

Please put your name here: _____ and return this sheet.

DUTIES AND LIMITATIONS 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

Peter accidentally cut off his finger while dining at a restaurant. The server, attempting to render aid, called out, "Is there a doctor in the house?" Darla, a doctor, approached the table. Upon seeing the severed digit, she whistled, said, "I'd call 911 pronto, if I were you," and returned to her meal. Peter made it to a hospital, but doctors there were unable to reattach his finger. He sued Darla for negligence.

- (a) Peter wins because Darla gratuitously rendered aid to him.
- (b) Peter wins because Darla left him in a worse position when she withdrew her aid.
- (c) Darla wins because she did not render aid to Peter.
- (d) Darla wins because her advice was not necessary for Peter's protection.

Question 2

Under the same facts as Question 1, suppose that Peter severed his finger on a broken faucet handle in the restaurant's bathroom and that he had come to the restaurant without any money, planning to eat and flee without paying. Peter sues the restaurant for negligence.

- (a) Peter wins because the restaurant should have realized the risk posed by its broken faucet handle.
- (b) Peter wins because the restaurant should have known that trespassers might be harmed by the faucet.
- (c) The restaurant wins because Peter was a trespasser.
- (d) The restaurant wins because the traditional distinctions between the duties owed to trespassers, licensees, and invitees have become obsolete.

DUTIES AND LIMITATIONS TORTS QUIZ--ANSWER KEY

1. Generally speaking, we should be surprised if Darla ends up liable. She either refused to render aid at all (like the doctor in *Hurley v. Eddingfield*) or, more likely, rendered aid too trifling, because so obvious, to support a duty to exercise reasonable care. Furthermore, it is not at all evident that she acted negligently; "call 911" constitutes pretty good advice, and it is not clear she could have done much else to help Peter.
 - (a) is wrong because it is insufficient to give rise to liability; per R. (2d) Torts § 323, Darla's aid was not "necessary for the protection of the other's person"
 - (b) is wrong because it just does not look true.
 - (c) is arguably correct, but not the best answer because we might quibble over whether or not her trivial advice did, nonetheless, constitute aid.
 - (d) is right because it leaves open the possibility that Darla rendered some trivial aid, but zeros in on the fact that she did nothing so significant as to support a duty of care.

2.
 - (a) is right because, per *Herrick v. Wixom*, a court is likely to extend to Peter the same protections granted to invitees.
 - (b) is wrong because it does not sound very likely; a restaurant probably has no reason to know that trespassers will be in dangerous proximity to the broken faucet.
 - (c) is wrong because, per *Herrick v. Wixom*, a court is likely to extend to Peter the same protections granted to invitees.
 - (d) is wrong because, though it mirrors the holding of the California case of *Rowland v. Christian*, that case's law does not generally control.