GOULD'S
"MCQ's in the MORNING"
Multiple Choice Program:

TORTS QUESTIONS, 11-20

TORT LAW MCQ's, 11-20

11. A safety statute prohibited skateboarding in the public square, in order to cut down on the number of skateboarders who received injuries, such as broken bones. Nevertheless, Jeremy skateboarded in the town square, in violation of the safety statute. He wiped out several times, and incurred some bodily injury. The last time he wiped out, one of the wheels on his skateboard broke off. Jeremy left the wheel in the public square. Mary, who walked by six hours later on her way home from work, tripped over the wheel and broke her arm. When Jeremy heard of Mary's accident, he asserted that he should be excused from liability, because three different people had kicked the wheel after Jeremy had left the public square.

If Mary asserts only that Jeremy breached a duty of care to her through violation of a safety statute, will she succeed in a claim of negligence?

A. No, because there were three intervening events, that would break Jeremy's causal chain.
B. Yes, because Mary's injury was of the type that the safety statute was intended to protect against.
C. No, because Mary did not establish that Jeremy breached a duty of care.
D. Yes, because Jeremy's asserted "excuse" is not viable.

11. <u>CORRECT ANSWER</u>: C.

Under negligence *per se*, a plaintiff may establish breach of duty under a safety statute, if the harm they encounter is the type of harm a safety statute was meant to protect against, and they are part of the class meant to be protected under the statute. Here, Mary suffered a broken arm, which is the type of injury the safety statute was meant to protect against. However, the statute was meant to protect the class of persons of skateboarders, and there are no facts indicating that Mary was a skateboarder. Therefore, Mary would not be able to establish that Jeremy breached his duty of duty of care under negligence *per se*, and her negligence claim would fail.

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12. Dr. Mary was a "Jacqueline of all trades." She was an osteopathic surgeon, a psychiatrist, a licensed social worker, a physical therapist, she had a Ph.D. in prosthetic design for artificial limbs, and on occasion, she would mop the floor in the mornings at her osteopathic practice, if the night cleaning crew did not do a "ship-shape" job. On Monday, she mopped the floor, and one of her patients that she had just treated for a broken leg, Henry, slipped, and more severely injured his leg. If Henry sues Mary, what is the most likely result?

A. Henry will succeed in negligence, because Dr. Mary must take Bo as she finds him under the eggshell skull plaintiff rule.
B. Henry will not succeed on a negligence claim, because Dr. Mary did not cause Henry to suffer grossly negligent medical care.
C. Henry will succeed on a negligence claim, if "but for" Dr. Mary mopping the floor, Henry would not have been injured.
D. Henry will not succeed on a negligence claim, because he experienced a new injury, and he was not injured due to the professional negligence of Dr. Mary during an operation.

12. <u>CORRECT ANSWER</u>: C.

The fact Dr. Mary is a "Jacqueline of all trades" as an osteopathic surgeon, a psychiatrist, a licensed social worker, a physical therapist, along with a Ph.D. in prosthetic design for artificial limbs, are all irrelevant to this situation. The only pertinent aspect of her expansive skill set in this situation, relates to her ability to mop her floor in a reasonable manner that keeps people safe from potential harm. Therefore, if Henry would have kept his balance "but for" Dr. Mary mopping the floor, he is likely to succeed in a claim of negligence.

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13. Bobbi was throwing footballs to Susie in a crowded public park. Bobbi told Susie to go on longer and longer "routes" whereby Bobbi would throw the football off target, and it would tumble for many yards. On one throw, Bobbi threw the football such that Susie should have caught the football, but Susie did not catch the football, and the football struck Phyllis in her arm. Phyllis experienced no harm from the force of being struck by the football, but she did experience a "severe rash" from the minimum amount of normal leather lubricant that was applied to the football before Bobbi purchased the football. There were no warnings on the packaging related to the leather lubricant. If Phyllis sues Bobbi for negligence, what is the likely result?

A. Phyllis will prevail in an *In re Polemis* jurisdiction.
B. Phyllis will prevail in a *Wagon Mound I* jurisdiction.
C. Phyllis will prevail in either a *Wagon Mound I* or in an *In re Polemis* jurisdiction.
D. Phyllis will not prevail, because proximate causation is lacking.

13. <u>CORRECT ANSWER</u>: A.

The leather lubricant was applied to the football before Bobbi purchased the football, and there were no warnings on the packaging alerting Bobbi that the leather lubricant used on the football was potentially dangerous. Therefore, Bobbi could not have foreseen that the type of harm suffered by Phyllis, that was due to mere contact with the leather lubricant on the football, would occur. Under *Wagon Mound I*, proximate cause is found only if the type of injury suffered by plaintiff was reasonably foreseeable to the defendant, while under *In re Polemis* proximate cause is found whether or not the injury suffered by plaintiff was reasonably foreseeable to the defendant. In this situation, Phyllis will prevail in an *In re Polemis* jurisdiction, but not in a *Wagon Mound I* jurisdiction, because the harm Phyllis suffered was not reasonably foreseeable to Barry.

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14. Evan parked a rental car in Pleasantville, for two days, on a weekend. Evan had previously read about Pleasantville online, and it appeared that Pleasantville was a small community, with little crime. During the time that Evan parked in Pleasantville, a Harley-Davidson motorcycle rally was held, for the first time. During the rally, a couple of thugs broke into the rental car, and stole the radio. The rental car company sued Evan for negligence, asserting damages due to harm to their car because of the break-in of the car, and the loss of the radio. The rental car company will:

A. Prevail, because they experienced damages.
B. Lose, because Evan could not have reasonably foreseen that a couple of thugs would break into the rental car.
C. Prevail, because Evan should have realized that parking the car for two days in Pleasantville would invite a person to commit a crime.
D. Lose, because the rental company did not experience physical harm.

14. CORRECT ANSWER: B.

In this situation, Evan examined the town of Pleasantville online, and was informed that Pleasantville was a small community with little crime. Therefore, it was reasonable for Evan to park a rental car in Pleasantville for an extended period of time, because Pleasantville was not shown to be an area of high crime. Additionally, it is unreasonable that Evan should be aware of all of the events that might occur in Pleasantville, especially an event that was being held for the first time, such as the Harley-Davidson rally. Evan will not be held liable for the unforeseen criminal activity of third-persons, and his causal chain for proximate causation will be broken due to an unforeseen superseding event.

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15. Sparky parked his friend Ivan's car in a downtown liquor mart, which was widely known to be patronized by criminal elements looking for trouble. Sparky left Ivan's car at the downtown liquor mart for two days. Sometime within that time frame, a couple of thugs broke into Ivan's car, and stole the radio. Ivan sued Sparky for negligence, asserting damages due to harm to his car because of the break-in of the car, and the loss of the radio. Ivan will:

A. Prevail, because his car experienced damage.
B. Lose, because Sparky could not have reasonably foreseen that a couple of thugs would break into Ivan's car.
C. Prevail, because Sparky should have realized that parking the car for three days in the same place would invite a person to commit a crime.
D. Lose, because Ivan did not experience physical harm.

15. <u>CORRECT ANSWER</u>: C.

We are told that Sparky parked Ivan's car in an area that was known as attracting a criminal element, and he parked the car in that environment for two days. Therefore, there are sufficient facts indicating that Sparky was put on notice that the area in which he parked Ivan's car was experiencing heightened crime. As such, it was foreseeable to Sparky that a crime would occur, and Sparky's causal chain for proximate causation will not be broken due to a foreseeable intervening event in this case.

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16. Max delivered fine art to various vendors of art. One day, during delivery of a painting, Max dropped the painting while delivering it to Fine Arts. The "outside packing" was damaged, but not the painting. It is undisputed that Max would not have dropped the painting if he would have used a hand cart.

If Fine Arts sues Max for negligence, what is the likely result?

A. Fine Arts will lose.
B. Fine Arts will prevail, because Max owed Fine Arts a high level duty of care as a professional delivery person of fine art.
C. Fine Arts will prevail, because it is undisputed that Max was the causative agent of the dropped package.
D. Fine Arts will prevail, because it is undisputed that Max would not have dropped the painting if he had used a hand cart, thus evidencing that Max breached his duty to have acted reasonably under the Learned Hand formula.

16. <u>CORRECT ANSWER</u>: A.

Here, Max acted unreasonably when he did not use a hand cart. Additionally, "but for" his unreasonable behavior the painting would not have fallen. However, the painting was not damaged. Therefore, since Fine Arts cannot show that they experienced any damage to the painting, they would lose a negligence claim against Max.

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17. Johnson was known as a cranky old man. Animal rights activists hated him with passion, because Johnson still used antiquated leg-hold traps to trap wild animals trespassing onto his property. Angela, an animal rights activist, tried to secure a meeting with the Johnson on his property, in order to try and convince him to stop using leg-hold traps. But Johnson refused, asserting to Angela that she should back off and stay off of his property, lest she become injured. Angela took Johnson's response to be a threat, and she was afraid of Johnson's potential anger. Nevertheless, she felt that wild animals were suffering, and that she needed to do something to stop their suffering. Therefore, one day, while Johnson was away, Angela devised a plan to go into Johnson's barn and take all of his leg-hold traps. As she walked near Johnson's property, she observed that Johnson had "No Trespassing" signs posted, and that his fence-line was protected with barbed wire. Angela tried to scale the fence, became impaled on the barbed wire, and incurred a cut. Angela's doctor told her that she was lucky not to have died from becoming entangled in the barbed wire. If Angela brings a claim in negligence against Johnson, will she prevail?

A. Yes, because Johnson used potentially deadly force to protect his property.
B. Yes, because Angela was a known trespasser, and Johnson had a duty to Angela to warn of danger, and to make the property safe.
C. No, because Angela saw the barbed wire before she tried to scale the fence.
D. No, because Angela was not given consent to enter Johnson's real property.

17. <u>CORRECT ANSWER</u>: C.

While a landowner may not use deadly force to protect his land, he is entitled to use a means not intended or likely to cause serious bodily harm or death, to protect his property. Sharp fencing through use of barbed wire is not considered deadly force. Barbed wire is a commonly used device to keep people and animals off of real property. Angela was aware of the "No Trespassing" signs, and of the fact that Johnson's fence contained barbed wire. As an adult, she would have implicitly assumed a risk of danger, by climbing the fence. Angela will not prevail with her claim, because she was aware of the barbed wire, and tried to climb the fence in spite of the inherent risk of harm. In this situation, Johnson was entitled to reasonably protect his property, as he did.

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18. It was conclusively shown that plaintiff Dan was sixty percent responsible for an accident, while defendant Susie was forty percent responsible.

How much of a potential award would plaintiff Dan receive in a jurisdiction that has adopted pure comparative negligence?

A. Nothing.
B. Forty percent.
C. Sixty percent.
D. One hundred percent.

18. <u>CORRECT ANSWER</u>: B.

Where a plaintiff has contributed to their injuries in a pure comparative negligence jurisdiction, the exact amount that plaintiff has contributed will be deducted from their award. Here, by subtracting sixty percent from one hundred percent, leaves forty percent. Therefore, Dan will be awarded forty percent of the total award in a pure comparative negligence jurisdiction.

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19. Mike purchased a motorcycle from Herb's Cycles. The second time that Mike rode his new motorcycle, and while he was riding safely, the chain fell off of his motorcycle, and Mike fell as a result, and incurred an injury. Mike brought a strict products liability claim against Herb's Cycles, and Mike submitted evidence that his injury was caused by either a manufacturing defect or a design defect. Herb's Cycles presented contradictory evidence that the motorcycle was not defectively designed. At the close of evidence, what should occur?

A. The court should send the decision to the jury, because a reasonable jury could find that Mike's injury was caused by a defective motorcycle.
B. The court should rule in favor of Herb's Cycles, because Mike was not able to specify the precise cause of his injury.
C. The court should rule in favor of Herb's Cycles, because Herb's Cycles did not design or manufacture the motorcycle.
D. The court should rule in favor of Mike, because Mike was riding safely when the accident took place.

19. <u>CORRECT ANSWER</u>: A.

A jury is often given an opportunity to decide the various issues in a negligence or strict products liability claim. The relevant context is whether a reasonable jury could find in favor of the plaintiff, or the defendant. In this situation, sufficient evidence was given on both sides of the issue as to whether or not there was a defective product. A broken chain that causes injury to a motorcycle rider, shortly after purchase, is the kind of accident that would normally occur as a result of a defective motorcycle. This case should go to the jury for a jury decision, because a reasonable jury could conclude that the motorcycle contained either a manufacturing defect or a design defect, or both, at the time of purchase, that made the motorcycle more dangerous that a reasonable consumer would expect.

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20. Betsy got sick because the milk her mother purchased from the Grocer was bad at the time of purchase. Grocer used all reasonable care to make sure that his products were safe.

If Betsy can establish a prima *facie case* in strict product liability and brings an action against Grocer, will she likely prevail?

A. No, because Betsy was not in privity with Grocer.
B. Yes, because the Grocer sold the bad milk to Betsy's mother.
C. No, because the Grocer used all reasonable care to make his products safe.
D. No, because the Grocer could not inspect every bottle of milk.

20. <u>CORRECT ANSWER</u>: B.

In this situation, the Grocer is in the distributive chain of the business of selling milk. Grocer could be liable in strict products liability, because at the time of the purchase of the milk, it was more dangerous than a reasonable consumer would expect.

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