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DAMAGES TORTS QUIZ

Prof. Bell

NOTE: Choose the one best answer to each question, applying the Restatement of Torts (2d) and relevant case law. As on the MBE, you have 1.8 minutes/answer.

Question 1

Plato purchased and drank a bottle of Fizzade manufactured by Fizz Co. The beverage contained shards of glass, some of which Plato swallowed. After a delay of some hours, Plato underwent surgery to have the glass removed from his stomach. Which of the following best describes the damages he is most likely to receive from Fizz Co.?

- (a) Compensation for any wages lost as a result of the accident and the costs of his medical care.
- (b) The above plus compensation for physical pain and suffering caused by the accident and his medical care.
- (c) All of the above plus compensation for mental distress caused by worrying about wounds the glass might inflict before it could be removed.
- (d) All of the above plus punitive damages, because Fizz Co. will be held strictly liable for its defective product.

Question 2

Descartes intentionally killed a dog belonging to Sartre, claiming that it had been roaming free in violation of local law. Sartre brought suit for conversion and testified at length that, while he had obtained the dog for free from a local animal shelter, he had come to regard it as his boon companion. Sartre will most likely recover:

- (a) Nothing, because Descartes was enforcing the law.
- (b) Nominal damages, only.
- (c) Compensation for his emotional distress.
- (d) Compensation for his emotional distress and punitive damages for Descartes' intentional wrongdoing.

DAMAGES TORTS QUIZ--ANSWER KEY

1. The facts come from *Watson v. Augusta Brewing Co.*, 124 Ga. 121 (1905), and is cited by R. (2d) Torts § 905 as support for illustration 6.
 - (a) is wrong because Plato merits greater recovery.
 - (b) is wrong because Plato merits greater recovery.
 - (c) is the best answer because Plato had a reasonable fear that the glass would cause the injuries described. We might add, moreover, that he could perhaps get recovery for fear that some of the glass remained and would cause further damages.
 - (d) is wrong because strict liability does not necessarily result in punitive damages, a remedy which, at any rate, these facts do not justify.

2. This problem comes from R. (2d) Torts § 912, Illustration 1.
 - (a) is wrong because private parties do not generally have the right to enforce the law, much less to do so without bearing the costs of any takings they thereby inflict. Compare the law of private necessity.
 - (b) is the best answer because, while Descartes evidently acted wrongly, we have no evidence of the dog's exchange value nor any certain evidence of its special value to Sartre.
 - (c) is wrong because courts generally treat pets as chattel property and refuse to award anything comparable to "loss of consortium" for their destruction. At most, a court might treat the intentional killing of a pet as a form of IIED, but we do not have the facts to support such a claim, here.
 - (d) is wrong both because (c) is wrong and because we have no basis to think Descarte acted with sufficient malice to justify punitive damages.