

**Torts MBE Questions
June 2022 E-Classroom**

1. After Robert began to act strangely, his parents took him to Southwood Psychiatric Center (Southwood), where they met with Sara, a psychiatrist. During the interview, Robert expressed suicidal thoughts and also threatened to kill both his parents. Sara concluded that Robert was intoxicated, out of control, very depressed, suicidal, angry, hostile, and agitated. She also concluded that Robert posed a danger to himself and others, and that he should be detained for 72 hours pursuant to a state statute. When she informed Robert of this, Robert said these conclusions were not accurate, and he tried to leave. His parents pulled him away from the door to stop him and yelled, "close the door." Reuben, a nurse who did not yet know about Robert, closed the door, leaving Robert inside. Robert then walked to the lobby elevator. An alert was called, and several employees, including Reuben, responded. Sara notified the employees that Robert was dangerous and that they should escort him upstairs. When the employees saw Robert, Robert moved toward them, stating, "Come on, I'll take you all on," and began to remove his jacket. He swore at his parents, yelled, "I'm going to kill them," and said he wanted to die. The employees believed Robert was dangerous and physically restrained him. The staff then completed the necessary forms, and Robert was admitted. At this point, the formal 72-hour hold began. Robert claims that, although the 72-hour hold might have been legal, he was falsely imprisoned prior to the time the statutory hold officially began. Of the following, which argument provides the strongest defense to Robert's false imprisonment claim?

(A) Assuming Southwood personnel were following statutory procedures in assessing Robert's condition, his detention prior to the initiation of the 72-hour hold was not unlawful.

(B) Because Southwood personnel did not intend to detain Robert until the initiation of the 72-hour hold, they did not possess the necessary intent for false imprisonment.

(C) Because Robert was not physically restrained prior to the initiation of the 72-hour hold, he was not falsely imprisoned.

(D) Because Robert was allowed to move freely within the building prior to the initiation of the 72-hour hold, he was not falsely imprisoned.

2. Island's, a small, rustic bit of land connected to a mainland town only by a rickety bridge, attracts occasional explorers. Hurley was fond of driving her fifteen-year-old automobile over the bridge and strolling around the island. Her enemy, Hommyside, decided to kill her by connecting a bomb to her automobile ignition while Hurley was away exploring the island. Hommyside's plan was that, on her return, Hurley would turn the ignition key and the bomb would go off, killing her. The plan didn't work. Between the time that Hommyside wired the explosive and Hurley's return to her car, a severe storm pounded Island's. Because of the age of the car, the hood was not watertight. Rainwater got under the hood, ruining Hommyside's rewiring.

When Hurley attempted to start her car, the wet, exposed ignition wires would not send current to the engine and the car simply failed to start, trapping Hurley on Marylebone Island for several hours. Has Hommside's conduct fulfilled a prima facie case for false imprisonment?

- (A) Yes, because Hommside's rewiring created a physical barrier that confined Hurley to Marylebone Island.
- (B) Yes, under transferred intent. Hommside intended to commit a battery and the consequences of false imprisonment resulted.
- (C) No, because Hommside intended harmful bodily contact, not unlawful confinement.
- (D) No, because Hurley voluntarily entered the island and assumed the risk of automobile failure.

3. Peter built a small pond in front of his house for his prize koi fish. The pond was visible from the sidewalk. To keep people and animals away, Peter constructed an eight-foot high chain link fence between the sidewalk and the pond. One day, Stewie, a six-year-old who lived next door, struggled over the fence to get a closer look at the koi. When Stewie bent down to "pet" a fish, he fell into the water, hit his head on the bottom of the pond, and was rendered unconscious. Three minutes later, Lois, a passerby, saw Stewie floating in the pond, and climbed over the fence to rescue him. Stewie suffered permanent brain damage in the accident, and sues Peter for negligence. Which of the following statements is most likely correct?

- (A) Because Stewie was a trespasser to whom Peter did not owe a duty of reasonable care with respect to the koi pond, Peter will prevail.
- (B) Even though Peter owed Stewie a duty of reasonable care with respect to the koi pond, Peter's construction of the fence probably satisfied that duty.
- (C) Because the koi pond was visible from the sidewalk, Stewie will prevail.
- (D) Because Stewie did not appreciate the danger posed by the koi pond, Stewie will prevail.

4. A car driven by Dave negligently struck Adam as Adam crossed the street. A few minutes later, a bystander took Adam to the hospital. The emergency room doctor who treated Adam negligently failed to notice Adam's serious head injury. A reasonable physician would have taken x-rays of Adam's head, and these x-rays would have revealed a serious concussion that required hospitalization. Instead, the doctor just cleaned and bandaged a less serious cut on Adam's leg, then released him from the

hospital. Because of the doctor's failure to treat Adam properly, he suffered more harm from the concussion than he would have suffered if treated properly.

If Adam sues Dave for negligence, and Dave claims he should only be responsible for the amount of harm Adam would have suffered if properly treated in the hospital, which of the following statements is most likely correct?

(A) In a jurisdiction adhering to a "directness" or "intervening cause" approach to proximate cause, the doctor's conduct will likely be deemed to have broken the chain of causation, absolving Dave of responsibility.

(B) In a jurisdiction adhering to a "directness" or "intervening cause" approach to proximate cause, the doctor's conduct will likely not be deemed to have broken the chain of causation. Thus, Dave will probably be responsible for the additional injury Adam suffered.

(C) In a jurisdiction adhering to a "scope of risk" or "scope of duty" approach to proximate cause, Adam's additional harm will likely be deemed outside the scope of risk created by Dave's negligence, absolving Dave of responsibility.

(D) Because Dave had no control over the doctor's conduct, Dave cannot be responsible for any harm caused by the doctor's negligent treatment.

5. Hannah suffered a heart attack. Her husband Hardy dialed 911, but was unable to get through because the phone lines were jammed with callers trying to obtain tickets for an upcoming concert by a very popular group, which had just become available. Unfortunately, Hannah died. Hardy has sued Phone Co. for negligence. If Phone Co. claims that there was no cause in fact relationship between its conduct and Hannah's death, which of the following statements is most likely correct?

(A) Unless Hardy can prove that had the phone lines been open, Hannah would not have died, or that her life would have been extended in some meaningful way, Hardy will not prevail.

(B) Unless Phone Co. can prove that had the phone lines been open, Hannah would have died anyway, or that her life would not have been extended in some meaningful way, Hardy will prevail.

(C) If it was not foreseeable that the phone lines would be jammed and that a person would die because the 911 service would be unreachable, there was no cause in fact relationship between Phone Co.'s conduct and Hannah's death, and Hardy will not prevail.

(D) Because Phone Co. did not act, there is no cause in fact relationship, and Hardy will not prevail.

6. Fran was on an early morning bicycle ride along Flower Street, a tree-lined road that ran slightly uphill. Fran often rode this stretch. When riding that way, she would keep her head down much of the time, only looking up every so often to check ahead of her for other cyclists, joggers, and parked cars. This is a common way for cyclists to ride. At one point, she looked up, and seeing no parked cars, bicycles, or joggers, lowered her head again. Less than 10 seconds later, Earl, a jogger, emerged from a side street and turned onto Flower Street about a hundred feet in front of Fran. Earl began running along the side of the street, a couple of feet from the curb. Fran was traveling much faster than Earl, and caught up to him in about 15 seconds. Fran never saw Earl, however, and Earl did not know Fran was coming from behind. Fran's bike struck Earl, causing him injury when he fell, and further injury when he was struck almost immediately by a car. Earl sues Fran for negligence. In response, Fran has asserted the doctrine of assumption of risk. Which of the following statements is most likely correct?

(A) Because being struck by a cyclist is an inherent risk of jogging, Fran owed no duty of reasonable care toward Earl to take precautions to avoid that risk. Earl will therefore recover nothing.

(B) Because being struck by a cyclist is an inherent risk of jogging, Fran owed no duty of reasonable care toward Earl to take precautions to avoid that risk. However, Fran has violated her duty not to act willfully or recklessly. Therefore, Fran will be fully liable for the harm she caused.

(C) Even if Fran negligently struck Earl, Earl assumed the risk because being struck by a cyclist is an inherent risk of jogging. Earl's recovery will therefore be reduced by the degree to which Earl's assumption of risk overcomes Fran's negligence.

(D) Earl did not assume the risk.

7. Owner was developing a piece of land, a task that required a significant amount of earth and rock removal. For that purpose, Owner engaged BlastCo, a company that specialized in construction-related blasting. One blast sent debris flying through the air. Some of it struck a nearby house owned by Peter, shaking the house sufficiently to knock some valuable pottery off shelves, breaking it.

Peter was aware of the blasting operations but took no steps to protect his pottery. Peter sues Owner. Assume BlastCo is an independent contractor. Which of the following statements is correct?

(A) Owner is not liable.

(B) Owner will be liable only if BlastCo acted recklessly.

(C) Owner will be liable as long as BlastCo's conduct was negligent (or worse).

(D) Owner is liable.

8. As Pecan City grew, farmland on the eastern edge of the city was converted to other uses. Clavin Enterprises (CE) purchased a parcel of east side land and built a complex to serve as its headquarters and main plant. CE manufactured computer chips, and its plant employed several hundred workers. Like most chipmakers, CE used toxic chemicals in its manufacturing process. CE workers were carefully trained in the proper use and storage of the chemicals, and CE followed and often exceeded all of the industry's customary safety guidelines for the use of toxics. One day, a CE worker was using a forklift to move a drum of toxic chemicals. The worker's route took him close to the edge of CE's property. Due to factors of which CE had no reason to be aware, one of the hydraulic lifts holding up the drum snapped, and the drum rolled off the forklift, and crashed through the fence separating CE's property from that of Diane, a soybean farmer. The drum split open, and the chemicals spilled out. Diane was not present at the time. CE immediately sent a crew to Diane's land to clean up the toxic liquid but much of the liquid had already seeped into the soil, contaminating Diane's ground water and killing many of the crops. In addition, the heavy equipment CE used in the clean-up destroyed some of Diane's crops, some of which would not have been harmed by the chemicals. Diane sues CE for negligence, claiming its worker negligently handled the drum of chemicals. Which of the following statements is most accurate?

(A) CE had a duty to handle the drum with reasonable care, and because harm occurred when it was handling the drum, CE will be liable.

(B) Because CE was experienced in handling chemicals, it had a higher duty than a less experienced company, and its failure to handle the drum in a manner that would prevent an accidental spill will make it liable.

(C) CE had a duty to handle the chemicals with reasonable care, but because its procedures met or exceeded the industry's standards, CE will not be liable.

(D) Because CE had no reason to anticipate the breakdown of the hydraulic lift, it will not be liable even though its conduct led to significant harm.

9. Al owns a home next to the multi-story parking garage of Springfield Mall, owned and operated by the Peg Co. The parking structure is open at the sides, and it backs up to a narrow alley. Al's home is just across the alley. On days when Al works the late shift in the mall, he likes to sleep until noon. A recent rash of auto thefts has led the Peg Co. to install alarms on all twenty vehicles it uses for security at Springfield Mall. Almost every morning, one or more of the alarms activate when the vehicles are touched by mall patrons or when heavy delivery trucks lumber by. The alarms make extremely loud siren-like sounds until mall employees turn them off, which sometimes takes thirty minutes. This has caused Al to lose a great deal of sleep, and the Peg Co. has refused his

requests to remove the alarm systems from the vehicles. If Al sues the Peg Co. for nuisance, which of the following statements is most likely correct?

- (A) Because the noise from the car alarms harms the general public, the appropriate redress is through an action for public nuisance. Therefore, Al's action will fail.
- (B) Because the Peg Co. does not intentionally set off the alarms. Al's action will fail.
- (C) Because the sound from the alarms poses an abnormally high danger to Al and others in the community, Al's action will succeed.
- (D) If the jury finds that the noise substantially interferes with Al's sleep and that a reasonable person could prevent the alarms from going off so easily or could arrange to have the alarms shut off more quickly, Al's action will succeed.

10. Guests of innkeeper Stewart Marther would be surprised to learn that inside the headboards of their antique king-sized beds are embedded recording devices. Marther, who has owned the inn for ten years, enjoys sitting at a console in the front office, tuning in to the private conversations of guests in the rooms. Once his devices picked up the words of a married man named Jeff. Marther heard Jeff confess to his wife, in response to her questioning, that he, Jeff, had had homosexual experiences before their marriage. Marther repeated this gossip to mutual acquaintances, causing injury to Jeff. Can Marther be liable to Jeff?

- (A) No, because the information that Marther repeated was truthful.
- (B) No, because the inn belongs to Marther and Marther has a privilege to enter the rooms of his property.
- (C) Yes, because a reasonable person would find the disclosure of homosexual conduct repugnant.
- (D) Yes, because Jeff had a reasonable expectation of privacy in his room in the inn.

11. Ronald was eating lunch with Paddy in the company cafeteria when Diego, another employee, solemnly approached him and said: "We just got a call from County General. Your wife has been admitted with severe injuries from a car accident. They don't think she's going to make it." Ronald ran from the room and headed for County General. On the way, his wife called to ask him to pick up some milk on the way home. She was fine; there had been no accident. Diego had played a prank on Ronald. Meanwhile, Paddy, who, unknown to Diego was a close friend of Ronald and his wife, suffered severe emotional distress. Though he learned later in the day that the whole thing was a prank, his anxiety was severe, and he required psychiatric care. If Paddy sues Diego for intentional infliction of emotional distress, which of the following statements is correct?

- (A) Paddy has a strong claim.
- (B) Paddy will lose because Diego's conduct was not "extreme and outrageous."
- (C) Paddy will lose because he did not suffer bodily harm.
- (D) Paddy will lose because it was not reasonably foreseeable to one in Diego's position that Paddy would suffer severe emotional distress.

12. Peter, his wife Pauline, and their son Padua drove together to the Sparkle Car, a car wash. Sparkle Car was a drive-through place, and customers were permitted to remain in the car while it rolled through the washing and drying areas. Peter and Padua remained in the car, while Pauline got out, intending to watch the car through thick windows along the way. When the car was part way through, one of Sparkle Car's employees negligently handled a piece of equipment, causing it to crash through the passenger-side window and impale Padua. Peter was looking the other way when this happened, but Pauline saw the whole thing and immediately fainted from emotional distress. Peter also became extremely upset when he noticed what had happened a few moments later. If Pauline sues Sparkle Car for negligent infliction of emotional distress, which of the following statements is correct?

- (A) If the court applies the most common test, Pauline's case will fail.
- (B) If the court applies the "impact" rule, Pauline will prevail.
- (C) Regardless of the test used, Pauline's case will fail because Pauline was not in the zone of danger caused by the employee's negligence.
- (D) Regardless of the test used, Pauline will prevail.

13. Thousands of residents of Wilkaukee became severely ill with diarrhea and other intestinal problems over a period of several days. A city investigation revealed that the drinking water had become contaminated with a bacterium. Almost everyone who became ill recovered fully within a few days, but for people with weak immune systems, the problem was much more serious. One such person was Arni, an AIDS patient whose immune system was extremely weak. Arni died from the bacterial infection brought on by the drinking water. Arni's estate has sued the city of Wilkaukee for negligence. Assume Wilkaukee is not immune. Based only on the facts given, which of the following arguments could the city use?

- (A) Because Arni was extra sensitive, the action should fail.
- (B) The water contamination was not the cause in fact of Arni's death.

(C) Because AIDS almost certainly would have shortened Arni's life, he suffered no damage.

(D) Because AIDS almost certainly would have shortened Arni's life, his damages should be reduced.

14. A car driven negligently by Doe repeatedly collided with Preston's car. Preston sues for negligence. Which of the following statements is accurate?

(A) If Preston proves physical injury as a result of the collisions, he may recover emotional distress damages regardless of the rule followed in the jurisdiction concerning the tort of negligent infliction of emotional distress.

(B) If emotional distress was not a reasonably foreseeable consequence of causing these collisions, Preston cannot recover for the emotional distress.

(C) Because Preston's injuries did not result from observation of Doe's negligent injury of another person, Preston cannot recover for the emotional distress.

(D) If Preston had a preexisting condition that made him particularly susceptible to suffering emotional distress in an auto accident, Preston cannot recover for the emotional distress.