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

TORTS QUESTIONS, 51-60

TORT LAW MCQ's, 51-60

51. The zookeeper, who was also a trained veterinarian, was walking along a pedestrian path at the zoo, and decided to clean up some trash. The zookeeper grabbed a nearby broom, and began sweeping up the walkway. As the zookeeper swept the walkway, and while using due care, part of the broom broke off and dropped onto the pedestrian walkway. Joe tripped over the broken broom, suffering injuries. The broom broke due to a manufacturing defect that the zookeeper could not have detected. If Joe sues the zookeeper for strict liability in tort, strict products liability, and for malpractice, what is the likely result?

A. Joe will succeed with the strict products liability claim, but not with the strict liability in tort or malpractice claims.
B. Joe will not succeed on any of his claims.
C. Joe will succeed with the strict products liability and strict liability in tort claims, but not with the malpractice claim.
D. Joe will succeed with all of his claims.

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

While the zookeeper was a veterinarian, he was not performing his professional duties as a veterinarian when Joe was injured, and thus a malpractice claim would fail. While the zoo housed wild animals, Joe's injury was not related to the wild animals, and thus a strict liability in negligence claim would fail. Further, even though a product that the zookeeper was using caused an injury, the zookeeper was not in the distributive chain of the product, and could not have detected the product defect. Thus, the zookeeper would not be a proper defendant in a strict products liability claim. Therefore, the only possible answer is answer choice "B," and Joe will not succeed on any of his claims.

TORT LAW MCQ's, 51-60

52. Smoke Plant has complied with all City regulations, but a small problem with the "sweepers" in the plant, meant that a rancid stench escaped every two or three days, for a few minutes. The problem persisted for a few months, and fewer people purchased homes in the area due to the smell from Smoke Plant. Some older people experienced health difficulties from the rancid smell. However, not all residents of City have complained.

If some residents bring a claim against Smoke Plant for nuisance, with the assistance of City, what is the likely result?

A. Smoke Plant will prevail, because not all of the residents have complained.
B. Smoke Plant will not prevail, because they have not fixed the problem with the "sweepers."
C. Smoke Plant will prevail, because they used reasonable care to comply with City regulations.
D. Smoke Plant will not prevail, because they will be held strictly liable for their actions.

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

Public nuisance is an unreasonable interference with the health, safety or property rights of a community. Not all community members need complain. In this situation, a rancid stench from Smoke Plant resulted in decreased home sales, and some health problems. Such problems in the community would indicate that the community would prevail in a claim against Smoke Plant for public nuisance.

TORT LAW MCQ's, 51-60

53. Susan felt that the neighborhood beer brewery interfered with her use and enjoyment of the home that she owned on Maple Street. Susan had purchased her home before the brewery was built. Susan lived in a residential neighborhood, with scores of other residential homes between her home and the brewery. Every night, Susan smelled a slight beer-like scent for a couple of minutes, just after dinner, if she went outside and held her nose up in the air. The beer brewery was located on Main Street, and was surrounded by other buildings and commercial enterprises. The brewery had secured all necessary building permits. Susan was upset that the other homeowners in the area were not bothered by the evening scent coming from the brewery, but she nevertheless brought an action in nuisance against the brewery. Will Susan win her action in nuisance against the beer brewery?

A. No, because Susan did not experience a substantial and unreasonable interference in the use and enjoyment of her land.
B. No, because the beer brewery operated pursuant to building permits.
C. Yes, because Susan purchased her home before the beer brewery was built.
D. Yes, because Susan experienced a substantial and unreasonable interference in the use and enjoyment of her land.

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

In this situation, Susan experienced a slightly unpleasant scent emanating from the beer brewery, but only if she went out of her way, at a specific time of day, to try to catch a scent from the beer brewery. This would not qualify as a substantial and unreasonable interference with the use and enjoyment of her land, especially because none of her neighbors, including those that lived closer to the beer brewery, were heard to complain about the scent from the beer brewery. Therefore, Susan will not succeed with a claim of nuisance, because Susan did not experience a substantial and unreasonable interference in the use and enjoyment of her land.

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54. Independent Contractor developed and installed a roller coaster ride for Amusement Rides. Amusement Rides independently operated Amusement Park in the summer months. Rider incurred physical injury while riding the roller coaster at Amusement Park. It was established without controversy that the roller-coaster ride malfunctioned, leading to Rider's injuries. However, Rider was not able to establish the exact modality through which the roller coaster ride malfunctioned. If Rider brings a claim of negligence against Amusement Rides, will Rider prevail?

A. Yes, because pursuant to the Learned Hand formula, Amusement Rides did not meet their burden to have acted reasonably to protect Rider from potential harm.
B. No, because Rider did not also sue the Independent Contractor.
C. No, because under *respondeat superior,* Amusement Rides will not be responsible for the work of the Independent Contractor.
D. Yes, because the negligence of Amusement Rides may be inferred.

54. <u>CORRECT ANSWER</u>: D.

In this situation, the Independent Contractor would be considered an employee, because the design and installation of a roller-coaster ride would be considered an inherently dangerous work project. Further, no facts are given relating to application of the Learned Hand formula, or negligence *per se*, to establish breach of duty under negligence. However, a jury could infer breach of duty under *res ipsa loquitur,* the things speaks for itself, where an accident would not normally occur in the absence of negligence, and the defendant is responsible for the instrumentality that caused plaintiff's injury. In this instance, Amusement Rides independently operated Amusement Park. An accident on an amusement ride such as a roller-coaster ride, would not normally occur without negligence. Therefore, the negligence of Amusement Rides could be inferred under *res ipsa loquitur.*

TORT LAW MCQ's, 51-60

55. Jonnie used his outdoor barbeque three times per week. Each time he used his outdoor barbeque, Jonnie's next-door neighbor, Hank, used a bull horn / siren, for thirty minutes, continually. The decibel level of the bull horn / siren on Jonnie's property was 120 decibels, and this activity persisted for three months.

If Jonnie brings a claim in private nuisance against Hank, will Jonnie prevail?

A. Yes, because Hank's use of the bull horn / siren constitutes a substantial and unreasonable interference with Jonnie's use and enjoyment of Jonnie's land.
B. Yes, because Hank should have known better than to use the bull horn / siren when Jonnie was trying to barbeque.
C. No, because bull horns / sirens are commonly used in society, and their use does not constitute a private nuisance.
D. No, unless Hank was consciously trying to aggravate Jonnie.

55. CORRECT ANSWER: A.

Private nuisance is an intentional, unreasonable and substantial interference with the use and enjoyment of plaintiff's land. Courts balance the interests of the defendant who has a right to enjoy their land, against the right of the plaintiff to be free from excessive interference in the use and enjoyment of their land. Defendant's conduct will be unreasonable where the gravity of the harm to the plaintiff outweighs the utility of the conduct by the defendant, or where the harm to plaintiff should be compensated because the plaintiff has endured significant interference with the use and enjoyment of their property. Substantial interference will exist where a normal person living in the community would consider defendant's interference as strongly offensive or seriously annoying. The plaintiff in a private nuisance action must own or lease the land. This situation would qualify as a substantial and unreasonable interference with the use and enjoyment of Jonnie's land, because of the excessive decibel level, and because of the length of time of three months duration.

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56. Adam taunted Norman, because Norman was significantly smaller than Adam. On one occasion, Adam waited for Norman to walk into a fenced area, and then closed the gate of the fence behind Norman. Adam then swung a sturdy tree limb at Norman, while yelling that he, Adam, was going to drive the tree limb through Norman's chest. The tree limb accidently flew out of Adam's hands, and struck Norman, causing physical injury to Norman. After the accident, Adam yelled at Norman, "Norman, you are a worthless electrician, and not worthy of the profession." Curt heard the statement by Adam, but believed Norman to be a quality electrician. Norman sued Adam in an effort to recover medical expenses, expenses for pain and suffering, lost wages and punitive damages.

For which of the following causes of action would Norman be least likely to recover punitive damages against Adam?

A. Defamation.
B. Negligence.
C. Assault.
D. False imprisonment.

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

Punitive damages are available to a plaintiff as a remedy, in situations involving torts such as intentional torts, defamation and reckless conduct. However, punitive damages are normally not awarded in negligence claims, because mere negligence does not signify behavior that society believes should be punished through punitive damages. In this situation, all of the claims listed, including intentional infliction of emotional distress, assault, false imprisonment and negligence, are viable claims. Intentional infliction of emotional distress and assault are intentional torts, that are amenable to punitive damages. Defamation is also amendable to punitive damages. However, negligence is the only answer choice that is not amenable to punitive damages.

TORT LAW MCQ's, 51-60

57. Mavis took a walk in the Town Park. At one point along her walk, Mavis stopped to admire a garden, and she walked right up to the flowers to imbibe the heavenly scent. She then continued her walk. Assume that when Mavis walked up to smell the garden, she left the grounds of the Town Park, and was on the property of Harriet.

If Harriet files a claim for trespass to land, will he prevail?

A. No, if Mavis did not cause any damage to Harriet's property.
B. Yes.
C. No, if Mavis intended to be on Town Park property at the time that she smelled the flowers.
D. Yes, if Mavis had the intent to be on Harriet's property.

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

The intent threshold for trespass to land is very low, and as long as plaintiff intended to take the action that resulted in a trespass to land, the intent threshold will be met. In this instance, Mavis intended to walk up and smell the garden, and she was on Harriet's property at that moment, which would entail a trespass to land. Trespass to land does not require a showing of damages.

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58. Arnold was sleeping in his hammock. Timmy, with the intent to initiate a practical joke, walked up and locked a chain around Arnold's feet, and also wound the chain around the tree that the hammock was hung from. There was no way that Arnold could get loose. Twenty minutes later, Timmy unlocked and removed the chain from Arnold's feet.

Assume that Arnold brings a claim of false imprisonment against Timmy. What is the likely result?

A. Timmy will prevail, if Arnold never woke up when the chain was locked around his feet.
B. Arnold will prevail, because he was confined to a bounded space.
C. Arnold will prevail, because Timmy intentionally confined Arnold.
D. Timmy will prevail, because he was only playing a practical joke.

58. CORRECT ANSWER: A.

False imprisonment occurs where a defendant intends, or takes action with knowledge to a substantial certainty, to confine plaintiff to a bounded area with physical means or threats, for any length of time, and in which plaintiff has no reasonable means of escape. Additionally, a plaintiff must show that they were aware of their confinement to a bounded space, in order to prevail in a false imprisonment claim. In this situation, all of the elements of false imprisonment are met, except for the fact that if Arnold did not wake up during his confinement, he would not have been aware that he had been confined. Therefore, Timmy will prevail if Arnold never woke up when the chain was locked around his feet.

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59. Pietra yelled at Jose because she was angry at Jose for breaking up with her. Jose laughed in response. Pietra then threw a shoe at Jose, in anger. The shoe missed Jose, and hit Octavio, who was standing nearby.

If Octavio sues Pietra for battery, is Octavio likely to prevail?

A. No, because Pietra did not intend to hit Octavio with the shoe.
B. Yes, because Pietra hit Octavio with the shoe.
C. No, because the argument was between Pietra and her ex-boyfriend, Jose.
D. Yes, because Pietra evinced the requisite anger necessary for a battery claim.

59. CORRECT ANSWER: B.

A battery occurs where the defendant intends, or takes action with an intent to a substantial certainty, to cause a harmful or offensive touching to another, or something connected with that person. An offensive touching is present when the dignity of a reasonable person would be hurt. Transferred intent occurs where the defendant has an intent to cause an intentional tort to occur to one person, but instead causes the intentional tort to occur to another person. Transferred intent may occur through a transfer of intent from person to person, or from tort to tort. Transferred intent is applicable to assault, battery, trespass to land, trespass to chattels and false imprisonment, but transferred intent is not applicable to intentional infliction of emotional distress or to conversion. Transferred intent applies in this situation, and Pietra will be held liable for the harmful or offensive touching to Octavio, because she caused him to suffer a harmful touching, with the intent to cause such a touching transferred from Jose to Octavio.

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60. Sue was in the hospital, and wanted Doctor to take a look at her hand, and make a diagnosis. Instead, Doctor began operating on Sue's hand, before Doctor realized that Sue was only present for a diagnosis.

If Sue brings a claim against Doctor for battery, will she prevail?

A. No, because Doctor did not intend to cause Sue a harmful or offensive touching.
B. Yes, because "the thing speaks for itself."
C. No, because Sue consented to whatever work the Doctor was to do.
D. Yes, because Sue suffered a harmful or offensive touching.

60. <u>CORRECT ANSWER:</u> D.

A battery occurs where the defendant intends, or takes action with an intent to a substantial certainty, to cause a harmful or offensive touching to another, or something connected with that person. An offensive touching is present when the dignity of a reasonable person would be hurt. A doctor must secure specific and informed consent, before operating on a patient, in order to avoid a battery claim. Doctor had not secured informed consent from Sue in this situation, and therefore the touching that he did in beginning an operation, would be considered a harmful or offensive touching and Sue would prevail in a battery claim.

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