

TORTS II REVIEW 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

In the canyon behind her house, Sarah found a starving bobcat kitten, apparently abandoned by its mother. Sarah nursed the kitten to health and then released it back into the wild. Soon thereafter, the bobcat bit her neighbor, Alan, as he grilled hamburgers in his backyard.

- (a) Alice is not liable to Alan for the bobcat's bite.
- (b) Alice is not liable to Alan unless she owned the land in the canyon.
- (c) Alice is liable to Alan because she acted negligently in nursing and releasing the bobcat.
- (d) Alice is strictly liable to Alan because her bobcat, a wild animal, bit him.

Question 2

Vic foraged through the dumpster of the local Buystuff store for something to eat. He found a tin of sardines that the store had thrown out because it had passed its "sell by" date. The tin split apart when Vic tried to open it, cutting his hand badly. Vic brought suit against Buystuff.

- (a) Buystuff is not liable to Vic because it did not manufacture the tin.
- (b) Buystuff is not liable to Vic because it did not sell the tin to Vic.
- (c) Buystuff is liable to Vic because it created an attractive nuisance by putting food in its dumpster.
- (d) Buystuff is strictly liable to Vic.

Question 3

Angry that she cut in front of him in a checkout line, Tony bumped Alice with his shopping cart. The blow caused her momentary pain, but had the salutatory effect of relocating a misaligned vertebra in her lower back, curing her of a chronic ache. She brought suit for battery.

- (a) Alice should recover nothing because the effects of pain cannot be quantified in monetary terms.
- (b) Alice should recover nothing, because Tony's blow cured her of a medical problem.
- (c) Alice should recover compensation for the momentary pain that Tony's blow caused her.
- (d) Alice should recover compensation for the momentary pain that Tony's blow caused her as well as punitive damages for his malicious intent.

Question 4

Trucker illegally left his vehicle sitting across a public sidewalk, blocking passage. Walker left the sidewalk and entered the street in order to pass by Trucker's vehicle. When Walker did so, a negligently-driven vehicle struck and injured him.

- (a) Walker is barred from recovering for his injury because he assumed the risk of walking in the street.
- (b) Walker is barred from recovering for his injury if he violated a statute forbidding pedestrians from occupying the street.
- (c) Walker is not barred from recovering for his injury because he did not assume the risk of being struck by a vehicle in the street.
- (d) Walker is not barred from recovering for his injury because Trucker violated a statute that places the entire responsibility on him.

Question 5

Mary drinks heavily and often injures herself in accidental falls. Though she often has violent arguments with her husband, Paul, he has never hit her. Mary relates her marital troubles to her acquaintance, Kim. After hearing those tales, and observing Mary's bruises, Kim says in strict confidence to her friend, Bob, "I think that Mary lies when she says Paul has never hit her, because she suffers from battered-wife syndrome."

- (a) Because Kim made clear she was only expressing her opinion, she has not defamed Paul.
- (b) Because Bob is obligated to not repeat Kim's statement, she has not published it and thus has not defamed Paul.
- (c) Because Kim spoke carelessly, she defamed Paul.
- (d) Because Kim spoke a falsehood about Paul with reckless disregard for its truth, she defamed him.

Question 6

True story: Some years ago, I used to have on my personal website a lovely picture of my smiling family. I learned through one of my students that an area dentist had reproduced the image in his advertisements. He did not name us nor did he ask for our permission. His ad touted services, such as teeth whitening and orthodontics, that nobody in our photo had ever used. I put an end to the matter with a phone call. What causes of action might I have succeeded in pressing, though?

- (a) Appropriation of likeness and intrusion upon seclusion.
- (b) Appropriation of likeness and false light.
- (c) Appropriation of likeness and defamation.
- (d) Appropriation of likeness and publicity given to private life.

TORTS II REVIEW QUIZ--ANSWER KEY

1. Although we did not in class discuss the exact rule that controls this question, students should be able to derive the right answer by reflecting on the principles underlying the rules that we did study. (The controlling rule appears in R. (2d) § 508: "A possessor of a wild animal indigenous to the locality in which it is kept is not liable for harm done by it after it has gone out of his possession and returned to its natural state as a wild animal indigenous to the locality.")
 - (a) **is the best answer** both because of the rule in R. (2d) § 508 and, more importantly, none of the other answers is better.
 - (b) is not the best answer because her ownership of the canyon has no bearing on Sarah's liability.
 - (c) is not the best answer—though it is certainly a contender—because it is hard to see how Sarah's acts amount to negligence. Wouldn't a reasonable person act likewise? It is a question of fact, granted, but not plainly a case of negligence.
 - (d) is not the best answer because it invokes the rule applicable in cases where a dangerous animal escapes confinement—not the case, here.

2. This question plays off of the comment 1 to R. (2d) § 402A: "In order for the rule stated in this Section to apply, it is not necessary that . . . the consumer have purchased the product at all. He may be a member of the family of the final purchaser, or his employee, or a guest at his table, or a mere donee from the purchaser. The liability stated is one in tort, and does not require any contractual relation, or privity of contract, between the plaintiff and the defendant." A fuller treatment of the issue might afford Buystuff a defense if it can show that the defect was introduced by the age of sardines or rough treatment the tin got when it was thrown away, but the available answers do not allow appeal to those defenses.
 - (a) is not the best answer because a retailer can be held liable to a consumer even for defects caused by the manufacturer.
 - (b) is not the best answer because liability for defective products reaches even beyond buyers.
 - (c) is not the best answer because, among other reasons, U.S. law has largely discarded the "attractive nuisance" rule.
 - (d) **is the best answer** as it reflects R. (2d) § 402A.

3. This question comes largely from illustration 1 to R. (2d) § 905, though it also invokes the principles of punitive damages set forth in § 908.
- (a) is not the best answer because pain is routinely subject to monetary compensation in tort suits.
 - (b) is not the best answer because Tony did cause Alice pain, even if the net effect of the blow was beneficial.
 - (c) is not the best answer, though it is true, because (d) is better.
 - (d) is the best answer** because Alice deserves both compensation for the pain Tony caused and, due to the outrageous and malicious nature of his act, punitive damages.
4. This question comes from illustration 5 to R. (2d) § 496E.
- (a) is not the best answer because Walker was forced into the street.
 - (b) is not the best answer because, even if Walker did violate a statute, he was not thereby necessarily *per se* negligent, given that his violation was prudent under the circumstances. And, at any rate, even if he were thereby held negligent, that would probably serve at most only to reduce his damages.
 - (c) is the best answer** because Walker did not voluntarily assume the risk of being struck; rather, Trucker's illegal act forced Walker to enter the street.
 - (d) is not the best answer, though it is an interesting one, simply because we cannot be sure what policies the relevant statute aims at. To be sure, it probably aims at serving the interests of pedestrians, thus perhaps calling for invocation of R. (2d) § 496F ("The plaintiff's assumption of risk bars his recovery for the defendant's violation of a statute, unless such a result would defeat a policy of the statute to place the entire responsibility for such harm as has occurred upon the defendant.") We cannot be sure of that, though; the statute might well also aim at keeping streets neat-looking, however, or facilitating access to fire hydrants by safety personnel.

5. These facts somewhat mirror those of illustrations 2 and 3 of R. (2d) Torts § 564. The most important point is that Kim's statement about Mary refers to Paul, though the wrong answers also illustrate other points of defamation law.
- (a) is not the best answer because simply framing your statement as an opinion will not exempt you from liability for defamation; what matters is if you appear to make a statement of fact about another.
 - (b) is not the best answer because it misstates the applicable standard for publication, which occurs even when only one person (other than the defamer and the defamed) receives the defamatory communication.
 - (c) **is the best answer**, as it accurately reflects the prevailing standard in private defamation suits and offers a fair characterization of Kim's act. (Kim may well have defamed Mary, too, but that is not relevant, here.)
 - (d) is not the best answer, both because it misstates the facts (Kim probably did not speak with actual malice) and invokes a rule not applicable to Paul (who as a private figure need not show actual malice).
6. Plainly, appropriation of (name or) likeness is a good claim. The question is what claim might be added.
- (a) is not the best answer because the dentist did not intrude; the photo was publicly posted on my webpage, after all.
 - (b) **is the best answer** because the dentist made implied claims—"This family has had work done on its teeth and will happily sell the right to use its image in ads."—that were false and, though probably not so bad as to amount to defamation, were such as might highly offend a reasonable person.
 - (c) is not the best answer because, although the dentist did make false implied claims about my family's use of cosmetic surgery and willingness to sell its image, those are not necessarily claims that would harm our reputation among a substantial minority of a respectable community. Lots of people have cosmetic work done on their teeth, after all, and modeling is not generally considered a disreputable profession.
 - (d) is not the best answer, because there was no "matter concerning the private life" of my family that the dentist publicized. Our picture was, after all, on a publicly-available webpage.