

TORTS
JOHN TEETER
SAMPLE QUESTIONS

COMPLETED

1. Roofer entered into a written contract with Orissa to repair the roof of Orissa's home, the repairs to be done "in a workmanlike manner." 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 Orissa 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. Orissa has asserted a claim against Roofer for damages for the loss of the jewels.

In her claim against Roofer, Orissa will:

- (A) prevail, because by leaving the ladder Roofer became a trespasser on Orissa's property.
- (B) prevail, because by leaving the ladder, Roofer created the risk that a person might unlawfully enter the house.
- (C) not prevail, because the act of the thief was a superseding cause.
- (D) not prevail, because Orissa's claim is limited to damages for breach of contract.

2. Ohner owns the Acme Hotel. When the International Order of Badgers came to town for its convention, its members rented 400 of the 500 rooms. Badgers are a rowdy group, and during their convention they littered both the inside and the outside of the hotel with debris and

bottles. The Hotel's 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. Ohner was out of town and was not aware of the problems which were occurring. During the convention, as Smith walked past the Hotel on the sidewalk, he was hit and injured by an ashtray thrown out of a Hotel window. Smith sued Ohner for damages for his injuries.

Will Smith prevail in his claim against Ohner?

- (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 Ohner 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.

Questions 3-4 are based on the following fact situation.

Sand Company operated an installation for distributing sand and gravel. The installation was adjacent to a residential area. On Sand'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 Sand'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. Sand knew of this activity.

One evening, the children were using the chute as a play device. As an automobile driven by Commuter approached the chute, Ladd, an 8-year-old boy, slid down just in front of the automobile. Commuter applied her brakes, but they suddenly failed, and she hit and injured Ladd. Commuter saw the child in time to have avoided hitting him if her brakes had worked properly.

Two days previously, Commuter had taken her car to Garage to have her brakes inspected. Garage inspected the brakes and told her that the brakes were in perfect working order. Claims were asserted on behalf of Ladd by his proper legal representative against Sand, Commuter, and Garage.

3. On Ladd's claim against Commuter, 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 Ladd's presence in the street.
- (D) she did not act willfully and wantonly.

4. On Ladd's claim against Garage, will Ladd prevail?

- (A) Yes, because Garage is strictly liable in tort.
- (B) Yes, if Garage was negligent in inspecting Commuter's brakes.
- (C) No, if Ladd was in the legal category of a bystander.
- (D) No, because Sand's conduct was an independent and superseding cause.

5. Al and Bill are identical twins. Al, angry at David, 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, David saw Bill coming toward him. As Bill came up to David, Bill raised his hand. Thinking Bill was Al and fearing bodily harm, David struck Bill.

If Bill sues David and David relies on the privilege of self-defense, David will:

- (A) not prevail, because Bill was not an aggressor.
- (B) not prevail unless Bill intended his gesture as a threat.
- (C) prevail if David honestly believed that Bill would attack him.
- (D) prevail only if a reasonable person under the circumstances would have believed that Bill would attack him.

Questions 6-7 are based on the following fact situation.

Section 1 of the Vehicle Code of 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. Ped wanted to cross Main Street in the central business district of City, located in State, but a truck parked by Trucker was blocking the designated crosswalk. Ped stepped out into Main Street and carefully walked around the back of the truck. Ped was struck by a motor vehicle negligently operated by Driver.

6. If Ped asserts a claim against Driver, Ped's failure to be in the crosswalk will have which of the following effects?

- (A) It is not relevant in determining the right of Ped to recover damages.
- (B) It may be considered by the trier of the facts on the issue of Driver's liability.
- (C) It will bar Ped's recovery unless Driver saw Ped in time to avoid the impact.
- (D) It will bar Ped's recovery as a matter of law.

7. If Ped asserts a claim against Trucker, the most likely result is that Ped will:

- (A) prevail, because 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 the crosswalk.

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

(D) not prevail, because Driver's conduct was the actual cause of Ped's harm.

Questions 8-10 are based on the following fact situation.

Husband and 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 Grower. After climbing over the fence, Husband and Wife damaged some of Grower's plants which were near the fence. The fence was posted with a large sign, "No Trespassing."

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

8. If Wife sues Grower for battery, will she prevail?

(A) Yes, because Grower intended that the dog frighten Wife.

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

(C) No, because Wife made an unauthorized entry on Grower's land.

(D) No, because Grower did not intend to cause any harmful contact with Wife.

9. If Husband asserts a claim based on assault against Grower, will Husband prevail?

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

10. If Grower asserts a claim against Wife and Husband for damage to his plants, will Grower prevail?

- (A) Yes, because Wife and Husband entered on his land without permission.
- (B) Yes, because Grower had posted his property with a “No Trespassing” sign.
- (C) No, because Wife and Husband were confronted by an emergency situation.
- (D) No, because Grower used excessive force toward Wife and Husband.

Questions 11-12 are based on the following fact situation.

Johnson wanted to purchase a used motor vehicle. The used car lot of Car Company, in a remote section away from town, was enclosed by a ten-foot chain link fence. While Johnson and Sales Representative, an employee of 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., Johnson and Sales

Representative discovered they were locked in.

There was no traffic in the vicinity and no way to call for help. After two hours, Johnson began to panic at the prospect of remaining undiscovered and without food and water until Monday morning. Sales Representative decided to wait in a car until help should come. Johnson tried to climb over the fence and, in doing so, fell and was injured. Johnson sues Car Company to recover damages for his injuries.

11. If Johnson'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 Sales Representative, as 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 Johnson was confined as the result of a volitional act.

12. If Johnson's claim is based on false imprisonment, will Johnson 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.

Questions 13-15 are based on the following fact situation.

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

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

13. If Motorist asserts a claim against Cross, Motorist will:

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

(B) recover only a proportion of his damages, because Spouse was also at fault.

- (C) not recover, because Spouse 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.

14. If the jurisdiction has adopted "pure" comparative negligence and Spouse asserts a claim against Cross, Spouse will:

- (A) recover in full for her injuries, because 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 Cross.
- (C) not recover, because her negligence was the proximate cause of the accident.
- (D) not recover, because her negligence was the superseding cause of the accident.

15. If Motorist asserts a claim against Owner, will Motorist prevail?

- (A) Yes, in negligence, because Owner knew the brakes were faulty and failed to tell Motorist.
- (B) Yes, in strict liability in tort, because the car was defective and Owner lent it to Motorist.

(C) No, because Owner was a gratuitous lender, and thus his duty of care was slight.

(D) No, because the failure of Spouse to tell Motorist about the brakes was the cause in fact of Motorist's harm.

Questions 16-17 are based on the following fact situation.

A water pipe burst in the basement of the Supermart 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, Supermart put the goods on special sale.

Four weeks later Dittfurth was shopping in Supermart. 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."

Dittfurth was having Roberts for dinner that evening and purchased two dented cans of tuna, packed by Canco, from one of the tables displaying the damaged cans. Before Roberts arrived, Dittfurth prepared a tuna casserole which he and Roberts 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 Dittfurth and Roberts 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 Canco shipment was fit for consumption.

16. If Dittfurth asserts a claim against Canco based on negligence, the doctrine of *res ipsa loquitur* is:

- (A) applicable, because the tuna was packed in a sealed can.
- (B) applicable, because Canco 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 Dittfurth purchased the tuna.

17. If Roberts asserts a claim against Dittfurth, Dittfurth most likely will:

- (A) be held strictly liable in tort for serving spoiled tuna.
- (B) be held liable only if he were negligent.
- (C) not be held liable unless his conduct was in reckless disregard of the safety of Roberts.
- (D) not be held liable, because Roberts was a social visitor.

Questions 18-19 are based on the following fact situation.

Peter was rowing a boat on a mountain lake when a storm suddenly arose. Fearful that the boat might sink, Peter rowed to a boat dock on shore and tied the boat to the dock. The

shore property and dock were the private property of Owner.

While the boat was tied at the dock, Owner came down and ordered Peter to remove the boat, because the action of the waves was causing the boat to rub against a bumper on the dock. When Peter refused, Owner untied the boat and cast it adrift. The boat sank.

Peter was wearing only a pair of swimming trunks. He had a pair of shoes and a parka in the boat, but they were lost when Owner set it adrift. Peter was staying at a cabin one mile from 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 Peter asked Owner to take him there in Owner's car. Owner said, "You got here by yourself and you'll have to get back home yourself." After one hour the storm stopped and Peter walked home over the trail.

18. A necessary element in determining if Peter is liable for trespass is whether:

- (A) Owner had clearly posted his property with a sign indicating that it was private property.
- (B) Peter knew that the property belonged to a private person.
- (C) Peter had reasonable grounds to believe the property belonged to a private person.
- (D) Peter had reasonable grounds to believe his boat might be swamped and sink.

19. If Peter asserts a claim against Owner for loss of the boat, the most likely result is that

Owner will:

- (A) have no defense under the circumstances.
- (B) prevail, because Peter was a trespasser *ab initio*.
- (C) prevail, because the boat might have damaged the dock.
- (D) prevail, because Peter became a trespasser when he refused to remove the boat.

Questions 20-22 are based on the following fact situation.

An ordinance of City makes it unlawful to park a motor vehicle on a City street within ten feet of a fire hydrant. At 1:55 p.m. Parker, realizing he must be in 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. Parker then hurried into the bank, leaving his aged neighbor, Ned, as a passenger in the rear seat of the car. About 5 minutes later, while Parker was still in Bank, Driver was driving down the street. Driver swerved to avoid what he mistakenly thought was a hole in the street and sideswiped Parker's car. Parker's car was turned over on top of the hydrant, breaking the hydrant and causing a small flood of water. Parker's car was severely damaged and Ned was badly injured. There is no applicable guest statute.

20. If Ned asserts a claim against Parker, the most likely result is that Ned will:

- (A) recover, because Parker's action was negligence per se.
- (B) recover, because Parker's action was the proximate cause of Ned's injuries.
- (C) not recover, because a reasonably prudent person could not foresee injury to Ned as a result of Parker's action.
- (D) not recover, because a violation of a city ordinance does not give rise to a civil cause of action.

21. If Parker sues Driver for damage to Parker's automobile, the most likely result is that Parker will:

- (A) recover, because the purpose of the ordinance is to provide access to the fire hydrant.
- (B) recover, because Driver's negligence was later in time than Parker's act of parking.
- (C) not recover, because Parker was contributorily negligent as a matter of law.
- (D) not recover, because Parker's unlawful parking was a superseding cause of the accident.

22. If City asserts a claim against Driver for the damage to the fire hydrant and Driver was negligent in swerving his car, his negligence is:

- (A) a cause in fact and a proximate cause of City's harm.
- (B) a cause in fact but not a proximate cause of City's harm because Parker parked

illegally.

(C) a proximate cause but not a cause in fact of City's harm because Parker's car struck the hydrant.

(D) neither a proximate cause nor a cause in fact of City's harm.

Questions 23-24 are based on the following fact situation.

Piatt was in the act of siphoning gasoline from Neighbor's car in Neighbor's garage and without his consent when the gasoline exploded and a fire followed. Moder, seeing the fire, grabbed a fire extinguisher from his car and put out the fire, saving Piatt's life and Neighbor's car and garage. In doing so, Moder was badly burned.

23. If Moder sues Piatt for personal injuries, Moder will:

(A) prevail, because he saved Piatt's life.

(B) prevail, because Piatt was at fault in causing the fire.

(C) not prevail, because Moder knowingly assumed the risk.

(D) not prevail, because Moder's action was not a foreseeable consequence of Piatt's conduct.

24. If Moder asserts a claim against Neighbor for personal injuries, Moder will:

- (A) prevail, because he saved Neighbor's property.
- (B) prevail, because he acted reasonably in an emergency.
- (C) not prevail, because Neighbor was not at fault.
- (D) not prevail, because Moder unreasonably assumed the risk.

25. Henry hated Wanda, his former wife, for divorcing him and marrying John a short time thereafter. About a month after Wanda married John, Henry secretly entered Wanda and John's rented apartment during their absence by using a master key. Henry 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 so that the microphone appeared to be connected with wires going into the adjoining apartment. Actually the microphone was not connected to anything. Henry anticipated that Wanda would discover the microphone in a few days and would be upset by the thought that someone had been listening to her conversations with John in their bedroom.

Shortly thereafter, as he was putting a book on the stand, John noticed the wires behind the book stand and discovered the hidden microphone. He then called Wanda and showed her the microphone and wires. Wanda fainted and, in falling, struck her head on the book stand and suffered a mild concussion. The next day John telephoned Henry and accused him of planting the microphone. Henry laughingly admitted it. Because of his concern about Wanda and his anger at Henry, John is emotionally upset and unable to go to work.

If Wanda asserts a claim against Henry based on infliction of mental distress, the fact that

John was the person who showed her the microphone will:

- (A) relieve Henry of liability, because John was careless in so doing.
- (B) relieve Henry of liability, because John's conduct was the proximate cause of Wanda's harm.
- (C) not relieve Henry of liability, because Henry's goal was achieved.
- (D) not relieve Henry of liability, because the conduct of a third person is irrelevant in emotional distress cases.

Questions 26-27 are based on the following fact situation.

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

26. If the claim is asserted against Dave'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 Dave'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.

27. If the claim is asserted against Dave, the most likely result is Dave will be:

(A) liable, because he intentionally harmed Pete.

(B) liable, because a reasonable six-year-old would 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.

28. Lytton went into Store at approximately 6:45 p.m. to look at some suits that were on sale. The clerks were busy, and one of them told Lytton that he should wait on himself. Lytton selected three poka-dotted suits from a rack and went into the dressing room to try them on. Signs posted on the walls of Store state that closing time is 9:00 p.m. Because of a special awards banquet for employees, however, Store was closed at 7:00 p.m. on this day. The employees, in a hurry to get to the banquet, did not check the dressing rooms or turn off the lights before leaving. When Lytton emerged from the dressing room a few minutes after 7:00 p.m., he was alone and locked in. Lytton tried the front door but it was secured on the outside by a bar and padlock, so he went to the rear door. Lytton grabbed the door knob and vigorously shook the door. It did not open, but the activity set off a mechanism that had been installed because of

several recent thefts committed by persons who had hidden in the store until after closing time. The mechanism sprayed a chemical mist in Lytton's face, causing him to become temporarily blind. The mechanism also activated an alarm carried by Store's employee, Watchman, who was just coming to work. Watchman unlocked the front door, ran into the store, and grabbed Lytton. Lytton, who was still unable to see, struck out at this person and hit a metal rack, injuring his hand. Watchman then identified himself, and Lytton did the same. After assuring himself that Lytton was telling the truth, Watchman allowed him to leave.

To prevail on a claim against Store based on battery from the use of the chemical spray, Lytton must establish that:

- (A) he suffered 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.

29. Construction Company contracted to build a laundry for Wash Company on the latter's vacant lot in a residential area. As a part of its work, Construction Company dug a trench from the partially completed laundry to the edge of a public sidewalk so waterlines could 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. 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 Wash 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, 5-year-old Tommy, who was playing on the vacant lot with friends, stumbled and fell into the trench. Robert, an adult passerby, saw this and immediately lowered himself into the trench to rescue Tommy. However, his doing so caused the rain-soaked walls of the trench to collapse, killing both him and Tommy.

In a claim for wrongful death by Tommy's administrator against 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 Tommy was a trespasser.
- (D) not recover, because Tommy's death was a result of the collapse of the trench, a superseding cause.

30. Doctor, a licensed physician, resided in her own home. The street in front of the home had a gradual slope. Doctor's garage was on the street level, with a driveway entrance from the street.

At two in the morning 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

Parker, who, while intoxicated, had driven to that place and now was in a drunken stupor in the front seat. Unable to rouse Parker, Doctor pushed him into the passenger's side of the front seat and got in on the driver's side. Doctor released the brake and coasted the car down the street, planning to pull into a parking space that was open. When Doctor attempted to stop the car, the brakes failed to work and the car crashed into the wall of Owner's home, damaging Owner's home and Parker's car and injuring Doctor and Parker. 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 Parker'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 Parker asserts a claim against Doctor for his injuries, Parker probably will:

- (A) recover, because Doctor was negligent as a matter of law.
- (B) recover, because 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.

31. Auto Company was a small dealer in big new cars and operated a service department. Peter wanted to ask Mike, the service manager, whether Auto Company would check the muffler on his small foreign car. Peter 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 Peter 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 Peter unconscious and caused permanent damage.

Peter 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 Auto Company mechanics. Mike, 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 Peter asserts a claim based on negligence against Auto Company, Peter probably will:

- (A) recover, based on negligence per se.
- (B) recover, because an employee of Auto Company was negligent.
- (C) not recover, because Peter was a trespasser.

(D) not recover, because Peter unreasonably assumed the risk.

32. Mrs. Dennis' 12-year-old daughter, Gala, had some difficulty getting along with other children in the neighborhood, especially the younger ones. Thinking the experience would be good for her, Mrs. Dennis recommended Gala to Mr. Parrent as a babysitter for his five-year-old boy, Robby, but did not mention Gala's difficulties or her lack of prior experience as a babysitter. The Dennises and the Parrents were longstanding social acquaintances. On the evening Gala was to sit, the Parrents told Gala that she should treat Robby firmly, but that it would be preferable not to spank him since he did not take kindly to it. They did not tell Gala they had experienced trouble retaining babysitters because of Robby's temper tantrums.

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

The backyard was completely dark. Gala heard Robby 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 Gala went outside and found Robby lying on the steps unconscious and injured.

If a claim is asserted on behalf of Robby against Mrs. Dennis for damages based on Gala's conduct, Mrs. Dennis 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.

33. The most generally accepted basis on which a court will hold that X has a legal duty to aid another is the recognition by X 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 X's own non-negligent conduct.

Questions 34-37 are based on the following fact situation.

Walker, a pedestrian, started north across the street in a clearly marked north-south crosswalk with the green traffic light in her favor. Walker was in a hurry, and so before reaching the north side on the street, she cut to her left diagonally across the street to the east-west crosswalk and walked across it. Just after reaching the east- west crosswalk, the traffic light turned green. 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 Driver, 81 years of age, who failed to stop his car after seeing that the traffic light was red against him. Walker had a very rare bone disease, resulting in very brittle bones. As a result of the impact Walker 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 Walker's grandmother for \$10,000 but was valued at \$500,000 at the time of the accident.

Walker has filed suit against Driver. Driver's attorney has alleged that Walker violated a state statute requiring that pedestrians stay in crosswalks, and that if Walker 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 Driver. Walker's attorney ascertains that there is a statute as alleged by Driver, that his measurements are correct, that there is a state statute requiring observance of traffic lights, and that Driver's license expired two years prior to the collision.

34. The violation of the crosswalk statute by Walker should not defeat her cause of action against Driver because:

- (A) Driver violated the traffic light statute at a later point in time than Walker's violation.
- (B) pedestrians are entitled to assume that automobile drivers will obey the law.
- (C) Walker 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.

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

- (A) It makes Driver liable to Walker because Driver is a trespasser on the highway.
- (B) It would not furnish a basis of liability.
- (C) It creates a presumption that Driver is an unfit driver.
- (D) It makes Driver absolutely liable for Walker's injury.

36. If Walker establishes liability on the part of Driver for her physical injuries, should Walker's recovery include damages for a broken leg?

- (A) No, because the fracture was due to her rare bone disease.
- (B) No, unless a person of ordinary health would have suffered a broken leg from the impact.
- (C) Yes, because 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.

37. Walker'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 Driver's conduct was the superseding cause.
- (D) as a matter of law the injury to Walker was not the result of a risk the statute was designed to protect against.

38. Light Company is the sole distributor of electrical power in City. The Company owns and maintains all of the electric poles and equipment in City. Light Company has complied with the National Electrical Safety Code, which establishes minimum requirements for the installation and maintenance of power poles. The Code has been approved by the federal and state governments.

Light Company frequently has had to replace insulators on its poles because unknown persons repeatedly shoot and destroy them. This causes the power lines to fall to the ground. On one of these occasions, Paul, Faber's 5-year-old son, wandered out of Faber's yard, intentionally touched a downed wire, and was seriously burned.

If a claim on Paul's behalf is asserted against Light Company, the probable result is that Paul will:

- (A) recover if 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 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.

39. Duncan drove his car into an intersection and collided with a fire engine that had entered the intersection from Duncan's right. The accident was caused by negligence on Duncan's part. As a result of the accident, the fire engine was delayed in reaching Robinson's house, which was entirely consumed by fire. Robinson's house was located about ten blocks from the scene of the accident.

If Robinson asserts a claim against Duncan, Robinson 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 because Duncan did not cause the fire.
- (D) nothing, because Duncan's conduct did not create a foreseeable risk to Robinson.

40. Acorp and Beeco are companies that each manufacture pesticide X. 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 the pesticide into the river.

Kabumoto operated a cattle ranch downstream from the plants of Acorp and Beeco. Kabumoto'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 Kabumoto's cattle.

If Kabumoto asserts a claim against Acorp and Beeco, what, if anything, will Kabumoto recover?

- (A) Nothing, because neither company discharged enough pesticide to cause harm to Kabumoto's cattle.
- (B) Nothing, unless Kabumoto can establish how much pesticide each plant discharged.
- (C) One-half of Kabumoto's damages from each company.
- (D) The entire amount of Kabumoto's damages, jointly and severally, from the two companies.

Questions 41-42 are based on the following fact situation.

Juan ordered some merchandise from Store. When the merchandise was delivered, Juan decided that it was not what he had ordered, and he returned it for credit. Store refused to credit

Juan's account, continued to bill him, and, after 90 days, turned the account over to Kane, a bill

collector.

Kane called at Juan's house at 7 p.m. on a summer evening while many of Juan's neighbors were seated on their porches. When Juan opened the door, Kane, 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, Kane called Juan a "deadbeat" and asked him when he intended to pay his bill to Store.

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

41. If Juan asserts a claim based on intentional infliction of emotional distress against Kane, will Juan prevail?

- (A) Yes, because Kane's conduct was extreme and outrageous.
- (B) Yes, because Kane was intruding on Juan's property.
- (C) No, unless Juan suffered physical harm.
- (D) No, if Juan still owed Store for the merchandise.

42. If Kane asserts a claim of battery against Juan, will Kane prevail?

- (A) No, because one may use deadly force to terminate a burglary.
- (B) Yes, if Juan knew that the door was substantially certain to strike the bullhorn.

(C) No, because Kane caused Juan severe emotional distress.

(D) No, because Kane was an intruder on Juan's property.

43. Bush, 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, Buchanan pushed Plummer's chair to one side. As a result, Bush fell to the floor. Bush was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

If Bush sues Buchanan for damages because of his embarrassment, will Bush prevail?

(A) Yes, if Buchanan knew that Bush was about to sit on the chair.

(B) Yes, if Buchanan negligently failed to notice that Bush was about to sit on the chair.

(C) No, because Bush suffered no physical harm along with his embarrassment.

(D) No, if in moving the chair Buchanan intended only a good-natured practical joke on Bush.

44. While on a hiking trip during the late fall, Page 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 Plant, Page's friend, who had given Page permission to use it. Page entered one of the cabins, which he thought was Plant's, and prepared to spend the night. In fact the cabin was owned not by Plant, but by Bonham.

When the night turned cold, Page started a fire in the stove. Unknown to Page, there was

a defect in the stove that allowed carbon monoxide fumes to escape into the cabin. During the night the fumes caused serious injury to Page.

If Page asserts a claim against Bonham for his injury, will Page recover?

- (A) Yes, if Bonham knew that the stove was defective.
- (B) Yes, if Bonham could have discovered the defect in the stove by a reasonable inspection.
- (C) No, because Bonham had no reason to anticipate Page's presence in the cabin.
- (D) No, unless Page needed to use the cabin for his own protection.

45. Telco, a local telephone company, negligently allowed one of its telephone poles to become termite-ridden. Cher, 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 Gregg, a pedestrian who was walking on the sidewalk. The pole fell because of the combination of the force of the impact and the pole's termite-ridden condition.

If Gregg asserts a claim against Telco and Cher, will Gregg prevail?

- (A) Yes, against Telco but not Cher.
- (B) Yes, against Cher but not Telco.
- (C) Yes, against Telco and Cher, each for one-half of his damages.
- (D) Yes, against both Telco and Cher for the full amount of his damages.

46. Dittfurth 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. The center's purpose is to modify the behavior of the children through a teaching program carried out in a family-like environment. Though the children are not permitted to leave the center without Dittfurth's 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.

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

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

- (A) No, because parents are not personally liable for their children's intentional torts.
- (B) Yes, because Lucifer was old enough to be liable for battery.
- (C) Yes, because Lucifer was in Dittfurth's custody.
- (D) No, unless Dittfurth knew or had reason to know that Lucifer had a propensity to attack younger children.

47. While driving at a speed in excess of the statutory limit, Keith negligently collided with another car and the disabled vehicles blocked two of the highway's three northbound lanes. When Mick 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 a vehicle driven by Charlie. Mick, who sustained damage to his car and was seriously injured, brought an action against Keith to recover damages. The jurisdiction adheres to the traditional common-law rules pertaining to contributory negligence.

If Keith 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 Charlie, not Keith, who collided with Mick's car and caused Mick's injuries.
- (B) Yes, if Mick could have safely passed the disabled vehicles in the traffic lane that remained open.
- (C) No, because a jury could find that Mick's injury arose from a risk that was a continuing consequence of Keith's negligence.
- (D) No, because Keith was driving in excess of the statutory limit when he negligently caused the first accident.

48. Nolan was a pitcher for the City Robins, a professional baseball team. While Nolan 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, Nolan turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. Nolan wound up as though he were preparing to pitch in the direction of his catcher, but instead hurled the ball directly toward the hecklers in the stands. The ball passed through the wire mesh fence and struck Patricia, one of the hecklers.

Patricia sued Nolan and the City Robins based upon negligence and battery. The trial court directed verdicts for the defendants on the battery count. The jury found for the defendants on the negligence count because the jury determined that Nolan could not foresee that the ball would pass through the wire mesh fence.

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

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

- (A) affirmed, because the jury found on the evidence that Nolan could not foresee that the ball would pass through the fence.
- (B) affirmed, if there was evidence that Nolan 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 Nolan intended to cause the hecklers to fear being hit.
- (D) reversed and the case remanded, because a jury could find that Nolan's conduct was

extreme and outrageous and caused physical harm to Patricia.

49. Dieter parked her car in violation of a city ordinance that prohibits parking within ten feet of a fire hydrant. Because Grove was driving negligently, his car sideswiped Dieter's parked car. Plaintiff, a passenger in Grove's car, was injured in the collision.

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

- (A) Yes, because Dieter was guilty of negligence per se.
- (B) Yes, if Plaintiff would not have been injured had Dieter's car not been parked where it was.
- (C) No, because Dieter's parked car was not a cause in fact of Plaintiff's injury.
- (D) No, if prevention of traffic accidents was not a purpose of the ordinance.

50. A bullet fired by Lola strikes Veronica. If Veronica sues for battery, the most relevant factor will be that:

- (A) Lola knows that firearms are dangerous and can cause serious harm to persons.
- (B) Lola hated Veronica.
- (C) Lola desired that the bullet strike Veronica.
- (D) Lola was eight-years-old.

TORTS
John Teeter
Sample Multistate Questions

ANSWER KEY

- | | | | |
|-----|---|-----|---|
| 1. | B | 39. | A |
| 2. | D | 40. | D |
| 3. | B | 41. | A |
| 4. | B | 42. | B |
| 5. | D | 43. | A |
| 6. | B | 44. | C |
| 7. | B | 45. | D |
| 8. | A | 46. | D |
| 9. | B | 47. | C |
| 10. | A | 48. | C |
| 11. | C | 49. | D |
| 12. | D | 50. | C |
| 13. | A | | |
| 14. | B | | |
| 15. | A | | |
| 16. | C | | |
| 17. | B | | |
| 18. | D | | |
| 19. | A | | |
| 20. | C | | |
| 21. | A | | |
| 22. | A | | |
| 23. | B | | |
| 24. | C | | |
| 25. | C | | |
| 26. | B | | |
| 27. | A | | |
| 28. | B | | |
| 29. | A | | |
| 30. | C | | |
| 31. | B | | |
| 32. | D | | |
| 33. | D | | |
| 34. | D | | |
| 35. | B | | |
| 36. | D | | |
| 37. | D | | |
| 38. | A | | |