent in turning into the sidewalk.

156. While on a hiking trip during the late fall, the plaintiff arrived, toward the end of the day, at a clearing where several similar cabins were located, none of which was occupied. One of the cabins belonged to the plaintiff's friend, who had given the plaintiff permission to use it. The plaintiff entered one of the cabins, which she thought was her friend's, and prepared to spend the night. In fact the cabin was owned, not by her friend, but by the defendant. When the night turned cold, the plaintiff started a fire in the stove. Unknown to the plaintiff, there was a defect in the stove that allowed carbon monoxide to escape into the cabin. During the night the fumes caused serious injury to the plaintiff.

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

A. Yes, if the defendant knew that the stove was defective.

B. Yes, if the defendant could have discovered the defect in the stove by a reasonable inspection.

C. No, because the defendant had no reason to anticipate the plaintiff's presence in the cabin.

D. No, unless the plaintiff needed to use the cabin for her own protection.

157. A large company owns and operates a beachfront hotel. Under a contract with the city to restore a public beach, a dredging company placed a large and unavoidably dangerous stone-crushing machine on the city land near the company's hotel. The machine creates a continuous and intense noise that is so disturbing to the hotel guests that they have canceled their hotel reservations in large numbers, resulting in a substantial loss to the company. The company's best chance to recover damages for its financial losses from the dredging company is under the theory that the operation of the stone-crushing machine constitutes

A. an abnormally dangerous activity.

B. a private nuisance

C. negligence

D. a trespass

158. X-- As a bartender was removing the restraining wire from a bottle of champagne produced and bottled by Winery, Inc., the plastic stopper suddenly shot out of the bottle. The stopper struck and injured the bartender's eye. The bartender had opened other bottles of champagne, and occasionally the stoppers had shot out with great force, but the bartender had not been injured. The bartender has brought an action against Winery, Inc., alleging that the bottle that caused his injury was defective and unreasonably dangerous because its label did not warn that the stopper might suddenly shoot out during opening. The state has merged contributory negligence and unreasonable assumption of risk into a pure comparative fault system that is applied in strict products liability actions.

If the jury finds that the bottle was defective and unreasonably dangerous because it lacked a warning, will the bartender recover a judgment in his favor?

A. No, if the jury finds that a legally sufficient warning would not have prevented the bartender's injury.

B. No, if a reasonable bartender would have realized that a stopper could eject from the bottle and hit his eye.

C. Yes, with damages reduced by the percentage of any contributory fault on the bartender's part.

D. Yes, with no reduction in damages, because foreseeable lack of caution is the reason for requiring a warning.

159. An eight-year-old child went to the grocery store with her mother. The child pushed the grocery cart while her mother put items into it. The child's mother remained near the child at all times. Another customer in the store noticed the child pushing the cart in a manner that caused the customer no concern. A short time later, the cart the child was pushing struck the customer in the knee, inflicting serious injury. If the customer brings an action, based on negligence, against the child, the child's best argument in defense would be that

A. The child exercised care commensurate with her age, intelligence, and experience.

B. The child is not subject to tort liability.

C. The child was subject to parental supervision.

D. The customer assumed the risk that the child might hit the customer with the cart.

160. X-- A plaintiff entered a drug store to make some purchases. As he was searching the aisles for various items, he noticed a display card containing automatic pencils. The display card was on a high shelf behind a cashier's counter. The plaintiff saw a sign on the counter that read, "No Admittance, Employees Only." Seeing no clerks in the vicinity to help him, the plaintiff went behind the counter to get a pencil. A clerk then appeared behind the counter and asked whether she could help him. He said he just wanted a pencil and that he could reach the display card himself. The clerk said nothing further. While reaching for the display card, the plaintiff stepped sideways into an open shaft and fell to the basement, ten feet below. The clerk knew of the presence of the open shaft, but assumed incorrectly that the plaintiff had noticed it.

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

Will the plaintiff recover a judgment against the drug store?

A. No, because the plaintiff was a trespasser.

B. No, unless the plaintiff's injuries resulted from the defendant's willful or wanton misconduct.

C. Yes, because the premises were defective with respect to a public invitee.

D. Yes, if the clerk had reason to believe that the plaintiff was unaware of the open shaft.

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

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

A. prevail, because the employee was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.

B. prevail, if the owner should have foreseen that the statement would be overheard by other employees.

C. not prevail, if the owner made the charge in good faith, believing it to be true.

D. not prevail, because the statement was made to the employee alone and intended for his ears only.

162. X-- A real estate developer was trying to purchase land on which he intended to build a large commercial development. An elderly widow had rejected all of the developer's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of the developer's planned development. Finally, the developer offered her $250,000. He told her that if she rejected it, state law authorized him to have her property condemned. The widow then consulted her nephew, a law student, who researched the question and advised her that the developer had no power of condemnation under state law. The widow had been badly frightened by the developer's threat, and was outraged when she learned that the developer had lied to her.

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

A. Yes, if the developer knew he had no legal power of condemnation.

B. Yes, if the developer tried to take unfair advantage of a gross indifference between himself and the widow in commercial knowledge and experience.

C. No, if the developer's offer of $250,000 equaled or exceeded the market value of the widow's property.

D. No, because the widow suffered no pecuniary loss.

163. The Rapido is a sports car manufactured by the Rapido Motor Co. The Rapido has an excellent reputation for mechanical reliabilty with one exception; the motor may stall if the engine has not had an extended warm-up. A driver had just begun to drive her Rapido in city traffic without a warm-up when the engine suddenly stalled. A car driven by a motorist rear-ended the driver's car. The driver suffered no external physical injuries as a result of the collision. However, the shock of the crash caused her to suffer a severe heart attack. The driver brought an action against the Rapido Motor Co. based on strict liability in tort. During the trial, the plaintiff presented evidence of an alternative engine design of equal cost that would eliminate the stalling problem without impairing the functions of the engine in any way. The defendant moves for a directed verdict at the close of the evidence.

This motion should be

A. denied, because the jury could find that an unreasonably dangerous defect in the engine was a proximate cause of the collision.

B. denied, if the jury could find that the Rapido was not crashworthy.

C. granted, because the motorist's failure to stop within an assured clear distance was a superseding cause of the collision.

D. granted, if a person of normal senstivity would not have suffered a heart attack under these circumstances.

164. X--A driver, returning from a long shift at a factory, fell asleep at the wheel and lost control of his car. As a result, his car collided with a police car driven by an officer who was returning to the station after having responded to an emergency. The police officer was injured in the accident. The police officer sued the driver in negligence for her injuries. The driver moved for summary judgment, arguing that the common-law firefighters' rule barred the suit.

Should the court grant the motion?

A. No, because the firefighters' rule does not apply to police officers.

B. No, because the police officer's injuries were not related to any special dangers of her job.

C. Yes, because the accident would not have occurred but for the emergency.

D. Yes, because the police officer was injured on the job.

165. X-- The personnel director of an investment company told a job applicant during an interview that the company was worth millions of dollars and that the company's portfolio would triple in the next several months. The applicant was very excited about the company's prospects and accepted an offer to work for the company. Two days later, the applicant read in the newspaper that the investment company had filed for bankruptcy reorganization. As a result of reading this news, the applicant suffered severe emotional distress but he immediately found another comparable position.

Is the applicant likely to prevail in his action for negligent misrepresentation?

A. No, because the applicant did not suffer any physical injury or pecuniary loss.

B. No, because the personnel director's statement was purely speculative.

C. Yes, because the applicant relied on the personnel director's misrepresentations about the investment company.

D. Yes, because the personnel director should have foreseen that his misrepresentations would cause the applicant to be upset.

166. A law student rented a furnished apartment. His landlord began to solicit his advice about her legal affairs, but he refused to provide it. The landlord then demanded that he vacate the apartment immediately. The landlord also engaged in a pattern of harassment, calling the student at home every evening and entering his apartment without his consent during times when he was at school. During these unauthorized visits she removed the handles from the bathroom and kitchen sinks, but did not touch anything belonging to the student. The lease has a year to run, and the student is still living in the apartment. The student has sued the landlord for trespass to land.

Is he likely to prevail?

A. No, because he has no standing to sue for trespass.

B. No, because the landlord caused no damage to his property.

C. Yes, for compensatory damages only.

D. Yes, for injunctive relief, compensatory damages, and punitive damages.

167. X-- A food company contracted with a delivery service to supply food to remote areas. The contract between the food company and the delivery service was terminable at will. The delivery service then entered into a contract with an airline company to provide an airplane to deliver the food. The contract between the delivery service and the airline company was also terminable at will.

The food company was displeased with the airline company because of a previous business dispute between them. Upon learning of the delivery service's contract with the airline company, the food company terminated its contract with the delivery service in order to cause the airline company to lose the business. When the food company terminated the delivery service's contract, the delivery service had no choice but to terminate the airline company's contract. If the airline company sues the delivery service for tortious interference with contract, will the airline company prevail?

A. No, because the airline company and the delivery service were the parties to the contract.

B. No, because the airline company was not in privity with the food company.

C. Yes, because the delivery service did not terminate the contract because of poor performance.

D. Yes, because the delivery service's termination of the contract made it a party to the food company's acts.

168. A farmer kept antiques in an uninhabited farmhouse on his property. The farmhouse had been broken into several times in the past, and some of the farmer's goods had been stolen. Instead of posting "No Trespassing" signs, the farmer decided to install an alarm system to deter intruders. While the farmer was in the farmhouse installing the alarm system, he heard a window open in the adjoining room. The farmer crept very quietly to the door of the room, threw the door open, and found an intruder, a young child. The farmer immediately struck the child, a 10-year-old girl, very hard in the face, breaking her nose.

In an action on behalf of the child against the farmer to recover for the injury to her nose, is the child likely to prevail?

A. No, because the farmer did not use deadly force.

B. No, because the farmer had probable cause to believe that the child was a thief.

C. Yes, because the farmer should have posted a "No Trespassing" sign.

D. Yes, because the farmer used excessive force.

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

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

A. Yes, because by leaving the ladder the roofer became a trespasser on the owner's property.

B. Yes, because by leaving the ladder, the roofer created the risk that a person might unlawfully enter the house.

C. No, because the act of the thief was a superseding cause.

D. No, because the owner's claim is limited to damages for breach of contract.

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

The client has filed suit against the partners for negligence. That case is on trial with a jury in a court of general jurisdiction. In order to establish a breach of the standard of care owed to her by the partners, the client

A. must have a legal expert from the same locality testify that defendants' conduct was a breach.

B. must have a legal expert from the same state testify that defendants' conduct was a breach.

C. can rely on the application of the jurors' common knowledge as to whether there was a breach.

D. can rely on the judge, as an expert in the law, to advise the jury whether there was a breach.

171. X--A homeowner owns a house in a city. On the lawn in front of his home and within five feet of the public sidewalk there was a large tree. The roots of the tree caused the sidewalk to buckle severely and become dangerous. An ordinance of the city requires adjacent landowners to keep sidewalks in safe condition. The homeowner engaged a contractor to repair the sidewalk, leaving it to the contractor to decide how the repair should be made. The contractor dug up the sidewalk, cut back the roots of the tree, and laid a new sidewalk. Two days after the homeowner had paid the contractor the agreed price of the repair, the tree fell over onto the street and damaged a parked car belonging to a driver.

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

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

A. the tree was on the property of the homeowner.

B. he repaired the sidewalk at the direction of the homeowner.

C. he could not reasonably foresee that the tree would fall.

D. he was relieved of liability when the homeowner paid for the repair.

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

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

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

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

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

A. No, because there is no practicable way for the utility company to reduce the fumes.

B. No, because the utility company's acts constituted a public nuisance.

C. Yes, because the farmer's personal injuries were within the scope of the liability imposed on the utility company.

D. Yes, because the generation of electricity is an ultra-hazardous activity.

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

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

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

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

A. Yes, because the mechanic is strictly liable in tort.

B. Yes, if the mechanic was negligent in inspecting the commuter's brakes.

C. No, if the child was in the legal category of a bystander.

D. No, because the company's conduct was an independent and superseding cause.

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

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

A. It is not relevant in determining the right of the pedestrian.

B. It may be considered by the trier of fact on the issue of the driver's liability.

C. It will bar the pedestrian's recovery unless the driver saw the pedestrian in time to avoid the impact.

D. It will bar the pedestrian's recovery as a matter of law.

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

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

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

A. Yes, because the landowner did not have a privilege to use excessive force.

B. Yes, if the husband reasonably believed that the dog might bite him.

C. No, if the dog did not come in contact with him.

D. No, if the neighbor was trying to protect his property.

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

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

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

If the employee was injured while cutting plywood when the shaft holding the saw blade came loose because a bearing gave way, and the shaft and blade flew off the saw, and if the purchaser asserts a claim based on strict liability in tort against the storekeeper for loss of business because of the injury to the employee, the purchaser probably will

A. not recover, because economic loss from injury to an employee is not within the scope of the storekeeper's duty.

B. not recover, because the storekeeper was not the manufacturer of the power saw.

C. recover, because the storekeeper knew the power saw was to be used in the purchaser's cabinetmaking business.

D. recover, because the reconditioned power saw was the direct cause of the purchaser's loss of business.

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

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

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

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

A. not recover unless the purchaser told the storekeeper that the employee would use the power saw.

B. not recover if the employee failed to notice that the shaft was coming loose.

C. recover unless the employee knew that the shaft was coming loose.

D. recover unless the storekeeper used all possible care in reconditioning the power saw.

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

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

If the employee was cutting a sheet of plywood, and while he was doing so, the saw blade flew to pieces and severely cut the employee's arm, and if the employee asserts a claim against the storekeeper, the theory on which the employee is most likely to prevail is

A. strict liability in tort.

B. express warranty.

C. negligence, relying on res ipsa loquitur.

D. negligence, relying on the sale of an inherently dangerous product.

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

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

If the employee was cutting a sheet of hard plastic, and while he was doing so, the saw blade flew to pieces and severely cut the employee's arm, and if the employee asserts a claim based on strict liability in tort against Saw-Blade Company, the defense most likely to prevail is

A. The employee did not purchase the saw blade.

B. the blade was being put to an improper use.

C. The employee was contributorily negligent in using the blade to cut hard plastic.

D. Saw-blade Company used every available means to inspect the blade for defects.

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

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

A. Yes, if the shoe store was reckless in accepting the photographer's statement that the photographer had the athlete's approval.

B. Yes, because the defamatory material was in printed form.

C. No, if the shoe store believed the photographer's statement that the photographer had the athlete's approval.

D. No, because the picture of the athlete was not defamatory per se.

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

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

A. Yes, because the photographer had no right to take the athlete's picture.

B. Yes, because the shoe store, without the athlete's permission, used the athlete's picture for profit.

C. No, because the athlete was already a basketball star who had received much publicity in the press.

D. No, because the shoe store believed it had permission to put the picture in the window.

182. X-- A buyer wanted to purchase a used motor vehicle. The used car lot of a car company, in a remote section away from town, was enclosed by a ten-foot chain link fence. While the buyer and a sales representative of the car company were in the used car lot looking at cars, a security guard locked the gate at 1:30 p.m., because it was Saturday and the lot was supposed to be closed after 1:00 p.m. Saturday until Monday morning. At 1:45 p.m. the buyer and the sales representative discovered they were locked in. There was no traffic in the vicinity and no way in which help could be summoned. After two hours, the buyer began to panic at the prospect of remaining undiscovered and without food and water until Monday morning. The sales representative decided to wait in a car until help should come. The buyer tried to climb over the fence and, in doing so, fell and was injured. The buyer asserts a claim against the car company for damages for his injuries. If the buyer's claim is based on false imprisonment, will the buyer prevail?

A. Yes, because he was confined against his will.

B. Yes, because he was harmed as a result of his confinement.

C. No, unless the security guard was negligent in locking the gate.

D. No, unless the security guard knew that someone was in the lot at the time the guard locked the gate.

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

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

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

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

A. applicable, because the tuna was packed in a sealed can.

B. applicable, because the canning company, as the packer, is strictly liable.

C. not applicable, because the case of tuna had been knocked over by the workmen.

D. not applicable, because of the sign on the table from which the customer purchased the tuna.

184. X-- A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale. Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price." The customer was having a guest over for dinner that evening and purchased two dented cans of tuna, packed by a canning company, from one of the tables displaying the damaged cans. Before the guest arrived, the customer prepared a tuna casserole which she and the guest later ate. Both became ill, and the medical testimony established that the illness was caused by the tuna's being unfit for consumption. The tuna consumed by the customer and the guest came from the case that was at the top of one of the stacks knocked over by the workmen. The tuna in undamaged cans from the same canning company's shipment was fit for consumption.

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

A. be held strictly liable in tort for serving spoiled tuna.

B. be held liable only if she were negligent.

C. not be held liable unless her conduct was in reckless disregard of the safety of the guest.

D. not be held liable, because the guest was a social visitor.

185. X-- A boater was rowing a boat on a mountain lake when a storm suddenly arose. Fearful that the boat might sink, the boater rowed to a boat dock on shore and tied the boat to the dock. The shore property and dock were on private property. While the boat was tied at the dock, the owner of the dock came down and ordered the boater to remove the boat because the action of the waves was causing the boat to rub against a bumper on the dock. When the boater refused, the owner untied the boat and cast it adrift. The boat sank.

The boater was wearing a pair of swimming trunks, nothing else. He had a pair of shoes and a parka in the boat, but they were lost when the owner set it adrift. The boater was staying at a cabin one mile from the owner's property. The only land routes back were a short rocky trail that was dangerous during the storm, and a 15-mile road around the lake. The storm continued with heavy rain and hail, and the boater having informed the owner of the location of his cabin, asked the owner to take him back there in the owner's car. The owner said, "You got here by yourself and you'll have to get back home yourself." After one hour the storm stopped, and the boater walked home over the trail. A necessary element in determining if the boater is liable for a trespass is whether

A. The owner had clearly posted his property with a sign indicating that it was private property.

B. The boater knew that the property belonged to a private person.

C. The boater had reasonable grounds to believe the property belonged to a private person.

D. The boater had reasonable grounds to believe his boat might be swamped and sink.

186. X-- An unmarried woman was prominent in the women's liberation movement. She recently gave birth to a baby and publicly announced that she had no intention of marrying the father or disclosing his identity. The local newspaper decided to do a series of articles on the woman. The first article discussed the woman's parents. The article correctly stated that her mother had died recently and her father is still living. The article referred to the fact that at the time of the woman's birth there were rumors that she had been born six months after her parent's marriage, that her father was not in fact her father, and that an actor was her real father. The actor has lived in retirement for the last ten years. If the woman asserts a claim based on invasion of privacy against the newspaper for the statements in the first article about her birth and it is established that the statements are true, the most likely result is that the woman will

A. not prevail, because truth is a complete defense.

B. not prevail, because of her announcement concerning the birth of her own child.

C. prevail, because the statements hold her up to ridicule and contempt.

D. prevail, because her statements are embarrassing to her.

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

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

A. recover, because the man's action was negligence per se.

B. recover, because the man's action was a continuing wrong which contributed to the neighbor's injuries.

C. not recover, because a reasonably prudent person could not foresee injury to the neighbor as a result of the man's action.

D. not recover, because a violation of a city ordinance does not give rise to a civil cause of action.

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

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

A. prevail, because he saved the neighbor's property.

B. prevail, because he acted reasonably in an emergency.

C. not prevail, because the neighbor was not at fault.

D. not prevail, because the rescuer knowingly assumed the risk.

189. X-- Maple Street is a local public thoroughfare, designated as a one-way street for northbound traffic. Pine Street is a public thoroughfare, designated as a one-way street for eastbound traffic. Maple and Pine Streets intersect at right angles. The intersection is controlled by traffic lights. There are two sets of lights, one at the northeast corner and one at the northwest corner, for traffic on Maple Street. There are two sets of lights, one at the northeast corner and one at the southeast corner, for traffic on Pine Street.

A trucker was making a delivery to a market on the east side of Maple Street, just north of its intersection with Pine Street. There being insufficient space for his truck and enclosed trailer, he parked it with the rear of the trailer extending entirely across the crosswalk on the north side of the intersection. The height of the trailer was such that it entirely obscured the traffic light on the northeast corner from the view of traffic moving east on Pine Street. Unknown to the trucker, the traffic light at the southeast corner was not functioning, because a collision seventy-two hours earlier had knocked down the pole from which the light was suspended.

A visitor, on his first trip to the city, was driving east on Pine Street. Not seeing any traffic light or pole, he entered the intersection at a time when the light was red for eastbound traffic and green for northbound traffic. A driver, proceeding north on Maple Street and seeing the green light, entered the intersection without looking for any cross traffic and struck the visitor's car. The driver received personal injuries, and the visitor's car was damaged severely as a result of the impact.

State statutes make it a misdemeanor (1) to park a motor vehicle so that any part projects into a crosswalk, and (2) to enter an intersection contrary to a traffic signal.

If the driver asserts a claim against the trucker and establishes that the trucker was negligent, the likely result is that the trucker's negligence is

A. a legal but not an actual cause of the driver's injuries.

B. an actual but not a legal cause of the driver's injuries.

C. both an actual and a legal cause of the driver's injuries.

D. neither an actual nor a legal cause of the driver's injuries.

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

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

A. liable, because he intentionally harmed the playmate.

B. liable, because, as a six-year-old, he should have known his conduct was wrongful.

C. not liable, because a child under seven is not liable in tort.

D. not liable, because he is presumed to be under his parents' control and they have the sole responsibility.

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

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

A. he suffered severe bodily harm.

B. the spray mist was an offensive or harmful contact.

C. he suffered severe emotional distress.

D. his conduct was not a factual cause of the chemical's spraying him.

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

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

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

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

A. recover, because the dishwasher was defectively made.

B. recover, because the company that manufactured the dishwasher is vicariously liable for the improper installation.

C. not recover, because he assumed the risk by inspecting the machine.

D. not recover, because he was not the purchaser.

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

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

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

A. the defendant negligently designed the stove.

B. stoves made by other manufacturers do not turn over with a 25-pound weight on the oven door.

C. the defendant failed to warn the widow and her that the stove would turn over easily.

D. the stove was defective and unreasonably dangerous to her.

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

A. another human being from a stranger's wrongful conduct.

B. his neighbor from a stranger's wrongful conduct.

C. his cousin from a stranger's wrongful conduct.

D. another human being from the person's own non-negligent conduct.

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

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

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

A. No, since only 0.02 percent of the population have bones as brittle as the pedestrian's.

B. No, unless a person of ordinary health would probably have suffered a broken leg from the impact.

C. Yes, because the driver could foresee that there would be unforeseeable consequences of the impact.

D. Yes, even though the extent of the injury was not a foreseeable consequence of the impact.

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

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

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

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

A. recover if she can recover against the glue manufacturer.

B. recover, because the woman was an invitee of a tenant in the building.

C. not recover unless the paint company was negligent.

D. not recover, because the glue came in a sealed package.

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

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

A. No, if the construction company did not design the storage facility.

B. No, because the construction company was an independent contractor.

C. Yes, because the operation of the storage facility was an abnormally dangerous activity.

D. Yes, if the explosion resulted from a defect of which the construction company was aware.

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

At that hearing, a man appeared without being subpoenaed and stated that the restaurant owner had underworld connections. Although the man did not know this information to be true, he had heard rumors about the restaurant owner's character and had noticed several underworld figures going in and out of the bar and grill. In fact, the restaurant owner had no underworld connections.

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

A. not recover if the man reasonably believed his statement to be true.

B. not recover if the board granted the restaurant owner's application.

C. recover, because the man's statement was false.

D. recover, because the man appeared before the board voluntarily.

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

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

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

A. prevail if the use of a restraining device would have prevented the trailer from overturning.

B. prevail, because the driver is strictly liable to the man for injuries resulting from defects in the trailer.

C. not prevail unless the driver was driving in a negligent manner at the time the man was injured.

D. not prevail, because the driver was not the manufacturer or seller of the trailer.

200. X-- A purchaser ordered some merchandise from a store. When the merchandise was delivered, the purchaser decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the purchaser's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection. The bill collector showed up at the purchaser's house at 7 p.m. on a summer evening while many of the purchaser's neighbors were seated on their porches. When the purchaser opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the purchaser a "deadbeat" and asked him when he intended to pay his bill to the store.

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

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

A. Yes, because the bill collector's conduct was extreme and outrageous.

B. Yes, because the bill collector was intruding on the purchaser's property.

C. No, unless the purchaser suffered physical harm.

D. No, if the purchaser still owed a store for the merchandise.

201. X-- A purchaser ordered some merchandise from a store. When the merchandise was delivered, the purchaser decided that it was not what he had ordered, and he returned it for credit. The store refused to credit the purchaser's account, continued to bill him, and, after 90 days, turned the account over to a bill collector for collection. The bill collector showed up at the purchaser's house at 7 p.m. on a summer evening while many of the purchaser's neighbors were seated on their porches. When the purchaser opened the door, the bill collector, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, the bill collector called the purchaser a "deadbeat" and asked him when he intended to pay his bill to the store.

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

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

A. Yes, because the purchaser had not first asked the bill collector to leave the property.

B. Yes, if the purchaser knew that the door was substantially certain to strike the bullhorn.

C. No, if the bill collector's conduct triggered the purchaser's response.

D. No, because the bill collector was an intruder on the purchaser's property.

202. X-- When the defendant heard that his neighbor intended to sell his home to a minority purchaser, the defendant told his neighbor that the neighbor and his wife and children would meet with "accidents" if he did so. The neighbor then called the prospective purchaser and told him that he was taking the house off the market.

If the neighbor asserts a claim against the defendant for intentional infliction of emotional distress the neighbor will

A. recover if the neighbor suffered severe emotional distress as a consequence of the defendant's conduct.

B. recover, because the defendant intended to frighten the neighbor.

C. not recover, because the defendant made no threat of immediate physical harm to the neighbor or his family.

D. not recover if the neighbor suffered no physical harm as a consequence of the defendant's conduct.

203. X-- A drug company developed a new drug, ZB, for treatment of Wegener's disease. The company extensively tested ZB for several years on animals and human volunteers and had observed no undesirable side effects. The Federal Drug Administration (FDA) then approved ZB for sale as a prescription drug. Five other drug companies, each acting independently, developed drugs identical to ZB. Each of these drugs was also approved by the FDA for sale as a prescription drug. A wholesaler bought identically-shaped pills from all six of the manufacturers and sold the pills to drugstores as Wegener's X. This drug had a long-delayed side effect. Sons of male users of Wegener's X are sterile. One such son brought an action against the drug company for his damages. The drug company, through the wholesaler, supplied about 10 percent of the Wegener's X sold in the state where the son lived. It is not possible to establish which of the five companies supplied the particular pills that the son's father took.

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

A. Does the res ipsa loquitur doctrine apply?

B. Can liability be imposed on the drug company without proof that the drug company knew that the drug had an undesirable side effect?

C. Is the drug company relieved of liability by the FDA approval of the drug?

D. Can liability be imposed on the drug company without showing that its pills were used by the son's father?

204. X-- A senior and a junior are students in an advanced high school Russian class. During an argument one day in the high school cafeteria, in the presence of other students, the senior, in Russian, accused the junior of taking money from the senior's locker.

In a suit by the junior against the senior based on defamation, the junior will

A. prevail, because the senior's accusation constituted slander per se.

B. prevail, because the defamatory statement was made in the presence of third persons.

C. not prevail, unless the senior made the accusation with knowledge of falsity or reckless disregard of the truth.

D. not prevail, unless one or more of the other students understood Russian.

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

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

A. Will the court recognize that the plaintiffs have suffered a present legal injury?

B. Can the plaintiffs prove the amount of their damages?

C. Can the plaintiffs prove that any harm they may suffer was caused by this exposure?

D. Can the plaintiffs prevail without presenting evidence of specific negligence on the part of NPP?

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

The teenager invited his friend and classmate, the plaintiff, to assist him in a chemistry project. Referring to a library chemistry book on explosives and finding the chemistry set contained all of the necessary chemicals, the teenager and the plaintiff agreed to make a bomb. During the course of the project, the teenager carelessly knocked a lighted Bunsen burner into a bowl of chemicals from the chemistry set. The chemicals burst into flames, injuring the plaintiff.

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

A. prevail, if the chemistry set did not contain a warning that its contents could be combined to form dangerous explosives.

B. prevail, because manufacturers of chemistry sets are engaged in an abnormally dangerous activity.

C. not prevail, because the teenager's negligence was the cause in fact of the plaintiff's injury.

D. not prevail, if the chemistry set was as safe as possible, consistent with its educational purposes, and its benefits exceeded its risks.

207. X-- As a bartender was removing the restraining wire from a bottle of champagne produced and bottled by Winery, Inc., the plastic stopper suddenly shot out of the bottle. The stopper struck and injured the bartender's eye. The bartender had opened other bottles of champagne, and occasionally the stoppers had shot out with great force, but the bartender had not been injured.

The bartender has brought an action against Winery, Inc., alleging that the bottle that caused his injury was defective and unreasonably dangerous because its label did not warn that the stopper might suddenly shoot out during opening. The state has merged contributory negligence and unreasonable assumption of risk into a pure comparative fault system that is applied in strict products liability actions. If the jury finds that the bottle was defective and unreasonably dangerous because it lacked a warning, will the bartender recover a judgment in his favor?

A. No, if the jury finds that a legally sufficient warning would not have prevented the bartender's injury.

B. No, if a reasonable bartender would have realized that a stopper could eject from the bottle and hit his eye.

C. Yes, with damages reduced by the percentage of any contributory fault on the bartender's part.

D. Yes, with no reduction in damages, because foreseeable lack of caution is the reason for requiring a warning.

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

If the governor asserts a defamation claim against XYZ, will the governor prevail?

A. Yes, because the signs would cause persons to hold the governor in lower esteem.

B. Yes, if the governor proves that XYZ showed the signs with knowledge of falsity or reckless disregard of the truth that the governor had not committed homicide.

C. No, unless the governor proves he suffered pecuniary loss resulting from harm to his reputation proximately caused by the defendants' signs.

D. No, if the only reasonable interpretation of the signs was that the term "murderer" was intended as a characterization of one who would sign a death warrant.

209. X-- The governor of a state signed a death warrant for a convicted murderer. Two protesters are active opponents of the death penalty. At a demonstration protesting the execution of the murderer, the protesters carried large signs that state, "The governor - Murderer." Television station XYZ broadcast news coverage of the demonstration, including pictures of the signs carried by the protesters. If the governor asserts against XYZ a claim of damages for intentional infliction of emotional distress, will the governor prevail?

A. Yes, if the broadcast showing the signs cause the governor to suffer severe emotional distress.

B. Yes, because the assertion on the signs was extreme and outrageous.

C. No, unless the governor suffered physical harm as a consequence of the emotional distress caused by the signs.

D. No, because XYZ did not publish a false statement of fact with "actual malice."

210. X-- The plaintiff is being treated by a physician for asbestosis, an abnormal chest condition that was caused by his on-the-job handling of materials containing asbestos. His physician has told him that the asbestosis is not presently cancerous, but that it considerably increases the risk that he will ultimately develop lung cancer.

The plaintiff brought an action for damages, based on strict product liability, against the supplier of the materials that contained asbestos. The court in this jurisdiction has ruled against recovery of damages for negligently inflicted emotional distress in the absence of physical harm. If the supplier is subject to liability to the plaintiff for damages, should the award include damage for emotional distress he has suffered arising from his knowledge of the increased risk that he will develop lung cancer?

A. No, because the plaintiff's emotional distress did not cause his physical condition.

B. No, unless the court in this jurisdiction recognizes a cause of action for an increased risk of cancer.

C. Yes, because the supplier of a dangerous product is strictly liable for the harm it causes.

D. Yes, because the plaintiff's emotional distress arises from bodily harm caused by his exposure to asbestos.

211. X-- The plaintiff was a passenger in a car that was struck in the rear by a car driven by a student. The collision resulted from the student's negligence in failing to keep a proper lookout. The plaintiff's physician found that the collision had aggravated a mild osteoarthritic condition in her lower back and had brought on similar, but new, symptoms in her neck and upper back. Six months after the first accident, the plaintiff was a passenger in a car that was struck in the rear by a car driven by a doctor. The collision resulted from the doctor's negligence in failing to keep a proper lookout. The plaintiff's physician found that the second collision had caused a general worsening of the plaintiff's condition, marked by a significant restriction of movement and muscle spasms in her back and neck. The physician believes the plaintiff's worsened condition is permanent, and he can find no basis for apportioning responsibility for her present worsened condition between the two automobile collisions. The plaintiff brought an action for damages against the student and the doctor. At the close of the plaintiff's evidence, as outlined above, each of the defendants moved for a directed verdict in his favor on the ground that the plaintiff had failed to produce evidence on which the jury could determine how much damage each defendant had caused. The jurisdiction adheres to the common law rules regarding joint and several liability.

The plaintiff's best argument in opposition to the defendants' motions would be that the defendants are jointly and severally liable for the plaintiff's entire harm, because

A. the wrongdoers, rather than their victim, should bear the burden of the impossibility of apportionment.

B. the defendants breached a common duty that each of them owed to the plaintiff.

C. each of the defendants was the proximate cause in fact of all of the plaintiff's damages.

D. the defendants are joint tortfeasors who aggravated the plaintiff's preexisting condition.

212. X-- Airco operates an aircraft maintenance and repair business serving the needs of owners of private airplanes. A pilot contracted with Airco to replace the engine in his plane with a more powerful engine of foreign manufacture. Airco purchased the replacement engine through a representative of the manufacturer and installed it in the pilot's plane. A short time after it was put into use, the new engine failed, and the plane crashed into a warehouse, destroying the warehouse and its contents. Airco was guilty of no negligence in the procurement, inspection, or installation of the engine. The failure of the engine was caused by a defect that would not be disclosed by inspection and testing procedures available to an installer. There was no negligence on the part of the pilot, who escaped the disabled plane by parachute. The warehouse owner recovered a judgment for damages from the pilot for the destruction of his warehouse and its contents, and the pilot has asserted a claim against Airco to recover compensation on account of that liability.

In that action, the pilot will recover

A. full compensation, because the engine was defective.

B. no compensation, because Airco was not negligent.

C. contribution only, because Airco and the pilot were equally innocent.

D. no compensation, because the warehouse owner's judgment established the pilot's responsibility to the warehouse owner.

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

The plaintiff has brought an action against the defendant to recover damages for his loss resulting from the accident. The jurisdiction follows a pure comparative negligence rule.

In this action, the plaintiff should recover

A. nothing, because the defendant was not an active or efficient cause of the plaintiff's loss.

B. nothing, if the defendant was less negligent.

C. his entire loss, reduced by a percentage that reflects the negligence attributed to the plaintiff.

D. his entire loss, because the defendant's truck suffered no damage.

214. X-- A plaintiff entered a drug store to make some purchases. As he was searching the aisles for various items, he noticed a display card containing automatic pencils. The display card was on a high shelf behind a cashier's counter. The plaintiff saw a sign on the counter that read, "No Admittance, Employees Only." Seeing no clerks in the vicinity to help him, the plaintiff went behind the counter to get a pencil. A clerk then appeared behind the counter and asked whether she could help him. He said he just wanted a pencil and that he could reach the display card himself. The clerk said nothing further. While reaching for the display card, the plaintiff stepped sideways into an open shaft and fell to the basement, ten feet below. The clerk knew of the presence of the open shaft, but assumed incorrectly that the plaintiff had noticed it.

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

Will the plaintiff recover a judgment against the drug store?

A. No, because the plaintiff was a trespasser.

B. No, unless the plaintiff's injuries resulted from the defendant's willful or wanton misconduct.

C. Yes, because the premises were defective with respect to a public invitee.

**D**. Yes, if the clerk had reason to believe that the plaintiff was unaware of the open shaft.

215. X-- A woman and a man, who were professional rivals, were attending a computer industry dinner where each was to receive an award for achievement in the field of data processing. The man engaged the woman in conversation and expressed the opinion that if they joined forces, they could do even better. The woman replied that she would not consider the man as a business partner and when the man demanded to know why, she told him that he was incompetent. The exchange was overheard by another person who attended the dinner. The man suffered emotional distress but no pecuniary loss.

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

A. No, because the man suffered no pecuniary loss.

B. No, because the woman's statement was made to the man and not to the person who overheard the statement.

C. No, unless the woman should have foreseen that her statement would be overheard by another person.

D. No, unless the woman intended to cause the man emotional distress.

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

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

A. prevail, if the children's noise constituted a substantial interference with the plaintiffs' use and enjoyment of their home.

B. prevail, because the the plaintiffs' interest in the quiet enjoyment of their home takes precedence in time over the defendants' interests.

C. not prevail, unless the noise constituted a substantial and unreasonable disturbance to persons of normal sensibilities.

D. not prevail, because the children's interest in healthy play has priority over the plaintiffs' interest in peace and quiet.

217. X-- A plaintiff was walking peacefully along a public street when he encountered the defendant, whom he had never seen before. Without provocation or warning, the defendant picked up a rock and struck the plaintiff with it. It was later established that the defendant was mentally ill and suffered recurrent hallucinations.

If the plaintiff asserts a claim against the defendant based on battery, which of the following, if supported by evidence, will be the defendant's best defense?

A. The defendant did not understand that his act was wrongful.

B. The defendant did not desire to cause harm to the plaintiff.

C. The defendant did not know that he was striking a person.

D. The defendant thought the plaintiff was about to attack him.

218. X--A defendant built in his backyard a garage that encroached two feet across the property line onto property owned by his neighbor. Thereafter, the defendant sold his property to a friend. The neighbor was unaware, prior to the defendant's sale to his friend, of the encroachment of the garage onto her property. When she thereafter learned of the encroachment, she sued the defendant for damages for trespass.

In this action, will the neighbor prevail?

A. No, unless the defendant was aware of the encroachment when the garage was built.

B. No, because the defendant no longer owns or possesses the garage.

C. Yes, because the defendant knew where the garage was located, whether or not he knew where the property line was.

D. Yes, unless the friend was aware of the encroachment when he purchased the property.

219. X-- An eight-year-old rode his bicycle down his driveway into a busy highway and a driver had to stop her car suddenly to avoid colliding with the bike. Because of the sudden stop, the driver's two-year-old son, who was sitting on the seat without any restraint, was thrown into the dashboard and injured. Had the driver's son been properly restrained in a baby car seat, as required by a state safety statute of which his mother was aware, he would not have been injured.

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

A. not prevail, because parents are not vicariously liable for the negligent acts of their children.

B. not prevail, because the driver's son's injury was attributable to his mother's knowing violation of a safety statute.

C. prevail, if the eight-year-old's parents knew that he sometimes drove into the highway, and they took no steps to prevent it.

D. prevail, if the eight-year-old's riding into the highway was negligent and the proximate cause of the driver's son's injuries.

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

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

A. a person can recover damages based on the defendant's breach of a duty owed to another.

B. it is foreseeable that a person may suffer physical harm caused solely by an injury inflicted on another.

C. a person can recover damages caused by shock unaccompanied by bodily impact.

D. a person can recover damages for harm resulting from shock caused solely by another's peril or injury.

221. X-- A man owned a shotgun that he used for hunting. The man knew that his old friend had become involved with a violent gang that recently had a shoot-out with a rival gang. The man, who was going to a farm to hunt quail, placed his loaded shotgun on the back seat of his car. On his way to the farm, the man picked up his old friend to give him a ride to a someone's house. After dropping off his old friend at the house, the man proceeded to the farm, where he discovered that his shotgun was missing from his car. The old friend had taken the shotgun and, later in the day, the old friend used it to shoot a member of the rival gang. The gang member was severely injured. The gang member recovered a judgment for his damages against the man, as well as the old friend, on the ground that the man was negligent in allowing his old friend to obtain possession of the gun, and was therefore liable jointly and severally with the old friend for the gang member's damages. The jurisdiction has a statute that allows contribution based upon proportionate fault and adheres to the traditional common-law rules on indemnity.

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

A. indemnity for the full amount of the judgment, because the old friend was an intentional tortfeasor.

B. contribution only, based on comparative fault, because the man himself was negligent.

C. one-half of the amount of the judgment.

D. nothing, because the man's negligence was a substantial proximate cause of the shooting.

222. X--A chemical company manufactured a liquid chemical product known as XRX. Some XRX leaked from a storage tank on the chemical company's property, seeped into the groundwater, flowed to a farmer's adjacent property, and polluted the farmer's well. Several of the farmer's cows drank the polluted well water and died. If the farmer brings an action against the chemical company to recover the value of the cows that died, the farmer will

A. prevail, because a manufacturer is strictly liable for harm caused by its products.

B. prevail, because the XRX escaped from the chemical company's premises.

C. not prevail, unless the farmer can establish that the storage tank was defective.

D. not prevail, unless the chemical company failed to exercise reasonable care in storing the XRX.

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

Will the plaintiff prevail on the battery claim?

A. Yes, if the defendant was reckless in cutting across in front of the plaintiff's horse.

B. Yes, because the State Racetrack Commission determined that the defendant committed a foul in violation of rules applicable to racing.

C. No, unless the defendant intended to cause impermissible contact between the two horses or apprehension of such contact by the plaintiff.

D. No, because the plaintiff assumed the risk of accidental injury inherent in riding as a jockey in a horse race.

224. X-- The owner of a truck leasing company asked one of his employees to deliver $1,000 to the dealership's main office. The following week, as a result of a dispute over whether the money had been delivered, the owner instructed the employee to come to the office to submit to a lie detector test. When the employee reported to the owner's office for the test, it was not administered. Instead, without hearing the employee's story, the owner shouted at him, "You're a thief!" and fired him. The owner's shout was overheard by several other employees who were in another office that was separated from the owner's office by a thin partition. The next day, the employee accepted another job at a higher salary. Several weeks later, upon discovering that the money had not been stolen, the owner offered to rehire the employee.

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

A. prevail, because the employee was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.

B. prevail, if the owner should have foreseen that the statement would be overheard by other employees.

C. not prevail, if the owner made the charge in good faith, believing it to be true.

D. not prevail, because the statement was made to the employee alone and intended for his ears only.

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

Who should prevail?

A. The man, because of the sensitivity people have regarding the care of the bodies of deceased relatives.

B. The man, because hospitals are strictly liable for mishandling dead bodies.

C. the hospital, because the man did not require medical or psychiatric treatment.

D. the hospital, because the man suffered no bodily harm.

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

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

A. nothing, if the elevator company could not reasonably have been expected to foresee the extent of harm that the plaintiff suffered as a result of the accident.

B. nothing, if the accident would not have caused significant harm to an ordinarily prudent elevator passenger.

C. damages for the full amount of her disability, because a tortfeasor must take its victim as it finds her.

D. damages for the injury caused by the falling elevator, including the aggravation of her preexisting disability.

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

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

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

A. Yes, if the developer's action was extreme and outrageous.

B. Yes, because the widow was frightened and outraged.

C. No, if the widow did not suffer emotional distress that was severe.

D. No, if it was not the developer's purpose to cause emotional distress.

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

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

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

A. Yes, if the developer knew he had no legal power of condemnation.

B. Yes, if the developer tried to take unfair advantage of a gross indifference between himself and the widow in commercial knowledge and experience.

C. No, if the developer's offer of $250,000 equaled or exceeded the market value of the widow's property.

D. No, because the widow suffered no pecuniary loss.

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

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

A. prevail, only if the builder retained the right to direct and control the contractor's construction of the pool.

B. prevail, because the blasting that the contractor was hired to perform damaged the plaintiff's home.

C. not prevail, if the contractor used reasonable care in conducting the blasting operations.

D. not prevail, if the builder used reasonable care to hire a competent contractor.

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

If the roommate asserts a claim for his injuries against the shampoo company based on strict liability in tort, which of the following would constitute a defense?

I. The roommate misused the No-Flake shampoo.

II. The roommate was contributorily negligent in continuing to use No-Flake shampoo when his scalp began to hurt and itch.

III. The roommate was a remote user and not in privity with the shampoo company.

A. I only.

B. I and II only.

C. II and III only.

D. Neither I, nor II, nor III.

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

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

A. not prevail, if the construction company exercised reasonable care to protect the public from harm.

B. not prevail, because the plaintiff understood the signs and disregarded the warnings.

C. prevail, because the plaintiff was harmed by the construction company's abnormally dangerous activity.

D. prevail, unless the plaintiff failed to use reasonable care to protect himself from harm.

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

A. recover, because the other student's statement was false.

B. recover, if the other student had substantial doubts about the accuracy of the information he gave the interviewer.

C. not recover, unless the law review editor proves pecuniary loss.

D. not recover, because the statement was made by the other student only after the interviewer inquired about the authorship of the note.

233. X-- A plaintiff sustained personal injuries in a three-car collision caused by the concurrent negligence of all three drivers. In the plaintiff's action for damages against the other two drivers, the jury apportioned the negligence 30% to the plaintiff, 30% to driver #1, and 40% to driver #2. The plaintiff's total damages were $100,000. Assume that the state has retained the common-law rule pertaining to contribution and that the state's comparative negligence statute provides for a system of pure comparative negligence but abolishes **joint and several liability**.

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

A. $70,000 from driver #1, and then driver #1 will be entitled to collect $40,000 from driver #2.

B. $30,000 from driver #1, and then driver #1 will be entitled to collect $10,000 from driver #2.

C. $30,000 from driver #1, and then driver #1 will be entitled to collect nothing from driver #2.

D. nothing from driver #1, because his percentage of fault is not greater than that of the plaintiff.

234. X--A plaintiff suffered from a serious, though not immediately life-threatening impairment of his circulatory system. The plaintiff's cardiologist recommended a cardiac bypass operation and referred the plaintiff to a surgeon. The surgeon did not inform the plaintiff of the 2% risk of death associated with this operation. The surgeon defended his decision not to mention the risk statistics to the plaintiff because the plaintiff "was a worrier and it would significantly lessen his chance of survival to be worried about the nonsurvival rate." The surgeon successfully performed the bypass operation and the plaintiff made a good recovery. However, when the plaintiff learned of the 2% risk of death associated with the operation, he was furious that the plaintiff had failed to disclose this information to him.

If the plaintiff asserts a claim against the surgeon based on negligence, will the plaintiff prevail?

A. No, if the surgeon used his best personal judgment in shielding the plaintiff from the risk statistic.

B. No, because the operation was successful and the plaintiff suffered no harm.

C. Yes, if the plaintiff would have refused the operation had he been informed of the risk.

D. Yes, because a patient must be told the risk factors associated with a surgical procedure in order to give informed consent.

235. X--A pedestrian was crossing a street at a crosswalk. A bystander, who was on the sidewalk nearby, saw a speeding automobile heading in the pedestrian's direction. The bystander ran into the street and pushed the pedestrian out of the path of the car. The pedestrian fell to the ground and broke her leg.

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

A. Yes, because the bystander could have shouted a warning instead of pushing the pedestrian out of the way.

B. Yes, if the pedestrian was not actually in danger and the bystander should have realized it.

C. No, because the driver of the car was responsible for the pedestrian's injury.

D. No, if the bystander's intent was to save the pedestrian, not to harm her.

236. X-- A plaintiff suffered a serious injury while participating in an impromptu basketball game at a public park. The injury occurred when the plaintiff and the defendant, on opposing teams, each tried to obtain possession of the ball when it rebounded from the backboard after a missed shot at the basket. During that encounter, the plaintiff was struck and injured by the defendant's elbow. The plaintiff now seeks compensation from the defendant.At the trial, evidence was introduced tending to prove that the game had been rough from the beginning, that elbows and knees had frequently been used to discourage interference by opposing players, and that the plaintiff had been one of those making liberal use of such tactics.

In this action, will the plaintiff prevail?

A. Yes, if the defendant intended to strike the plaintiff with his elbow.

B. Yes, if the defendant intended to cause harmful or offensive contact with the plaintiff.

C. No, because the plaintiff impliedly consented to rough play.

D. No, unless the defendant intentionally used force that exceeded the players' consent.

237. X-- The police in a large city notified local gas station attendants that a woman recently had committed armed robberies at five city gas stations. The police said that the woman was approximatley 75 years old, had white hair, and drove a vintage, cream-colored Ford Thunderbird. Attendants were advised to call the police if they saw her, but to not attempt to apprehend her. Armed robbery is a felony under state law. A traveler was passing through the city on a cross-country journey. The traveler was a 75-year-old woman who had white hair and drove a vintage, cream-colored Ford Thunderbird. When the traveler drove into a gas station, the owner of the station thought the traveler must be the robber wanted by the police. After checking the oil at the traveler's request, the owner falsely informed the traveler that she had a broken fan belt, that her car could not be driven without a new belt, that it would take him about an hour to replace it, and that she should stay in his office for consultation about the repair. The traveler was greatly annoyed that her journey was delayed, but she stayed in the owner's office while she waited for her car. The owner telephoned the police and, within the hour, the police came and questioned the traveler. The police immediately determined that the traveler was not the woman, and the traveler resumed her journey without further delay.

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

A. not prevail, if the owner reasonably believed that the traveler was the wanted woman.

B. not prevail, because the traveler suffered no physical or mental harm.

C. prevail, if the traveler reasonably believed she could not leave the owner's premises.

D. prevail, because the owner lied to the traveler about the condition of her car.

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

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

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

A. a satisfactory, safer, alternative insulation material exists under today's technology.

B. the defendant should be held to the standard of a prudent manufacturer who knew of the risks, regardless of whether the risks were reasonably discoverable before 1966.

C. the defendant should reasonably have known of the risks of asbestos insulation materials before 1966, even though no one else had discovered the risks.

D. the asbestos insulation materials to which the plaintiff was exposed were inherently dangerous.

239. X-- While approaching an intersection with the red light against him, a motorist suffered a heart attack that rendered him unconscious. The motorist's car struck a child, who was crossing the street with the green light in her favor. Under the state motor vehicle code, it is an offense to drive through a red traffic light.

The child sued the motorist to recover for her injuries. At trial it was stipulated that (1) immediately prior to suffering the heart attack, the motorist had been driving within the speed limit, had seen the red light, and had begun to slow his car; (2) the motorist had no history of heart disease and no warning of this attack; (3) while the motorist was unconscious, his car ran the red light.

On cross motions for directed verdicts on the issue of liability at the conclusion of the proofs, the court should

A. grant the child's motion, because the motorist ran a red light in violation of the motor vehicle code.

B. grant the child's motion, because, in the circumstances, reasonable persons would infer that the motorist was negligent.

C. grant the motorist's motion, because he had no history of heart disease or warning of the heart attack.

D. deny both motions and submit the case to the jury, to determine whether, in the circumstances, the motorist's conduct was that of a reasonably prudent person.

240. X-- In a trial by jury, a restaurant owner proved that a power company's negligent maintenance of a transformer caused a fire that destroyed his restaurant. The jury returned a verdict for the owner in the amount of $450,000 for property loss and $500,000 for emotional distress. The trial judge entered judgment in those amounts. The power company appealed the part of the judgment awarding $500,000 for emotional distress.

On appeal, the judgment should be

A. affirmed, because the power company negligently caused the owner's emotional distress.

B. affirmed, because harm arising from emotional distress is as real as harm caused by physical impact.

C. reversed, because the law does not recognize a claim for emotional distress incident to negligently caused property loss.

D. reversed, unless the jury found that the owner suffered physical harm as a consequence of the emotional distress caused by his property loss.

241. X-- A man's car sustained moderate damage in a collision with a car driven by a woman. The accident was caused solely by the woman's negligence. The man's car was still drivable after the accident. Examining the car the next morning, the man could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

The man then took the car to a mechanic, who owns and operates a body shop, and arranged with the mechanic to repair the damage. During their discussion the man neglected to mention the gasoline leakage. Thereafter, while the mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. The mechanic was severely burned.

The mechanic has brought an action to recover damages against the man and woman. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

In this action, will the mechanic obtain a judgment against the woman?

A. No, unless there is evidence that the woman was aware of the gasoline leak.

B. No, if the mechanic would not have been harmed had the man warned him about the gasoline tank.

C. Yes, unless the mechanic was negligent in not discovering the gasoline leak himself.

D. Yes, if the mechanic's injury was a proximate consequence of the woman's negligent driving.

242. X-- A man's car sustained moderate damage in a collision with a car driven by a woman. The accident was caused solely by the woman's negligence. The man's car was still drivable after the accident. Examining the car the next morning, the man could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

The man then took the car to a mechanic, who owns and operates a body shop, and arranged with the mechanic to repair the damage. During their discussion the man neglected to mention the gasoline leakage. Thereafter, while the mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. The mechanic was severely burned.

The mechanic has brought an action to recover damages against the man and woman. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

In this action, will the mechanic obtain an judgment against the man?

A. No, because it was the mechanic's job to inspect the vehicle and repair whatever needed repair.

B. No, unless the man was aware of the risk that the gasoline leak presented.

C. Yes, if a reasonable person in the man's position would have warned the mechanic about the gasoline leak.

D. Yes, because the car was unreasonably dangerous when the man delivered it to the mechanic.

243. X-- The warden of a state prison prohibits the photographing of the face of any prisoner without the prisoner's consent. A news photographer wanted to photograph a notorious mobster incarcerated at the state prison. To circumvent the warden's prohibition, the photographer flew over the prison exercise yard and photographed the mobster. A prisoner, who was imprisoned for a technical violation of a regulatory statute, happened to be standing next to the mobster when the photograph was taken.

When the picture appeared in the press, the prisoner suffered severe emotional distress because he believed that his business associates and friends would think he was consorting with gangsters. The prisoner suffered no physical harm as the result of his emotional distress. The prisoner brought an action against the photographer for intentional and reckless infliction of emotional distress.

What is the best argument that the photographer can make in support of a motion for summary judgment?

A. No reasonable person could conclude that the photographer intended to photograph the prisoner.

B. The prisoner did not suffer any physical injury arising from the emotional distress.

C. As a news photographer, the photographer was privileged to take photographs that others could not.

D. No reasonable person could conclude that the photographer's conduct was extreme and outrageous as to the prisoner.

244.X-- A farmer owns a small farm with several head of cattle which are kept in a fenced grazing area. One day the cattle were frightened by a thunderstorm, an occasional occurrence in the area. The cattle broke through the fence, entered onto the neighbor's property, and severely damaged the neighbor's crops. Under the law of the state, landowners are not required to erect fences to prevent the intrusion of livestock.

If the neighbor sues the farmer to recover for the damage done to his crops, will the neighbor prevail?

A. Yes, because the farmer's cattle caused the damage to the neighbor's crops.

B. Yes, if the farmer's cattle had panicked during previous thunderstorms.

C. No, unless the fence was negligently maintained by the farmer.

D. No, because the thunderstorm was a force of nature.

245. X-- A patient had been under the care of a cardiologist for three years prior to submitting to an elective operation that was performed by a surgeon. Two days thereafter, the patient suffered a stroke, resulting in a coma, caused by a blood clot that lodged in her brain. When it appeared that she had entered a permanent vegetative state, with no hope of recovery, the artificial life-support system that had been provided was withdrawn, and she died a few hours later. The withdrawal of artificial life support had been requested by her family, and duly approved by a court. The surgeon was not involved in that decision, or in its execution.

The administrator of the patient's estate thereafter filed a wrongful death action against the surgeon, claiming that the surgeon was negligent in having failed to consult a cardiologist prior to the operation. At the trial the plaintiff offered evidence that accepted medical practice would require examination of the patient by a cardiologist prior to the type of operation that the surgeon performed. In this action, the plaintiff should

A. prevail, if the surgeon was negligent in failing to have the patient examined by a cardiologist prior to the operation.

B. prevail, if the blood clot that caused the patient's death was caused by the operation which the surgeon performed.

C. not prevail, absent evidence that a cardiologist, had one examined the patient before the operation, would probably have provided advice that would have changed the outcome.

D. not prevail, because the surgeon had nothing to do with the withdrawal of artificial life support, which was the cause of the patient's death.

246. X--The day after a seller completed the sale of his house and moved out, one of the slates flew off the roof during a windstorm. The slate struck a pedestrian who was on the public sidewalk. The pedestrian was seriously injured.

The roof is old and has lost several slates in ordinary windstorms on other occasions.

If the pedestrian sues the seller to recover damages for his injuries, will the pedestrian prevail?

A. Yes, because the roof was defective when the seller sold the house.

B. Yes, if the seller should have been aware of the condition of the roof and should have realized that it was dangerous to persons outside the premises.

C. No, because the seller was neither the owner nor the occupier of the house when the pedestrian was injured.

D. No, if the pedestrian knew that in the past slates had blown off the roof during windstorms.

247. X-- A male orderly who worked at a hospital had sexual relations with a patient, who was severely mentally disabled, in her room at the hospital.

In a tort action brought on the patient's behalf against the hospital, the patient will

A. not prevail, if the orderly's actions were outside the scope of his employment.

B. not prevail, if the patient initiated the relationship with the orderly and encouraged his actions.

C. prevail, if the orderly was an employee of the hospital.

D. prevail, if the hospital failed to use reasonable care to protect the patient from such conduct.

248. X--A passenger departed on an ocean liner knowing that it would be a rough voyage due to predicted storms. The ocean liner was not equipped with the type of lifeboats required by the applicable statute.

The passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action against the operator of the ocean liner brought by the passenger's representative, will the passenger's representative prevail?

A. Yes, because the ocean liner was not equipped with the statutorily required lifeboats.

B. Yes, because in these circumstances common carriers are strictly liable.

C. No, because the storm was so severe that it would have been impossible to launch a statutorily required lifeboat.

D. No, because the passenger assumed the risk by boarding the ocean liner knowing that it would be a rough voyage.

249. X-- A driver was driving his car near a homeowner's house when the homeowner's child darted into the street in front of the driver's car. As the driver swerved and braked his car to avoid hitting the child, the car skidded up into the homeowner's driveway and stopped just short of the homeowner, who was standing in the driveway and had witnessed the entire incident. The homeowner suffered from serious emotional distress from witnessing the danger to his child and to himself. Neither the homeowner nor his property was physically harmed.

If the homeowner asserts a claim for damages against the driver, will the homeowner prevail?

A. Yes, because the driver's entry onto the homeowner's land was unauthorized.

B. Yes, because the homeowner suffered serious emotional distress by witnessing the danger to his child and to himself.

C. No, unless the driver was negligent.

D. No, unless the homeowner's child was exercising reasonable care.

250. X--A driver, returning from a long shift at a factory, fell asleep at the wheel and lost control of his car. As a result, his car collided with a police car driven by an officer who was returning to the station after having responded to an emergency. The police officer was injured in the accident. The police officer sued the driver in negligence for her injuries. The driver moved for summary judgment, arguing that the common-law firefighters' rule barred the suit.

Should the court grant the motion?

A. No, because the firefighters' rule does not apply to police officers.

B. No, because the police officer's injuries were not related to any special dangers of her job.

C. Yes, because the accident would not have occurred but for the emergency.

D. Yes, because the police officer was injured on the job.

251. X-- During a comprehensive evaluation of an adult patient's psychiatric condition, the psychiatrist failed to diagnose the patient's suicidal state. One day after the misdiagnosis, the patient committed suicide. The patient's father, immediately after having been told of his son's suicide, suffered severe emotional distress, which resulted in a stroke. The patient's father was not present at his son's appointment with the psychiatrist and did not witness the suicide. The father brought an action against the psychiatrist to recover for his severe emotional distress and the resulting stroke. Will the father prevail?

A. No, because the father did not sustain a physical impact.

B. No, because the psychiatrist's professional duty did not extend to the harms suffered by the patient's father.

C. Yes, because the father was a member of the patient's immediate family.

D. Yes, because the psychiatrist reasonably could have foreseen that a misdiagnosis would result in the patient's suicide and the resulting emotional distress of the patient's father.

252. X-- A car owner washed her car while it was parked on a public street, in violation of a statute that prohibits the washing of vehicles on public streets during rush hours. The statute was enacted only to expedite the flow of automobile traffic. Due to a sudden and unexpected cold snap, the car owner's waste water formed a puddle that froze. A pedestrian slipped on the frozen puddle and broke her leg. The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the statute. At the conclusion of the proofs, both parties moved for a directed verdict.

How should the trial judge proceed?

A. Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.

B. Deny both motions and submit the case to the jury, because the jury may consider the statutory violation as evidence that the car owner was negligent.

C. Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.

D. Grant the pedestrian's motion, because of the car owner's admitted statutory violation.

253. The personnel director of an investment company told a job applicant during an interview that the company was worth millions of dollars and that the company's portfolio would triple in the next several months. The applicant was very excited about the company's prospects and accepted an offer to work for the company. Two days later, the applicant read in the newspaper that the investment company had filed for bankruptcy reorganization. As a result of reading this news, the applicant suffered severe emotional distress but he immediately found another comparable position.

Is the applicant likely to prevail in his action for negligent misrepresentation?

A. No, because the applicant did not suffer any physical injury or pecuniary loss.

B. No, because the personnel director's statement was purely speculative.

C. Yes, because the applicant relied on the personnel director's misrepresentations about the investment company.

D. Yes, because the personnel director should have foreseen that his misrepresentations would cause the applicant to be upset.

254. X-- In a civil action, the plaintiff sued a decedent's estate to recover damages for the injuries she suffered in a collision between her car and one driven by the decedent. At trial, the plaintiff introduced undisputed evidence that the decedent's car swerved across the median of the highway, where it collided with an oncoming car driven by the plaintiff. The decedent's estate introduced undisputed evidence that, prior to the car's crossing the median, the decedent suffered a fatal heart attack, which she had no reason to foresee, and that, prior to the heart attack, the decedent had been driving at a reasonable speed and in a reasonable manner. A statute makes it a traffic offense to cross the median of a highway.

In this case, for whom should the court render judgment?

A. The decedent's estate, because its evidence is undisputed.

B. The decedent's estate, because the plaintiff has not established a prima facie case of liability.

C. The plaintiff, because the accident was of a type that does not ordinarily happen in the absence of negligence on the actor's part.

D. The plaintiff, because the decedent crossed the median in violation of the statute.

255. X-- A consumer became physically ill after drinking part of a bottle of soda that contained a large decomposed snail. The consumer sued the store from which she bought the soda to recover damages for her injuries. The parties agreed that the snail was put into the bottle during the bottling process, over which the store had no control. The parties also agreed that the snail would have been visible in the bottle before the consumer opened it.

Will the consumer prevail in her action against the store?

A. No, because the consumer could have seen the snail in the bottle.

B. No, because the store was not responsible for the bottling process.

C. Yes, because the consumer was injured by a defective product sold to her by the store.

D. Yes, because the store had exclusive control over the bottle before selling it to the consumer.

256. X-- A four-year-old child sustained serious injuries when a playmate pushed him from between two parked cars into the street, where he was struck by a car. The child, by his representative, sued the driver of the car, the playmate's parents, and his own parents. At trial, the child's total injuries were determined to be $100,000. The playmate's parents were determined to be 20% at fault because they had failed to adequately supervise her. The driver was found to be 50% at fault. The child's own parents were determined to be 30% at fault for failure to adequately supervise him. The court has adopted the pure comparative negligence doctrine, with joint and several liability, in place of the common-law rules relating to plaintiff's fault. In addition, the common-law doctrines relating to intra-family liability have been abrogated.

How much, if anything, is the child's representative entitled to recover from the driver?

A. $30,000.

B. $50,000.

C. $100,000.

D. Nothing.

257. X-- A customer fell and injured himself when he slipped on a banana peel while shopping at a grocer's store. The banana peel was fresh and clean except for a mark made by the heel of the customer's shoe. In an action brought by the customer against the grocer, these are the only facts in evidence.

Should the trial judge permit the case to go to the jury?

A. No, because the customer had an obligation to watch where he stepped.

B. No, because there is not a reasonable basis for inferring that the grocer knew or should have known of the banana peel.

C. Yes, because it is more likely than not that the peel came from a banana offered for sale by the grocer.

D. Yes, because the grocer could foresee that a customer might slip on a banana peel.

258. X-- A landowner who owned a large tract of land in the mountains sought to protect a herd of wild deer that frequented the area. Although the landowner had posted signs that said, "No Hunting-No Trespassing," hunters frequently intruded to kill the deer. Recently, the landowner built an eight-foot chain-link fence, topped by three strands of barbed wire, across a gully on her land that provided the only access to the area frequented by the deer.

A wildlife photographer asked the landowner for permission to enter the property to photograph the deer. Because the landowner feared that any publicity would encourage further intrusions, she denied the photographer's request. Frustrated, the photographer attempted to climb the fence. He became entangled in the barbed wire and suffered extensive lacerations. The wounds became infected and ultimately caused his death. The photographer's personal representative brought an action against the landowner.

Will the plaintiff prevail?

A. Yes, because the landowner may not use deadly force to protect her land from intrusion.

B. Yes, because the landowner had no property interest in the deer that entitled her to use force to protect them.

C. No, because the photographer entered the landowners land after the landowner had refused him permission to do so.

D. No, because the potential for harm created by the presence of the barbed wire was apparent.

259. X-- A smoker and a nonsmoker were seated at adjoining tables in a small restaurant. The smoker's table was in the smoking section, and the nonsmoker's table was in the nonsmoking section. When the smoker lit a cigarette, the nonsmoker politely requested that he not smoke, explaining that she had a severe allergy to cigarette smoke. The smoker ignored the nonsmoker's request and continued to smoke. As a result, the nonsmoker was hospitalized with a severe allergic reaction to the smoke.

The nonsmoker brought a battery action against the smoker. Which of the following questions will NOT be an issue in the battery action?

A. Did the smoker intend to cause the nonsmoker's contact with the cigarette smoke?

B. Does smoke have the physical properties necessary for making the kind of contact required for battery?

C. Is contact with cigarette smoke from a lawful smoking section in a restaurant the kind of contact one must endure as a voluntary restaurant patron?

D. Was the smoker's conduct unreasonable under the circumstances?

260. X-- Under the Federal Tort Claims Act, with certain exceptions not relevant here, the federal government is liable only for negligence. A federally owned and operated nuclear reactor emitted substantial quantities of radioactive matter that settled on a nearby dairy farm, killing the dairy herd and contaminating the soil. At the trial of an action brought against the federal government by the farm's owner, the trier of fact found that the nuclear plant had a sound design, but that a valve made by the Acme Engineering Company had malfunctioned and allowed the radioactive matter to escape, that Acme Engineering Company is universally regarded as a quality manufacturer of components for nuclear plants, and that there was no way the federal government could have anticipated or prevented the emission of the radioactive matter.

If there is no other applicable statute, for whom should the trial judge enter judgment?

A. The plaintiff, on the ground that the doctrine of res ipsa loquitur applies.

B. The plaintiff, on the ground that one who allows dangerous material to escape to the property of another is liable for the damage done.

C. The defendant, on the ground that a case under the Federal Tort Claims Act has not been proved.

D. The defendant, on the ground that the Acme Engineering Company is the proximate cause of the owner's damage.

261. X-- A hiker sustained a head injury when he was struck by a limb that fell from a tree. At the time of his injury, the hiker was walking through a forest on private property without the property owner's knowledge or permission. It was determined that the limb fell because the tree was infested with termites.

In an action by the hiker against the property owner to recover for his head injury, will the hiker prevail?

A. No, because the property owner could not foresee that anyone would be injured.

B. No, because the property owner breached no duty to the hiker, who was a trespasser.

C. Yes, because the property owner had a duty to prevent the trees on his property from becoming dangerous.

D. Yes, because the property owner is liable for hidden dangers on his property.

262. X-- A company manufactured metal stamping presses that were usually sold with an installed safety device that made it impossible for a press to close on a worker's hands. The company strongly recommended that its presses be purchased with the safety device installed, but would sell a press without the safety device at a slightly reduced price.

Rejecting the company's advice, a worker's employer purchased a stamping press without the safety device. The press closed on the worker's hand, crushing it.

In an action brought by the worker against the company, will the worker prevail?

A. Yes, because the company's press was the cause in fact of the worker's injury.

B. Yes, because the company sold the press to the worker's employer without an installed safety device.

C. No, because the failure of the worker's employer to purchase the press with a safety device was a superseding intervening cause of the worker's injury.

D. No, because the company strongly recommended that the worker's employer purchase the press with the safety device.

263. X-- In a plaintiff's action for battery, the evidence established that the plaintiff was bad-tempered and, the defendant knew, carried a gun and used it often; that the plaintiff struck the defendant first; that during the altercation, the plaintiff repeatedly tried to get to his gun; and that the blows inflicted upon the plaintiff by the defendant resulted in the plaintiff being hospitalized.

Which finding of fact would be most likely to result in a verdict for the defendant?

A. The defendant used no more force than he actually believed was necessary to protect himself against death or serious bodily harm.

B. The defendant used no more force than he reasonably believed was necessary to protect himself against death or serious bodily harm.

C. The defendant, in fact, feared death or serious bodily harm.

D. The defendant was justified in retaliating against the plaintiff because the plaintiff struck the first blow.

264. X-- A food company contracted with a delivery service to supply food to remote areas. The contract between the food company and the delivery service was terminable at will. The delivery service then entered into a contract with an airline company to provide an airplane to deliver the food. The contract between the delivery service and the airline company was also terminable at will. The food company was displeased with the airline company because of a previous business dispute between them. Upon learning of the delivery service's contract with the airline company, the food company terminated its contract with the delivery service in order to cause the airline company to lose the business. When the food company terminated the delivery service's contract, the delivery service had no choice but to terminate the airline company's contract.

If the airline company sues the delivery service for tortious interference with contract, will the airline company prevail?

A. No, because the airline company and the delivery service were the parties to the contract.

B. No, because the airline company was not in privity with the food company.

C. Yes, because the delivery service did not terminate the contract because of poor performance.

D. Yes, because the delivery service's termination of the contract made it a party to the food company's acts.

265. X-- A homeowner was using a six-foot stepladder to clean the furnace in his home. The homeowner broke his arm when he slipped and fell from the ladder. The furnace had no warnings or instructions on how it was to be cleaned.

In a suit by the homeowner against the manufacturer of the furnace to recover for his injury, is the homeowner likely to prevail?

A. No, because the danger of falling from a ladder is obvious.

B. No, because the homeowner should have hired a professional to clean the furnace.

C. Yes, because the furnace did not have a ladder attached to it for cleaning purposes.

D. Yes, because the lack of warnings or instructions for how to clean the furnace made the furnace defective.

266. A mining company that operated a copper mine in a remote location kept dynamite in a storage facility at the mine. The storage facility was designed and operated in conformity with state-of-the-art safety standards. In the jurisdiction, the storage of dynamite is deemed an abnormally dangerous activity.

Dynamite that was stored in the mining company's storage facility and that had been manufactured by an explosives manufacturer exploded due to an unknown cause. The explosion injured a state employee who was at the mine performing a safety audit. The employee brought an action in strict liability against the mining company. What would be the mining company's best defense?

A. The mine was in a remote location.

B. The mining company did not manufacture the dynamite.

C. The state employee assumed the risk of injury inherent in the job.

D. The storage facility conformed to state-of-the-art safety standards.

267. X-- A patient received anesthesia while giving birth. Upon awakening from the anesthesia, she discovered a severe burn on the inner portion of her right knee. The patient has brought a medical malpractice action in which she has joined all of the physicians and nurses who exercised control over her person, the delivery room, the medical procedures, and the equipment used during the period in which she was unconscious. The defendants have jointly moved for summary judgment. The patient has produced affidavits that establish that the applicable professional standard of care was violated. What would be the patient's best argument against the motion?

A. At least one of the defendants had control over whatever agency or instrumentality caused the patient's injury.

B. The defendants were acting in concert.

C. The patient has produced affidavits that establish that the applicable professional standard of care was violated.

D. The patient was in no way responsible for her injury.

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

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

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

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

A. strictly liable, because the tree was on his property.

B. liable for the contractor's negligence if, to the homeowner's knowledge, the contractor was engaged in an ultra-hazardous activity.

C. liable, because he assumed responsibility when he paid the contractor for the repair.

D. liable on the basis of respondeat superior.

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

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

If the jurisdiction has adopted "pure" comparative negligence and the motorist's wife asserts a claim against the woman, the wife will

A. recover in full for her injuries, because the motorist, who was driving the car in which she was riding, was not himself at fault.

B. recover a proportion of her damages based on the respective degrees of her negligence and that of the woman.

C. not recover, because but for the failure of the brakes the collision would not have occurred.

D. not recover, because she was negligent and her negligence continued until the moment of impact.

270. A water pipe burst in the basement of a grocery store, flooding the basement and damaging cases of canned goods on the floor. The plumbing contractor's workmen, in repairing the leak, knocked over several stacks of canned goods in cases, denting the cans. After settling its claims against the landlord for the water leak and against the plumbing contractor for the damage done by his workmen, the grocery store put the goods on special sale. Four weeks later, a customer was shopping in the grocery store. Several tables in the market were covered with assorted canned foods, all of which were dirty and dented. A sign on each of the tables read: "Damaged Cans - Half Price."

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

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

A. be held strictly liable in tort for serving spoiled tuna.

B. be held liable only if she were negligent.

C. not be held liable unless her conduct was in reckless disregard of the safety of the guest.

D. not be held liable, because the guest was a social visitor.

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

A. recover on the theory of res ipsa loquitur.

B. recover on the theory of strict liability.

C. not recover, because the grocery store gave proper warning.

D. not recover, because the guest was not the purchaser of the cans.

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

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

A. recover, because the purpose of the ordinance is to provide access to the fire hydrant.

B. recover, because the driver's negligence was later in time than the man's act of parking.

C. not recover, because the man was contributorily negligent as a matter of law.

D. not recover, because the man's action in parking unlawfully was a continuing wrong.

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

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

A. liable, because parents are strictly liable for the torts of their children.

B. liable, because the child's parents encouraged him to be aggressive and tough.

C. not liable, because a six-year old cannot commit a tort.

D. not liable, because parents cannot be held liable for the tort of a child.

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

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

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

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

A. parents are vicariously liable for the intentional torts of their children.

B. she has a nondelegable duty to control the actions of her child.

C. respondeat superior applies.

D. she was negligent.

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

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

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

A. Mobilco only, because the ventilating system was defectively designed by Mobilco.

B. Heatco only, because it was the excessive heat from the furnace that caused the child's injuries.

C. Mobilco and Heatco only, because the combination of Mobilco's design and Heatco's furnace caused the child's injuries.

D. Mobilco, Heatco, and Coolco, because the combination of Mobilco's design, Heatco's furnace, and Coolco's air conditioning unit caused the child's injuries.

276. A car owner left her car at a mechanic's garage to have repair work done. After completing the repairs, the mechanic took the car out for a test drive and was involved in an accident that caused damages to the plaintiff. A statute imposes liability on the owner of an automobile for injuries to a third party that are caused by the negligence of any person driving the automobile with the owner's consent. The statute applies to situations of this kind, even if the owner did not specifically authorize the mechanic to test-drive the car.

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

In this action, the proper outcome will be that

A. The plaintiff should have judgment for $50,000 each against the car owner and the mechanic; the car owner should recover nothing from the mechanic.

B. The plaintiff should have judgment for $100,000 against the mechanic only.

C. The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for 50 percent of an amount collected from the car owner by the plaintiff.

D. The plaintiff should have judgment for $100,000 against the car owner and the mechanic jointly, and the car owner should have judgment against the mechanic for any amount collected from the car owner by the plaintiff.

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

At that hearing, a man appeared without being subpoenaed and stated that the restaurant owner had underworld connections. Although the man did not know this information to be true, he had heard rumors about the restaurant owner's character and had noticed several underworld figures going in and out of the bar and grill. In fact, the restaurant owner had no underworld connections.

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

A. not recover if the man reasonably believed his statement to be true.

B. not recover if the board granted the restaurant owner's application.

C. recover, because the man's statement was false.

D. recover, because the man appeared before the board voluntarily.

278. When a defendant heard that his neighbor intended to sell his home to a minority purchaser, the defendant told his neighbor that the neighbor and his wife and children would meet with 'accidents" if he did so. The neighbor then called the prospective purchaser and told him that he was taking the house off the market.

If the neighbor asserts a claim against the defendant for assault, the neighbor will

A. recover if the defendant intended to place the neighbor in fear of physical harm.

B. recover because the defendant's conduct was extreme and outrageous.

C. not recover if the defendant took no action that threatened immediate physical harm to the neighbor.

D. not recover because the neighbor's action removed any threat of harmful force.

279. The defendant operates a residential rehabilitation center for emotionally disturbed and ungovernable children who have been committed to his custody by their parents or by juvenile authorities. Though the children are not permitted to leave the center without his permission, there are no bars or guards to prevent them from doing so. It has been held in the state where the center is located that persons having custody of children have the same duties and responsibilities that they would have if they were the parents of the children. A child, aged 12, who had been in the defendant's custody for six months, left the center without permission. The defendant became aware of the child's absence almost immediately, but made no attempt to locate him or secure his return, though reports reached him that the child had been seen in the vicinity. Thirty-six hours after the child left the center, the child committed a brutal assault upon the plaintiff, a five-year-old child, causing the plaintiff to suffer extensive permanent injury. If an action is brought against the defendant on behalf of the plaintiff to recover damages for the plaintiff's injuries, will the plaintiff prevail?

A. No, because parents are not personally liable for their child's intentional torts.

B. Yes, if the child was old enough to be liable for battery.

C. Yes, because the child was in the defendant's custody.

D. No, unless the defendant knew or had reason to know that the child had a propensity to attack younger children.

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

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

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

On appeal, the court holds that the question of whether the defendant committed a battery is a jury issue. The judgment entered on the directed verdict in favor of the City Robins should then be

A. reversed and the case remanded, because a jury could find the City Robins vicariously liable for a battery committed by the defendant in the course of his employment.

B. reversed and the case remanded, only if a jury could find negligence on the part of the Robins' management.

C. affirmed, because an employer is not vicariously liable for a servant's battery.

D. affirmed, if the defendant's act was a knowing violation of team rules.

281. The plaintiff is being treated by a physician for asbestosis, an abnormal chest condition that was caused by his on-the-job handling of materials containing asbestos. His physician has told him that the asbestosis is not presently cancerous, but that it considerably increases the risk that he will ultimately develop lung cancer. The plaintiff brought an action for damages, based on strict product liability, against the supplier of the materials that contained asbestos. The court in this jurisdiction has ruled against recovery of damages for negligently inflicted emotional distress in the absence of physical harm. If the supplier is subject to liability to the plaintiff for damages, should the award include damage for emotional distress he has suffered arising from his knowledge of the increased risk that he will develop lung cancer?

A. No, because the plaintiff's emotional distress did not cause his physical condition.

B. No, unless the court in this jurisdiction recognizes a cause of action for an increased risk of cancer.

C. Yes, because the supplier of a dangerous product is strictly liable for the harm it causes.

D. Yes, because the plaintiff's emotional distress arises from bodily harm caused by his exposure to asbestos.

282. Airco operates an aircraft maintenance and repair business serving the needs of owners of private airplanes. A pilot contracted with Airco to replace the engine in his plane with a more powerful engine of foreign manufacture. Airco purchased the replacement engine through a representative of the manufacturer and installed it in the pilot's plane. A short time after it was put into use, the new engine failed, and the plane crashed into a warehouse, destroying the warehouse and its contents. Airco was guilty of no negligence in the procurement, inspection, or installation of the engine. The failure of the engine was caused by a defect that would not be disclosed by inspection and testing procedures available to an installer. There was no negligence on the part of the pilot, who escaped the disabled plane by parachute.

The warehouse owner recovered a judgment for damages from the pilot for the destruction of his warehouse and its contents, and the pilot has asserted a claim against Airco to recover compensation on account of that liability.

In that action, the pilot will recover

A. full compensation, because the engine was defective.

B. no compensation, because Airco was not negligent.

C. contribution only, because Airco and the pilot were equally innocent.

D. no compensation, because the warehouse owner's judgment established the pilot's responsibility to the warehouse owner.

283. While walking on a public sidewalk, a pedestrian was struck by a piece of lumber that fell from the roof of a homeowner's house. The homeowner had hired a repairman to make repairs to his roof, and the lumber fell through due to negligence on the repairman's part. If the pedestrian brings an action against the homeowner to recover damages for the injury caused to him by the repairman's negligence, will the pedestrian prevail?

A. Yes, under the res ipsa loquitur doctrine.

B. Yes, if the repairman's act was a breach of a nondelegable duty owed by the homeowner to the pedestrian.

C. No, if the repairman was an independent contractor rather than the homeowner's servant.

D. No, if the homeowner exercised reasonable care in hiring the repairman to do the repair.

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

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

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

A. No, because the plaintiff experienced no threat to her own safety.

B. No, unless the mausoleum's behavior was extreme and outrageous.

C. Yes, if the mausoleum failed to use reasonable care to safeguard the body.

D. Yes, unless the plaintiff suffered no physical harm as a consequence of her emotional distress.

285. A plaintiff, who was 20 years old, purchased a new, high-powered sports car that was marketed with an intended and recognized appeal to youthful drivers. The car was designed with the capability to attain speeds in excess of 100 miles per hour. It was equipped with tires designed and tested only for a maximum safe speed of 85 miles per hour. The owner's manual that came with the car stated that "continuous driving over 90 miles per hour requires high-speed-capability tires," but the manual did not describe the speed capability of the tires sold with the car. The plaintiff took her new car out for a spin on a straight, smooth country road where the posted speed limit was 55 miles per hour. Intending to test the car's power, she drove for a considerable distance at over 100 miles per hour. While she was doing so, the tread separated from the left rear tire, causing the car to leave the road and hit a tree. The plaintiff sustained severe injuries.

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

Will the plaintiff prevail?

A. No, because the plaintiff's driving at an excessive speed constituted a misuse of the car.

B. No, because the car was not defective.

C. Yes, if the statement in the manual concerning the tires did not adequately warn of the danger of high-speed driving on the tires mounted on the car.

D. Yes, unless the plaintiff's driving at a speed in excess of the posted speed limit was negligence per se that, by the law of the jurisdiction, was not excusable.

286. X-- A surgeon performed a sterilization operation on a patient. After the surgery, the surgeon performed a test that showed that the patient's fallopian tubes were not severed, as was necessary for sterilization. The surgeon did not reveal the failure of the operation to the patient, who three years later became pregnant and delivered a baby afflicted with a severe birth defect that will require substantial medical care throughout its life. The birth defect resulted from a genetic defect unknown to, and undiscoverable by, the surgeon. The patient brought an action on her own behalf against the surgeon, seeking to recover the cost of her medical care for the delivery of the baby, and the baby's extraordinary future medical expenses for which the patient will be responsible. Which of the following questions is relevant to the lawsuit and currently most difficult to answer?

A. Did the surgeon owe a duty of care to the baby with respect to medical services rendered to the patient three years before the baby was conceived?

B. Can a person recover damages for a life burdened by a severe birth defect based on a physician's wrongful failure to prevent that person's birth from occurring?

C. Did the surgeon owe a duty to the patient to inform her that the sterilization operation had failed?

D. Is the patient entitled to recover damages for the baby's extraordinary future medical expenses?

287. The owner of a truck leasing company asked one of his employees to deliver $1,000 to the dealership's main office. The following week, as a result of a dispute over whether the money had been delivered, the owner instructed the employee to come to the office to submit to a lie detector test. When the employee reported to the owner's office for the test, it was not administered. Instead, without hearing the employee's story, the owner shouted at him, "You're a thief!" and fired him. The owner's shout was overheard by several other employees who were in another office that was separated from the owner's office by a thin partition. The next day, the employee accepted another job at a higher salary. Several weeks later, upon discovering that the money had not been stolen, the owner offered to rehire the employee.

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

A. prevail, because the employee was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.

B. prevail, if the owner should have foreseen that the statement would be overheard by other employees.

C. not prevail, if the owner made the charge in good faith, believing it to be true.

D. not prevail, because the statement was made to the employee alone and intended for his ears only.

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

Based upon the foregoing facts, if the roommate sues the shampoo company to recover damages for his dermatitis, his most promising theory of liability will be that the No-Flake shampoo

A. had an unreasonably dangerous manufacturing defect.

B. had an unreasonably dangerous design defect.

C. was inherently dangerous.

D. was inadequately labeled to warn of its dangers.

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

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

A. not prevail, if the construction company exercised reasonable care to protect the public from harm.

B. not prevail, because the plaintiff understood the signs and disregarded the warnings.

C. prevail, because the plaintiff was harmed by the construction company's abnormally dangerous activity.

D. prevail, unless the plaintiff failed to use reasonable care to protect himself from harm.

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

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

A. Yes, for the actual damage to the saw.

B. Yes, for the value of the saw before the neighbor borrowed it.

C. No, because when the saw broke the neighbor was using it to benefit the homeowner.

D. No, because the neighbor did not intend to keep the saw.

291. When two parents were told that their child should repeat second grade, they sought to have him evaluated by a psychologist. The psychologist, who charged $300, determined that their child had a learning disability. Based upon the report, the school board placed the child in special classes. At an open meeting of the school board, the parents asked that the $300 they had paid to the psychologist be reimbursed by the school district. A reporter attending the meeting wrote a newspaper article about this request, mentioning the child by name.

In a privacy action brought by the child's legal representative against the newspaper, the plaintiff will

A. recover, because the story is not newsworthy.

B. recover, because the child is under the age of consent.

C. not recover, if the story is a fair and accurate report of what transpired at the meeting.

D. not recover, if the parents knew that the reporter was present.

292. A man's car sustained moderate damage in a collision with a car driven by a woman. The accident was caused solely by the woman's negligence. The man's car was still drivable after the accident. Examining the car the next morning, the man could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank. The man then took the car to a mechanic, who owns and operates a body shop, and arranged with the mechanic to repair the damage. During their discussion the man neglected to mention the gasoline leakage. Thereafter, while the mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. The mechanic was severely burned.

The mechanic has brought an action to recover damages against the man and woman. The jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

In this action, will the mechanic obtain an judgment against the man?

A. No, because it was the mechanic's job to inspect the vehicle and repair whatever needed repair.

B. No, unless the man was aware of the risk that the gasoline leak presented.

C. Yes, if a reasonable person in the man's position would have warned the mechanic about the gasoline leak.

D. Yes, because the car was unreasonably dangerous when the man delivered it to the mechanic.

293. Because of a farmer's default on his loan, the bank foreclosed on the farm and equipment that secured the loan. Among the items sold at the resulting auction was a new tractor recently delivered to the farmer by the retailer. Shortly after purchasing the tractor at the auction, the buyer was negligently operating the tractor on a hill when it rolled over due to a defect in the tractor's design. He was injured as a result. The buyer sued the auctioneer, alleging strict liability in tort. The jurisdiction has not adopted a comparative fault rule in strict liability cases.

In this suit, the result should be for the

A. plaintiff, because the defendant sold a defective product that injured the plaintiff.

B. plaintiff, if the defendant failed to inspect the tractor for defects prior to sale.

C. defendant, because he should not be considered a "seller" for purposes of strict liability in tort.

D. defendant, because the accident was caused in part by the buyer's negligence.

294. An associate professor in the pediatrics department of a local medical school was denied tenure. He asked a national education lobbying organization to represent him in his efforts to have the tenure decision reversed. In response to a letter from the organization on the professor's behalf, the dean of the medical school wrote to the organization explaining truthfully that the professor had been denied tenure because of reports that he had abused two of his former patients. Several months later, after a thorough investigation, the allegations were proven false and the professor was granted tenure. He had remained working at the medical school at full pay during the tenure decision review process and thus suffered no pecuniary harm.

In a suit for libel by the professor against the dean of the medical school, will the professor prevail?

A. No, because the professor invited the libel.

B. No, because the professor suffered no pecuniary loss.

C. Yes, because the dean had a duty to investigate the rumor before repeating it.

D. Yes, because the dean's defamatory statement was in the form of a writing.

295. A bright nine-year-old child attended a day care center after school. The day care center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice skating when conditions were suitable. At a time when the pond was only partially frozen, the child sneaked away from the center and walked out onto the ice covering the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby. At the time of the incident, the pond was clearly marked with signs that stated, "THIN ICE - NO SKATING." When the child left the day care center, the center was staffed with a reasonable number of qualified personnel, and the center's employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. The jurisdiction follows a rule of pure comparative negligence.

In a suit brought on the child's behalf against the day care center, who is likely to prevail?

A. The child, because he left the center while he was under the center's care.

B. The child, because the day care center is located near a pond.

C. The day care center, because it was not negligent.

D. The day care center, because the child was a trespasser.

296. A cigarette maker created and published a magazine advertisement that featured a model dressed as a race-car driver standing in front of a distinctive race car. In fact, the car looked almost exactly like the very unusually marked one driven by a famous and popular driver. The driver in the ad was not identified, and his face was not shown in the advertisement. The cigarette maker published the advertisement without obtaining the famous driver's permission. The race-car driver sued the cigarette maker for economic loss only, based on common law misappropriation of the right of publicity. The cigarette maker moved to dismiss the complaint.

Will the cigarette maker's motion to dismiss the complaint be granted?

A. No, because there are sufficient indicia of the driver's identity to support a verdict of liability.

B. Yes, because the driver is a public figure.

C. Yes, because there was no mention of the driver's name in the ad.

D. Yes, because the driver did not claim any emotional or dignitary loss.

297. X-- A man owned a much-loved cat, worth about $25, that frequently trespassed on a neighbor's property. The neighbor repeatedly asked the man to keep the cat on his own property, but the trespasses did not diminish. Aware of the man's attachment to the cat, the neighbor killed the cat with a shotgun in full view of the man. As a consequence, the man suffered great emotional distress.

In an action by the man against the neighbor, which of the following claims would be likely to result in the greatest monetary recovery?

A. Battery.

B. Intentional infliction of mental suffering.

C. Trespass to a chattel.

D. Conversion.

298. X-- A man rented a car from a car rental agency. Unbeknownst to the rental agency, the car had a bomb hidden in it at the time of the rental. The bomb exploded an hour later, injuring the man. Immediately prior to renting the car to the man, the rental agency had carefully inspected the car to be sure it was in sound operating condition. The rental agency did not inspect for hidden explosive devices, but such an inspection for explosives would have revealed the bomb. There had been no previous incidents of persons hiding bombs in rental cars. In a negligence action by the man against the car rental agency, is the man likely to prevail?

A. No, because the rental agency could not have reasonably foreseen the likelihood of someone placing a bomb in the car it was about to rent to the man.

B. No, because the rental agency did not hide the bomb in the car.

C. Yes, because an inspection for explosive devices would have revealed the bomb.

D. Yes, because the bomb made the car abnormally dangerous.