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

Bob, while attending a meeting of the Bridge Engineering Association, got wrapped up in reading his email on his Blackberry. He thus did not notice when the emcee introduced a panel of speakers on bridge liability, including, "Laura Nimmer, the only lawyer in the room and one of the few we've ever had at one of our events." During the Q&A that followed the presentation, Bob stood and asked, "What can engineers do to keep lawyers—liars and crooks to a one—from interfering with our work?"

(a) Bob did not defame Laura because he did not intend to insult her.

(b) Bob did not defame Laura because she is only one of many, many lawyers.

(c) Bob defamed Laura because she is one of the class of people he called liars and crooks.

(d) Bob defamed Laura because those who heard his comment reasonably took him to refer to her, specifically.

Question 2

Senator Bloviate was speaking at a public rally when Sandra Diehard stood and shouted, "You are a tool of the oppressive capitalist infrastructure, a puppet in the hands of the real ruling class, a running dog for the WTO—the World Totalitarian Oligarchy!" Although security personnel quickly put an end to Sandra's rant, Bloviate took offense and sued her for defamation.

(a) Diehard did not defame Bloviate.

(b) Diehard did not defame Bloviate because he cannot carry the burden of proving the falsity of her statements.

(c) Diehard defamed Bloviate because her statements wrongfully harmed his reputation.

(d) Diehard defamed Bloviate because, not being a media defendant, she bears the burden of proving the truth of her claims.
1. This problem illustrates the rule in R. (2d) Torts § 564A(b), and discussed in Comment d to that rule.

(a) is wrong because, defamation is generally (apart from distinctions arising from constitutional considerations not relevant, here) a strict liability offense. It thus does not matter what Bob intended; it matters only what his audience interpreted him to say.

(b) is wrong because, as the rule and comment cited above indicate, even a statement about a class of potential plaintiffs too large to support a defamation claim can, under the right circumstances, be taken to refer to only one or a few of them.

(c) is close, but not the best answer because it suggests that any lawyer might have a claim against Bob. Lawyers as a group are too large to be defamed by his comment alone, however; it takes reference to the context of his comment to make it appear he referred to Laura.

(d) is the best answer for reasons made clear by the text of R. (2d) Torts § 564A(b) and Comment d thereto.

2. This problem deals with the interplay of R. (2d) Torts § 566 and various constitutional doctrines relating to defamation law.

(a) is the best answer because Diehard is engaged in fair commentary about a matter of public interest. Judge-imposed constitutional limits on defamation law do not appear to rendered that defense entirely redundant.

(b) is not the best answer because it is not clear that the holding of Milkovich v. Lorain Journal Co. applies to non-media defendants, such as Diehard.

(c) could never suffice as a justification of a defamation claim, given that true statements of fact, even if made "wrongfully" in some sense, may harm another and yet not constitute defamation.

(d) is not the best answer because, even if Milkovich does not apply to non-media defendants such as Diehard, she need not address the truth of falsity of her statements, as they are not statements of fact but rather of opinion.