

Torts Final Exam

Prof. Pi • Fall 2024

Instructions

- This exam consists of eleven multiple-choice questions.
- In your exam answer, write the question number, followed by your answer, followed by a comma. For example, a valid exam answer might look like this:

“1. A, 2. C, 3. D, 4. E, [...]”

- You may only select one answer per question.
- Each answer will be assigned a point value from 0 to 10.
 - 0 is the worst possible answer.
 - 10 is the best possible answer.
 - If you leave a question blank or input an invalid answer (for example, “1. Z, [...],” where “Z” is not a valid option), then you will be awarded 5 points by default.
- Your final exam score will be the sum of the points you receive for all your answers.
- The exam is open-book / open-internet.
- **The use of artificial intelligence is permitted on this exam.**

Fact Pattern

Harry Holmes owns a large tract of land in New Vermont, where he raises horses, sheep, and cattle. In addition to ranching, he fosters and rehabilitates sick or injured animals. During the summer of 2024, he took in Ignatius, an injured and malnourished mustang who had been captured by an animal welfare group for rehabilitation.¹

After consulting with a horse specialist, Holmes concluded that, due to the extent of Ignatius's condition, he could not be safely returned to the wild. Holmes decided to tame Ignatius and put him to use as a working horse on the ranch.

By late 2024, Holmes had made significant progress training Ignatius. On December 5, he invited his friend Gertrude Guest—an ardent hippophile—to come by the ranch to meet his new horse. Guest eagerly accepted, and Holmes asked her to bring along a dozen bales of hay to help restock his stables. When she arrived, Holmes led her to the fenced pen where Ignatius grazed during the day.

Upon seeing the horse, Guest admired him: “Oh, he’s just as lovely as you described!”

“Ain’t he so,” Holmes agreed.

“How’s the training comin’ along?”

“He’s a good learner, he is.”

“Well, ain’t that wonderful. Such a gentle creature!”

“Well, he’s still got some wild in him.”

“Does he now?”

“Oh, sure. We still got work to do—don’t we now, Ignatius?” The horse neighed, as if in agreement.

“Didja bring that hay I asked for?” Holmes asked.

“Oh sure. It’s in the back of my Tesla Cybertruck,” Guest replied.

“You stay here with Ignatius, and I’ll go unload it,” Holmes said, heading toward the truck and leaving Guest with the horse.

Ignatius grew restless soon after Holmes disappeared from view, kicking and shoving at the pen’s gate. The gate’s latch, made by Failsafe Lock Company, was designed to be mounted on metal surfaces, but Holmes had attached it to the wooden fence using wood screws.² Failsafe’s installation manual warned that mounting the latch on wood would weaken its connection to the gate. The latch itself was constructed from stainless steel, which is used by a majority of hardware manufacturers making latches.

As Ignatius pressed against the gate, Guest heard the creaking sound of metal under stress. Ignatius pushed harder, the bolt snapped, and the gate swung open. Ignatius galloped off into the open field.³

“Oh geez! No! Come back!” Guest exclaimed.

¹ Mustangs are feral horses descended from domesticated stock, found primarily in the western United States—especially in and around Nevada. Although they live and behave like wild animals, genetically they are no different from other domesticated horses.

² Wood screws are metal screws designed specifically for use in wood. They typically have a pointed tip and a tapered shape, allowing them to hold hinges, latches, or other hardware securely to wooden surfaces.

³ The field, although unfenced, was still Holmes’s property.

Ignatius halted about fifty feet away and looked back hesitantly. Panicked, Guest ran after him. As she approached, Ignatius stomped nervously and neighed.

“Don’t you worry. Everything’s gonna be okay. You’re a good horsey,” she cooed, inching closer. She reached for his halter. Ignatius abruptly reared up and kicked her in the head. Guest collapsed instantly.

When Holmes returned, Ignatius was gone, the gate was open, and Guest lay crumpled in the field, unconscious. He carried her back to the stables and laid her on a soft bed of hay.

“What happened?” Guest asked dizzily when she regained consciousness.

“Well, I wasn’t here to see it, but I reckon Ignatius done kicked you in the face,” Holmes said.

“Oh—it hurts,” Guest mumbled.

“I expect you’ve been concussed,” Holmes said.

“What?”

“I reckon you have a concussion.”

“I’ve got to get back... gotta let my dog out,” Guest murmured, disoriented.

“What?” Holmes asked.

“I left my dog—I’ve got to go home. It’s time to let him out.”

“Gertie, you’ve been kicked in the face by a horse. You can’t drive.”

“I can. Just—you need to help me up.”

“No, you need to rest a spell.”

“No. I’ve got to go,” Guest insisted unsteadily.

“You’ve been concussed,” Holmes repeated.

“Should I go to the doctor?” she asked.

“Later. Right now you’ve got to rest.”

“I want to go,” she insisted.

“Wait a while. I’m going to look for Ignatius,” Holmes said.

He squeezed Guest’s arm reassuringly and stepped outside. Before leaving, he discreetly secured a padlock on the stable door to prevent her from slipping out.

Guest began to feel somewhat better after a half hour and thought about heading home, but she hesitated, worried that Holmes might stop her if he noticed. She briefly considered escaping through the window but instead drifted off to sleep on the soft hay.

When Holmes returned ninety minutes later, Guest stirred awake.

“Oh, Harry—there you are. I must’ve dozed off,” she said.

“You feelin’ better?” he asked.

“Yes, I’m fine. I’d like to go home now.”

Holmes shook his head. “I don’t think that’s a good idea, Gertie.”

“I tell you I’m fine.”

“Well, I’m not gonna keep you prisoner. If you’re gonna leave, then I suppose you’re gonna leave.”

“Help me up.”

Holmes helped her to her feet. He could see she was wobbling, struggling to maintain her balance.

“I don’t think you should be driving—not like this.”

“I’m fine. It’s a Tesla. It’ll drive itself.”

“If you say so,” Holmes shrugged.

Guest got into her car and left Holmes’s ranch. As the Cybertruck approached a bend in the road, its sensors mistakenly detected an obstacle. Though the path was clear, the vehicle swerved to avoid the phantom threat and crashed into a reservoir. Investigators were unable to determine whether the self-driving feature had been engaged at the time of the accident.

The site of the crash was remote, and several hours passed before anyone found the crashed Tesla. When emergency services arrived, Guest was delirious and babbling incoherently. At the hospital, doctors determined she had suffered severe brain trauma, and the damage was likely permanent. No other injuries were found. The car itself was undamaged.

The evidence was inconclusive whether Guest’s brain injury was caused by the horse’s kick or the car crash. Medical experts estimated an 80% likelihood it was the horse’s kick and a 20% likelihood it was the crash. Experts also agreed that if Guest had received emergency medical treatment within an hour of the original trauma—no matter the cause—her injuries would have been substantially mitigated and likely not permanent.

Law

New Vermont has adopted a rule of modified comparative negligence and abolished secondary assumption of risk. The doctrine of joint and several liability has been replaced by *several liability*. Finally, the principles of *Rylands v. Fletcher* are recognized in New Vermont common law.

Questions

1. Assume the following premises are true:

- **Holmes is not liable for improperly installing the latch, and**
- **Holmes is not strictly liable for *harms emanating from his land*.**

Choose the strongest argument. (Strict liability for animals)

- a. Holmes is liable for the horse’s kick. The keeping of a feral horse is an abnormally dangerous activity. Restatement (Second) §520. Holmes is therefore strictly liable for any harms which may result from that activity. Restatement (Second) §519.
- b. Holmes is liable for the horse’s kick. Mustangs are feral animals. Their behavior is inherently unpredictable, and their size and strength make them especially dangerous. The law ought therefore to adopt the “legal fiction” that they are *ferae naturae* to discourage people from keeping mustangs. If an owner keeps a *ferae naturae*, then he is strictly liable for any harm it causes. Therefore, Holmes is strictly liable for any harm caused to Guest by the horse’s kick to her head.

- c. Holmes is not liable for the horse's kick. The keeping of a feral horse is not an abnormally dangerous activity. The likelihood of harm is not great, the risk *can* be mitigated by the exercise of reasonable care, and a ranch is an appropriate place to undertake the rehabilitation of injured mustangs. Restatement (Second) §520. Therefore, Holmes is not liable for the horse's kick.
- d. Holmes is not liable for the horse's kick. Mustangs are genetically indistinct from domesticated horses, and horses are unquestionably *domitae naturae*. Consequently, mustangs are also *domitae naturae*. See *Behrens*. Therefore, Holmes is not strictly liable for harms caused by the horse.
- e. Holmes is liable for the horse's kick. But for the horse's kick, Guest would not have suffered a brain injury. Since a brain injury is a foreseeable consequence of a horse's kick to a person's head, Holmes is liable for the harm.
- f. Holmes is liable for the horse's kick. Although horses are *domitae naturae*, Holmes's remark, "[Ignatius] has still got some wild in him," reveals Holmes's awareness that *this particular* horse was dangerous. Therefore, despite being a *domitae naturae*, Holmes is strictly liable for any harm caused to Guest by the horse's kick to her head.
- g. Holmes is liable for the horse's kick. Mustangs are *ferae naturae*, and owners are strictly liable for any harm they cause. See *Candler v. Smith*. Therefore, Holmes is liable for any harm caused to Guest by the horse's kick to her head.
- h. Holmes is not liable for the horse's kick. Guest chose to approach and make physical contact with Holmes's animal. This removes her injury from the scope of strict liability for animals. Restatement (Third) §24(a). Therefore, Holmes is not liable for the horse's kick.
- i. Holmes is liable for the horse's kick. He was training the horse to be a working horse on the ranch. The horse was thus an agent of Holmes. Restatement (Second) of Agency §220, and Holmes is liable for the horse's kick on a theory of *respondeat superior*.

2. Assume the following premises are true:

- **Holmes is not liable for improperly installing the latch, and**
- **Holmes is not strictly liable for *harm caused by an animal*.**

Choose the strongest argument. (Strict liability for harms emanating from land)

- a. Holmes is liable for the horse's kick. Holmes brought the dangerous horse onto his land. It escaped from its pen, and thereby caused harm, kicking Guest in the head. The duty to control any dangerous thing one brings onto one's land is absolute. See *Rylands v. Fletcher*. Therefore, Holmes is strictly liable for any harm the horse may cause.
- b. Holmes is not liable for the horse's kick. American cases have repudiated the precedent set in *Rylands v. Fletcher*. See *Losee v. Buchanan*, *Turner v. Big Lake Oil Co*. Although Holmes brought the horse onto his land, strict liability

would not apply in this situation. Therefore, Holmes is not liable for the horse's kick.

- c. Holmes is not liable for the horse's kick. When Ignatius kicked Guest, it was no longer on his property. The liability for dangers that one brings onto one's land ceases when they are no longer on the land. *Rylands v. Fletcher*. Therefore, Holmes is not liable for the kick, which occurred off the ranch.
- d. Holmes is liable for the horse's kick. Since he invited Guest onto his land, she was an "invitee," and he is strictly liable for any harm she suffered while there. *Rylands v. Fletcher*. Allowing the horse to kick her head constituted a breach, which caused her brain injury. Therefore, Holmes is liable for the kick to Guest's head.
- e. Holmes is not liable for the horse's kick. Since Guest was on his property as a social guest and not for a business purpose, she was a "licensee." Property owners only have a duty to warn of known hazards, and Holmes did warn her that Ignatius still had some "wild" in him. Therefore, he is not liable for the horse's kick.
- f. Holmes is not strictly liable for the horse's kick. He did not induce or intend the horse to kick Guest. Moreover, he undertook reasonable precautions—keeping it in an enclosed pen—to prevent such incidents. Since he is not liable for the horse's kick, it follows that he cannot be *strictly liable* for the horse's kick.
- g. Holmes is not liable for the horse's kick. Although Holmes brought the horse onto his land, and it escaped its pen, it was still on his property when it kicked Guest. Under *Rylands v. Fletcher*, strict liability applies when a dangerous substance escapes from the defendant's land. Here, the horse never left Holmes's property, so Holmes is not strictly liable for the horse.
- h. Holmes is liable for the horse's kick. The medical expenses associated with the injuries Guest suffered are "pure economic losses," for which property owners are strictly liable. *Robins Dry Dock v. Flint*. Since the kick occurred on Holmes's land, he is strictly liable for the pure economic loss.

3. Assume the following premises are true:

- **Holmes is not strictly liable for harm caused by an animal, and**
- **Holmes is not strictly liable for harm emanating from his land.**

Choose the strongest argument. (Holmes's duty to Guest)

- a. Holmes owed Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head. Once he discovered her in the field and brought her to the stable to recover, he commenced rescue. Undertaking a rescue triggers the duty to complete the rescue. Therefore, Holmes owed Guest a duty to prevent the horse from kicking her in the head.
- b. Holmes owed Guest a duty to inspect for and repair hazards on his property. Holmes asked Guest to bring bales of hay to restock his stables. Hay being necessary for his ranching business, Guest's visit furthered Holmes's business interests. Holmes and Guest thus stand in privity, and Holmes

therefore has a duty to inspect for and repair hazards on his property which might harm Guest.

- c. Holmes owed Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head. By taking in a dangerous animal, Holmes assumed the risk that it would harm others. The primary assumption of risk creates a duty to exercise reasonable care.
- d. Holmes did not owe Guest a duty to inspect for or repair hazards on his property. Property owners do not have a duty to prevent or mitigate pure economic losses. *Robins Dry Dock v. Flint*. Therefore, Holmes did not owe Guest a duty to ensure his property was safe.
- e. Holmes did not owe Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head. There is no duty to control the conduct of third parties in tort. Restatement (Second) §315. Therefore, Holmes owed Guest no duty of care.
- f. Holmes owed Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head. Although there exists no *general* duty to control the conduct of third parties in tort, an exception exists for “special relations” between the actor and the third person which imposes a duty on the actor to control the third person’s conduct. Restatement (Second) §315(a). Therefore, Holmes owed Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head.
- g. Holmes did not owe Guest a duty to inspect for or repair hazards on his property. Although Guest was a friend, she was formally a trespasser on the land because Holmes had not opened his property to the public. Property owners owe no duty to trespassers. Therefore, Holmes did not owe Guest a duty to inspect for or repair hazards on his property.
- h. Holmes owed Guest a duty to inspect for and repair hazards on his property. Although Guest was a trespasser, when a property owner becomes aware of the trespasser’s presence, they are owed the same duty of care as an invitee. See *Herrick v. Wixom*. Therefore, Holmes owed Guest a duty to inspect for and repair hazards on his property.
- i. Holmes owed Guest a duty to inspect for and repair hazards on his property. Although the cause of her brain damage was uncertain, it was more likely than not a result of the kick to her head. We can infer, by *res ipsa loquitur*, that this was due to Holmes’ negligence. Since duty is an element of negligence, it follows that Holmes owed Guest a duty to inspect for and repair hazards on his property.
- j. Holmes owed Guest a duty to inspect for and repair hazards on his property—specifically the defective latch which allowed the horse to escape from its pen. Holmes asked Guest to bring bales of hay to restock his stables. Hay being necessary for his ranching business, Guest’s visit furthered Holmes’s business interests, making her an “invitee.” Restatement (Second) §332(1). Holmes thus owed Guest a duty to inspect and repair hazardous

conditions on his land, such as the defective latch which would allow a dangerous horse to escape. Restatement (Second) §343(a).

- k. Holmes did not owe Guest a duty to discover and repair the compromised latch. Even if Guest was an “invitee,” the latch broke due to a latent defect in the product, which reasonable inspection would not have discovered. Therefore, Holmes did not have a duty to discover or repair the compromised latch.
- l. Holmes did not owe Guest a duty to exercise reasonable care to prevent the horse from kicking her in the head. If the law imposed such a duty on property owners, then it would disincentivize social visits. Since people generally derive utility from socialization, such a duty would be inefficient. Therefore, Holmes did not owe guest a duty to exercise reasonable care to prevent the horse from kicking her in the head.
- m. Holmes did not owe Guest a duty to inspect for or repair hazards on his property. Holmes did not open his property to the public, nor was Guest there on business. Rather, Guest was a social guest, making her a “licensee” rather than an “invitee.” Restatement (Second) §330. Landowners owe licensees no duty to inspect, nor a general duty to repair. Therefore, Holmes owed Guest no duty to inspect for or repair the compromised latch. Moreover, since Holmes was unaware that the latch was compromised, he had no duty to warn Guest of the danger.
- n. Holmes owed Guest a duty to exercise reasonable care because he was keeping a dangerous animal. When engaging in any activity which creates a risk of physical harm, people generally have a duty to exercise reasonable care. Restatement (Third) §7(a). Keeping a mustang clearly creates risks of physical harm to others. Therefore, Holmes owed anyone encountering the animal—including Guest—a duty of care.

4. Choose the strongest argument. (Guest’s culpability—Holmes’s defenses)

- a. Holmes is not liable for the horse’s kick because Guest was *also* negligent. Guest approached the horse, despite knowing it was partially wild. Guest’s conduct was unreasonable. But for her approaching Ignatius, she would not have been kicked—a foreseeable consequence of approaching a feral horse. Therefore, since Guest was contributorily negligent, Holmes is not liable.
- b. Holmes is not liable for the horse’s kick because Guest consented to the risk. Guest knowingly approached a partially wild horse, aware that being kicked is a risk commonly associated with approaching horses. She therefore *consented* to the risk. Consent is a complete defense. Restatement (Second) §892.
- c. Holmes is not liable for the horse’s kick because Guest assumed the risk. Guest knowingly approached a partially wild horse, aware that being kicked is a risk commonly associated with approaching horses. In a comparative negligence regime, because her share of the fault exceeds 51%, she cannot recover.

- d. Holmes is not liable for the horse's kick because Guest assumed the risk after Holmes's negligence created the dangerous situation. Even if Holmes negligently allowed the horse to escape, Guest recognized the danger and voluntarily chose to confront it. Her deliberate exposure to a known risk pushes her fault over the 51% threshold, barring recovery.
- e. Holmes is liable for the horse's kick, but Guest's fault reduces her recovery. Guest knowingly encountered the risk. Her decision to approach a dangerous horse reduces her damages proportionally rather than negating Holmes's liability entirely.
- f. Holmes is not liable for the horse's kick because Guest assumed the risk after Holmes *expressly stated* that Ignatius still had some "wild" in him. The *express assumption* of risk nullifies any liability Holmes might otherwise have had for the dangerous animal.
- g. Holmes is not liable for the horse's kick because Failsafe's breach supersedes. Although Holmes's use of wood screws to attach the latch to the wooden fence was unreasonable, Failsafe's defective manufacturing supersedes Holmes's negligence. Ergo, Holmes's negligence was not a proximate cause of the failure of the latch. Therefore, Holmes is not liable.
- h. Holmes is not liable for the horse's kick because Guest's approaching the horse was *misuse*. Holmes warned her that Ignatius still had some "wild" in him, and yet she disregarded the warning. Disregarding warnings constitutes misuse *per se*. *Welge v. Planters*. Misuse is a complete defense. Therefore, Holmes is not liable.

5. Assume the following premises are true:

- **Holmes is not strictly liable for harm caused by an animal,**
- **Holmes is not strictly liable for harms emanating from his land,**
- **Holmes owed Guest a duty of care, and**
- **Guest's brain injury was not caused by the car crash.**

Choose the strongest argument. (Holmes's negligence)

- a. Holmes is not liable for the horse's kick. Although he failed to exercise due care by installing the latch using wood screws, the subsequent chain of events leading to Guest's brain injury was *unforeseeable*. A reasonable person could not have foreseen that Ignatius would break open the gate, that Guest would chase after him, and that her attempts to corral him would result in a violent kick to her head. Since the injury was unforeseeable, Holmes's breach was not the *proximate* cause of Guest's brain injury, and he is not liable for the horse's kick.
- b. Holmes is liable for the horse's kick. Disregarding the manufacturer's warning not to attach the latch to wood was unreasonable—especially because the gate was meant to contain a large and partially wild animal. Guest would not have been kicked in the head but for the latch failing, and a person getting kicked is among the foreseeable dangers of mustang getting loose. Holmes's is therefore liable for the horse's kick.

- c. Holmes is liable for the horse's kick. Because Failsafe was unable to exercise control over Holmes, and he defied their warning not to attach the latch to wood, his conduct constituted a "frolic and detour," negating the principal-agent relationship. See *Miller v. Reiman-Weurth Co.* Failsafe is thus not liable for Holmes's negligence. Therefore, Holmes is individually responsible for his negligence, and he bears the cost of liability for his negligence.
- d. Holmes is not liable for the horse's kick. Although he disregarded Failsafe's warning not to attach the latch to wood, minor deviations from the principal's instructions do not necessarily constitute a "frolic and detour." In this circumstance, Holmes ultimately installed the latch. Ergo, he was advancing the interests of the principal. Thus, on a theory of *respondeat superior*, Failsafe is the party liable for the horse's kick—not Holmes.
- e. Holmes is only partly liable for the horse's kick. In a comparative negligence regime, Holmes is liable in proportion to his share of the fault when multiple parties are negligent. Failsafe negligently manufactured the latch bolt, which broke during normal use. Holmes negligently installed the latch. And Guest negligently approached the dangerous horse. Although Holmes's negligence makes him liable for the harm caused by the horse, he is not liable for the total harm. He is liable only in proportion to his fault.
- f. Holmes is liable for the horse's kick. It is irrelevant whether he installed the latch negligently. When Holmes discovered Guest crumpled on the ground and brought her to the stables to recover, he *commenced a rescue*. He thus had a duty to *complete* the rescue. Since he locked her inside the stables rather than taking her to a doctor, he breached his duty to rescue. Guest would not have suffered permanent brain damage but for Holmes's breach. Therefore, Holmes is liable for the horse's kick.
- g. Holmes is not liable for the horse's kick. If Guest had received timely medical attention, she would not have suffered permanent brain damage. And she would have gotten medical attention but for the Tesla Cybertruck swerving into the reservoir. The intervention of Tesla's algorithm was unforeseeable and thus supersedes, breaking the chain of causation. Therefore, *even if* Holmes installed the latch negligently, his breach was not the proximate cause of Guest's brain injury.
- h. Holmes is not liable for the horse's kick. If Guest had received timely medical attention, she would not have suffered permanent brain damage. However, she was determined to return home to feed her dog, and she had no apparent intention to seek medical care. Her irrational and unforeseeable choice to forgo medical treatment supersedes, breaking the chain of causation. Therefore, *even if* Holmes installed the latch negligently, his breach was not the proximate cause of Guest's brain injury.
- i. Holmes is not liable for the horse's kick. Although he unreasonably disregarded the manufacturer's instructions—attaching the latch to a wooden gate—the latch did not fail because it was improperly attached. Rather, the point of failure was the bolt. In other words: but for Holmes's

breach, the latch would have failed anyway. Ergo, Holmes's breach was not a cause-in-fact of the horse's escape, and *a fortiori*, not a cause of the horse's kick.

- j. Holmes is liable for the horse's kick. Although Guest unreasonably approached a partially wild horse, Holmes knew her to be a hippophile and should have foreseen that Ignatius would be an *attractive nuisance*. Therefore, Holmes breached his duty to take reasonable precautions to prevent Guest from being drawn toward the danger.

6. Choose the strongest argument. (Confinement)

- a. Holmes is not liable for falsely imprisoning Guest. Since Guest was aware that she could exit the stable through a window she was not "confined." Restatement (Second) §36(2). Confinement is an element of false imprisonment, so Holmes is not liable for falsely imprisoning Guest. Restatement (Second) §35.
- b. Holmes is liable for falsely imprisoning Guest. False imprisonment requires intent, causation, confinement, and consciousness of confinement. When Holmes secured the padlock to the door, he *intended* to confine her within the stable. The padlock was a physical barrier, preventing her from leaving. Holmes thus *caused* her to be confined. Restatement (Second) §38. Although the window may have been a reasonable means of escape, she only became aware of it a half hour after she had already been confined. Thus, there was at least a half hour interval during which she was *unaware* of any means of escape. Finally, Guest believed that if she attempted to leave, then Holmes would try to stop her. She was therefore *conscious* of her confinement. All the elements of false imprisonment being present, Holmes is liable. Restatement (Second) §35.
- c. Holmes is not liable for falsely imprisoning Guest. Although he intended to confine her, and she was in fact confined, she did not attempt to open the door. She had no reason to believe that the door was locked. Thus, she was at no point *conscious* of her confinement. A victim's awareness of their confinement being a necessary element of false imprisonment, Holmes is not liable. Restatement (Second) §35(c).
- d. Holmes is liable for falsely imprisoning Guest. False imprisonment requires intent, causation, confinement, and harm. When Holmes secured the padlock to the door, he *intended* to confine her within the stable. The padlock was a physical barrier, preventing her from leaving. Holmes thus *caused* her to be confined. Restatement (Second) §38. Although the window may have been a reasonable means of escape, she only became aware of it a half hour after she had already been confined. Thus, there was at least a half hour interval during which she was *unaware* of any means of escape. Finally, although Guest was at no point *conscious* of her confinement, her inability to leave prevented her from receiving timely medical attention, resulting in permanent damage to her brain. The confinement therefore caused her

harm. All the elements of false imprisonment being present, Holmes is liable. Restatement (Second) §35.

- e. Holmes is not liable for falsely imprisoning Guest. Guest was neither aware of nor harmed by her confinement. First, she did not attempt to open the door. She had no reason to believe that the door was locked. Thus, she was at no point *conscious* of her confinement. Second, she explicitly stated that if she were allowed to leave, she intended to return home to let her dog out. In other words: but for her confinement, she still would not have sought medical attention anyway. Ergo, her confinement was not a *cause in fact* of her brain damage. Since Guest with neither conscious of nor harmed by her confinement, Holmes is not liable. Restatement (Second) §35(c).
- f. Holmes is not liable for falsely imprisoning Guest. Holmes's intention was not to confine Guest, but merely to prevent her from driving home after suffering a concussion. Preventing her from driving in a dangerous condition does not constitute false imprisonment. See Restatement (Second) §36(3).
- g. Holmes is not liable for falsely imprisoning Guest. Intent is an element of false imprisonment. Restatement (Second) §35(1)(a). Holmes's intention was not to confine Guest, but merely to prevent her from driving home after suffering a concussion. His intention was to *benefit* Guest—not to *harm* her. Holmes thus lacked the requisite intent. Since a necessary element of false imprisonment is not present, Holmes is not liable.
- h. Holmes is not liable for falsely imprisoning Guest. Intent is an element of false imprisonment. Restatement §35(1)(a). Holmes's intention was not to cause brain damage. Holmes thus lacked the requisite intent. Since a necessary element of false imprisonment is not present, Holmes is not liable.
- i. Holmes is not liable for falsely imprisoning Guest. Holmes was unaware that Guest required immediate medical attention. Although the confinement may have been a cause of her subsequent brain damage, it serves no purpose to impose liability for unforeseeable harms. Parties are necessarily inelastic with respect to incentives they cannot foresee. Since Guest's brain damage was an *unforeseeable* consequence of her confinement, the confinement was not a *proximate cause* of her brain damage. Therefore, Holmes is not liable.

7. Choose the strongest argument. (Products liability—Failsafe)

- a. Failsafe is liable for the failure of the latch. Securing livestock is a common and foreseeable use-case for a gate latch. A reasonable person would not ordinarily expect the kicks and pushes of a horse to cause a metal latch bolt to break. It follows from *res ipsa loquitur* that there must have been some defect in the manufacture of the bolt. Producers are strictly liable for manufacturing defects. Restatement (Third) §2(a). Therefore, Failsafe is strictly liable for the failure of the latch, regardless of their negligence.
- b. Failsafe is not liable for the failure of the latch. The installation manual specifically warned that mounting the latch on wood would weaken its

connection to the gate. Nevertheless, Holmes mounted the latch to a wooden door and wooden fencepost using wood screws. Manufacturers are not liable when their products are misused in violation of clear warnings. Therefore, Failsafe is not liable for the failure of the latch.

- c. Failsafe is not liable for the failure of the latch. Although securing livestock—including horses—was a foreseeable use-case for a gate latch, it was *not* reasonably foreseeable that the latch would be used to contain a *mustang*. Since the latch was not being used for the purposes for which it was designed, Failsafe is not liable for any harms which may result from that misuse.
- d. Failsafe is liable for the failure of the latch. Securing livestock is a common and foreseeable use-case for a gate latch. A reasonable person would not ordinarily expect the kicks and pushes of a horse to cause a metal latch bolt to break. Nevertheless, the bolt *did* break. However, since bolts do not ordinarily break from ordinary use, it can be inferred that more resilient alternative designs exist. The weakness of the latch was thus a *design defect*. Restatement (Third) §2(b). Therefore, Failsafe is liable for the defect.
- e. Failsafe is not liable for the failure of the latch. Failsafe provided adequate instructions and warnings not to mount the latch on wood. There was no defect in their marketing. Restatement (Third) §2(c). Therefore they are not liable for the failure of the latch.
- f. Failsafe is not liable for the failure of the latch. Holmes attached the latch to a wooden gate. However, Failsafe provided instructions expressly warning end-users *not* to attach the latch to wood. Holmes's installation of the latch thus constituted negligence. Contributory negligence is a complete defense. Since Holmes was contributorily negligent, Failsafe is not liable.
- g. Failsafe is not liable for the failure of the latch. Even if the latch failed due to a manufacturing or design defect, Holmes's negligent installation was the voluntary act of an independent third party, breaking the chain of causation. Since Holmes's intervention *supersedes*, any manufacturing or design defects that may have existed would not be proximate causes of the latch breaking. Therefore, Failsafe is not liable.
- h. Failsafe is not liable for the failure of the latch. Even if alternative designs would not have failed, Failsafe is not obligated to adopt the safest possible design. It need only adopt a design which reasonably balances the additional costs against the benefits of adopting a safer design. Even if a bolt made from more resilient material—for example, titanium—could have better withstood the strain, the law ought not to *require* its adoption through tort. Assuming the use of steel satisfies the *risk-utility test*, the design of the latch was not defective.
- i. Failsafe is liable for the failure to warn. It was reasonably foreseeable that the latch would be used to constrain the movement of mustangs—either to fence them in, or to fence them out. If the latch was not capable of withstanding the physical force of a mustang's pushes and kicks, then the

manufacturer was obliged to warn the consumer, which it did not do. Therefore, Failsafe is liable for the marketing defect.

8. Choose the strongest argument. (Products liability—Tesla)

- a. Tesla is liable for Guest's brain injury. It is reasonable to assume that the Cybertruck's sensors were not supposed to hallucinate road obstructions. In other words: they were not "functioning as designed." When a product fails to perform as intended, it is a *manufacturing defect*. Producers are strictly liable for harms caused by manufacturing defects. The car would not have crashed *but for* the manufacturing defect, and trauma to Guest's brain is a *foreseeable* result of a car crash. Therefore, Tesla is liable for Guest's brain injury.
- b. Tesla is liable for Guest's brain injury. The algorithm in Guest's Cybertruck caused it to swerve off the road to avoid a nonexistent obstacle. Although the sensors may have malfunctioned, there is no evidence to suggest that the *algorithm* was not operating as designed. Hence, the algorithm was defective in its design. Even if there *had* been an obstacle, swerving into a reservoir to avoid it would still have been an unreasonable response. Consider that the vehicle could instead have hard-braked, gone around the obstacle, or simply allowed the collision. Any of these alternatives would have been safer than driving into the reservoir. The possibility of traumatic brain injury is a foreseeable consequence of cars crashing into reservoirs. Since the algorithm was functioning as intended, and safer alternatives existed, Tesla's *design defect* was a cause of Guest's brain injury. Therefore, Tesla is liable for Guest's brain injury.
- c. Tesla is not liable for Guest's brain injury. Perfecting automated driving technology has proven to be a historically significant engineering challenge. Tesla has invested billions of dollars in developing safer automation and is expected to invest billions more. Given the extent of Tesla's efforts to advance the cutting edge of automated driving technology, it is implausible that they adopted a cheaper, less safe alternative. Even if their algorithm is not perfect, it is almost surely among the safest feasible, and far exceeds the requirements of the risk-utility standard. Therefore, Tesla is not liable for Guest's brain injury.
- d. Tesla is not liable for Guest's brain injury. Regardless whether Tesla is liable for the *crash*, the testimony of medical experts established that there was only a 20% probability that the crash was a cause-in-fact of the *brain injury*. This is insufficient to meet the more-likely-than-not threshold required to prevail in a civil case. Since Tesla did not cause Guest's brain injury, Tesla cannot be liable for Guest's brain injury.
- e. Tesla is not liable for Guest's brain injury. According to the testimony of medical experts, the kick to her head was more-likely-than-not the cause of her brain injury. When she left Holmes's ranch, Guest stated that her intention was to return home to let her dog out. She had no apparent intention to seek immediate medical care. Thus, even if the Cybertruck had

not swerved into the reservoir, she still would not gotten medical care for her injury. The crash was thus *not* a cause-in-fact of the delay in her receiving medical attention. Therefore, regardless of Tesla's liability for the crash, Tesla was not the cause of Guest's brain injury.

- f. Tesla is liable for Guest's *lost chance* to receive prompt medical attention. According to the testimony of medical experts, the damage to Guest's brain probably would not have been permanent had she received prompt medical attention. However, it was not possible for Guest to see a doctor within the critical time period because her car crashed into a reservoir. Regardless whether the crash was due to a manufacturing defect or a design defect, Guest would have been able to see a doctor but for the crash. Even if it is uncertain whether she would have sought medical attention, she was nevertheless deprived of the *chance* to seek medical care. Tesla is therefore liable for the *lost chance*.
- g. Tesla is liable for Guest's brain injury. First, even if there is only a 20% probability that the crash was the cause of Guest's injury, under the doctrine of comparative negligence, Tesla is still liable for 20% of the harm. Second, Tesla is liable for the crash. The sensors were not functioning according to design. Therefore, they were defectively manufactured. Alternatively, the algorithm failed to respond reasonably to the hallucinated obstruction, and therefore the design was defective. In either case, there was some defect for which Tesla is liable.
- h. Tesla is liable for Guest's brain injury. First, Tesla is liable for the crash. The sensors were not functioning according to design. Therefore, they were defectively manufactured. Alternatively, the algorithm failed to respond reasonably to the hallucinated obstruction, and therefore the design was defective. In either case, there was some defect for which Tesla is liable. Second, the testimony of medical experts established that there was a 20% probability that the crash was a cause-in-fact of Guest's brain injury. Under the doctrine of joint and several liability, Tesla is fully liable for Guest's brain injury, although they can sue Holmes and Failsafe for contribution.
- i. Tesla is not liable for Guest's brain injury. Regardless whether Tesla caused the crash, Guest unreasonably approached a partially wild horse. Her contributory negligence negates any liability Tesla may have had for her injuries.

9. Assume the following premises are true:

- **Holmes is not strictly liable for keeping a dangerous animal,**
- **Holmes is liable for improperly installing the latch,**
- **Failsafe is liable for producing a faulty latch,**
- **Holmes is liable for falsely imprisoning Guest,**
- **Tesla is liable for the crash,**
- **Guest was not negligent in any way, and**
- **Guest did not assume the risk when she approached Ignatius.**

Choose the strongest argument. (Causation and damages—Holmes)

- a. Holmes is liable for all of the damages arising from Guest's brain injury. First, even if Failsafe produced the faulty latch, Holmes's negligence supersedes, breaking the chain of causation between Failsafe's product and Guest's injury. Second, even if Tesla is liable for the crash, the evidence does not support the inference to a 51% certainty that the crash was a cause-in-fact of the brain injury. Therefore, Holmes alone is liable for Guest's brain injury.
- b. Holmes is liable for half of the damages arising from Guest's brain injury. Since Failsafe produced the faulty latch, and Holmes installed it improperly, they are concurrent causes of the horse's kick. There exists a preponderance of the evidence supporting the proposition that the kick caused Guest's brain injury. There is *less* than a preponderance of evidence supporting the proposition that the crash caused it. Under the doctrine of alternative liability, since neither Holmes nor Failsafe were non-negligent, they should each pay *half* the damages.
- c. Holmes is liable for 40% of the damages arising from Guest's brain injury. First, since Failsafe produced the faulty latch, and Holmes installed it improperly, they are concurrent causes of the horse's kick. Under the doctrine of alternative liability, since neither Holmes nor Failsafe can prove that they were not the cause in fact of Guest's injury, they should each pay *half* the damages. Next, in a comparative negligence regime, Tesla is liable for 20% of the damages because there is a 20% chance that they caused the injury. Therefore, Holmes is liable for half of the remaining 80% of the damages, which is 40%.
- d. Holmes is liable for no damages arising from Guest's brain injury. Although Holmes bore some share of the fault for Guest's injury, it was not more than 50%, and therefore under a theory of *modified* comparative negligence, he is liable for no portion of the damages.
- e. Holmes is liable for all of the damages arising from Guest's brain injury. Although Failsafe's product was also a cause-in-fact of Guest's injury, Guest would not have suffered permanent brain damage if Holmes had not confined her in the stable for over an hour subsequent to the horse's kick. The false imprisonment supersedes, breaking the chain of causation between Failsafe's defective product and Guest's injury. Therefore, Holmes alone is liable for Guest's brain injury.
- f. Holmes is liable for nearly all of the damages arising from Guest's brain injury. Although Failsafe's product was defective and a cause-in-fact of Guest's injury, the fault attributable to a manufacturing defect is negligible compared to the fault attributable to false imprisonment. In a comparative negligence regime, damages are apportioned according to fault. Therefore, Holmes should be liable for nearly all the damages, as he perpetrated an *intentional* tort more closely tied to the eventual harm.
- g. Holmes is liable for 80% of the damages arising from Guest's brain injury. If Guest's brain injury were caused by the horse's kick, then Guest would not have suffered permanent brain damage but for Holmes confining her in the

stable for over an hour subsequent to the horse's kick. However, if her brain injury were caused by the crash, then Tesla should be liable for her brain injury. Since it cannot be determined with certainty which event—the kick or the crash—caused her brain injury, in a comparative negligence regime, Tesla should be liable for 20% of the damages, and Holmes should be liable for 80% of the damages.

- h. Holmes is liable for nominal damages. Even if Holmes is liable for Guest's brain injury, he is not liable to pay "damages for any harm that [Guest] could have avoided by the use of reasonable effort." Restatement (Second) §918(1). Guest chose not to seek timely medical attention, thereby exacerbating the harmful effect of the horse's kick. Had she sought care earlier, then she probably would not have suffered permanent brain damage. Holmes is therefore not liable for the permanent damage. He is liable only for the residue—nominal damages.

10. Assume the following premises are true:⁴

- **Holmes is strictly liable for keeping a dangerous animal,**
- **Holmes is liable for improperly installing the latch,**
- **Failsafe is liable for producing a faulty latch,**
- **Holmes is liable for falsely imprisoning Guest,**
- **Tesla is liable for the crash,**
- **Guest was not negligent in any way, and**
- **Guest did not assume the risk when she approached Ignatius.**

Choose the strongest argument. (Causation damages—Holmes)

- a. Holmes is liable for all of the damages arising from Guest's brain injury. Guest would not have been kicked in the head but for Holmes keeping a partially wild horse. A person getting kicked in the head is a foreseeable danger of keeping a partially wild horse. Therefore, Holmes's keeping the horse was a cause of Guest's getting kicked in the head.
- b. Holmes is liable for half of the damages arising from Guest's brain injury. Since Holmes owned a dangerous animal, and Failsafe produced the faulty latch, which allowed the dangerous animal to escape, they are *both* causes-in-fact of the horse's kick. There exists a preponderance of the evidence supporting the proposition that the kick caused Guest's brain injury. There is *less* than a preponderance of evidence supporting the proposition that the crash caused it. Under the doctrine of alternative liability, since neither Holmes nor Failsafe can prove that they were not the cause in fact of Guest's injury, they should each pay *half* the damages.
- c. Holmes is liable for 40% of the damages arising from Guest's brain injury. First, since Holmes owned a dangerous animal, and Failsafe produced the faulty latch, which allowed the dangerous animal to escape, they are *both*

⁴ The difference in the assumptions in Questions 9 and 10 is that you are meant to assume that Holmes is *not* strictly liable for keeping a dangerous animal in Question 9, and that he *is* strictly liable for keeping a dangerous animal in Question 10.

causes-in-fact of the horse's kick. Under the doctrine of alternative liability, since neither Holmes nor Failsafe were non-negligent, they should each pay *half* the damages. Next, in a comparative negligence regime, Tesla is liable for 20% of the damages because there is a 20% chance that they caused the injury. Therefore, Holmes is liable for half of the remaining 80% of the damages, which is 40%.

- d. Holmes is liable for no damages arising from Guest's brain injury. Although Holmes bore some share of the fault for Guest's injury, it was not more than 50%, and therefore under a theory of *modified* comparative negligence, he is liable for no portion of the damages.
- e. Holmes is liable for all of the damages arising from Guest's brain injury. Even if Failsafe's product was defective, Holmes is *strictly liable* for owning the dangerous animal, not merely negligent. Under strict liability, the parties' share of the "fault" is irrelevant—Holmes is liable absolutely. Therefore, Holmes is liable for *all* of the harms which his ownership of the dangerous animal caused.
- f. Holmes is liable for all of the damages arising from Guest's brain injury. Although Failsafe's product was also a cause-in-fact of Guest's injury, Guest would not have suffered permanent brain damage if Holmes had not confined her in the stable for over an hour subsequent to the horse's kick. The false imprisonment supersedes, breaking the chain of causation between Failsafe's defective product and Guest's injury. Therefore, Holmes alone is liable for Guest's brain injury.
- g. Holmes is liable for nearly all of the damages arising from Guest's brain injury. Although Failsafe's product was defective and a cause-in-fact of Guest's injury, the fault attributable to a manufacturing defect is negligible compared to the fault attributable to false imprisonment. In a comparative negligence regime, damages are apportioned according to fault. Therefore, Holmes should be liable for nearly all the damages, as he perpetrated an *intentional* tort more closely tied to the eventual harm.
- h. Holmes is liable for 80% of the damages arising from Guest's brain injury. If Guest's brain injury were caused by the horse's kick, then Guest would not have suffered permanent brain damage but for Holmes confining her in the stable for over an hour subsequent to the horse's kick. However, if her brain injury were caused by the crash, then Tesla should be liable for her brain injury. Since it cannot be determined with certainty which event—the kick or the crash—caused her brain injury, in a comparative negligence regime, Tesla should be liable for 20% of the damages, and Holmes should be liable for 80% of the damages.
- i. Holmes is liable for nominal damages. Even if Holmes is liable for Guest's brain injury, he is not liable to pay "damages for any harm that [Guest] could have avoided by the use of reasonable effort." Restatement (Second) §918(1). Guest chose not to seek timely medical attention, thereby exacerbating the harmful effect of the horse's kick. Had she sought care earlier, then she

probably would not have suffered permanent brain damage. Holmes is therefore not liable for the permanent damage. He is liable only for the residue—nominal damages.

11. Assume the following premises are true:⁵

- **Holmes is not strictly liable for keeping a dangerous animal,**
- **Holmes is liable for improperly installing the latch,**
- **Failsafe is liable for producing a faulty latch,**
- **Holmes is liable for falsely imprisoning Guest,**
- **Tesla is not liable for the crash,**
- **Guest was not negligent in any way, and**
- **Guest did not assume the risk when she approached Ignatius.**

Choose the strongest argument. (Causation and damages—Failsafe)

- a. Failsafe is liable for all of the damages arising from Guest's brain injury. First, the dangerous horse would not have escaped its pen but for Failsafe producing a defective latch, Guest would not have been kicked in the head but for the horse getting loose, and Guest would not have suffered a brain injury but for the kick to her head. Guest's brain injury is a foreseeable consequence of the broken latch. The very purpose of a latch is to prevent the escape of dangerous things. Second, although Holmes negligently installed the latch, the improper installation was not the cause of its failure. Therefore, Failsafe alone is liable for all of the damages arising from Guest's brain injury.
- b. Failsafe is liable for half of the damages arising from Guest's brain injury. Since Failsafe produced the faulty latch, and Holmes installed it improperly, they are concurrent causes of the horse's kick. There exists a preponderance of the evidence supporting the proposition that the kick caused the brain injury. There is *less* than a preponderance of evidence supporting the proposition that the crash caused it. Under the doctrine of alternative liability, since neither Holmes nor Failsafe were non-negligent, they should each pay *half* the damages.
- c. Failsafe is liable for no damages arising from Guest's brain injury. Although Failsafe bore some share of the fault for Guest's injury, it was not more than 50%, and therefore under a theory of *modified* comparative negligence, they are liable for no portion of the damages.
- d. Failsafe is liable for no damages arising from Guest's brain injury. Even if Failsafe's product was a cause-in-fact of Guest's injury, Guest would not have suffered permanent brain damage if Holmes had not confined her in the stable for over an hour subsequent to the horse's kick. The false imprisonment supersedes, breaking the chain of causation between

⁵ The difference in the assumptions in Questions 10 and 11 is that you are meant to assume that Holmes *is* strictly liable for keeping a dangerous animal in Question 10, and that he is *not* strictly liable for keeping a dangerous animal in Question 11. Additionally, you are meant to assume that Tesla *is* liable for the crash in Question 10, and that they are *not* liable for the crash in 11.

Failsafe's defective product and Guest's injury. Therefore, Failsafe is not liable for Guest's brain injury.

- e. Failsafe is liable for nominal damages for Guest's brain injury. Although Failsafe's product was defective and a cause-in-fact of Guest's injury, the fault attributable to a manufacturing defect is negligible compared to the fault attributable to false imprisonment. In a comparative negligence regime, damages are apportioned according to fault. Therefore, Failsafe should be liable for nominal damages only, because Holmes perpetrated an *intentional* tort more closely tied to the eventual harm.
- f. Failsafe is liable for nominal damages for Guest's brain injury. Even if Failsafe is liable for Guest's brain injury, they are not liable to pay "damages for any harm that [Guest] could have avoided by the use of reasonable effort." Restatement (Second) §918(1). Guest chose not to seek timely medical attention, thereby exacerbating the harmful effect of the horse's kick. Had she sought care earlier, then she probably would not have suffered permanent brain damage. Failsafe is therefore not liable for the permanent damage. They are liable only for the residue—nominal damages.