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DEFENSES 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

Landlubber asked Salty to take him and a party of friends whale watching in Salty's sailboat. Salty agreed. The large party overloaded the boat, however, which capsized. Landlubber drowned and his estate sued Salty for negligence. Salty responded that Landlubber assumed the risk. What result?

- (a) Salty will win because everybody knows that overloaded ships can capsize.
- (b) Salty will win because Landlubber was contributorily negligent.
- (c) Landlubber's estate will win unless Salty can show that Landlubber knew of the risk and appreciated its unreasonableness.
- (d) Landlubber's estate will win because Landlubber could not have known the risk of sailing in a top-heavy boat.

Question 2

Cliff encouraged his girlfriend, Amy, to go for a "fun" drive that, thanks to a series of dips and small hills in the road, "feels just like a roller coaster." She agreed. As they sped along, laughing and bouncing, Amy struck her head on the ceiling of the vehicle and cried out in pain. Alarmed, Cliff slammed on the brakes. He had failed to maintain them properly, however, and as a consequence lost control and crashed. Amy suffered further injuries in the crash and sued Cliff for negligence. What will Amy recover?

- (a) Compensation for all of her injuries.
- (b) Compensation for her head injury, only, because Cliff did not intend to lose control of the vehicle.
- (c) Damages for all but her head injury, the risk of which she assumed.
- (d) Nothing, because she assumed the risks of the adventure.

DEFENSES TORTS QUIZ--ANSWER KEY

1. The facts come from *Calanchini v. Bliss*, 88 F.2d 82 (9th Cir. 1937), and is cited by R. (2d) Torts § 496D as support for comment b.
 - (a) is wrong because, while we may presume everybody knows of the risks of capsizing in general, Landlubber was not likely to have appreciated the scope of the risk in this particular case.
 - (b) is wrong because it is not likely that the relevant jurisdiction recognizes contributory negligence as a defense, given its rarity. Furthermore, it is not clear that Landlubber was negligent on these facts.
 - (c) is the best answer because it effectively describes the rule of R. (2d) Torts § 496D.
 - (d) is not the best answer, though it is interestingly close. The standard for implied assumption of risk is subjective, and we cannot be sure what Landlubber subjectively knew. Also, some claims of subjective ignorance are too implausible to be credited.

2. This problem comes from R. (2d) Torts § 496C, Illustration 7.
 - (a) is wrong because (c) is correct.
 - (b) is wrong because, among other reasons, Cliff's intent is not relevant to her negligence cause of action.
 - (c) is the best answer because, while Amy assumed the risk of the bumpy road, she had no reason to know that Cliff had not maintained his brakes and so did not assume that risk.
 - (d) is wrong because (c) is correct.