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

TORTS QUESTIONS, 1-10

TORT LAW MCQ's, 1-10

1. Mary went to a party held by her friend Samantha. Samantha lived in an apartment complex, and held her party in the common area of the apartment complex. Many people who lived in the apartment complex came to the party, including Barry who brought along his cat, Mayville. Mayville was a mean cat, and Barry was aware that Mayville was mean and often scratched people without provocation. When Mary walked near Mayville, Mayville scratched Mary so bad, that Mary needed to get medical treatment. The Landlord of the apartment complex was not aware that Mayville was a mean cat. If Mary brings an action against the Landlord, will she prevail?

A. No, because the Landlord was not himself aware that Mayville was dangerous.
B. No, because a cat scratch is not a suitable harm.
C. Yes, because the Landlord had a duty to protect guests from dangerous situations.
D. Yes, because the fact that the dangerous propensity of the cat was known by Barry will indicate that the Landlord will be held strictly liable, without the necessity that duty and its breach be shown.

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

The Landlord owed a duty to those that were foreseeably on the premises, including the guests, to act reasonably. The Landlord did not know of the dangerous propensities of Mayville. Further, there are no facts indicating that the Landlord breached any other duty of care to the tenants or to the guests. Therefore, Mary will not prevail in a claim against the Landlord.

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2. Eighteen-year old Clyde was an ecologist. He walked into the state park for the first time to conduct an experiment, for which he had secured prior permission to conduct from the state park officials. As he was walking along, he was bit by a wild snake, and needed medical treatment.

If it turns out that Clyde was walking on land owned by Henry when he was bit by the snake, will Clyde recover from Henry in negligence?

A. No, because Clyde was trespassing at the time that he was bit.
B. Yes, because Henry had a duty to prevent conditions on his property from becoming dangerous.
C. No, because Henry could not foresee that a wild snake might bite someone on his property.
D. No, because Henry owed no duty of care to Clyde.

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

Wild snakes may be on real property even if the owner of the property exercises reasonable care. Henry, as a land-owner, is not liable for natural hazards on his property, unless he could easily avoid injury to others through basic precautions. For adult trespassers that are unknown and uninvited, an owner has no duty to make safe or to warn. However, an owner does have a duty against willful negligence or excessive force. Clyde is an unknown trespasser, and Henry would have had no reason to be aware of Clyde's potential presence. Clyde, as an unknown trespasser, was not owed a duty of care by Henry to make the premises safe.

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3. Barry went to a late summer party held by his friend Bo. Bo rented a house in Alameda, CA, and had fireworks that were left over from a Fourth of July celebration. Bo ignited the fireworks during the party, and Barry was physically injured. Bo's landlord was not aware that the late summer party would be held.

If Barry sues Bo's landlord for negligence, what is the likely result?

A. Barry will not prevail, because the Landlord was not aware that Bo was going to ignite fireworks at a party.
B. Barry will prevail, because he will hold the Landlord strictly liable for an ultra-hazardous activity, without the necessity that duty and its breach be shown.
C. Barry will prevail, because the Landlord had a duty to protect guests from dangerous situations.
D. Barry will not prevail, because Bo's actions were a superseding intervening event that broke Landlord's causal chain.

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

The Landlord owed a duty to those that were foreseeably on the premises, including a duty to guests, to act reasonably. In this situation, the Landlord was not aware that Bo was having a late summer party where Bo might ignite fireworks. Therefore, if Barry sued Landlord in negligence, there are no facts indicating that Landlord breached a duty of care to Barry. Therefore, Barry will not succeed in a negligence claim against Landlord.

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4. Twenty-one year old Nancy was collecting rare botanical samples for a college biology class assignment. She walked for miles in the woods, in an attempt to find sufficient samples. This was her first foray into the woods, and she wanted to make sure that she completed her class assignment. Then, it started raining, and she slipped a couple of times as she walked, because the rain made walking slippery. She stopped to rest under the canopy of a large tree, in order to seek refuge from the rain. As she walked to the base of the tree, she was stung by a wasp. A ground wasp nest had just formed earlier that year, in that spot. Her face swelled up like a balloon, but she was able to get to a hospital, and her injury was effectively treated. When she was stung by the wasp, she was walking on land owned by Horace. In an action by Nancy against Horace to recover medical costs related to the wasp sting, will Nancy prevail?

A. Yes, because Horace had a duty to prevent conditions on his property from becoming dangerous.
B. Yes, because Horace is liable for the hidden dangers on his property.
C. No, because Horace could not foresee that a wasp-nest might develop on his property.
D. No, because Horace had no duty of care to Nancy.

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

In this situation, a wasp-nest could have developed at many different times during the year, and such wasp-nests are difficult to discover, even with the exercise of reasonable care. Horace, as a land owner, is not liable for natural hazards on his property, unless he could easily avoid injury to others through basic precautions. Nancy was an unknown trespasser, and Horace would have had no reason to be aware of her classroom assignment, and therefore, he had no reason to know of her potential presence on his land.

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5. Bud worked as a mechanic in a motorcycle shop. He had recently taken training and become certified as a mechanic on "Renegade Motorcycles." "Renegade Motorcycles" are a rare type of motorcycle that are put together in an unusual manner. Bud worked in his normal careful manner, to repair a "Renegade Motorcycle," but forgot that he was working on a "Renegade Motorcycle" when he repaired the motorcycle, and he assembled a couple of parts incorrectly.

If the owner of the motorcycle is injured as a direct causative agent of Bud's work on the "Renegade Motorcycle," which statement below is the most correct?

A. Bud is not liable in negligence, because he used his normal reasonable care.
B. Bud is liable in negligence, because he was certified to work on "Renegade Motorcycles."
C. Bud is not liable in negligence, because he thought he was doing a good job.
D. Bud is liable in negligence, because he will be held to the highest standard of care as that of a common carrier.

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

Bud was not just a motorcycle mechanic, he was a motorcycle mechanic that had advanced training and certification in repairing "Renegade" Motorcycles." Therefore, he had a heightened duty to use the type of care that a person certified in repairing "Renegade Motorcycles" would use. Inasmuch as Bud did not use the heightened level of reasonable care, he will be held liable in negligence.

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6. Evan was walking by Farmer's farm, when he saw Farmer trip and fall into a well. Evan, weighing 120 pounds, did not want to help, but he felt that it was his duty as a good neighbor to try and help Farmer, who Evan had known for two months. Therefore, Evan tried to grab Farmer by the wrists and pull Farmer out of the well. Farmer was forced to let go of the side of the well, after Evan grabbed Farmer's wrists. Farmer weighed 450 pounds, and Evan could not hold on to Farmer's wrists for more than a couple of seconds, at which point Farmer fell ten feet, encountering several injuries.

If Farmer sues Evan for negligence, what is the likely result?

A. Farmer will prevail, because Evan dropped Farmer.
B. Farmer will prevail, because Evan should not have tried to rescue Farmer.
C. Evan will prevail, because he was merely a good Samaritan.
D. Evan will prevail, because Evan had no duty to aid or rescue Farmer.

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

Once Evan took action to aid or rescue Farmer, Evan had a duty to exercise reasonable care when enacting the rescue. Here, Farmer weighed 330 more pounds than Evan, and it was probably impossible that Evan would have been able to pull Farmer out of the well. Evan should have taken other reasonable action, such as to place a log across the well opening, that Farmer could have grabbed onto, and then placed a rope around Farmer, while calling a rescue team. However, Evan did not use reasonable care in trying to rescue Farmer, and therefore Farmer will prevail in a negligence claim against Evan.

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7. Betty was in a hurry, so she let her son Henry use her car to pick her up at the beauty parlor. Betty knew that Henry was not a safe driver, but she trusted him to do this simple chore.

If Henry accidentally hits Oscar's car causing injury to the car, what is the likely result if Oscar sues Betty in negligence?

A. Oscar will prevail, because Henry was driving the car that hit Oscar's car
B. Betty will prevail, because the injury to Oscar's car was accidental.
C. Betty will prevail, because she was not driving the car that hit Oscar's car.
D. Oscar will prevail, because Oscar did nothing to contribute to his injured car.

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

Betty was aware that her son Henry was not a safe driver, and yet she entrusted Henry in the sole and unsupervised use of her car. A person may be liable for negligent entrustment, if they entrust a potentially dangerous instrument, such as a car, to another, that they should reasonably know presents an unreasonable risk of harm to others. Therefore, even though Oscar directly sued Betty, she will be liable for the damages to Oscar's car under the doctrine of negligent entrustment.

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8. At trial, Penny sued Dan for injuries suffered in a car crash. Penny suffered a broken leg, and during the trial Penny showed that Dan had driven onto a sidewalk, and struck her with his car. Dan did not dispute that evidence. In this jurisdiction, there is a statute that forbids driving cars on the sidewalk. Dan had suffered an epileptic seizure immediately prior to driving onto the sidewalk, but he had no history of epileptic seizures, and in other respects he was driving carefully and under the speed limit at the time of the accident. Penny did not dispute that evidence.

Will Penny prevail in a negligence claim?

A.Yes, because she suffered physical damage through a broken leg, indicating that she had sufficient damage to survive a negligence claim.
B.No, because Penny did not contest the evidence by Dan that he had an epileptic seizure.
C. No, because Penny did not establish a prima *facie case* of negligence.
D. Yes, because Dan violated a safety statute.

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

Inasmuch as the claim has proceeded to trial, plaintiff will have already shown a *prima facie* case of negligence. In proving a *prima facie* case of negligence, plaintiff will have already shown that she suffered damages. Dan, apparently, did violate a safety statute, by driving onto the sidewalk, and Penny would be within the class of persons meant to be protected by the statute, as a pedestrian. Additionally, her broken leg would be a type of injury meant to be protected against. However, Dan has a viable excuse to negligence *per se*, because he had an unforeseen epileptic seizure at the time of the accident and was driving safely before the accident. A person that is not in control of their behavior due to automatism / unconsciousness cannot be seen to have breached a duty of care. Penny did not contest evidence indicating that Dan had an unforeseen seizure, and therefore Dan would prevail in a negligence claim.

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9. Barry went to the Grocery Store on a beautiful dry day. Barry stopped and talked to the store manager before Barry started to shop. While he was in the condiments aisle, Barry slipped on a can of mustard that was on the floor, fell, and incurred a physical injury. The store manager immediately called for medical assistance for Barry, and questioned other shoppers as to whether or not they noticed that the can of mustard was on the floor. No other shoppers had noticed that the mustard can was on the floor. Nevertheless, Barry decided to bring an action in negligence against the Grocery Store, based only on the facts stated above. Which statement below is most accurate regarding Barry's negligence claim?

A. Grocery Store will prevail because it did not owe a duty of care to Barry.
B. Barry will prevail because 'but for' falling on the mustard can, he would not have incurred injury.
C. Barry will prevail because it is foreseeable that cans will sometimes fall on the floor in the Grocery Store.
D. Grocery Store will prevail because the manager did not know, and should not have known, that a dangerous condition existed.

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

The other shoppers did not see the mustard can on the floor, and the manager of the Grocery Store could not be expected to have had the can put back onto the shelf, if the manager did not know that the can was on the floor. Breach of duty is the exercise of reasonable care, but not the exercise of extraordinary care. Here, because Barry did not assert facts to indicate that the manager of the Grocery Store exhibited anything less than reasonable care, there would be no breach of duty, and the Grocery Store will prevail in a negligence claim.

10. Dan argued that he was acting pursuant to the custom of the cement industry, when he took safety signs away from drying pavement after one hour.

If Penny, the plaintiff, offers evidence showing that she was injured due to the fact that she did not know the cement was not dry, will the evidence be allowed in her negligence claim?

A. No, because Dan followed the custom of his industry.
B. Yes, because Penny's evidence will help clarify the application of the Hand formula.
C. No, because such information would be unduly prejudicial.
D. Yes, because Dan should not have removed the safety signs when he did.

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

Under the Learned Hand formula, the custom of an industry may be used to support defendant's contention that they acted reasonably. However, the fact that defendant comported themselves with the custom of an industry, is not dispositive, and plaintiff may assert additional facts indicating that within the context of a particular situation, defendant did not act reasonably, even though defendant may have been acting within the parameters of the custom of an industry.

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