

Torts Answers

1. **B is correct.** If the risk of injury to Jonathan was not foreseeable, then Delta could not be said to have acted unreasonably in the face of a foreseeable risk. Since negligence is usually defined as failure to act reasonably in the face of a foreseeable risk, this would mean that Delta was not negligent.
2. **C is correct.** Strict liability in tort is imposed, regardless of fault, on a professional supplier who sells a product while it is in a defective condition. Courts usually define a product as defective if its condition would defeat the reasonable expectation of the reasonable consumer or of the reasonable manufacturer. If the reasonable person would not have expected the product to irritate the scalp of a person with Jonathan's allergy, then the product's condition would defeat the reasonable expectation of the reasonable consumer and was defective.
3. **B is correct.** A seller of a product which is defective at the time it was sold is held strictly liable for damages which result. Thus, if the product was defective when Watsons sold it, Watsons would be strictly liable to Jonathan. A product is "defective as labeled" if its condition would defeat the expectations which the reasonable person would form upon reading its label. While it is not certain that a court would come to this conclusion about Delta's
4. **A is correct.** Negligence is unreasonable conduct in the face of a foreseeable risk. Eddie's awareness of the high incidence of crime in the neighborhood would make the risk foreseeable, and might result in a finding that it was unreasonable for her to open the door under the circumstances. While it is not certain that a court would come to this conclusion, the fact in **A** is the only one listed which would help support Susan's case.
5. **D is correct.** A misrepresentation is a statement of a false material fact made with the intent to induce one to rely to their detriment. If defendant knew the statement was false and if the plaintiff justifiably relied upon it, the defendant is liable for damage, which results. If a party to a transaction is under a legal obligation to disclose a fact, non-disclosure may be an assertion that the fact does not exist. Thus, although Courtney said nothing about the coming of the highway, if she had an obligation to disclose her silence was an assertion that there was no highway coming.
6. **D is correct.** Negligence is the failure to act reasonably in the face of a foreseeable risk. If selling a pistol for less than \$50 created a foreseeable risk to Barbie, it might be found Gunz Inc's conduct was unreasonable and that Gunz Inc is liable to Barbie for negligence. While it is not certain that a court would come to this conclusion, the argument is **D** is the only one listed which could possibly support Barbie's claim.
7. **C is correct.** One whose conduct creates a foreseeable risk to any person owes that person a duty of reasonable care. One who helps an intoxicated person get his car started is creating a foreseeable risk to all who are likely to be endangered by that person's driving. If the injury to Walker occurred two hundred miles away from the place where Helen assisted Skippy, it may successfully be argued that the reasonable person in

Skippy's situation would not have anticipated harm to him, because Skippy could be expected to sober up in the time it took to drive that distance.

8. **C is correct.** Negligence is a breach of the duty of reasonable care. Ordinarily, a defendant owes a plaintiff a duty of reasonable care only if the defendant's conduct creates a foreseeable risk to the plaintiff. A risk is foreseeable if it is one, which the reasonable person would anticipate or expect. Thus, if the reasonable person would not have expected Skippy to drive upon leaving the bar, the risk, which led to Walker's injury, was not a foreseeable breaking the chain of causation.

9. **C is correct.** Negligence liability requires a breach of the duty of reasonable care, which is a proximate cause of the plaintiff's damage. The plaintiff's injury was not foreseeable. This argument would help support Dawson's defense in two ways. First, he owed him no duty of care. Under Cardozo view a duty is owed to those within the foreseeable zone of danger. Brown was not within the foreseeable zone of danger. Thus, Dawson did not owe him a duty of reasonable care. Next, unless some injury to Brown was a foreseeable result of Dawson's conduct, that conduct was not a proximate cause of his injury.

10. **A is correct.** All persons are liable for the harm, which proximately results from their negligence. Thus, if Brenda's injury was proximately caused by Aces' negligence, Aces is liable to her.

11. **C is correct.** False imprisonment occurs when the defendant intentionally confines the plaintiff. The plaintiff is confined when his will to leave a place with fixed boundaries is overcome in a way which would similarly overcome the will of the reasonable person in the plaintiff's situation. Since Reginald was not prevented from leaving, he was not confined.

12. **C is correct.** For defamation liability results from a publication of a false defamatory statements about the plaintiff which was publication must be either intentional or negligently. Douglas's statement to Perry was not a publication, since Perry is the plaintiff. The fact that it was overheard by Aaron does not satisfy the requirement of publication to a third party unless either Douglas intended Aaron to hear it or Aaron heard it as a result of Douglas's unreasonable conduct in the face of the foreseeable risk that Aaron would hear it. If Douglas knew that Aaron would hear it, he intended the publication. If he should have known that Aaron would hear it, he acted unreasonably in saying it.

13. **C is correct.** This question is testing products liability. Strict liability is imposed on the seller of a product which is in a defective condition when sold and which reaches the consumer in a condition which is substantially unchanged. If the wheat was substantially changed before reaching Peter, Fanny could not be held strictly liable for damages, which resulted from a defect.

14. **A is correct.** *Res ipsa loquitur* permits an inference of unreasonable conduct to be drawn where the accident is one, which would not ordinarily have occurred without negligence, and the defendant was in exclusive control of the circumstances, which produced the harm. Since PanCo was in exclusive control of the baking process, *res ipsa loquitur* would apply if reasonable care in baking would ordinarily have eliminated the slivers (i.e., if the accident would not ordinarily have occurred without negligence).

15. **C is correct.** Assault exists when the defendant acts with the intent to cause either an offensive contact or apprehension and induces apprehension in the plaintiff. Battery results when the defendant acts with the intention of causing either a harmful or offensive touching of another. Gerry, intending to cause apprehension of offensive contact, induced apprehension, making him liable for assault. With intent to induce apprehension, he also caused offensive contact, when David hit the fire hydrant, making him liable for battery.

16. **D is correct.** A negligent misrepresentation is a false assertion of fact which is made without knowledge of its falsity but under circumstances such that a reasonable person in the defendant's situation would have had such knowledge. Thus, if Samuel's belief that there were no termites in the house was reasonable, his misrepresentation was not negligent.

17. **D is correct.** Strict liability is imposed on the seller of a product, which is in a defective condition when sold. Thus, if Saver sold the product while it was defective, Saver would be held strictly liable no matter who manufactured it.

18. **D is correct.** Assault occurs when, one intends to induce apprehension, and the defendant induces in the plaintiff a reasonable apprehension that a harmful or offensive contact will occur. Since Janice did not fear contact no assault.

19. **C is correct.** A defendant is liable for intentional infliction of mental distress if, with the intent to cause mental distress, he engages in outrageous conduct which causes serious mental suffering. The defendant intends the plaintiff's mental distress if he desires or knows that it will result from his conduct. Because of the affection normally associated with the mother-daughter relationship, Mike probably knew (i.e., intended) that his threats to injure or kill Ally would cause her mother to experience mental distress. If his conduct was outrageous and caused her to experience mental distress, Mike is liable to her for the mental distress and any physical manifestations of it.

20. **A is correct.** Strict liability is imposed on the keeper of a wild animal, but only for harm which proximately results from an aspect of the animal's propensity. Leopards are dangerous because they bite or attack. The risk that they may clumsily knock someone over is not one, which makes them dangerous.

21. **B is correct.** A claim for damages resulting from contact with a product manufactured or sold by the defendant may be based on several theories, including negligence, misrepresentation, breach of warranty, and strict liability in tort. In most

jurisdictions, however, mental suffering is not a recoverable item of damage in a claim based on any of these theories unless the mental suffering is the result of a physical injury or has a physical manifestation. Pauline has no damages from her embarrassment.

22. **C is correct.** Assumption of the risk is a defense in all approaches to product liability (although some jurisdictions have merged it with the concept of comparative fault), and occurs when the plaintiff voluntarily encounters a known risk. If Pauline knew that the paper suit was likely to dissolve when wet and wore it anyway, she voluntarily encountered (and therefore assumed) a known risk.

23. **A is correct.** Under the all-or-nothing rule of contributory negligence, unreasonable conduct by the plaintiff, which contributes to the happening of an accident, is a complete bar to recovery by the plaintiff. Thus, if Victor's conduct was unreasonable, Danzig's defense of contributory negligence will succeed.

24. **C is correct.** Strict liability is imposed on the seller of a product, which is in a defective condition when sold. A product is defective if its condition would defeat the reasonable expectations of the reasonable consumer. Since the reasonable consumer probably would not expect a brand new training leash to break when used on a dog of average size and strength, one, which did, was probably defective.

Strict liability may be applied to benefit any person whose contact with the defective product was foreseeable.

25. **B is correct.** Negligence is a failure to act reasonably. Thus, if it was unreasonable for Shannon to work the dog in her front yard, her conduct was negligent and could result in liability.

26. **A is correct.** A person is liable for all harm which proximately results from her negligence. Thus, if Betsy was negligent in giving the doll to Shawn, she may be held liable for the injury, which resulted.

27. **C is correct.** Since negligence is a breach of the duty to act reasonably, Johnson's could only be held liable under that theory if it acted unreasonably. Since the tablets were delivered in a sealed bottle and since the reasonable merchant does not ordinarily open sealed products before selling them, Johnson's probably did not breach the duty, which it owed to Steve.

28. **D is correct.** Strict liability is imposed on the seller of a product which is in a defective condition when sold. A product is defective if its condition would defeat the reasonable expectations of the reasonable consumer. Thus, if the reasonable consumer would not have expected the tablets to contain a toxic ingredient, the presence of one makes them defective.

29. **C is correct.** A defendant owes a plaintiff a duty of reasonable care if the defendant's conduct creates a foreseeable risk to the plaintiff. Thus, if it was foreseeable that a person would be in the roadway, Rerun owed that person a duty to drive as the reasonable person. Once it is established that such a duty existed, its breach by driving while intoxicated is obvious.

30. **A is correct.** A person whose conduct is negligent is liable for damage which is proximately caused by that negligence. Conduct is a proximate cause of harm if it is a factual and legal cause of that harm. Thus, if Will's negligence was a factual and legal cause of Paris's broken leg, Will is liable for it.

31. **B is correct.** Strict liability is often imposed on one who uses his land in a non-natural manner for the storage of a substance, which is likely to do harm upon its escape from storage. The storage of water frequently leads to the application of this principle.

32. **D is correct.** Strict liability may be imposed for damage resulting from participation in abnormally dangerous activities such as the manufacture and storage of explosives. Even under a theory of strict liability, however, a defendant is not liable for harm unless it was proximately caused by the defendant's activity. Thus, if the intervening conduct of the terrorists was not foreseeable, the harm sustained by Matt was not proximately caused by the conduct of Bangco.

33. **C is correct.** Non-disclosure of a fact is not an assertion (i.e., representation) unless the fact is one, which is essential to the transaction, and the circumstances are such that the other party is reasonably entitled to expect disclosure of it. Since Brian had no special expertise, his reason for purchasing the hay wagon was not a fact essential to the transaction, and there were no circumstances, which entitled Denise to expect disclosure of his hope of making a profit.