Test Bank for Legal Fundamentals for Canadian Business CDN 4th Yates

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Legal Fundamentals for Canadian Business, 4e **(Yates)**
Chapter 2 Torts and Professional Liability

1) Which of the following best describes the primary purpose of tort law?
A) to punish wrongdoers
B) to prevent crime
C) to compensate victims of wrongful conduct
D) to ensure that contractual promises are kept
E) to force people to do good (e.g., rescue those in trouble)
Answer: C
Diff: 1 Type: MC Page Ref: 39
Skill: Recall

2) A truck was driven into the family room of a home, causing $14 000 in damage. The driver was impaired, so the homeowners called the police. The driver was arrested and charged with an offence under the *Criminal Code*, convicted, and sentenced. Which of the following is true?
A) In the criminal action, the individual is taking the action against the accused.
B) A civil action is a private action in which the plaintiff's primary purpose, generally, is to seek compensation.
C) In the criminal proceeding, the prosecutor had to prove the case on the balance of probabilities.
D) In a civil action, the plaintiff must prove his or her case beyond a reasonable doubt.
E) The owners cannot sue the driver in a civil action because he has been convicted in the criminal action, and the same behaviour cannot be the subject matter of both types of actions.
Answer: B
Diff: 2 Type: MC Page Ref: 39
Skill: Applied

3) A mean-spirited neighbour, Lahey, yelled insults at Rob, a real estate agent, as Rob was leaving an open house. Lahey then suddenly rushed toward Rob. Although Rob tried to defend himself by throwing his briefcase at Lahey, Lahey hit him above the eye, causing a serious cut that required stitches. Lahey was arrested, convicted, and sentenced in a criminal action for his attack. Rob couldn't work for two months because of the injury. On these facts, which of the following is false?
A) The attack by Lahey shows the elements of the torts of assault and battery; the assault was making Rob apprehend the hit, and the battery was the hit.
B) The insults yelled at Rob would not, in themselves, give Rob the right to hit Lahey with his briefcase.
C) Although Rob suffered damages because of the attack, he could not sue Lahey in a civil action because a criminal action had been taken, and the same incident cannot result in both types of proceedings.
D) If Lahey sued Rob for hitting him with the briefcase, Rob most likely would argue that it was justified on the basis of self-defence.
E) Rob could not succeed in an action against Lahey for the tort of nuisance.
Answer: C
Diff: 3 Type: MC Page Ref: 39, 41
Skill: Applied

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4) When Mr. P dropped off his wife at work, the driver behind him, Mr. H, angered by the slight delay in traffic, approached Mr. P's car, called him names, and then punched Mr. P in the nose and mouth area with a closed fist. Mr. H was convicted and sentenced in criminal proceedings for his action. Given these facts, which of the following is true?
A) Mr. P could also proceed in a civil action against Mr. H for the tort of nuisance.
B) Mr. P could also proceed in a civil action against Mr. H for the tort of battery.
C) Mr. P could not take a civil action because a criminal action had taken place, and the same behaviour or action cannot be the subject matter of both types of proceedings.
D) Mr. P could ask for special damages, but not for general or punitive damages.
Answer: B
Diff: 1 Type: MC Page Ref: 39, 40
Skill: Applied

5) In January, a driver accidentally caused a snowplow to go off the road, crash into a house, and enter the living room of that house. No one was hurt, but the incident caused extensive damage to the house. If the driver of the snowplow was charged with the crime of driving while impaired, and subsequently convicted, which of the following is true?
A) The owners of the house could not proceed in a civil action, because the driver had already gone through a criminal action and he cannot be forced to go through two proceedings for the action.
B) The owners of the house could also proceed in a civil action against the driver for the tort of nuisance.
C) The owners of the house could also proceed in a civil action against the driver for the tort of negligence.
D) The driver would be found liable in a civil action only if the prosecutor could prove he was guilty beyond a reasonable doubt.
E) The owners of the house would have no civil action against the driver because no one was hurt.
Answer: C
Diff: 2 Type: MC Page Ref: 39, 48, 49
Skill: Applied

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6) Bill and Sal worked for Mrs. Greenlawn, a lawn-care company. One morning they attended at a new customer's residence. While in the process of applying fertilizer to the lawn, the boys mistakenly applied strong weed killer that caused the grass to turn brown and die. The boys failed to follow the employer's directive that they double check to ensure that fertilizer was being used. The owner of Mrs. Greenlawn apologized to the homeowner but indicated that it was not her fault and she would not be paying for the costs of sodding the entire lawn. Is the position taken by the owner of Mrs. Greenlawn correct at law?
A) Yes, because the employees were specifically told to ensure that fertilizer was being applied before commencing the job.
B) Yes, because the owner of Mrs. Greenlawn did nothing wrong at law.
C) No, because the weed killer used by Mrs. Greenlawn caused too much damage.
D) No, because Mrs. Greenlawn is vicariously liable for torts committed by employees in the course of their employment.
E) Yes, because businesses are incorporated to protect themselves from these types of claims.
Answer: D
Diff: 2 Type: MC Page Ref: 39
Skill: Applied

7) Mrs. Kahn arranged a trip to Europe for herself and her two children. Her husband couldn't go. She spent hours with the travel agent, Mr. Tobin, deciding on the vacation package. She asked him, and wrote a note asking again, what documents, vaccinations, etc., would be needed for the trip. Tobin said and wrote that all they would need would be their passports. Tobin forgot to tell her that a new regulation required a note from the father allowing the children to leave Canada, although he had received a memo warning him to alert travellers of the new regulation. When Mrs. Kahn and the children reached Toronto to embark on a plane for London, England, they were stopped because she did not have the required note from Mr. Kahn. They lost their reservations for both the flight and the tour with no refund. On these facts, which of the following is true?
A) Libel is the only tort available for persons injured by another's words.
B) There could be a civil action against Tobin and his employer, although the employer did no wrong.
C) A travel agent owes no duty of care to his customers.
D) There is no possibility of suing Mr. Tobin because he had no intention of hurting anyone; his oversight was an accident.
E) Tobin could sue for false imprisonment.
Answer: B
Diff: 2 Type: MC Page Ref: 39
Skill: Applied

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8) Trevor and Roger, employees of Ezon Ltd., accidentally dropped a crate that they were unloading. The crate just missed an 80-year-old woman, Mrs. Sloe, who was on her way to the bus stop. She was not hurt at all nor upset, because the crate fell behind her. Just to be sure she wasn't hurt or upset, Trevor said, "Let me take your arm and help you to the bus." She agreed, so he took her by the arm and walked with her for the rest of the block. When they arrived at the bus stop where others were waiting, she then turned to him, screaming, "Let go of me! You have no right to touch me!" With that, she hit him with her purse. On these facts, which of the following is true?
A) In law, the battery was committed by Mrs. Sloe.
B) Mrs. Sloe could successfully sue Trevor and Roger for negligence.
C) To avoid a negligence action, the standard of care owed by workers is to act sincerely and with goodwill.
D) Mrs. Sloe could successfully sue Trevor for battery.
E) In a negligence action, the standard of care owed by workers is to do the best they can.
Answer: A
Diff: 2 Type: MC Page Ref: 40
Skill: Applied

9) Clark was at Computerheaven Ltd. and asked for a box of the highest-grade computer paper. Don, an employee, went to the back to get it, but he didn't know which of the five choices available was the best grade of paper. He took out a box of paper called "superstuff" and told Clark that was the highest-grade paper, even though he wasn't sure it was. Clark bought it. On the way out, Clark, a successful freelance computer programmer for the last five years, asked Don some questions about a new laser printer on display. Don started giving Clark his sales pitch, and Clark said with a smile, "I don't think you know what you're talking about." Don flushed and yelled, "You go to %^&%! You call yourself a programmer and you don't know anything about programming. You're a first-class fraud!" A client of Clark's overheard this conversation. Clark called Don a "jerk" and turned to go. As he was walking out the door, Don threw a hard disk drive at him and hit Clark in the back of the head. Considering the legal meaning of the following, indicate which would be successful based on these facts?
A) an action against Computerheaven Ltd. for the tort of trespass
B) an action against Computerheaven Ltd. for the tort of battery
C) an action against Computerheaven Ltd. for the tort of defamation
D) an action against Clark for the tort of negligence
E) an action for the tort of nuisance
Answer: B
Diff: 2 Type: MC Page Ref: 39, 40
Skill: Applied

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10) Which of the following incidents describes the legal meaning of the tort of assault?
A) Unknown to you, I throw a hammer at your head but miss.
B) I throw a hammer at your head, but you see it coming and duck out of the way.
C) When you are asleep in the house, I sneak up and throw a hammer through your garage window.
D) I come up from behind you without your seeing me and hit the back of your knees, causing you to fall down.
E) I accidentally drop a hammer on your foot.
Answer: B
Diff: 1 Type: MC Page Ref: 40
Skill: Applied

11) Mary was referred by her family doctor to a surgeon to discuss the possibility of having her gallbladder removed laparoscopically. During the course of meeting with the surgeon she was told that there were certain risks associated with undergoing the procedure but that these risks were small. She elected to undergo the procedure. During the course of the procedure the doctor "nicked" an artery causing a significant internal bleed that required significant additional surgery to repair. Mary sued the doctor for battery. Her case in court will:
A) succeed because there was actual physical contact.
B) fail because the doctor told Mary about the risks before the procedure and he therefore obtained her informed consent.
C) succeed because the doctor did the same thing to another patient two months earlier.
D) fail because there is no evidence of negligence.
E) succeed because Mary elected to have a jury trial.
Answer: B
Diff: 2 Type: MC Page Ref: 40
Skill: Applied

12) Which of the following actions constitutes an assault?
A) pointing an unloaded gun at another who does not know whether or not the gun is loaded
B) a rude gesture from another motorist
C) a car accident in which you are hit by an impaired driver
D) bumping into another person in a crowded hallway
E) a bystander struck by a ball during a baseball game
Answer: A
Diff: 1 Type: MC Page Ref: 40
Skill: Recall

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13) Ms. Reed attended the zoning offices of the city. She explained to the chief zoning officer, Mr. Shore, that she was interested in a piece of property, but only if it were zoned as a "multiple-family dwelling." Mr. Shore checked the property himself and assured her it was zoned as a "multiple-family dwelling," but he had not checked the new regulations properly. Relying on his statement, Reed invested $300 000 in the purchase and development of the property. When the apartment building was half finished, she was informed by the city that her building was unacceptable because the property was zoned as a "duplex." Upon hearing this news, she rushed to the zoning offices and approached Mr. Shore, started yelling, and threw her briefcase at him. He ducked; she missed. When she persisted in yelling, he threw some cold water in her face. On these facts, which of the following is true?
A) Reed could not sue Shore for saying the property was zoned as a "multiple-family dwelling" because he did not intend to make the error; it was just a mistake.
B) Shore could successfully sue Reed for assault.
C) Reed could successfully sue the city for negligence.
D) Reed could successfully sue Shore for defamation.
E) Reed could successfully sue Shore for assault and battery.
Answer: B
Diff: 3 Type: MC Page Ref: 40
Skill: Applied

14) Which of the following actions would result in a successful tort action by the person or persons wronged? Assume that all persons involved learn these facts.
A) An accountant accurately prepared the financial statements of a corporation that he knew would be used by a potential investor, Mr. Lam. Lam, relying on the statements, invested $10 000 and lost it all.
B) Ed became sick from consuming too much alcohol that he had purchased from the store.
C) When Jed accidentally dropped a board and broke Al's glasses, Al threw a cup at Jed, but Jed saw it coming and moved away in time to avoid being hit.
D) Mr. Meen wrote a letter to the editor of the *Vancouver Sun* in which he criticized the mayor of Vancouver.
E) A store detective stopped Joan after she left the shop because he saw her leave with candy she hadn't paid for. She had slipped the candy into her pocket. He detained her for 20 minutes until the police arrived.
Answer: C
Diff: 2 Type: MC Page Ref: 40
Skill: Applied

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15) Which of the following is true related to assault and battery?
A) Under the *Criminal Code*, the term *assault* includes physical contact that in tort law would be referred to as *battery*.
B) The definition of *assault* is the same under the *Criminal Code* and under tort law.
C) Under tort law, assault involves physical contact.
D) Intentional physical interference with another is a tort but is not a crime under the *Criminal Code*.
E) Provocation is a defence successfully used to justify a violent response to verbal abuse.
Answer: A
Diff: 2 Type: MC Page Ref: 40
Skill: Recall

16) Jed played hockey for his company's team. During the playoffs, three seconds after a play, he was deliberately hit in the back with a stick by Ed, a player on the opposing team. The hit broke Jed's rib. If Jed sued Ed, which of the following is true?
A) The defendant's best defence would be that the plaintiff consented to the hit.
B) The plaintiff's most likely cause of action would be negligence.
C) The plaintiff's most likely cause of action would be malicious prosecution.
D) The defendant's best defence would be provocation.
E) The defendant's best defence would be qualified privilege.
Answer: A
Diff: 2 Type: MC Page Ref: 40
Skill: Applied

17) Bubba, an angry, foul-mouthed fan, yelled insults at Rob, a professional athlete, as Rob was leaving the field. Bubba then suddenly rushed toward Rob. Although Rob tried to defend himself by throwing his gym bag at Bubba, Bubba hit Rob above the eye, causing a serious cut that required stitches. Bubba was arrested, convicted, and sentenced in a criminal action for his attack. Rob, a starting player, missed 10 games because of the injury. On these facts, which of the following is true?
A) The attack by Bubba shows the elements of the torts of assault and battery: the assault was the hit; the battery was the sudden rush toward Rob.
B) The insults yelled at Rob would in themselves give Rob the right to hit Bubba with his gym bag.
C) Rob could succeed in an action against Bubba for the tort of nuisance.
D) Although Rob suffered damages because of the attack, he could not sue Bubba in a civil action because a criminal action had been taken and the same incident cannot result in both types of proceedings.
E) If Bubba sued Rob for hitting him with the gym bag, Rob would most likely argue that it was justified on the basis of self-defence.
Answer: E
Diff: 2 Type: MC Page Ref: 40
Skill: Applied

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18) Although nothing at all had been stolen, the store detective thought that Al and Ed had stolen some CDs. After they exited the store, the detective said to both of them, "Hold it! You'll have to wait right here for the police; you'll be charged with theft!" While Ed stopped and protested, Al hurried off and drove away. Ed felt compelled to submit to the detective. After some time, the police finally arrived. It was only then that the detective realized that no crime had been committed. Ed was released. On these facts, which of the following is true?
A) Both Al and Ed could sue for assault and battery.
B) Both Al and Ed could sue for the tort of false imprisonment because both had been falsely accused of committing a crime.
C) Neither Al nor Ed could sue because neither was confined in a closed space.
D) Both Al and Ed could sue for the tort of false imprisonment because there had been no crime committed.
E) Only Ed has a cause of action for false imprisonment (i.e., a legal right to sue).
Answer: E
Diff: 2 Type: MC Page Ref: 41, 42
Skill: Applied

19) Which of the following is true related to a private citizen's authority to make an arrest and false imprisonment?
A) False imprisonment must involve some type of physical restraint.
B) A private citizen's power to arrest is the same as the power held by border guards and security personnel in most cases.
C) Private citizens do not have the power to arrest.
D) A private citizen's power to arrest is likely to be expanded in the future.
E) A private citizen's power to arrest is likely to be more restricted in the future.
Answer: D
Diff: 1 Type: MC Page Ref: 42
Skill: Recall

20) A person could be liable for the tort of trespass:
A) for attending the "garage sale" at the designated time.
B) for leaving packages in the wrong person's garage.
C) for sleeping in the garage with the owner's permission.
D) for leaving the wrong packages in the right person's garage.
E) for accidentally knocking down the garage in a car out of control.
Answer: B
Diff: 1 Type: MC Page Ref: 42, 43
Skill: Applied

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21) Which of the following actions would not result in a successful tort action by the person suing? Assume that all persons involved learn these facts.
A) An accountant made an error in financial statements that he knew would be given by his client to a potential investor, Mr. Ling. The investor, relying on the erroneous statements, invested $20 000 and lost it all. Ling sued the accountant.
B) When Manjeet accidentally dropped a board and broke Al's toe, Al threw a rock at Manjeet, but Manjeet saw it coming and moved in time to avoid being hit. Al sued; Manjeet counterclaimed.
C) A waiter, and then the police, detained a restaurant patron because he did not want to pay for wine that was brought to the table but was cloudy and undrinkable. The patron sued for false imprisonment.
D) Mr. Simpson wrote a letter to the editor of the *Vancouver Province* in which he falsely stated that the mayor took a bribe. The editor and 10 others on staff read it but decided not to print it. The mayor sued Mr. Simpson.
E) Jayne was doing aerobic exercises. She looked up and saw the gas meter reader in the backyard. She sued him for trespass.
Answer: E
Diff: 2 Type: MC Page Ref: 43
Skill: Applied

22) A person could be liable for the tort of trespass:
A) if he or she delivered a package to the owner at poolside as instructed by the owner.
B) if, in the middle of the night, he or she was carried onto the neighbour's property and thrown in the pool.
C) if he or she lost control of his or her bike and accidentally went onto the neighbour's property and into the pool.
D) if he or she stood in the lane and threw a tire in the pool.
E) if he or she swam in the pool with the owner's permission.
Answer: D
Diff: 2 Type: MC Page Ref: 42, 43
Skill: Recall

23) After the McLeans filled their swimming pool, recently built in their backyard, swarms of bees came regularly for water. The bees stung everyone, including the dog, and made it impossible for the McLeans to enjoy the use of their pool. Unknown to the McLeans when they had the pool installed, their neighbour Springborn had beehives on his property. On these facts, which of the following is true?
A) The McLeans have an action against Springborn for nuisance.
B) The McLeans have an action against Springborn for assault.
C) Springborn would successfully use the defence of absolute privilege.
D) The McLeans have an action against Springborn under the *Occupiers' Liability Act*.
E) The McLeans have an action against Springborn for nuisance and also under the *Occupiers' Liability Act*.
Answer: A
Diff: 3 Type: MC Page Ref: 43
Skill: Applied

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24) After the Leans began to use their new swimming pool, they found that they could not enjoy it because of the smell coming from their neighbour's chicken coop. They knew of the chickens when they moved in, but had no idea that the smell could be so overpowering, especially during the summer. Which of the following is true with regard to the legal position of the parties?
A) The Leans would have to sue in nuisance if they hope to succeed.
B) The Leans could sue for assault.
C) The Leans can sue for trespass.
D) This is an example of strict liability and there is nothing the neighbour can do to avoid liability in these circumstances.
E) There is nothing the Leans can do.
Answer: A
Diff: 2 Type: MC Page Ref: 43
Skill: Applied

25) Read the following and indicate the true statement.
A) If falling over boxes wrongfully left in a garage by a delivery company injured a person, the cause of action could be breach of contract.
B) If a person suffers damage because of wiring improperly installed by John for his employer, World Wires Ltd., only John could be sued for negligence.
C) If the odour from a neighbour's smokehouse makes it impossible for you to use your pool, the proper action is nuisance.
D) If a person is given a blood transfusion after making it clear that she doesn't want one, the cause of action would be negligence.
E) If a person suffers a loss because a salesperson knowingly made a false statement that he knew the other would rely on to his detriment, the cause of action could be defamation.
Answer: C
Diff: 2 Type: MC Page Ref: 43
Skill: Recall

26) Bill and Joe are neighbours. Joe has a swimming pool in his backyard. Every weekend Joe plays softball with a group of co-workers. He brings the entire team back to his house and they swim in his pool. Joe also plays loud music in the backyard until early morning hours. Bill has asked him to stop but he refuses. Joe's actions constitute:
A) the tort of assault.
B) the tort of private nuisance.
C) the tort of trespass.
D) the tort of negligence.
E) the tort of defamation.
Answer: B
Diff: 2 Type: MC Page Ref: 43
Skill: Applied

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27) The plaintiff, M, quit her job because her then-employer, Mr. C, made unwelcome sexual advances and her career was not advanced as promised. Subsequently, Mr. C, on his own initiative, called her past employer, her present employer, and an instructor at vocational school and said that M was a thief, a false statement. As a result of that call, M lost her new job. Which of the following is true?
A) Mr. C's statement is defamatory by innuendo.
B) Mr. C could be sued successfully for defamation even though the defamatory words were not written down.
C) Technically, M could sue Mr. C for libel.
D) Mr. C could successfully use the defence of fair comment.
E) Mr. C could successfully use the defence of qualified privilege.
Answer: B
Diff: 2 Type: MC Page Ref: 44
Skill: Applied

28) Which of the following is an intentional tort?
A) negligence
B) breach of contract
C) defamation
D) frustration
E) duress and undue influence
Answer: C
Diff: 2 Type: MC Page Ref: 39, 47
Skill: Recall

29) With regard to the law of tort, which of the following is false?
A) A negligent person causing physical injury to another is responsible to the full extent of the injury suffered, even though the injured person suffered more than would reasonably be expected because of a special weakness.
B) If the court finds the plaintiff contributorily negligent, causing 20% of his or her loss, he must suffer that portion of the loss and will not be compensated for it by the defendant.
C) An act must be intentional to be classified as a tort.
D) Although a signed consent form appears to be a defence to a claim of battery, the court will look to see if it was informed consent, that is, if the person was told all relevant facts that would allow a reasonable person to make a decision.
E) Although a person was not careless and intended no harm, he could still be sued successfully by someone harmed by a dangerous substance that escaped from his or her property.
Answer: C
Diff: 2 Type: MC Page Ref: 39
Skill: Recall

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30) Which of the following does not describe a crime?
A) an act prosecuted by the state
B) a serious injury inflicted on a person by the unintentional act of another
C) a charge laid by the police
D) an act that can be punished by imprisonment
E) a serious offence against the state
Answer: B
Diff: 2 Type: MC Page Ref: 39
Skill: Recall

31) The provincial government thought that the only way to make businesses competitive with those from other countries was to make more information available to them about market conditions, currencies, etc. around the world. It began a program of incentives that included a government office that would give people not only business information but also advice on how the businesses could link to the government's database that held the information. Mr. Su relied on some information given to him by Alex Chec, an employee of the government. The information was wrong due to a mistake made by an operator entering data. It was Chec's job to cross-check that information before it was released to the public. He forgot to do this. Su suffered a $10 000 loss because of the error. Which of the following is true?
A) The court must find only one party liable and that party must pay for all damages.
B) The operator may be found liable for negligence if Su, the plaintiff, can prove, among other things, that she owed him a duty of care.
C) Su could not take any action because he had not entered into a contract with the government for this information.
D) Su could not take any action because he suffered no physical injury. The case deals only with information.
E) If Su sues the government on the principle of vicarious liability, he cannot also sue the employee, or employees, at fault.
Answer: B
Diff: 2 Type: MC Page Ref: 49
Skill: Applied

32) A 70-year-old woman, while using the escalator at the airport, dropped a glove. When she attempted to pick it up, she lost her balance and fell. As a result of the accident, she suffered a fractured vertebra (back bone). In an action by her against the company that was responsible for maintaining the escalator, the defendant company would argue which of the following for its best defence?
A) provocation
B) There were no damages suffered.
C) It was not below the standard of care.
D) It did not owe her a duty of care.
E) qualified privilege
Answer: C
Diff: 1 Type: MC Page Ref: 51
Skill: Applied

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33) Mr. Reasoner was looking out his living room window and saw his next-door neighbour, Jon Bon, trying to burn leaves. Bon threw gasoline on the damp leaves, and when he lit a match, there was an explosion that sent flames in every direction. Luckily, no one was around, and the flame that shot onto Reasoner's property caused no harm whatsoever. Reasoner was upset by this carelessness and sued Bon for negligence. Which of the following is the best argument for the defendant Bon?
A) There were no damages suffered.
B) Reasoner had voluntarily assumed the risk.
C) Bon didn't owe the plaintiff a duty of care.
D) Bon was not below the standard of care.
E) Reasoner was contributorily negligent.
Answer: A
Diff: 1 Type: MC Page Ref: 48
Skill: Applied

34) Sam and John drank beer and watched the Olympics for hours. When John left, he did not feel impaired, but the alcohol in his system affected his driving. He lost control of his car, which crashed through Mr. Mitsu's fence and into Mr. Mitsu's garage. Mitsu's neighbour, Mr. Watson, called the police. John was charged with driving while impaired and was found guilty in criminal proceedings. Given these facts, which of the following is true?
A) Because John was charged with an offence, Mitsu cannot sue him in a civil action for compensation. One court action is all that is allowed.
B) Since no one was physically injured, there could be no civil action.
C) Mitsu could sue John for negligence.
D) Watson, the neighbour, could sue John for negligence.
E) If Mitsu sued John, he would be entitled only to punitive damages.
Answer: C
Diff: 2 Type: MC Page Ref: 48
Skill: Applied

35) Mrs. Stare was looking out her living room window when she saw her neighbour, Mr. Phast, get in his new car and try to go from 0 to 100 kilometres per hour in just 10 seconds, like the manufacturer's ad on TV. It was a careless thing to do in this residential neighbourhood; Phast just missed hitting a child on his bike who was travelling in the same direction and couldn't see Phast's car coming. No one was hurt. Stare was angry at Phast's recklessness. On these facts, which of the following is false?
A) The test to be applied to determine the standard of care owed is the reasonable person test (i.e., how a reasonable person would have driven the car).
B) Since there were no damages and the conduct was careless, Phast could not successfully be sued.
C) The boy could successfully sue Phast for negligence.
D) Stare could not successfully sue Phast for negligence.
E) Phast owes a duty of care to the boy on the bike.
Answer: C
Diff: 2 Type: MC Page Ref: 48, 49
Skill: Applied

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36) A recent case involved a fight that broke out at the Commodore, a dance hall. During a break in the music, the master of ceremonies was attacked. When the Commodore's security team failed to appear, the plaintiff, Mr. Jeffrey, a patron, joined other patrons who intervened. Jeffrey was hit from behind with a chair and punched in the jaw. He sued Commodore Cabaret Ltd., the company that managed the premises and entertainment, on these facts. Which of the following is false?
A) The company has a duty under the *Occupiers' Liability Act* to take reasonable steps to ensure that patrons are reasonably safe.
B) If the defendant argued and the court found that Jeffrey was contributorily negligent, Jeffrey would receive some damages for compensation.
C) Jeffrey could have successfully sued the person who punched him in the jaw for the tort of negligence.
D) Jeffrey's cause of action against the company could be framed in negligence because he could argue that the company owed him a duty of care, fell below the standard of care, and caused him foreseeable damage.
E) If the defendant argued and the court found that Jeffrey had volunteered to take both the physical and the legal risk, Jeffrey would lose and receive no damages.
Answer: C
Diff: 2 Type: MC Page Ref: 48, 54
Skill: Applied

37) Al bought a case of beer because his friends were coming over to watch the Grey Cup. During the game, Al opened a beer, poured about a third of it into Bob's glass, and handed the can to Chuck. Bob noticed the strange orange colour of the beer and called everyone's attention to it; unfortunately, Chuck had drunk most of the beer from the can before he heard Bob. There had been a small battery in the can that had contaminated the beer. Chuck was seriously injured. On these facts, which of the following is true?
A) Since Chuck did not buy the beer, he has no cause of action against anyone.
B) Bob could sue Al successfully for negligence, because Al poured the contaminated beer into Bob's glass.
C) Chuck could sue Al successfully for negligence, because Al handed the contaminated beer to Chuck.
D) Bob could successfully sue the manufacturer for negligence because he need only prove that the manufacturer owed him a duty of care and need not prove damages.
E) Because Chuck did not buy the beer, he could not sue the seller for breach of contract, but he could sue the beer manufacturer in tort.
Answer: E
Diff: 2 Type: MC Page Ref: 49
Skill: Applied

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38) A duty is owed when:
A) it would be apparent to a prudent person that the conduct was likely to cause injury.
B) a person undertakes to rescue someone in danger.
C) a person making a misstatement knew that it would be relied on by a member of a group.
D) a visitor comes on your property.
E) all of the above
Answer: E
Diff: 1 Type: MC Page Ref: 49-52
Skill: Recall

39) Which of the following statements best describes the standard used by the courts to measure socially acceptable behaviour?
A) When you cause injury, you are always liable.
B) an average person acting normally
C) the best possible response to the circumstance
D) a careful person acting to the best of his or her ability
E) a reasonably prudent person acting in a careful manner
Answer: E
Diff: 2 Type: MC Page Ref: 51
Skill: Recall

40) An investor who wanted to build a duplex asked the city zoning officer whether Lot A of Plan 16, known as 1 Street, was zoned for a single-family house or a duplex. The zoning officer was distracted by a news report on the radio and accidentally gave the investor a printed copy of the zoning for the wrong lot that said "duplex," although 1 Street was only zoned for single-family houses. After the investor began building a duplex, the city stopped him for building contrary to the zoning by-laws. He lost $50 000. On these facts (assuming all can be proven), which of the following is true?
A) The employer of the zoning officer could not be sued since the employer did no wrong.
B) The zoning officer can be sued even though the investor did not have a contract with him (i.e., he didn't pay for the information).
C) A person can be sued only for actions that cause physical injury.
D) The zoning officer could not be sued successfully since he had no intention of hurting anyone; his error was an accident.
E) The cause of action most likely to be taken by the investor in this case is "deceit."
Answer: B
Diff: 3 Type: MC Page Ref: 49
Skill: Applied

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41) You and your friend recently bought a duplex. You rent out the downstairs and live in the upstairs suite. As the owner and occupier, you have acquired certain rights and responsibilities. Which of the following statements about the law relating to land is true?
A) If you bring something onto your property that is inherently dangerous and it escapes and causes damage to others, you will be liable even if you were very careful and did not intend to harm anyone.
B) The use of your property is partly governed by fiduciary duty.
C) If there were an accident out front and a car were knocked into your yard, you could sue the driver in that car for trespass.
D) You could sue for the tort of negligence if someone used his or her property in such a way that it interfered with the use and enjoyment of your property.
E) Your tenants have no duty to take reasonable steps to make sure that any person is reasonably safe when in their suite.
Answer: A
Diff: 2 Type: MC Page Ref: 51, 52
Skill: Applied

42) Which of the following statements describes the standard expected of experts?
A) They require skills and abilities expected of an average person.
B) They must exercise skill with the degree of care expected of a reasonable person in that profession.
C) Inexperience excuses incompetence.
D) The standard of an expert needs to be perfection.
E) Common practice always sets the appropriate standard.
Answer: B
Diff: 2 Type: MC Page Ref: 52
Skill: Recall

43) In which of the following would the plaintiff not succeed in an action for negligence?
A) A real estate agent accidentally forgot to lock the back door of the house he had just shown. Before the owner returned, someone broke in and stole the TV. The owner sued the agent.
B) Dr. Zotsky used the skill of a reasonable doctor in that field, but the patient did not respond to the treatment and lost sight in one eye. She sued the doctor.
C) May was made sick by drinking a contaminated cola bought for her by her friend Fred. She sued the manufacturer.
D) A real estate agent failed to check the zoning and assured the purchasers that they could build a duplex on the property. Relying on that statement, they purchased the property.
E) Nick was hurt when the driver of a Gino's pizza truck carelessly ran through a yellow traffic light on his way to deliver a pizza. Nick sued the driver and Gino, the driver's employer, although Gino wasn't in the truck.
Answer: B
Diff: 2 Type: MC Page Ref: 52
Skill: Applied

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44) Which of the following is true with regard to the torts of assault and battery?
A) The amount of damages paid to Joe, injured by another's battery, will be an amount to cover the extent of injury suffered by a normal person regardless of Joe's actual injuries.
B) For consent to be an effective legal defence to a claim of battery, the person hit must have been surprised by the incident.
C) A person will always succeed with the defence of self-defence even if he or she used excessive force.
D) Both torts are "actionable per se"; that is, a person can successfully sue without having to prove damages.
E) Assault is the threat of interference viewed as harmful by the victim.
Answer: D
Diff: 2 Type: MC Page Ref: 40
Skill: Recall

45) Stella bought a cup of coffee at the drive-through window at a coffee shop. Holding the cup between her knees and attempting to take off the lid to add cream, she spilled the coffee. She suffered burns to her thighs. If this happened in Canada, which of the following is true?
A) To succeed with the defence that Stella volunteered to take the risk, the coffee shop would have to prove that Stella deliberately spilled the coffee.
B) If the court finds the plaintiff contributorily negligent, causing 60% of her loss, Stella must suffer that portion of the loss and will not be compensated for it by the defendant.
C) If the coffee shop claims there was no way to reasonably foresee that Stella would be harmed, the plaintiff's case would be dismissed even though Stella suffered burns.
D) If Stella sues the coffee shop for negligence, she will only have to prove that the company owed her a duty of care.
E) If Stella sues the coffee shop, the company's best argument is that it didn't owe her a duty of care.
Answer: B
Diff: 2 Type: MC Page Ref: 55
Skill: Applied

46) Which of the following statements with regard to the tort of negligence is true?
A) A possible defence to the plaintiff's claim of negligence is that the plaintiff volunteered to take the risk.
B) If physical injury can be foreseen as the result of a person's actions, the wrongdoer will not be liable for all injury suffered.
C) If the court finds contributory negligence, the defendant has no liability at all.
D) If a person is injured by a defective product that he himself did not purchase, he cannot sue the manufacturer for negligence.
E) The test used to determine whether a duty of care is owed is this: Would a below-average person foresee that the plaintiff could be affected by the acts of the defendant?
Answer: A
Diff: 2 Type: MC Page Ref: 55
Skill: Recall

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47) Pete and John were hired by the same computer consulting company. They worked a three-hour shift and walked to a pub, where they had several beers. John said he'd drive Pete home. Pete knew John had been drinking but agreed to go with him anyway. The alcohol affected John's driving. He lost control of the car, which crashed through Mr. Britt's fence and garage. Pete was injured. John was not injured. Britt's neighbour, Mr. Watson, called the police. John was charged with the offence of driving while impaired and was found guilty in the criminal proceedings. Given these facts, which of the following is true?
A) One court action is all that is allowed.
B) Since Britt was not physically injured, he could not sue.
C) Watson, the neighbour, could successfully sue John for negligence.
D) The principle of vicarious liability is relevant here because John was an employee at the time of the accident. John was charged with an offence; no one could sue him in a civil action for compensation.
E) Pete could sue John for negligence, but if the court held that Pete volunteered to take the risk, Pete would get no award of damages.
Answer: E
Diff: 2 Type: MC Page Ref: 55
Skill: Applied

48) The purchaser of a bottled beverage is more likely to be successful in a suit for damages against the manufacturer as a result of becoming ill if:
A) she saw a small spider in the bottle and decided not to drink it.
B) she saw a small spider in the bottle and dropped it on the ground before she opened it.
C) she saw a small spider in the bottle after taking "a sip."
D) she gave the bottle to a friend and saw a small spider in the bottom after her friend drank it.
E) she saw a small spider in the bottle on the store shelf and decided not to buy it.
Answer: C
Diff: 2 Type: MC Page Ref: 56
Skill: Applied

49) As a result of careless driving, Mr. Boz accidentally knocked Mr. Alder, a 70-year-old man, off his bike. Alder broke an arm and collarbone. Because of a rare disease, there was little likelihood that the breaks would heal properly, if at all. In effect, unlike most who would suffer those breaks, Alder lost the use of his right arm. Alder sued Boz for negligence. The court held Boz liable. With regard to the question of the amount of damages to be paid by the defendant, which of the following is correct?
A) an amount to cover the extent of injury that would have been suffered by the average 70-year-old man, because a reasonable man would not have foreseen the extent of injury actually suffered
B) an amount to cover the extent of injury that would have been suffered by a reasonable man
C) an amount to cover the full extent of the injury suffered
D) an amount to cover the extent of injury that would have been suffered by the average man
E) no compensation at all because of Alder's rare condition
Answer: C
Diff: 3 Type: MC Page Ref: 56, 57
Skill: Applied

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50) Sarah Iris, a middle-aged woman, was struck down as she crossed the street at 41st and Knight, by a car whose driver accidentally went through a red light. She was not killed, but was badly injured. Unfortunately, she was suffering from osteoporosis, a condition in which her bones had lost most of their mass and were fragile and brittle. Consequently, the bones in her legs were not expected to heal. She lost the use of her legs. She successfully sued the driver for negligence. With regard to the amount of damages to be paid by the defendant, which of the following is correct?
A) an amount to cover the extent of injury that would have been suffered by the average middle-aged woman, because a reasonable person would not have foreseen the extent of injury actually suffered
B) special damages only
C) an amount to cover the full extent of the injury suffered
D) maximum of $75 000, the legal limit in personal injury cases
E) an amount to cover the extent of injury that would have been suffered by the average person
Answer: C
Diff: 2 Type: MC Page Ref: 56, 57
Skill: Applied

51) Which of the following is true with respect to the law of tort?
A) With assault and battery, a person can successfully sue only if he or she can prove damages.
B) A person will always succeed with the defence of self-defence even if he or she used excessive force.
C) A negligent person causing physical injury to another is responsible to the full extent of the injury suffered even though the injured person suffered more than would reasonably be expected because of a special weakness.
D) A customer battered by an employee on the job can sue only the employee, not the employer, because it was the employee who did the wrong.
E) For fair comment to be an effective legal defence to a claim of defamation, the comment must have been made in Parliament or in court.
Answer: C
Diff: 2 Type: MC Page Ref: 56, 57
Skill: Recall

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52) For his Super Bowl party, Jack bought, among other things, some Francisco mustard. Even before the game began, one of Jack's guests, Fred, made himself a sandwich using that mustard. When Fred saw another guest, Tad, making a sandwich with that mustard, Fred warned him that the sandwich did not taste right and that he (Fred) didn't feel too well. Tad ate everything else on his plate, but left the sandwich. Fred became quite ill and had to go to the hospital. It was determined that the mustard had been contaminated when it was made. Jack had bought the mustard just an hour before game time from Big Store, which had purchased it from DB Distributors Ltd., which had purchased it from the manufacturer New Foods Ltd. On these facts, which of the following is true?
A) Fred could successfully sue the distributor for negligence because the distributor delivered the case of mustard to Big Store.
B) Tad could successfully sue Jack for negligence.
C) Since Fred did not buy the mustard himself, he must suffer his loss (i.e., he cannot sue anyone).
D) Fred could successfully sue Jack for negligence because Jack bought the mustard.
E) Fred could successfully sue the manufacturer New Foods Ltd. for negligence but could not successfully sue Big Store for negligence.
Answer: E
Diff: 2 Type: MC Page Ref: 57
Skill: Applied

53) Which of the following situations could result in a successful action for negligence?
A) A doctor, acting in the best interest of his patient Alex (who had lost blood after a serious cut), gave him a transfusion even though Alex told him explicitly not to do so.
B) An employee of the bank mistakenly wrote to Sean saying that the bank had approved his loan. Relying on that letter, Sean made contracts he could not honour when the bank refused to forward the money. Sean lost $10 000 because of the bank's carelessness.
C) George deliberately broke an expensive camera when he yanked on a large cable.
D) When Eric was setting up the lighting in a backyard rented for a night shoot, he fell into a hole and broke his leg. The owner had previously notified the director that he had been digging a hole to plant an apple tree.
E) Dr. Jones used the skill of a reasonable doctor in that field, but the patient did not respond to the treatment and lost sight in one eye. The patient sued the doctor.
Answer: B
Diff: 2 Type: MC Page Ref: 59, 60
Skill: Applied

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54) An employee prepared an appraisal of a property for his real estate development company. The employee had been told that the appraisal would be used by the company to attract a potential investor, Mr. Jones, for the company's client, Mr. Lee. Because the appraiser carelessly forgot to check the recent changes in the zoning by-laws, the appraisal was not accurate. Mr. Jones was misled about the value of the land and suffered a financial loss of $20 000. On these facts, which of the following is true?
A) To win in an action against the appraiser, Jones must prove that the appraiser owed him a duty of care, fell below the standard of care owed, and thereby caused him a foreseeable loss because of his reliance on the information.
B) Jones could not take any action because he had no contract with the company or the appraiser.
C) A person cannot be sued for words that cause loss, only for actions that cause physical injury.
D) If Jones sues the appraiser, he cannot also sue the employer.
E) The cause of action most likely to be taken by the investor is defamation.
Answer: A
Diff: 2 Type: MC Page Ref: 59, 60
Skill: Applied

55) A land appraiser prepared an appraisal of a property for a real estate development company. The appraiser had been told that the appraisal would be used by the company to attract potential investors. Because the appraiser forgot to check the recent changes in the zoning by-laws, the appraisal was not accurate; the investor, a party unknown to the appraiser, was misled about the value of the land and, consequently, suffered a financial loss. On these facts, which of the following is true?
A) A land appraiser owes a duty of care to his client and to potential investors only if he knows the name of the investor.
B) The investor may sue the appraiser for negligent misstatement that resulted in economic loss.
C) The investor must suffer his own loss, because an investor takes the risk and so must take care.
D) A land appraiser owes a duty of care to his client and the company, but not to any potential investors.
E) A person cannot be sued for words that cause loss, only for actions that cause physical injury.
Answer: B
Diff: 2 Type: MC Page Ref: 59
Skill: Applied

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56) To win an action in negligence against a professional person, the plaintiff must prove, among other things, that the defendant's conduct was below an acceptable standard of care. Which of the following is the legal standard of care demanded of a professional person?
A) that he or she act sincerely and as may reasonably be expected of a skilled professional
B) that he or she act as a reasonably prudent person
C) that he or she act as may reasonably be expected of the normally skilled professional in that class
D) that he or she act sincerely and with goodwill
E) that he or she act to the very best of his or her ability
Answer: C
Diff: 1 Type: MC Page Ref: 60
Skill: Recall

57) To have its schools valued for insurance purposes, a school district hired a firm of surveyors to give it a statement of value. To prepare the report, the surveyors took the relevant measurements, which were then given to a statistical tabulating company that does calculations based on the measurements. Surveyors always use the services of such tabulating companies. An error was made in the calculations, so the surveyors' report was wrong. Therefore, the buildings were underinsured. When one of the school buildings was destroyed by fire, the school district did not get sufficient funds from the insurance company to rebuild it. On these facts, which of the following is true? (Assume that the school district has the ability to sue and be sued in court.)
A) The school district could successfully sue the surveyors for nuisance, for subcontracting the calculations.
B) The school district can successfully sue the statistical tabulating company for negligent misstatement, causing economic loss.
C) The insurance company can successfully sue the statistical tabulating company for nuisance.
D) The statistical tabulating company cannot be sued by the school district.
E) This action would most likely be commenced in Small Claims Court.
Answer: B
Diff: 2 Type: MC Page Ref: 59
Skill: Applied

58) To win an action in negligence against a professional person, the plaintiff must prove, among other things, that the defendant's conduct was below an acceptable standard of care. Which of the following is the legal standard of care demanded of a professional person?
A) that he or she act to the very best of his or her ability
B) that he or she act sincerely and with goodwill
C) that he or she act as may reasonably be expected of the normally skilled professional in that class
D) that he or she act sincerely and as may reasonably be expected of a skilled professional
E) that he or she act as a reasonably prudent person
Answer: C
Diff: 1 Type: MC Page Ref: 60
Skill: Applied

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59) Jack works as a financial planning consultant for Adco Ltd., a company that provides financial advice to its clients. At a three-martini lunch with Benson, one of Adco's clients, and Carson, a friend of Benson, Jack mistakenly advised Benson to buy shares of Moose Jaw Mining because he thought that Adco had investigated the prospects of the company. In fact, Adco had investigated Goose Jaw Mining and was recommending it to its clients. As it turned out, Benson ignored Jack's advice but Carson bought a lot of Moose Jaw shares and lost all of his money when the mining operation went broke. Which one of the following statements accurately describes Carson's legal situation?
A) Because there was no contractual connection between Carson and anyone else, he has no legal right to compensation.
B) Jack cannot be held liable for Carson's loss, but Adco can be because it employed Jack.
C) Jack cannot be held responsible for Carson's loss because someone who is incapacitated at all by alcohol cannot be held liable in tort for actions while incapacitated.
D) Carson will have to sue Benson and then Benson can turn around and sue Jack under the principles of vicarious liability.
E) Jack can be held liable only if Carson can establish that Jack owed him a duty to be careful.
Answer: E
Diff: 3 Type: MC Page Ref: 60, 61
Skill: Applied

60) The tort of deceit involves:
A) use of the criminal justice system to improperly attack a competitor.
B) a negligent misstatement by a professional.
C) misleading the public as to the origin of a particular good.
D) a person intentionally misleading another, cheating him or her out of money.
E) the intentional misappropriation of the property of another.
Answer: D
Diff: 1 Type: MC Page Ref: 63
Skill: Applied

61) When a company puts extensive pressure on another to breach its employment relationship with a long-term employee, damages may be awarded for:
A) injurious falsehood.
B) passing-off.
C) deceit.
D) inducing breach of contract.
E) conversion.
Answer: D
Diff: 1 Type: MC Page Ref: 63
Skill: Applied

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62) Marco is a clothing designer whose business is failing. He believes that he will be able to sell more of his clothing and accessories if he puts a Calvin Klein label on them. Why is this not a good idea?
A) Marco could be sued for passing-off.
B) Marco could be sued for a negligent misstatement.
C) Marco could be sued for trade slander.
D) Marco could face an action in conversion.
E) Marco could face an action in injurious falsehood.
Answer: A
Diff: 1 Type: MC Page Ref: 63, 64
Skill: Applied

63) Intentionally depriving another of the possession or use of his or her personal property can give rise to an action in:
A) conversion.
B) product defamation.
C) trade slander.
D) passing-off.
E) deceit.
Answer: A
Diff: 1 Type: MC Page Ref: 64
Skill: Applied

64) The simplest way to describe the tort of negligence is as follows:
A) careless conduct leading to punishment of the wrongdoer.
B) inadvertent conduct which always leads to compensation.
C) strict liability causing loss.
D) fault causing loss.
E) no-fault compensation.
Answer: D
Diff: 2 Type: MC Page Ref: 48
Skill: Applied

65) Once acquitted of a crime, a person cannot be sued in tort.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 39
Skill: Recall

66) When an employee commits a tort in the process of his or her employment, the principle of vicarious liability states that the employer, not the employee, is liable.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 39
Skill: Recall

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67) When a person throws a hammer at another person and that person ducks, this is an example of battery.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 40
Skill: Applied

68) A person can be sued for trespass when he or she accidentally crashes into another person's property after losing control of his or her car.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 43
Skill: Recall

69) Some people have implied permission to be on your land.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 43
Skill: Recall

70) A person could commit a trespass even without coming onto your land.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 43
Skill: Recall

71) You cannot trespass in a public mall.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 43
Skill: Recall

72) A continuing trespass can be remedied by damages.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 43
Skill: Recall

73) A published true statement that injures the reputation of the person it concerns is called defamation.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 44
Skill: Recall

74) If a television broadcaster makes disparaging remarks about all immigrants in Canada, the broadcaster could be sued successfully for defamation by any immigrant in Canada.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 44
Skill: Recall

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75) A reasonable person is one who is prudent and careful.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 49
Skill: Recall

76) A principle established in *Donoghue v. Stevenson* is the test used to determine the standard of care that must be exercised by the defendant to escape liability.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 49
Skill: Recall

77) We owe a duty to anyone we can reasonably anticipate might be harmed by our conduct.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 49
Skill: Recall

78) If a person attempts to help, there is no duty to exercise reasonable care.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 52
Skill: Recall

79) The court determines the standard of care required and whether or not there was a failure to live up to that standard.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 51
Skill: Recall

80) The standard of care that is required of a professional in a negligence action is that he or she acts to the best of his or her ability.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 52
Skill: Recall

81) With intentional torts such as assault and battery, false imprisonment, or trespass, it is necessary that actual damage be shown.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 39
Skill: Recall

82) After the courts conclude a presumption of negligence, it is up to the defendant to produce evidence that he or she was not negligent.
Answer: TRUE
Diff: 2 Type: TF Page Ref: 54-57
Skill: Recall

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83) Professionals cannot be sued for negligence as long as they have been proven to be abiding by their own professional rules of conduct.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 60
Skill: Recall

84) If a director on the board of ABC Corp. has shares in Company XYZ and the directors of ABC Corp. are considering the acquisition of Company XYZ, that director must disclose his or her interest; he or she is still permitted to participate in discussions that influence the decision, but may not vote on the decision.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 61
Skill: Applied

85) Negligence cannot constitute a crime under the *Criminal Code of Canada*; it is the domain of civil courts.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 62
Skill: Recall

86) When a person intentionally misleads another, cheating that person out of money, this is known as fraud or deceit; thus, it may be a tort or criminal conduct.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 63
Skill: Recall

87) If a person persuades another to breach a contract with a third person, this may constitute *inducing breach of contract*.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 63
Skill: Recall

88) Slashing a truck tire would be an example of *trespass to chattels*.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 64
Skill: Recall

89) The primary purpose of tort law is to punish wrongdoers.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 64
Skill: Recall

90) In tort, damages as a remedy attempt to put the victim in the position he or she would have been in had the tort never taken place.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 64
Skill: Recall

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91) A civil court can assess only compensation and not punitive damages.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 64
Skill: Recall

92) The term that is used in tort law to describe a situation where an employer is held responsible for the conduct of the employee is _____.
Answer: vicarious liability
Diff: 1 Type: SA Page Ref: 39
Skill: Recall

93) Words that are basically innocent such as "Mary had a baby yesterday" can become defamatory when combined with information that the hearer has, such as the fact that Mary is a Catholic nun. This hidden meaning is referred to as _____.
Answer: innuendo
Diff: 2 Type: SA Page Ref: 45
Skill: Recall

94) What is a tort?
Answer: A tort is a civil or private wrong.
Diff: 1 Type: ES Page Ref: 39
Skill: Recall

95) Distinguish between a tort and a breach of contract.
Answer: A tort involves conduct that is inherently wrong, whereas in breach of contract, the conduct is wrongful only because it violates the promise set out in the contract.
Diff: 1 Type: ES Page Ref: 39
Skill: Recall

96) Distinguish a crime from a tort.
Answer: Both involve conduct that is inherently wrong or unacceptable. However, a criminal process involves prosecution by the state and punishment of the wrongdoer, whereas a tort involves a process whereby the injured party sues the other and receives compensation. The standard of proof is also different.
Diff: 2 Type: ES Page Ref: 39
Skill: Recall

97) Explain the principle of vicarious liability and give an example.
Answer: Vicarious liability occurs when one person is responsible for the wrongful acts of another. For example, an employer is vicariously liable for the wrongful acts committed by an employee during the course of employment when the employee is doing what he or she was employed to do.
Diff: 1 Type: ES Page Ref: 39
Skill: Applied

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98) Explain any limitation on the principle of vicarious liability in the employment context.
Answer: An employer is responsible only for those acts of an employee committed during the course of employment (i.e., while doing what he or she was employed to do).
Diff: 1 Type: ES Page Ref: 39
Skill: Recall

99) "The person who committed the assault and battery must have intended to hurt the other person." Comment on the accuracy of this statement.
Answer: It is necessary that only the act, not the results, be wilful or intended. The act may be motivated by the best of intentions, but if it interferes with the other person, it is still actionable.
Diff: 2 Type: ES Page Ref: 39, 40
Skill: Applied

100) Distinguish between assault and battery.
Answer: A battery involves actual physical contact, whereas an assault involves situations in which the act complained of creates fear or apprehension in the mind of the victim of imminent physical contact.
Diff: 2 Type: ES Page Ref: 40
Skill: Recall

101) "In order for a person to successfully sue for an assault and battery, damage or injury must be demonstrated." Comment on the accuracy of this statement.
Answer: It is not necessary for injury or damage to be present in an action of assault and battery.
Diff: 2 Type: ES Page Ref: 40
Skill: Applied

102) Discuss the position of a doctor when faced with a patient refusing life-saving medical treatment.
Answer: This is the problem of consent and a doctor's dilemma about saving a life in the face of instructions not to do so. Medical practitioners can be sued for battery for performing procedures without proper, informed consent. Students have difficulty with this problem, but it is a good question because it forces them to look at both sides and clearly understand that interference with another person's body without consent is a battery. Good students will explain that consent can be implied only where conditions are life threatening, the patient is unable to give instructions to the doctor, and no guardian is available.
Diff: 3 Type: ES Page Ref: 40
Skill: Applied

103) Contrast the use of the terms *assault* and *battery* in tort law as compared to their use in the *Criminal Code*.
Answer: *Battery*, in almost all tort cases, also includes an *assault*, so it has become common to simply use the term *assault* to cover situations where physical contact is involved. Under the *Criminal Code*, the term *assault* includes physical contact (which would be referred to as *battery* in tort law).
Diff: 2 Type: ES Page Ref: 40
Skill: Recall

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104) When a doctor treats or operates on a patient, explain why that patient cannot sue for battery.
Answer: The patient has consented to the procedure; therefore, it is not actionable.
Diff: 2 Type: ES Page Ref: 40
Skill: Applied

105) Explain how your right to defend yourself is limited.
Answer: You are permitted to use only reasonable force to defend yourself.
Diff: 2 Type: ES Page Ref: 40
Skill: Applied

106) Joe was jogging along a deserted trail beside a river when he met Sam coming the other way. Joe stopped and, in conversation with Sam, accused Sam of stealing and shoplifting from the store. Sam was appalled, became irate, and struck Joe in the nose. In the resulting fight, Joe was injured, suffering a broken nose and significant bruises. Finally, after some time, another jogger came along the trail and broke up the fight. Joe sued Sam for battery and Sam sued Joe for defamation. Explain the likely outcome.
Answer: Joe would win his battery action since his words of provocation would not justify Sam's violent response. Joe was defending himself; Sam was the aggressor. Sam would be liable for the damages Joe had suffered, although the provoking words that Joe spoke would be taken into consideration in determining the damages. Sam would lose his defamation action against Joe, since the words were not published to anyone else. No third party heard them; the other jogger who came along subsequently and broke up the fight did not hear the statement.
Diff: 2 Type: ES Page Ref: 40, 44, 45
Skill: Applied

107) What elements must be established in order to sue another for false imprisonment?
Answer:
1. There was an imprisonment.
2. It was done without authority.
Diff: 2 Type: ES Page Ref: 41, 42
Skill: Recall

108) Regarding the tort of false imprisonment, will anything short of complete restraint amount to imprisonment?
Answer: Yes, when one person surrenders to the control or authority of another voluntarily, thinking that he or she has no choice, an imprisonment has taken place even though there is no physical restraint.
Diff: 2 Type: ES Page Ref: 41
Skill: Applied

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109) Joe went to Sam the barber for a haircut. When Sam finished, Joe looked in the mirror and was horrified; he refused to pay and got up to leave. Sam refused to let him go, this being the third customer that day who had tried to leave without paying. Sam insisted that Joe stay while he phoned the police. Joe did so. When the police arrived and Sam explained the situation to them, the police told him that they wouldn't arrest Joe, and that Sam would have to pursue other remedies. Joe later sued Sam for false imprisonment. Explain the likely outcome.
Answer: Joe would win. The time during which he was held by Sam, waiting for the police, was an imprisonment without authority. This was a civil dispute, and unless it could be shown that Joe never intended to pay for the haircut, Sam had no right to arrest or hold him but was limited to an action of breach of contract.
Diff: 2 Type: ES Page Ref: 42
Skill: Applied

110) In order to sue for trespass to land, what two elements must be established?
Answer: First, it must be established that there was intrusion onto somebody's land, either personally or with some object. Second, it must be established that it was done without authority.
Diff: 2 Type: ES Page Ref: 42, 43
Skill: Recall

111) Joe wandered onto Sam's land, not realizing that he had crossed the property line. Sam found him there and sued him for trespassing. Explain the likely outcome.
Answer: It is no excuse to say that you didn't know that you were on the other person's land, as long as you intended to be where you were; it is trespass if you were on another's land without authority.
Diff: 2 Type: ES Page Ref: 42, 43
Skill: Applied

112) Joe was chased onto Sam's land by a group of ruffians and hid behind Sam's rose bush to escape them, causing some damages. Sam sued for trespass; will he win?
Answer: Yes, he will; this was a voluntary act, and Joe is responsible for the damages he has caused.
Diff: 2 Type: ES Page Ref: 42, 43
Skill: Applied

113) Give three examples where tort standards have been modified by legislation.
Answer:
1. *Occupiers' Liability Act*
2. defamation
3. *Innkeepers' Act*
4. in some circumstances, human rights legislation
5. *Motor Vehicle Act*
6. consumer protection acts
Diff: 2 Type: ES Page Ref: 45, 47, 53
Skill: Recall

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114) Explain what is meant by a continuing trespass.
Answer: Some building or other structure permanently encroaching onto another's property would amount to a continuing trespass.
Diff: 2 Type: ES Page Ref: 43
Skill: Recall

115) Under what circumstances would one sue for nuisance?
Answer: This is a tort action available where property adjoining or nearby is used in such a way that it interferes with someone's enjoyment of their own property. For example, where noise, noxious fumes, water, toxic substances, etc., escape, making it difficult to enjoy your property, you would sue that adjoining property owner for private nuisance.
Diff: 2 Type: ES Page Ref: 43
Skill: Recall

116) Define defamation.
Answer: Defamation is a false statement about someone to his or her detriment that is shared with a third party.
Diff: 2 Type: ES Page Ref: 44
Skill: Recall

117) Explain what is meant by innuendo.
Answer: An innuendo involves a hidden meaning that makes a basically innocent statement defamatory because of this hidden meaning.
Diff: 2 Type: ES Page Ref: 45
Skill: Recall

118) Distinguish between libel and slander.
Answer: Libel is written defamation and slander is spoken defamation. (In some jurisdictions, libel includes any form of broadcasted defamation.)
Diff: 2 Type: ES Page Ref: 45
Skill: Recall

119) Explain in what circumstances the defence of absolute privilege is available in defamation action.
Answer: Absolute privilege is available in relation to trial proceedings, statements made on the floor of the legislature or Parliament, and in senior government committees.
Diff: 2 Type: ES Page Ref: 45
Skill: Applied

120) Explain under what circumstances qualified privileges are available.
Answer: When defamatory communications are made pursuant to an obligation or duty such as employment (e.g., a job reference) or public position, they can be protected by qualified privileges.
Diff: 2 Type: ES Page Ref: 45
Skill: Applied

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121) Explain the difference between qualified and absolute privilege.
Answer: Where absolute privilege is involved, it doesn't matter what the motivation is, whether the person knew what he or she was saying was false, or how damaging the statement is. It is absolutely privileged and no defamation action can be taken. With qualified privilege, however, that privilege can be lost if it can be demonstrated that malice was intended in making the statement, that the statement was published too broadly, or that the person who made the statement did not believe it was true.
Diff: 2 Type: ES Page Ref: 45
Skill: Applied

122) Explain when the defence of fair comment would be available.
Answer: Where someone is a public figure or some event, such as a play, a movie, etc., becomes a matter of public interest, people are entitled to have opinions about that public matter and express them. It must be clear that the comment is the expression of an opinion based on a fact that is available to the public. Also, the opinion must be stated without malice.
Diff: 2 Type: ES Page Ref: 46
Skill: Applied

123) Following a broadcast on the TV station the night before about a particular city councillor having been pulled over for drunk driving, Joe, a political cartoonist, drew a cartoon of the councillor, obviously drunk and with his clothes in disarray, having difficulty walking a straight line on the road with a sober police officer looking on. This was published the next day in the paper for which Joe works. The city councillor involved had had disagreements with Joe in the past and disliked him intensely. It turned out that the story published on TV was an error, but the city councillor chose not to sue the TV reporter and the station; rather, he sued Joe for defamation. What would Joe's best defence be? Indicate the likely outcome.
Answer: Joe's best defence would be fair comment. Unfortunately for Joe, the fact on which the comment or opinion is made must be correct; here it was not, and so Joe would be liable for defamation. It doesn't matter that the city councillor chose to sue Joe instead of the TV station; he has that right. It would be no defence for Joe that the city councillor was motivated by malice against him, because the councillor was defamed.
Diff: 3 Type: ES Page Ref: 46
Skill: Applied

124) Explain the defence of "reasonable communication" and its importance in the area of defamation.
Answer: The Supreme Court of Canada made an extremely important change to the law of defamation with respect to the balance between freedom of speech and protection of reputation. It adopted the defence of "responsible communication," stating that as long as a publication is on a matter of public interest, is reasonable in the circumstances, and there is a diligent attempt to verify the facts, the publisher may be protected even where the comments are false and derogatory. This gives journalists greater protection than they had in the past.
Diff: 2 Type: ES Page Ref: 46, 47
Skill: Applied

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125) Joe is a publisher of a newspaper and relied on Harry's account when he published an article stating that a councillor, Sam, had been caught making indecent telephone calls. It turned out that Joe had misunderstood, and someone else had made the calls. Sam sued for defamation. Will he succeed?
Answer: Yes, mistake is no defence to a defamation action.
Diff: 2 Type: ES Page Ref: 45
Skill: Applied

126) Tom is complaining about the carelessness of his neighbour and asks you if you think he could sue the neighbour for negligence and win. Explain what a plaintiff must prove in order to sue successfully for the tort of negligence and have the defendant pay 100% of his loss.
Answer: Tom would have to prove that a duty was owed by his neighbour to him, that the neighbour failed to live up to that duty, and that this failure caused an injury or loss to Tom. Also, if brought up by the neighbour, Tom would have to show that the damage was not too remote and that there was no contributory negligence or voluntary assumption of risk on his part.
Diff: 3 Type: ES Page Ref: 48, 54
Skill: Applied

127) What elements must be established in order to succeed in a negligence action?
Answer:
1. a duty of care owed to the plaintiff
2. breach of that duty (i.e., failure to live up to the standard of care)
3. causation (physical and legal-not too remote)
4. damage
Diff: 2 Type: ES Page Ref: 48
Skill: Recall

128) Joe was driving his automobile when Sam came out from a side street and went through a stop sign without stopping, almost causing an accident. Joe swerved to avoid Sam and was successful in doing so. He wrote down Sam's licence plate number and sued Sam for his negligent driving. Indicate the expected result.
Answer: He will fail because there was no material loss; there was no accident.
Diff: 2 Type: ES Page Ref: 48
Skill: Applied

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129) Explain what must be established in order to succeed in a negligence action.
Answer: Here, students are expected to outline the elements that must be present for negligence. They should show that a duty of care exists, explaining reasonable foreseeability and the modernization through the *Anns* case. They should explain how to determine the standard applicable. This is the reasonable person test, and they should indicate that it is the reasonable person in the circumstances (i.e., reasonable doctor, etc.). The action must show that the conduct of the defendant fell below this standard and caused the injury complained of. Whether the damage was caused by the conduct complained of is determined by applying the "but for" test. The injury or damage that resulted now can be emotional and economic injury. Students should also note the effect of contributory negligence and voluntarily assuming the risk. They can also deal with the problem of remoteness, although this is likely dealt with today through the *Anns* case tests.
Diff: 2 Type: ES Page Ref: 48-54
Skill: Applied

130) Explain what is meant by the "reasonable person" test.
Answer: This test is used in many areas but is especially important in determining the standard against which the defendant's conduct is measured in a negligence action. The reasonable person here is a careful, prudent person going about the activities, not the average person. The test is analogous to par in the game of golf. Par is not what an average golfer would obtain as a score, but the score one would expect from a good golfer having a good day.
Diff: 2 Type: ES Page Ref: 48, 49
Skill: Recall

131) Indicate why the *Donoghue v. Stevenson* case (the snail in the ginger beer bottle) was so important in the development of negligence law.
Answer: Here, students should display an understanding of what happened in the case and should explain how the reasonable foreseeability test was developed. The concept of a duty owed to your neighbour was modified so that you owe a duty to take steps not to injure anyone you could anticipate might be harmed by your actions. Good students will also discuss how the case expanded the law, particularly with respect to product liability. Good students will go on to explain how this has since been further developed by the *Anns* case, which is good law in Canada.
Diff: 2 Type: ES Page Ref: 49, 50
Skill: Applied

132) Explain how the courts determine whether a duty of care exists in a negligence action.
Answer: The test of reasonable foreseeability applies; that is, could a reasonable person have anticipated that his or her conduct could cause harm to another? If the answer is yes, the duty exists. However, note that today, because of the *Anns* case, there may be some factors to reduce or alter the nature of that duty.
Diff: 2 Type: ES Page Ref: 49
Skill: Applied

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133) Discuss the role of insurance, especially compulsory insurance, and how it relates to tort law.
Answer: This is a little more difficult, requiring that students understand that tort law is based on finding one party at fault and requiring that party to pay damages. Insurance, on the other hand, is based on the principle of sharing the risk. Students should discuss the disadvantage of torts placing overwhelming and ruinous financial liability on one party, and how insurance can avoid that outcome. This leads to compulsory insurance, especially in motor vehicle cases, and the introduction of no-fault systems. Students could also discuss the requirement of insurance for professionals. They should mention that some professional organizations are self-insured, incorporating substantial fees to cover potential losses. However, even in this case, there will usually be backup arrangements for insurance coverage for extraordinary claims.
Diff: 3 Type: ES Page Ref: 54, 61
Skill: Applied

134) Mary was driving down the road when Sam came out from a side road, went through a stop sign without stopping, and struck the side of her car. Upon later examination of Mary's car, it was determined that the brakes were worn down beyond the point of safety. Sam sued her for negligence. Explain the likely result.
Answer: If Mary didn't notice Sam and didn't touch the brakes, then her poor brakes had absolutely nothing to do with the accident and did not cause it. It was Sam's negligence that caused the accident when he went through the stop sign. If, however, Mary did see Sam coming through the stop sign and was unable to stop because of her defective brakes, she at least contributed to the accident by her negligence.
Diff: 2 Type: ES Page Ref: 54, 55
Skill: Applied

135) Explain under what circumstances the defence of remoteness can be used in a negligence action.
Answer: Where some sort of injury or damage was reasonably foreseeable, but in fact the way that the injury took place was strange to the point of being completely unexpected or unusual so that the type of damage itself was not foreseeable, then the injury may be too remote and therefore not actionable.
Diff: 2 Type: ES Page Ref: 56
Skill: Applied

136) Joe, a concert pianist, was walking down the street when he was struck by Harry, a careless skateboarder, knocking him down and crushing his hand. When Joe sued Harry for his negligence, claiming the loss of income from his profession (he could never play piano again), Harry countered with the defence that there is no way he could have anticipated that the person he was going to hit was a concert pianist. Explain Harry's likelihood of success in raising this defence.
Answer: You take your victim the way you find him or her, and the fact that the damages are unusual because of the special circumstances of the victim is no defence. This is called the thin skull rule.
Diff: 2 Type: ES Page Ref: 56, 57
Skill: Applied

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137) Discuss the requirement to mitigate damages in a negligence action.
Answer: The requirement to mitigate means the plaintiff must take all reasonable steps to keep damages as low as possible. If he or she fails to do this, the damages will be reduced to the amount he or she would have received had he or she properly mitigated.
Diff: 2 Type: ES Page Ref: 57
Skill: Applied

138) In Canada, in order for a manufacturer to be held liable for injury caused by its product to an ultimate consumer, what must be shown?
Answer: It must be shown that there was a duty to be careful in manufacturing that product, and that there was a failure to live up to the standard of a reasonable person in that manufacturing process (assuming, of course, that some sort of injury had resulted and the injury resulted from the normal use of the product).
Diff: 2 Type: ES Page Ref: 57
Skill: Applied

139) Explain how the standard of care imposed varies when particular expertise is involved (e.g., a doctor).
Answer: The reasonable person test is really the reasonable person in the circumstances; therefore, the standard imposed with medical malpractice is what a reasonable doctor would have done in those circumstances. With other professions, what would a reasonable accountant or a reasonable plumber or electrician have done in the circumstances?
Diff: 2 Type: ES Page Ref: 60
Skill: Applied

140) How are professionals treated differently under the rules of negligence?
Answer: The standard required of a professional or expert in his or her field is much higher; that is, he or she must live up to the standard of a reasonable accountant, a reasonable lawyer, a reasonable doctor, etc.
Diff: 2 Type: ES Page Ref: 60
Skill: Applied

141) Explain when negligence can constitute a crime under the *Criminal Code*.
Answer: Negligence can constitute a crime under the *Criminal Code* where a person in the performance of a duty does or neglects to do something that "shows wanton or reckless disregard for the lives or safety of other persons."
Diff: 1 Type: ES Page Ref: 62
Skill: Recall

142) If someone sells imitation Seiko watches without permission, for what can that person be sued by Seiko?
Answer: passing-off
Diff: 1 Type: ES Page Ref: 63, 64
Skill: Recall

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143) When someone intentionally scratches your car, for what can you sue?
Answer: trespass to chattels
Diff: 1 Type: ES Page Ref: 64
Skill: Recall

144) Discuss the various kinds of remedies that are available in tort actions. In your answer, discuss any limitations on the availability of those remedies.
Answer: The primary remedy is damages (i.e., monetary compensation), but students should point out that these damages are usually designed to compensate the person for his or her loss as a result of the tort. In rare circumstances, where conduct was deliberate, punitive damages may also be granted where the object is to punish the wrongdoer rather than to simply compensate the victim. Also, where a monetary award would not be appropriate (e.g., usually the case where a passing-off action is involved), the court may award an injunction ordering the offending conduct to stop. Sometimes an accounting may be ordered, requiring the wrongdoer to disclose any profits made and pay them to the victim. Students should also discuss the effect of contributory negligence that will reduce the damages payable on the basis of apportioned responsibility for the loss. Voluntary assumption of risk should also be discussed. Here students should indicate that the defendant must demonstrate that the plaintiff voluntarily assumed the legal risk, not just the physical risk, and that in the few cases where this is present, this will be a complete bar to recovery.
Diff: 2 Type: ES Page Ref: 55, 64
Skill: Recall

145) Discuss strategies and practices that a business person (or a company) might use to avoid being a defendant in a tort action.
Answer: Students may discuss a wide range of possible strategies and practices. Examples might include the following:
1. Have a good understanding of the law and ensure that events or conduct that might give rise to tort action do not occur.
2. Select employees carefully and train them well on safety and other tort-related matters.
3. Perform internal and external audits.
4. Create an atmosphere that engages all employees in being alert to risks that may be present and removing them or reporting them.
Some students may suggest a more aggressive approach that companies may use when faced with a tort action wherein they launch their own lawsuits, usually claiming defamation with the goal of reducing criticism and disabling potential plaintiffs (through significant expenses and loss of time). These are called SLAPPs (strategic lawsuits against public participation) and they are sometimes effective, although the ethics related to them are questionable. They are often considered to be an abuse of the legal system.
Diff: 2 Type: ES Page Ref: 64, 65
Skill: Applied

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