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STRICT LIABILITY 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

Dottie kept in her second-floor apartment a small dog, which habitually rushed at the window to yap at pedestrians walking on the sidewalk below. One day the dog, hearing Patsy walking past, rushed at the window, lost its footing, and fell on her, causing her injuries. What best describes Dottie's liability to Patsy?

- (a) Dottie should not be held liable if she exercised due care in constraining her dog.
- (b) Dottie should not be held liable because the dog's behavior constituted an intervening cause.
- (c) Dottie should be held liable only if she failed to exercise due care in constraining her dog.
- (d) Dottie should be held strictly liable for Patsy's damages.

Question 2

Dig Inc. drilled an oil well on property it owned in Long Beach, in a residential neighborhood. Preston lived next door. Although Dig followed standard operating procedures and obeyed all relevant regulations, the oil well "blew," spraying mud and oil on Preston's property. What best describes Dig's liability to Preston?

- (a) Dig should be held liable on *res ipsa loquitur* grounds.
- (b) Dig should be held strictly liable for engaging in an abnormally dangerous activity.
- (c) Dig should not be held liable because it exercised due care.
- (d) Dig should not be held liable because Preston came to the nuisance.

STRICT LIABILITY TORTS QUIZ--ANSWER KEY

1. See R. (2d) Torts § 509, Illustration 2, for a nearly identical set of facts.

You might contest the Restatement's analysis, granted; does the dog really have "dangerous propensities abnormal to its class," as required by § 509(2)? Or is it simply acting like a normal dog in an abnormally dangerous situation?

There would probably be a good claim that Dottie should be held *prima facie* liable on *res ipsa loquitur* grounds, but that is not offered as an answer.

- (a) is wrong because Dottie should be held strictly liable.
 - (b) is wrong because, as the dog's keeper, Dottie bears responsibility for its actions.
 - (c) is wrong because Dottie should be held strictly liable.
 - (d) is the best answer, because she knew or should have known of her dog's dangerous propensities.
2. The facts come from *Green v. General Petroleum Corp.*, 205 Cal. 328, 270 P. 952 (1923), and is cited by R. (2d) Torts § 520, even though the case itself speaks in terms of trespass rather than strict liability.

As with the prior question, you might contest strict liability; here, it seems most doubtful that §§ 520(d) ("extent to which the activity is not a matter of common usage") and (f) ("extent to which its value to the community is outweighed by its dangerous attributes") go plaintiff's way. Nonetheless, plaintiff looks likely to win on §§ 520(a) ("existence of a high degree of risk of some harm to the person, land or chattels of others"), (b) ("likelihood that the harm that results from it will be great"), (c) ("inability to eliminate the risk by the exercise of reasonable care"), and (e) ("inappropriateness of the activity to the place where it is carried on").

- (a) is wrong because there might well be an intervening cause, such as a geological condition or other act of nature.
- (b) is the best answer for reasons that reference to § 520 should make clear.
- (c) is wrong because, while Dig probably did exercise due care, that is not sufficient to excuse it from strict liability.
- (d) is wrong because it presumes a fact not in evidence.