**CHAPTER 6-NEGLIGENCE AND STRICT LIABILITY**

**TRUE/FALSE**

1. *Palsgraf v. Long Island Railroad Co.* addressed the issue of furnishing alcohol to minors.

2. A landowner's highest duty is owed to licensees.

3. Courts have ruled that negligently retaining a violent employee is a tort.

4. A defendant who engages in setting off fireworks at a fully licensed Fourth of July show is liable for harm that results from the activity only if the plaintiff proves the harm was foreseeable

5. *Res ipsa loquitur* shifts the burden of proof from the plaintiff to the defendant.

6. The doctrine of contributory negligence is followed in most states.

7. While hunting, Roger enters Adele’s property without permission and is injured by falling into a ditch that was obscured by the underbrush. Under the common law, Adele is liable for Roger’s injuries.

8. Tort law is not concerned with how to respond to injury caused by criminals, as this would be addressed by criminal law.

9. Most states recognize some form of comparative negligence.

10. Kenneth was exposed to radiation on his job in an environmental cleanup. In a lawsuit against his employer, the court must decide the full extent of both present and future damages rather than allowing Kenneth to return to court years later if medical problems develop at that time.

11. A sports fan, injured by a hockey puck that flew into the stands during an NHL game, would be subject to the defense of assumption of the risk in a suit to recover for her injuries.

12. In a strict liability case, the courts still consider if the defendant acted in a reasonable and prudent manner.

13. Silas asks his friend Shelby to come to his property to go fishing at his pond. If he fails to warn her that the dock has a rotten spot and she falls through and is injured, Silas would be held liable in most states.

14. The duty of care that each of us must follow is to behave as a reasonable person.

15. A party engaging in ultra hazardous activity is always liable for any harm that results.

**MULTIPLE CHOICE**

1. In a negligence case, the plaintiff must establish:

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| a. | duty, strict liability, causation, and injury. |
| b. | *mens rea*, breach, foreseeable harm, and injury. |
| c. | duty, *actus reus*, foreseeable harm, and causation. |
| d. | duty of due care, breach, causation, foreseeable harm, and injury. |

2. Annette drove through an intersection without looking and hit Vincent's car that he had driven into the intersection without obeying a stop sign. Annette sued Vincent. The jury found that Annette’s fault contributed 20 percent to the collision and determined that her total loss was $100,000. Under comparative negligence, the jury should award Annette:

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| a. | $20,000. |
| b. | $80,000. |
| c. | $100,000. |
| d. | nothing. |

3. Negligence concerns harm that:

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| a. | is unforeseeable. |
| b. | arises intentionally. |
| c. | arises by accident. |
| d. | is always substantial. |

4. In *Hernandez v. Arizona Board of Regents,* the court held that individuals who:

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| a. | intentionally provide alcohol to minors can be liable for negligence to injured third parties. |
| b. | intentionally provide alcohol to minors cannot be held liable for negligence to injured third parties. |
| c. | carelessly provide alcohol to minors can be held liable for damages for resulting injury to third parties. |
| d. | none of the above. |

5. Bob, a weak swimmer, ignored warning signs in a recreational swimming area and went into deep water. He soon grew tired and realized that he could not make it back to shore. Seeing Kelly, he cried out for help. Kelly, however, ignored the pleas. Bob was finally saved by Dorothy, but suffered brain damage from being submerged during the ordeal. Bob now sues Kelly for negligence for failing to try to save him. Bob will:

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| a. | prevail because society places a duty on people to help each other and Kelly breached this duty, resulting in Bob's injury. |
| b. | lose because Kelly had no legal duty to rescue him. |
| c. | lose even though Kelly had a legal duty to save him, since Bob will not be able to prove that Kelly's failure to act was the proximate cause of his injuries. |
| d. | lose because a reasonable person could not have foreseen that someone in a recreation area could not swim well. |

6. One morning, Miles placed a thumbtack on the chair of the office manager where he worked. He had no quarrel with the office manager, but thought this would be funny. Two days after sitting on the tack, the office manager was hospitalized with an infection caused by the tack. Which of the following is correct?

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| a. | Miles actions were negligent. |
| b. | No tort has been committed. |
| c. | Miles committed an intentional tort. |
| d. | Miles is strictly liable. |

7. A plaintiff sues in negligence but has no direct proof that the defendant behaved unreasonably. Which of the following is most likely to help the plaintiff?

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| a. | *Res judicata.* |
| b. | *Stare decisis.* |
| c. | *Res ipsa loquitur.* |
| d. | *Mens rea.* |

8. Wayne worked in an office. He had no criminal record, had never had a complaint made against him about his work or his conduct, and had been a faithful employee for nearly 20 years. One day, Wayne followed his supervisor to his home and fatally shot him. The estate of the supervisor sued the company, claiming it should have been aware of Wayne's growing frustration with work. The company's best defense will be that:

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| a. | there was no way to foresee that the incident would happen. |
| b. | the incident occurred away from the office. |
| c. | the killing was the result of a personal conflict between Wayne and the supervisor. |
| d. | even if the company had been aware of Wayne's difficulty with his supervisor, Wayne did not have any criminal history. |

9. Which of the following acts resulting in injury would be *negligence per se*?

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| a. | Janet driving 40 mph over the posted speed limit. |
| b. | Ted keeping explosives in his private, locked garage without complying with state law regulating the storage of such materials. |
| c. | A retailer selling glue containing benzene to a 14-year-old boy in violation of state law. |
| d. | All the above acts are *negligence per se*. |

10. Which of the following statements regarding a negligence case is correct?

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| a. | A plaintiff must show that the defendant's act was both the factual cause of her injury as well as a foreseeable injury. |
| b. | A plaintiff must show that the defendant's act was the factual cause of her injury even if the injury was not foreseeable. |
| c. | A plaintiff must show that the defendant's act created a foreseeable danger even if it was not the factual cause of her injury. |
| d. | A plaintiff does not have to show that the defendant's act either created a foreseeable danger or that the act was the factual cause of her injury. |

11. Under a state law, a dog owner is absolutely liable to any person who is injured by the dog. This is an example of:

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| a. | *negligence per se*. |
| b. | strict liability. |
| c. | *res ipsa loquitur*. |
| d. | negligence. |

12. If a court applies *res ipsa loquitur:*

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| a. | the plaintiff needs to prove the case by a preponderance of the evidence. |
| b. | the plaintiff must prove the case by clear and convincing evidence. |
| c. | the defendant has the burden of proving he or she is not liable. |
| d. | the defendant is strictly liable. |

13. Kelley went ice skating on a neighbor’s pond, but she fell through a thin area into icy waters. Kelley did not have permission to be on the property, and the neighbor did not even know that she was there. Is the neighbor liable for Kelley’s injuries?

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| a. | Yes. The neighbor should have posted “thin ice” notices. |
| b. | No. Kelley was a trespasser and the neighbor could only be held liable for intentionally injuring her or for gross misconduct. |
| c. | It may depend on Kelley’s age. |
| d. | Yes, the neighbor is strictly liable. |

14. Kyle was eating clam chowder soup in a restaurant when a very small piece of bone lodged in his throat. Fortunately, he was able to remove the bone with his fingers. However, he was upset by the incident and sued the restaurant for negligence. The most likely result would be:

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| a. | Kyle will not collect any damages since he did not sustain any damages. |
| b. | none of these answers are correct. |
| c. | Kyle will collect damages if he proves it was possible to prevent tiny fish bones from being present in clam chowder. |
| d. | Kyle will collect damages, as *res ipsa loquitur* applies. |

15. Phillip was waiting for a bus at a bus stop. Across the street and down the block, a mechanic negligently overinflated a tire he was intending to put onto Marsha’s pickup truck. The exploding tire injured Marsha and frightened a neighborhood dog, which ran down the street and knocked Phillip down, injuring his knee. Phillip sued the mechanic. In applying the *Palsgraf v. Long Island Railroad Co.* decision to this case, Phillip would:

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| a. | win because the mechanic was negligent in overinflating the tire, which led to Phillip’s injury. |
| b. | win based on *negligence per se*. |
| c. | lose because the court would apply the doctrine of *res ipsa loquitur*. |
| d. | lose because, although the mechanic’s conduct was negligent toward Marsha, it was not a wrong in relation to Phillip, who was far away. The mechanic could not have foreseen injury to Phillip and therefore had no duty to him. |

16. In a comparative negligence state, if the plaintiff in a negligence lawsuit is found to be 30 percent negligent, the plaintiff would recover:

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| a. | 70 percent of the damages. |
| b. | all of the damages. |
| c. | none of the damages. |
| d. | 30 percent of the damages. |

17. A customer in a restaurant would be considered \_\_\_\_\_\_\_\_ to whom the restaurant owner owes a duty \_\_\_\_\_\_\_\_.

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| a. | a licensee; to warn of known dangers. |
| b. | an invitee; of reasonable care. |
| c. | a social guest; only to avoid intentionally injuring him. |
| d. | none of the above. |

18. Tommie, a six-year-old child, was seriously injured when he stuck a fork into an electrical outlet. His parents sued the restaurant where the incident occurred, claiming it should have had child protective guards on the outlets. Whether the restaurant is liable will be dependent upon whether:

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| a. | the incident was reasonably foreseeable. |
| b. | none of these answers is correct. |
| c. | this is *negligence per se.* |
| d. | this is an ultrahazardous activity. |

19. Laura, a brain surgeon, committed a negligent act when she ran a red light and injured Randy, a pedestrian crossing the street. Randy was a mentally impaired adult.

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| a. | The “reasonable person” standard does not apply to Laura since she is an extraordinary person. |
| b. | None of these answers is correct.. |
| c. | The "reasonable person" standard does not apply to Randy since he is mentally impaired. |
| d. | The "reasonable person" standard does not apply to Laura nor Randy given their respective degrees of extreme intelligence (one high and one low). |

20. Punitive damages are awarded:

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| a. | for past and future medical expenses. |
| b. | to repay the victim for losses suffered. |
| c. | to punish the defendant. |
| d. | for past and future pain and suffering. |

21. The test of “Foreseeability” is generally used to determine the existence of which element of a negligence case?

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| a. | Duty of due care. |
| b. | Breach. |
| c. | Factual cause. |
| d. | Injury. |

22. Don was driving his truck when a board fell out of the truck bed and onto the road. Alice, who was driving closely behind Don's truck, tried to avoid the board, swerved and struck a telephone pole, causing her severe injuries. Which of the following is correct?

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| a. | Don is strictly liable to Alice for her injuries. |
| b. | In a comparative negligence state, the actions of Don and Alice will be weighed to determine liability. |
| c. | Don was not negligent in allowing the board to fall out of his truck. |
| d. | Don is engaging in ultrahazardous activity. |

23. What level of owners liability does a trespassing adult have

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| a. | lowest level |
| b. | mid level |
| c. | higher level |
| d. | highest level |

24. Johnny is hit by a car and thrown into the ditch breaking his leg. when this happens it scares Jim’s cat who runs away tripping Mrs. Afton. what kind of cause is Mrs. Afton’s fall.

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| a. | superseding cause |
| b. | proximate cause |
| c. | factual cause |
| d. | contributive cause |

25. The movers have to bring the piano in through the open window on the third floor. The rope breaks and falls on Carmen’s car. Under what theory can she recover damages.

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| a. | assumption of risk |
| b. | strict liability |
| c. | res ipsa loquitur |
| d. | negligence per se |

**ESSAY**

1. Discuss the concepts of contributory negligence and comparative negligence.

2. List and discuss the elements necessary to establish negligence.

3. Mavrex, Inc. received an application from Larry and, since his written qualifications seemed to meet a pressing current need, they hired him without checking his references or prior records. Actually, Larry had been in prison for murder several years earlier. Tom, a long-time Mavrex employee, angered Larry when Tom tried to tell Larry how to do his job. Larry attacked and injured Tom. If Tom sues Mavrex, what would his cause of action be, and what elements would Tom need to prove to win his case?

4. In negligence cases the courts often refer to the term "reasonable person." What is meant by this term?

5. A contractor used dynamite to loosen a rocky hillside. The blast from the dynamite caused a house foundation to crack. The house was located over a half-mile away from the dynamite site. The contractor was careful when using the dynamite and no allegation of negligence is made. However, the house owner claims the contractor is liable for damage to the foundation. Is the house owner correct? Explain.

6. On Monday, Travis took his four-wheeler to Reppart’s Equipment & Service for repair because the steering was not working properly. On Friday he called Reppart’s to see if his four-wheeler was ready because he wanted it for a weekend trip. Reppart’s said they had done the major repairs but that the steering system still needed some work and they needed another few days to finish the repairs. Travis told them he would pick the four-wheeler up and use it for the weekend and then bring it back to have them finish their work. While riding with friends on the weekend, Travis ran into someone because the steering stuck and he couldn’t swerve to avoid them. Discuss how a court would determine causation in a negligence suit against Travis.