PROXIMATE CAUSATION 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

Steve, taking a stroll while smoking a cigarette, took a shortcut through a gas station—a location where the law forbids smoking. His exhaled smoke caused Nancy, a patron of the station, to sneeze. Her convulsion caused her to spill a few drops of fuel on her bare leg. She suffered a rare allergic reaction, had to have her leg amputated, and brought a negligence claim against Steve.

(a) Steve should win because he could not have foreseen the extent of harm Nancy would suffer.

(b) Steve should win because he could not have foreseen the type of harm he caused.

(c) Nancy should win because Steve's violation of the law established that he violated a duty.

(d) Nancy should win because she is a classic "egg-shell" plaintiff.

Question 2

Debbie negligently injured Rob, causing him to spend the night in the hospital. While he was there, a thief saw Rob's house unattended, broke in, and stole his television set. Rob sued Debbie for having negligently caused the loss of his TV.

(a) Rob should win because he would not have suffered the loss of his TV but for Debbie's negligence.

(b) Rob should win because Debbie's negligence increased the risk that he would suffer such a theft.

(c) Debbie should win because the thief's acts introduced an independent cause between her negligence and Rob's loss.

(d) Debbie should win because her negligence did not create so much of a risk of theft as to render that a foreseeable outcome.
1. This question should remind you of such cases as *Kinsman* or *United Novelty*.

(a) is wrong because, once having been found liable for negligence, Steve might well have to compensate for unforeseeable harms.
(b) is the best answer because Steve is not liable, despite his carelessness *per se*, for harm different in kind from those occasioned by such acts.
(c) is wrong because, while Steve did act negligently *per se*, his liability does not extend to unforeseeable types of harms.
(d) is wrong because, while Nancy is a classic egg-shell plaintiff, that goes only to show the extent of her recoverable damages; it does not establish liability.

2. This case should remind you of *Bauer*, even though liability should go the other way.

(a) is wrong because it concerns but-for causation, whereas proximate causation is the real issue, here.
(b) is wrong because, though true, it does not suffice to establish liability.
(c) is wrong because, as *Bauer* demonstrated, the introduction of independent agents into the causal chain does not necessarily preclude liability.
(d) is right, as it effectively distinguishes this case from *Bauer*.