

# Torts Quiz Answer Key

Prof. Pi

## 1 Question 1

The correct answer is (f). I will first explain why the other answers are wrong.

First, (a) is logically valid, but it is not the *most rigorous* of the alternatives. The problem is that the minor premise, “Socrates is a *Greek* man,” includes extraneous information, which does not contribute to the deduction. Ask yourself what difference it makes whether Socrates was Greek or Roman or Inuit? The insertion of “Greek” contributes nothing to the inference, and therefore it is not the *most rigorous* among the alternatives.

Next, (b) is simply a *non sequitur*. If you chose this answer, then it is probably because you *assumed* the premise, “If Wittgenstein is dead, then Wittgenstein is not alive.” However, this premise is not present in the argument. If you don’t have a major premise, then you can’t make an inference, and if you don’t have an inference, then you don’t have an argument. Inasmuch as answer (a) gave us *too much* information, answer (b) has the worse problem of giving us *too little*. The argument is not only not *rigorous*, it’s not even logically valid.

Next, (c) is also a *non sequitur*. It’s true that (i) and (ii) imply that Socrates is a frog. But in order to infer that Socrates can swim, you’d need the premise, “For any  $x$ , if  $x$  is a frog, then  $x$  can swim.” That premise has not been provided. So you can’t infer anything about Socrates swimming. Therefore, the argument is not *rigorous*.

Answers (d) and (e) are very bad. (i) and (ii) simply do not imply (iii). It could be the case that being a man and being mortal have nothing to do with each other. It could be the case that some men are mortal, and some men are not mortal. Who knows? And it could be the case that some mortal things are men, and some mortal things are not men. Who knows? Both (d) and (e) are simply logically invalid.

Answer (g) is the classic fallacy of “affirming the consequent.” To understand why this is logically invalid, consider if it were the case that (1) all persons who can’t add  $2 + 2$  are idiots, and (2) some persons who are idiots can add  $2 + 2$ . In that case,

it could be the case that Kermit is in the set of persons who are idiots, but who *can* add  $2 + 2$ .

Why is (f) the most logically rigorous? Let's posit that  $P =$  Elephants are pink, and  $Q =$  New Hampshire is north of Maine. The *form* of the argument is simply:

1. If  $P$  then  $Q$ .
2.  $P$ .
3. Therefore,  $Q$  (from 1, 2).

That's a logically valid argument. Okay, it turns out that neither  $P$  nor  $Q$  are true. Who cares? That's not what the question was asking. The question is which argument uses the most rigorous logic. The other alternatives are either logically invalid (i.e., answers d, e, g), missing premises (i.e., answers b, c), or contain extraneous information (i.e., a). That's why (f) is the most *logically rigorous* argument.

## 2 Question 2

The correct answers are (a) and (b). Whether a person behaves reasonably is a standard, because you have to weigh various *factors* to determine the reasonableness of the defendant's behavior. Weighing factors is what you do in a *standard*. Similarly, the level of care customary for a profession is a weighing of *factors*. To be sure, the factors we weigh in ordinary negligence versus malpractice negligence are different factors. But in both cases, we're interested in *weighing factors*.

Answers (c) and (d) refer to rules. Answer (c) is a (better) version of the "Hand Formula," which has one clear element. Either marginal  $B < PL$  or not. If yes, then there's liability. If no, then there's no liability. That's an element. It's either satisfied, or it isn't. There isn't any weighing. Likewise, answer (d) is describing the negligence rule. The negligence rule has four elements: duty, breach, causation, and harm. Rules have elements. Therefore, this is a *rule*.

Side note: answers (a), (b), and (c) are referring to "negligence" in the sense of *breach*. Answer (d) is referring to "negligence" in the broader sense of liability. The polysemy is confusing as ever, but it is not relevant to your finding the correct answer.

### 3 Question 3

The correct answer is (d). If you think the correct answer is (a) because you understand the term “justice” to mean incentivizing efficient behavior, then that’s fine also. The problem with “justice,” is that no one can agree on what that means, and while it makes for a nice bumper sticker slogan, it often ends up being an intellectually lazy way of justifying thinking with one’s gut rather than one’s brain.

Answer (b) is *ex post* reasoning. The compensation of victims is merely incidental. Consider the various areas of law where compensation might occur. In criminal law, the purpose of the law is deterring of criminal conduct. In contracts, it’s incentivizing efficient effort to perform promises. In torts, it’s incentivizing efficient investments in precautionary care. The objective is creating incentives *ex ante* for future behavior. If there’s any compensation for past harms, then it’s done only as a byproduct of creating incentives for future behavior.

Answer (c) is circular. A legal right is whatever the law declares it to be. If the court protects your interest in speech, then speech is a right. If the court doesn’t protect your interest in speech, then speech is not a right. If you think that the purpose of law is to protect people’s rights, then what you’re really saying is just that the purpose of law is to protect the interests that the law protects. That’s circular.

If you understand the term “right” to mean *moral rights*, then you run into the same problem as in answer (a).

Answer (d) is correct. I concede that at a very high level of abstraction, you can quibble about this. I acknowledge that (d) is controversial at a philosophical level. However, for the purposes of a 1L course, you’d do well to treat it as a foundational truth.

### 4 Question 4

The correct answer is (a). As discussed in my remarks on Question 3, answer (d) is hopelessly vague, and answer (c) is *ex post* reasoning. The interesting part of *this* question is why not (b). Indeed, you might think that (b) is the same as (a). It’s not. Consider what the function of tort law is in the context of automobile accidents. Is the purpose to minimize the cost of accidents, or is the purpose to maximize the value of driving?

If the purpose is to minimize the cost of accidents, then we could simply *ban cars*. That would reduce the cost of car accidents to zero! But that’s not the goal. We *want* people to engage in risky activities. We want people to drive cars. But we

want them to invest in precautionary care while they do those risky activities up to the point where the return on investment ceases to be positive.

## 5 Question 5

All the answers are correct. Answer (a) is the definition of “negligence” *qua* liability. Answer (b) is the definition of “negligence” *qua* breach. Answer (c) is the condition that must obtain in order for “negligence” *qua* breach to occur. Answer (d) is an alternative formulation of the condition that must obtain in order for “negligence” *qua* breach to occur.

## 6 Question 6

This is just like doing a jigsaw puzzle. The way to think about this is simply to start with the “if—then” propositions. For example, (P) says, “If Jones was on Smith’s property, then Smith had a duty to Jones.” So to make this into an argument, it must be the case that the minor premise is “Jones was on Smith’s property” (which happens to be proposition (F)), and the conclusion must be that “Smith had a duty to Jones” (which happens to be proposition (L)). So clearly, it must be the case that part of the argument must be:

1. If F then L. (premise)
2. F. (premise)
3. Therefore, L. (from 1, 2)

If you repeat this for all the “if—then” propositions, then you’ll have a bunch of tiny arguments. After that, you just link them up, so that the conclusion of one argument becomes the premise of another bigger argument. If you nest them in this way, you should come out of it with four grand arguments.

• Plaintiff's argument:

(I) For any  $x$  and  $y$ , if  $x$  is a person, and  $y$  is a person, and  $x$  had a duty to  $y$ , and  $x$  breached his duty to  $y$ , and  $x$  caused  $y$  harm, then  $x$  is liable to  $y$ . (from U, X, HH, FF)

U. For any rule  $\lceil x \implies y \rceil$ , and precedent case  $C$ , if  $\lceil x \implies y \rceil$  explains  $C$ , then  $x \implies y$ . (premise)

(JJ) *Anderson* is a precedent case. (from V, X, LL)

V. For any  $C$ , if  $C$  is a case, and there does not exist a reason why  $C$  should not be a precedent case, then  $C$  is a precedent case. (premise)

X. *Anderson* is a case. (premise)

LL. There does not exist any reason why *Anderson* should not be a precedent case. (premise)

(JJ) Therefore, *Anderson* is a precedent case. (from V, X, LL)

HH. (I) is a rule. (premise)

(FF) (I) explains *Anderson*. (from DD, X, Y, Z, II)

DD. For any case  $C$  involving fact  $F$  and result  $R$ , if  $\lceil x \implies y \rceil$  implies  $F \implies R$ , then  $\lceil x \implies y \rceil$  explains  $C$ . (premise)

X. *Anderson* is case. (premise)

Y. *Anderson* involved the following facts: *Anderson* hit *Flanderson* with his car while texting and driving, causing harm. (premise)

Z. *Anderson* involved the following result: *Anderson* was liable to *Flanderson*. (premise)

II. (I) implies that if *Anderson* hit *Flanderson* with his car while texting and driving, causing harm, then *Anderson* was liable to *Flanderson*. (premise)

(FF) Therefore, (I) explains *Anderson*. (from DD, X, Y, Z, II)

(I) Therefore, for any  $x$  and  $y$ , if  $x$  is a person, and  $y$  is a person, and  $x$  had a duty to  $y$ , and  $x$  breached his duty to  $y$ , and  $x$  caused  $y$  harm, then  $x$  is liable to  $y$ . (from U, X, HH, FF)

B. *Smith* is a person. (premise)

E. *Jones* is a person. (premise)

(L) *Smith* had a duty to *Jones*. (from P, F)

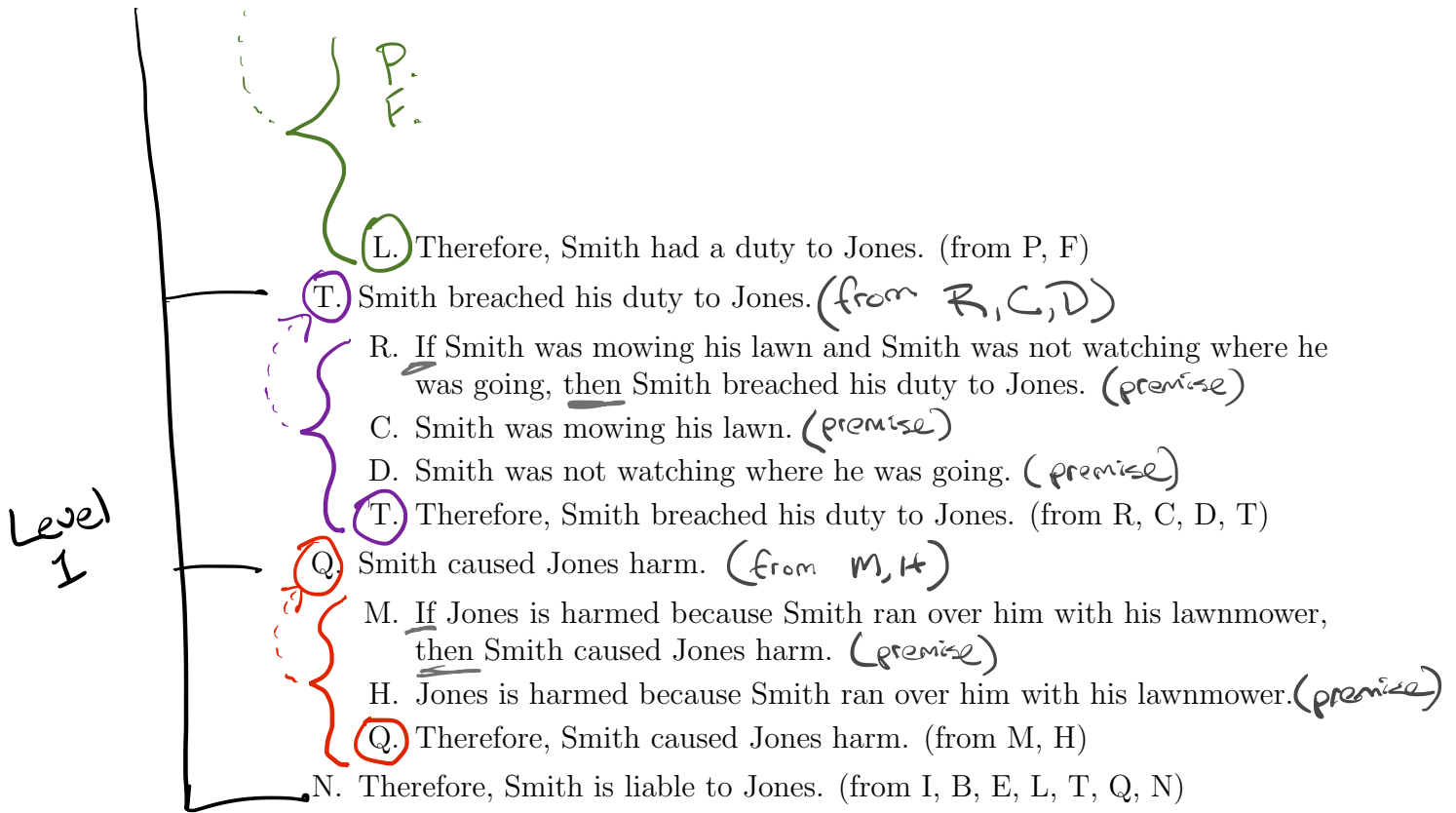
P. If *Jones* was on *Smith's* property, then *Smith* had a duty to *Jones*. (premise)

F. *Jones* was on *Smith's* property. (premise)

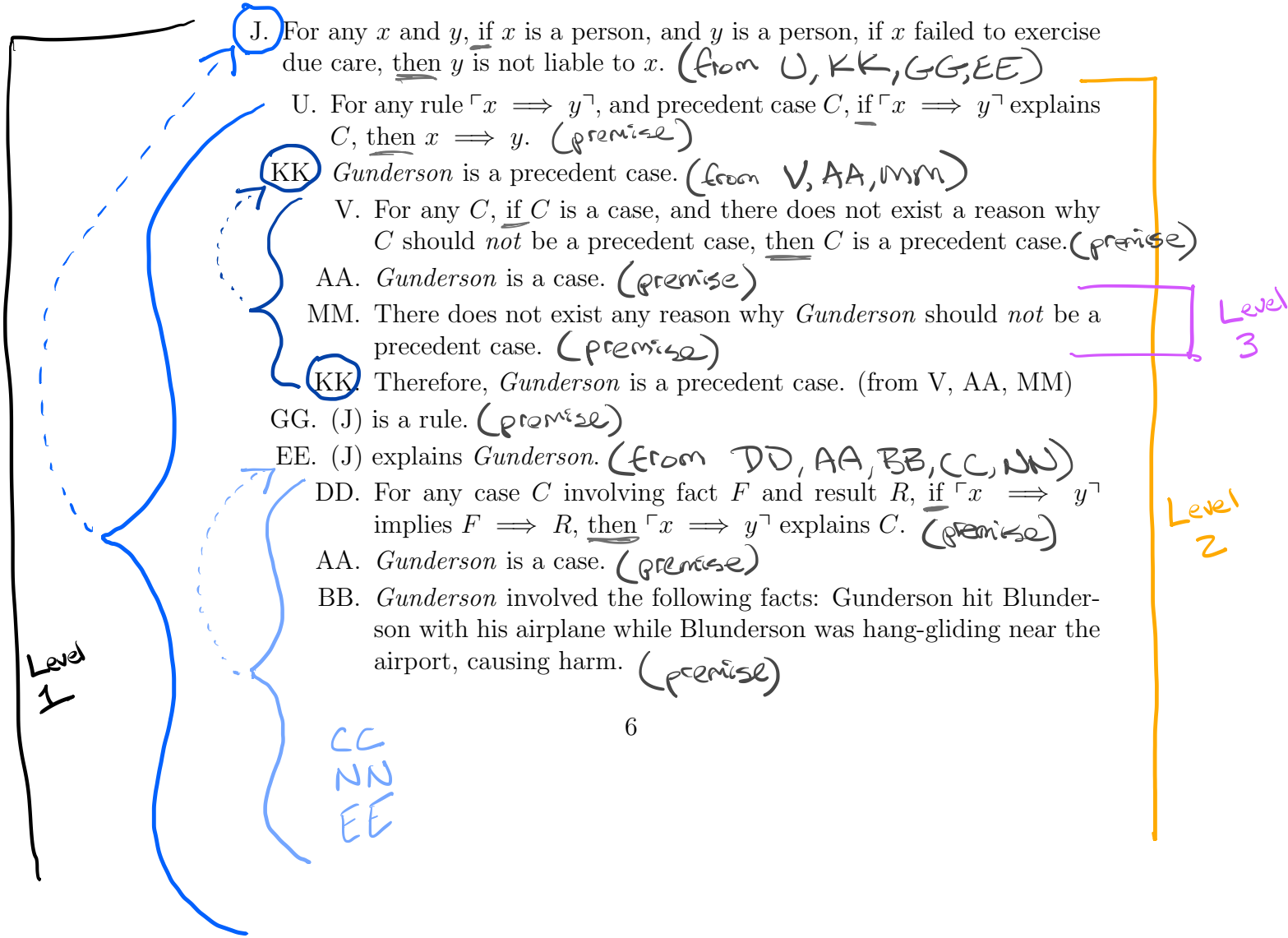
L.

Level 3  
Level 2

Level 1



• Defendant's argument:



Level 1

DD  
AA  
BB

CC. *Gunderson* involved the following result: Gunderson was not liable to Blunderson. (premise)

NN. (J) implies that if Gunderson hit Blunderson with his airplane while Blunderson was hang-gliding near the airport, causing harm, then Gunderson was not liable to Blunderson. (premise)

EE. Therefore, (J) explains *Gunderson*. (from DD, AA, BB, CC, NN)

J. Therefore, for any  $x$  and  $y$ , if  $x$  is a person, and  $y$  is a person, if  $x$  failed to exercise due care, then  $y$  is not liable to  $x$ . (from U, KK, GG, EE)

B. Smith is a person. (premise)

E. Jones is a person. (premise)

K. Jones failed to exercise due care. (from S, G)

S. If Jones was sunbathing on Smith's lawn while Smith was mowing, then Jones failed to exercise due care. (premise)

G. Jones was sunbathing on Smith's lawn while Smith was mowing. (premise)

K. Therefore, Jones failed to exercise due care. (from S, G)

O. Therefore, Smith is not liable to Jones. (from J, B, E, K, O)

Level 2

• Plaintiff's counterargument:

A. For any cases  $C$  and  $D$ , and rules  $R$  and  $S$ , if  $R$  explains  $C$ , and  $S$  explains  $D$ , and  $R$  increases the value of risky activities more than  $S$ , then there exists a reason why  $D$  should not be a precedent case. (premise)

X. *Anderson*. is a case. (premise)

AA. *Gunderson* is a case. (premise)

HH. (I) is a rule. (premise)

GG. (J) is a rule. (premise)

FF. (I) explains *Anderson*. (premise)

EE. (J) explains *Gunderson*. (premise)

OO. (I) increases the value of risky activities more than (J). (premise)

QQ. Therefore, there exists a reason why *Gunderson* should not be a precedent case. (from X, AA, HH, GG, FF, EE, OO)

Level 3

• Defendant's counterargument:

- A. For any cases  $C$  and  $D$ , and rules  $R$  and  $S$ , if  $R$  explains  $C$ , and  $S$  explains  $D$ , and  $R$  increases the value of risky activities more than  $S$ , then there exists a reason why  $D$  should not be a precedent case. (premise)
- X. *Anderson.* is a case. (premise)
- AA. *Gunderson* is a case. (premise)
- HH. (I) is a rule. (premise)
- GG. (J) is a rule. (premise)
- FF. (I) explains *Anderson.* (premise)
- EE. (J) explains *Gunderson.* (premise)
- PP. (J) increases the value of risky activities more than (I). (premise)
- RR. Therefore, there exists a reason why *Anderson* should not be a precedent case. (from X, AA, HH, GG, FF, EE, PP)

Level  
3