

# Torts Course Report

## Fall 2024

Prof. Pi

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# 1 Final Exam Points Allocations

		<i>Answer</i>													
		a	b	c	d	e	f	g	h	i	j	k	l	m	n
1	points	4	8	6	7	1	8	3	3	0					
	frequency	2	16	4	1	0	35	9	4	0					
2	points	3	3	0	0	5	0	8	0						
	frequency	17	0	0	8	12	4	30	0						
3	points	3	3	1	1	0	3	2	2	1	7	3	0	8	9
	frequency	2	3	2	0	0	2	0	0	2	21	3	1	24	11
4	points	3	2	7	4	7	0	2	1						
	frequency	4	2	10	16	28	9	1	1						
5	points	6	4	0	1	6	4	3	5	10	0				
	frequency	1	32	0	0	14	11	1	2	8	1				
6	points	4	6	6	8	10	3	2	2	3					
	frequency	7	13	12	22	13	1	2	0	1					
7	points	8	6	6	4	2	0	1	5	7					
	frequency	8	29	1	1	3	2	4	23	0					
8	points	4	3	7	8	6	3	2	1	1					
	frequency	20	3	0	8	4	4	28	3	0					
9	points	6	1	2	3	7	6	4	6						
	frequency	3	4	31	0	8	4	18	1						
10	points	7	2	0	2	4	7	6	4	6					
	frequency	4	2	10	0	25	2	1	27	0					
11	points	7	1	3	7	7	6								
	frequency	5	16	1	21	19	9								

# 2 Final Exam Answer Explanations

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.

**4 points.** *Explanation:* First, the basis for strict liability—if it exists at all—is most plausibly going to arise from *liability for keeping wild or dangerous animals*. It is not from the general doctrine of strict liability for “abnormally dangerous” or “ultrahazardous” activities. Additionally, even if you view animals as a special case of abnormally dangerous activities, the keeping of a horse (even a mustang) is not “abnormal” or “ultrahazardous,” which includes such things as blasting. Restatement (Second) §520 gives six factors as to when an activity is “abnormally dangerous.” The keeping of a mustang does not clearly implicate any factor. Moreover, Restatement (Third) §20(b) says that “An activity is abnormally dangerous is: (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors, and (2) the activity is not a matter of common usage,” which is unlikely upon the facts given.

- (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.

**8 points.** *Explanation:* This is a very strong answer for two reasons. First, it acknowledges that “feral animals” are *not necessarily ferae naturae*. This is the inverse of *Behrens*. The fact that mustangs are genetically the same as domesticated horses means that formally they are *domitae naturae*. However, the policy reasons which lead to the doctrine of strict liability for wild animals are implicated *despite* mustangs formally being *domitae naturae*. Hence, we should treat them *as if* they were *ferae naturae*. This is a sophisticated argument which acknowledges the black letter law, but also extends beyond it using nuanced policy reasoning.

- (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.

**6 points.** *Explanation:* This answer correctly explains why Answer (a) is wrong. However, just because Holmes is not strictly liable for engaging in an “abnormally dangerous activity” does not mean he could not be strictly liable for other reasons. Specifically, whether there is strict liability for dangerous animals. See Explanation for Answers (b) and (d). Thus, while this answer correctly identifies why one line of reasoning is wrong, it does not correctly identify which line of reasoning is *right*.

- (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.

**7 points.** *Explanation:* This is a solid answer, which inverts the reasoning from *Behrens*. *Behrens* reasoned that elephants as a biological category are *ferae naturae*, even those of a particularly docile breed. It follows that since horses as a biological category are *domitae naturae*, even those of a particularly wild and dangerous kind, mustangs are not *ferae naturae*.

- (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.

**1 point.** *Explanation:* This is quite a bad answer. This answer claims that Holmes is liable for the *horse's kick*. However, the substance of the argument seems to establish that the horse's kick was the *cause* of Guest's brain injury. There is a disconnect between what the argument establishes and what the argument purports to establish.

- (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.

**8 points.** *Explanation:* This answer correctly recognizes that horses generally are *domitae naturae*. However, knowledge that a particular animal is dangerous will generally trigger strict liability, even if the animal is a

*domitae naturae*. For example, a dog which has demonstrated a propensity to bite will be treated *as if* it were a *ferae naturae* despite dogs as a category being *domitae naturae*. Whether Holmes had enough information to reasonably conclude that Ignatius was especially dangerous is mixed. The facts given are that he was making progress taming Ignatius. But his own statement suggests that he knew that the process was still ongoing. That's a question for the jury, but it is not implausible that he had sufficient knowledge to trigger strict liability.

- (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.

**3 points.** *Explanation:* You were expressly told that mustangs are biologically identical to domesticated horses. Hence, they are *domitae naturae*. This argument rests upon a false premise.

- (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.

**3 points.** *Explanation:* Consider carefully what Restatement (Third) §24(a) says, "Strict liability does not apply if the person suffers physical harm as a result of making contact with or coming into proximity to the defendant's animal or abnormally dangerous activity *for the purpose of securing some benefit from that contact or that proximity*" (emphasis added). Guest did not approach Ignatius for the purpose of securing a benefit. Therefore, Restatement (Third) §24(a) is inapplicable in this situation.

- (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.

**0 points.** *Explanation:* A horse cannot be an "agent" for the purpose of *respondeat superior*. Restatement (Second) of Agency §220(1) states: "A servant is a *person* employed to perform services . . ." (emphasis added). A horse is not a person.

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.

**3 points.** *Explanation:* The point of *Rylands* is that owners are strictly liable for dangerous substances that emanate from their land. In this case, the horse did not leave Holmes's land. This argument misidentifies the circumstances where *Rylands* applies.

- 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.

**3 points.** *Explanation:* This disregards the explicit instruction that *Rylands* applies in New Vermont.

- 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.

**0 points.** *Explanation:* This argument starts off with a factual error. Footnote 3 in the exam expressly states that the kick occurred *on Holmes's property*. More problematically yet, this argument purports to apply *Rylands*, but claims that owners *aren't* liable for dangers that escape their land, which is the *exact opposite* of what *Rylands* holds. So it misstates the facts, and misapplies a misstatement of the rule.

- 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.

**0 points** The victim's status as an "invitee" does not trigger strict liability. *Rylands* is about harms emanating from land, not duties to invitees. This answer conflates property-based duties in a negligence context for dangers emanating from land in a strict liability context.

- 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.

**5 points.** *Explanation:* This argument correctly states the rules governing licensees. However, just because he did not breach his duty to Guest as a licensee does not mean he could not be liable to her for *other* reasons. This argument fails to address the question whether Holmes is strictly liable for the harm which befell Guest.

- 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.

**0 points.** *Explanation:* This answer implies that since Holmes is neither intentionally or negligently responsible for the kick, he cannot be strictly liable for the kick. This simply is not the rule and misunderstands the role of strict liability in torts.

- 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.

**8 points.** *Explanation:* This is straightforwardly the only correct answer to this question. The horse did not escape Holmes's property, and therefore *Rylands* is inapplicable.

- 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.

**0 points.** *Explanation:* This argument misidentifies the circumstance as involving a "pure economic loss" (it does not), misapplies the rule of pure economic loss (attaching it to property ownership), and misstating the rule (strict liability).

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.

**3 points.** *Explanation:* This answer correctly states the rules relating to the duty to rescue. However, it badly confuses the chronology. If Holmes's carrying Guest to the stables constitutes "commencing rescue," then his duty only existed *after* the kick. Moreover, his duty was not to *prevent the kick* (impossible unless he can travel backwards through time), but rather to *complete* the rescue. If Holmes had a duty to *prevent the kick*, then it must have existed *before* the kick.

- (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.

**3 points.** *Explanation:* This answer conflates duties arising from privity with duties to invitees.

- (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.

**1 point.** *Explanation:* The assumption of risk applies to plaintiffs—not defendants. This answer badly confuses the assumption of risk with the creation of a duty.

- (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.

**1 point** Factually, this is not an instance of pure economic loss. Legally, duties deriving from property relations are not related to pure economic harms.

- (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.

**0 points.** *Explanation:* First, the horse is not a “third party.” Second, tort law often assigns a duty to control third parties (e.g., special relations, privity, vicarious liability). This answer is wrong on the fact, rule, and application.

- (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.

**3 points.** *Explanation:* This correctly paraphrases Restatement (Second) §315(a). But a horse is not a person.

- (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.

**2 points.** *Explanation:* It's true that property owners do not owe trespassers a duty to inspect for or repair hazards. Social guests are the paradigmatic exemplar of a licensee. A "trespasser" by definition occupies land without permission. Holmes's invitation to Guest to visit his ranch means she is definitely *not* a trespasser.

- (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.

**2 points.** *Explanation:* In general, property owners owe *almost* no duty of care to trespassers *even when* they are aware of their presence. *Herrick* represents a rare class of exceptions, when trespassers are mixed in with invitees. The facts here are easily distinguishable from those in *Herrick*.

- (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.

**1 point.** *Explanation:* This answer has the form:

- i. If  $X$  then  $Y$ .
- ii.  $Y$ .
- iii. Therefore,  $X$ . (from i, ii)

This is the logical fallacy known as "affirming the consequent."

- (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).

**7 points.** *Explanation:* This is a plausible argument. It is debatable whether Guest was an invitee or merely a licensee. This answer offers compelling reasons for considering her the former. There is also a question of *foreseeability* relating to the defective latch. Arguably *Palsgraf* could apply. However, despite the “close call” factual issues, the argument is certainly colorable.

- (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.

**3 points.** *Explanation:* This answer correctly recognizes that even if Holmes did have a duty to inspect, he did not necessarily breach it, because the defect may not have been detectable. However, just because Holmes’s breach did not cause the eventual harm, it does not follow that Holmes did not have a duty in the first place. This argument has the form:

- i. If  $X, Y, Z$  then  $W$ .
- ii.  $W$  is false.
- iii. Therefore,  $X$  is false. (from i, ii)

This is logically invalid.

- (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.

**0 points.** *Explanation:* This answer presents an extremely crude attempt at a policy argument. It is true that imposing duties on social hosts will create *some* disincentive to host gatherings. However, the question is whether the forgone benefit is outweighed by the reduction in social cost. To understand the point, consider an extremum example: imposing

a duty on hosts not to steal from their guests will disincentivize hosting gatherings—if only slightly. However, it’s clearly a net positive if *those* hosts were deterred from hosting gatherings. Even if socializing is generally a social good, that does not mean any regulation of it is necessarily bad.

- (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.

**8 points.** *Explanation:* This answer correctly identifies that Holmes did not have a duty to inspect, repair, or warn arising from his ownership of the property.

- (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.

**9 points.** *Explanation:* This is good, but tricky. Even if Holmes did not owe Guest a duty arising from property or from his ownership of a *ferae naturae*, nevertheless he still owed her the ordinary duty of care that attends any risky activity. If an animal is not *ferae naturae*, then this only means that the owners are not *strictly liable* for the harms the animal causes. It does not absolve them of the standard of due care under ordinary negligence.

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 foresee-

able consequence of approaching a feral horse. Therefore, since Guest was contributorily negligent, Holmes is not liable.

**3 points.** *Explanation:* This would be quite a good answer if the prompt had not expressly stated that New Vermont had adopted comparative negligence, thereby displacing the defense of contributory negligence.

- (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.

**2 points.** *Explanation:* This answer conflates the assumption of risk with consent.

- (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.

**7 points.** *Explanation:* This answer characterizes Guest's conduct as negligent and her fault as exceeding 50%. In a modified comparative negligence regime plaintiffs cannot recover if they are more than 50% responsible for the accident. This answer correctly applies the rule to the given facts, assuming (not unreasonably) that Guest is more blameworthy than Holmes or Failsafe.

- (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.

**4 points.** *Explanation:* This answer identifies Guest's approaching Ignatius as an instance of *secondary assumption of risk*. That is plausible. However, the prompt expressly states that New Vermont has abolished the secondary assumption of risk as a defense.

- (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.

**7 points.** *Explanation:* This is a reasonable answer. If we assume that Guest is less at fault than Holmes, then she is entitled to recover damages—although her recovery will be reduced in proportion to her blameworthiness.

- (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.

**0 points.** *Explanation:* This answer totally mischaracterizes the express assumption of risk. The express assumption of risk applies when the plaintiff explicitly accepted responsibility for any harms which might occur, regardless of the defendant’s negligence.

- (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.

**2 points.** *Explanation:* Holmes probably isn’t liable for the failure of the latch, because the point of failure was not his installation of it. The point of failure was the defective bolt. The causal issue is explored in greater depth in subsequent questions. In this answer, there is recognition of a causation problem. However, this argument mischaracterizes it as a problem in proximate cause rather than physical cause. Also, there is a problem with the chronology. Holmes’s installation of the latch occurs *after* Failsafe’s defective manufacturing. Events cannot supersede *future* events.

- (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.

**1 point.** This argument characterizes Holmes as the “manufacturer” of the horse and Guest as the “consumer” of the horse. That characterization does not fit the given facts.

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.

**6 points.** *Explanation:* There is a colorable argument that the specific chain of events which occurred was unforeseeable. But consider: what is the purpose of having latches on the doors restricting the movement of animals? Surely the point is to prevent the animal from getting loose and causing harm. What sort of harm? Among the many kinds of harms that animals can cause when they escape their enclosures—e.g., dogs biting, bulls goring, cows grazing on crops—a horse kicking a person must surely be included. Some such harm was thus foreseeable, even if the exact sequence of events was not. See *United Novelty Co. v. Daniels* (“fire rat”).

- (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.

**4 points.** *Explanation:* First, this answer purports to establish that Holmes is liable for the horse’s kick. However, the argument does not connect Holmes’s negligent installation to the failure of the latch. Rather, it connects the failure of the latch to the kick. This is the wrong connection.

Second, even if Holmes's improper installation of the latch were "breach," it was not the breach that caused Ignatius to get loose. The point of failure was the bolt. The wood screws held. Ergo, even if Holmes did breach, his breach was *not* the cause-in-fact of the harm.

- (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.

**0 point.** *Explanation:* The relationship between Failsafe and Holmes was never one of principal to agent. Holmes is not an employee of Failsafe. And even if he were, and Failsafe were vicariously liable, that would not negate Holmes's liability: *Respondeat superior* establishes that the employer is liable for the employee's conduct. It does not mean that the employee is *not* liable for his own conduct.

- (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.

**1 point.** *Explanation:* This answer is almost as bad as Answer (c). It is *slightly* better because it at least recognizes that minor deviations from the principal's instructions do not necessarily render conduct a "frolic." However, it is fundamentally a very bad answer.

- (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.

**6 points.** *Explanation:* This answer correctly frames the rule of comparative negligence. However, the argument suffers from a problem with causation. Holmes's improper installation of the latch was *not* the cause-in-fact of the horse's escape. The point of failure was the bolt—not the connection to the wooden gate. Holmes's negligence thus fails the but-for test. He was not a cause of the horse's escape, and hence not a cause of the horse's kick.

- (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.

**4 points.** *Explanation:* The intuition undergirding this answer has merit, however the argument suffers from several defects. First, Holmes did not abandon the rescue—he mistakenly believed that forcing Guest to rest would help her recover from her injury. Possibly he was negligent in performing the rescue, however it is a misinterpretation of the facts to frame this as abandonment. Second, this argument claims that Holmes is liable for the horse's kick because of conduct that occurred *after* the horse's kick. While he may be liable for exacerbating the harms caused by the horse's kick, the argument does not establish liability 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.

**3 points.** *Explanation:* If Guest's brain injury were caused by the horse's kick, then according to the medical experts' testimony, Guest required attention within an hour of the kick. However, it was at least *two* hours after the kick when she drove away from Holmes's ranch. Even if it had

not been two hours, it is tenuous whether Holmes was a proximate cause of the accident. Consider: is it really *unforeseeable* that a person recently kicked in the head by a horse would be especially susceptible to a car accident if allowed to drive?

On the other hand, if Guest's brain injury were caused by the crash, then the Holmes would not be a cause of the brain injury. However, if he negligently allowed Ignatius to escape, then he would be liable for the kick.

- (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.

**5 points.** *Explanation:* This answer is based on a clever idea: that Guest's irrational choice to forgo medical treatment was an unforeseeable act that supersedes. However, the argument suffers from several problems. First, by the time Guest had an opportunity to seek medical attention, the critical time period had elapsed, and the damage to her brain would have already been permanent. Guest's decision was not an intervening event, and therefore cannot be a superseding event. Second, even if the kick were not the proximate cause of Guest's brain injury, that would only mean that Holmes wasn't liable for the brain injury. He'd still be liable for any other damage that the kick caused—even if only nominal damages.

- (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.

**10 points.** *Explanation:* This combines a close reading of the facts with a clear understanding of the interrelationship between breach, causation, and harm.

- (j) Holmes is liable for the horse's kick. Although Guest unreason-

ably 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.

**0 points.** *Explanation:* First, the doctrine of attractive nuisances applies only to children. Second, the presence of the horse is not an artificial condition that Holmes maintains on his property. Thus, the application of the doctrine of attractive nuisances as inapt.

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.

**4 points.** *Explanation:* Guest did not contemplate the window escape until thirty minutes after her confinement. Even if this operated to defeat legal confinement, she would still have been “confined” for at least thirty minutes. However, she was also not aware of her confinement in the first place, which poses a more serious problem.

- (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.

**6 points.** *Explanation:* This is quite a good and thorough answer, except that the last point is wrong. The problematic assertion is, “Guest believed

that if she attempted to leave, then Holmes would try to stop her. She was therefore conscious of her confinement.” The problem is that legal confinement does not include Holmes *trying* to stop her from leaving—which could include using persuasion. Confinement requires the use of either physical or legal barriers. The mere attempt to dissuade her does not constitute confinement. The critical fact of Guest’s confinement was the padlock keeping her in the stables. The problem is that she was never aware of the padlock.

- (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).

**6 points.** *Explanation:* This is quite a good answer, except that being harmed by the confinement (even if unaware of it) can satisfy the third prong of false imprisonment. See Restatement (Second) §35(c) (“An actor is subject to liability to another for false imprisonment if . . . the other is conscious of the confinement or is harmed by it.”).

- (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.

**8 points.** *Explanation:* This is an excellent argument, which lays out the most plausible case for Holmes’s liability for false imprisonment.

- (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).

**10 points.** *Explanation:* This argument cleverly leverages Guest’s apparent intention to go home to let her dog out—rather than to seek immediate medical attention—to negate the “harmed by her confinement” alternative in the third prong of false imprisonment. The claim is that if she would have suffered the brain damage *anyway*, then the false imprisonment could not be the *cause-in-fact* of the injury, and hence she was *neither* conscious of nor harmed by her confinement. This argument depends on the counterfactual claim that Guest certainly would not have sought medical treatment regardless of her confinement. This is a jury question, however it is extremely plausible given that Guest did not attempt to leave *even though* she was not conscious that she was being confined.

- (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).

**3 points.** *Explanation:* The *way* that Holmes prevented Guest from “going in a particular direction” was to confine her “within boundaries fixed by” Holmes. The fact that he intentionally confined her to prevent her from going in a particular direction or doing a particular thing does not obviate the fact that he intentionally confined her.

- (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.

**2 points.** *Explanation:* Holmes’s benevolent intention is *irrelevant*. False imprisonment consists of clearly enumerated elements. Those elements are plausibly satisfied by the given facts. The fact that Holmes intended to help Guest by confining her does not obviate the fact that he did intend to confine her.

- (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.

**2 points.** *Explanation:* The relevant element of false imprisonment is whether “[Holmes] intend[ed] to confine [Guest] within boundaries fixed by [Holmes].” Restatement (Second) §35(1)(a). The element does not require an intention that the confinement cause any *further harm*. Ergo, it is irrelevant whether Holmes intended to cause the brain damage.

- (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.

**3 points.** *Explanation:* This answer suffers from two problems. First, the question is not whether Guest’s brain damage was foreseeable by *Holmes*, but whether it would have been unforeseeable to a “reasonable person.” Hence, Holmes being unaware of the need for immediate medical attention is irrelevant.

Second, even if the brain damage were unforeseeable, this would entail only that Holmes is not liable for the brain damage—it would not absolve him of liability for false imprisonment. However, it is worth remarking that there is a more charitable interpretation of this argument: that in conjunction with Guest not being conscious of her confinement, the ab-

sence of a causal connection to a harm negates the third element of false imprisonment. Restatement (Second) §35(1)(c) (“the [victim] is conscious of the confinement or is harmed by it.”). Hence, the argument does not necessarily conflate liability for the brain injury with liability for false imprisonment. The possibility that this answer was chosen on the basis of the more sophisticated reasoning warrants granting this answer 3 points rather than 2.

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.

**8 points.** *Explanation:* This answer plausibly applies *res ipsa*, identifies the defect as a *manufacturing defect*, and applies strict liability.

- (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.

**6 points.** *Explanation:* This answer subtly misstates the rule. *Misuse* is not a blanket defense. If the user’s alleged misuse is causally unconnected to the harm, then it does not negate the manufacturer’s liability. In this case, the failure point was the bolt—not the connection to the wooden gate. The wood screws held. Hence, the “misuse” was not relevant to the harm.

- (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.

**6 points.** *Explanation:* According to the facts given, mustangs are biologically indistinct from domesticated horses, which implies that mustangs do not possess extraordinary size or strength. However, there is a colorable argument that due to their behavioral differences, mustangs *could* more aggressively seek to force the gate. And it is plausible that for this reason, containing mustangs was not intended by Failsafe when designing the latch. Failsafe might argue that if they had known people would use their latches to contain mustangs, they would have designed a thicker bolt. However, knowing that their latches should not be used to contain mustangs should trigger a duty to warn. However, it is plausible that the use of the latch to contain a mustang was an *unforeseeable* unintended use. These are factual premises, which would go to a jury. Although it is close, it is conceivable that a jury could find the use of the latch—to contain a mustang rather than a domesticated horse—was not the intended use and also unforeseeable.

- (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.

**4 points.** *Explanation:* This answer mistakenly identifies the failure of the bolt to be a design defect. Assuming the bolt was not expected to break under the stresses to which it was subjected, this implies the “defect” was in the manufacture—not the design—of the bolt.

- (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.

**2 points.** *Explanation:* The existence of a warning *not to do X* does not negate liability for harms that do not arise from *X*. Consider: if the bolt were defectively manufactured or designed, should the fact that

they warned users against improperly mounting the latch negate Failsafe's liability for any possible defects in the manufacture or design of the bolt? Obviously not. That would be analogous to excusing a manufacturer for selling potato chips contaminated with lethal levels of arsenic because they included an expiration date on the packaging.

- (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.

**0 points.** *Explanation:* This answer is wrong on multiple levels. First, the latch failed because of the defective bolt—not because of Holmes's improper installation. The wood screws held. Therefore, even though Holmes negligently installed the latch, his negligence was not the cause-in-fact of the latch breaking. Second, if there was misuse, then the defense would be *misuse*—not negligence. Third, contributory negligence applies to negligence on the part of the *plaintiff*—not other injurers. This answer badly misapplies the doctrine of contributory negligence. Fourth, the prompt expressly states that New Vermont has replaced contributory negligence with a comparative negligence.

- (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.

**1 point.** *Explanation:* First, the fact that Failsafe's installation instructions expressly warned against installing the latch on a wooden gate implies that improper installation was not *unforeseeable*. Analytically: misuse could operate as a defense; it would not negate proximate causation. The identification of the improper installation being a proximate cause issue is thus wrong. Second, the latch broke due to the bolt snapping—not due to the improper installation. The wood screws held. Holmes's negligence fails the but-for test. Since Holmes's improper installation is not a cause-in-fact of the latch failing, it is not even an intervening event—much

less a superseding one.

- (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.

**5 points.** *Explanation:* This answer argues persuasively that there was no design defect—assuming the asserted factual premises are true—because the design satisfies the risk-utility test. However, this does not foreclose the existence of a *manufacturing defect*. There most likely was a manufacturing defect. See Answer (a).

- (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.

**7 points.** *Explanation:* This is a slightly better version of Answer (c). Although it is arguable whether the “misuse” was foreseeable, this answer makes a reasonable argument that it was—even if *keeping* mustangs is extraordinary—because the gate could also have been used to keep mustangs *out* of a fenced area.

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.

**4 points.** *Explanation:* Facially, this argument seems to work. However, it is too simplistic to ask whether the sensor was designed to hallucinate obstructions. Of course, hallucinating nonexistent objects was not the intent of the designers. However, we cannot infer that the product was not functioning as intended just because the device did not produce the desired output. If every component part was operating as designed, and the assembled unit was operating as designed, then the error was a product of the design and not a defect in the manufacture. There is nothing in the facts to support the inference that there was a manufacturing defect. Additionally, there is a problem with causation. The testimony of medical experts indicated that there was only a 20% chance that the crash was the cause of Guest's brain injury. Since the standard of proof in civil cases is *preponderance of the evidence*, Tesla is not liable for the brain injury even if they are liable for the crash.

- (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.

**3 points.** *Explanation:* For the reasons given in Answer (c), it is not likely that the design would fail the risk-utility test. The standard does not require that manufacturers eliminate all risk of harm from their designs. Rather, the standard requires only that manufacturers adopt reasonably safe designs. It is plausible that Tesla exceeds what is required to satisfy the risk-utility test.

Additionally, there is a problem with causation. The testimony of medical experts indicated that there was only a 20% chance that the crash was the cause of Guest's brain injury. Since the standard of proof in civil cases is *preponderance of the evidence*, Tesla is not liable for the brain injury even if they are liable for the crash.

- (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.

**7 points.** *Explanation:* This is a persuasive argument that no safer alternative design existed.

- (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.

**8 points.** *Explanation:* This is dispositive.

- (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.

**6 points.** *Explanation:* The counterfactual here is more uncertain than

in Question 6 Answer (e), which has a similar form. Whereas in 6(e), we have very plausible evidence that Guest would not have gotten medical care even if she weren't confined (i.e., her actual conduct given she was unaware of her confinement), in this circumstance it is more difficult to say whether she would in fact have gone home to let her dog out rather than seeking medical care.

Additionally, the testimony of medical experts established that the damage to her brain would most likely have been minimal and temporary if she had received medical attention within an hour of the trauma. By the time she was in the Cybertruck, it had already been two hours since Guest had been kicked in the head by the horse.

- (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.

**3 points.** *Explanation:* First, this argument fails to establish the existence of either a manufacturing defect or design defect, simply *assuming* the existence of *some* kind of defect. This is conclusory, and it is not at all obvious that there was *any* product defect.

Next, there is a problem with causation. Consider two possibilities: (1) the crash caused the brain injury, (2) the horse's kick caused the brain injury. If it's the former, and the crash were due to a defect in the product, then the "lost chance" theory is a weak and roundabout way of assigning liability to Tesla. Tesla ought to be liable directly based on a products liability theory.

On the other hand, if the brain injury were caused by the horse's kick, then by the time she was in the Cybertruck, it had already been two hours since Guest had been kicked, and the brain damage would already have been permanent.

- (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.

**2 point.** *Explanation:* First, the products liability arguments are conclusory. See the explanations for Answers (a) and (b) above. However, far more problematic is that comparative negligence is based on the share of *fault*, not the probability of being the cause-in-fact (when there is uncertainty about who caused a harm, as in *Summers v. Tice*, then alternative liability can in some instances be used to flip the burden of proof. That is not irrelevant here. In this case, we *know* the probabilities). The probability that Tesla is the cause-in-fact is 20%. And a mere 20% level of certainty fails to meet the preponderance of the evidence threshold. Therefore, the crash simply was not the cause-in-fact of the brain injury.

- (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.

**1 point.** *Explanation:* The products liability arguments are conclusory. See the explanations for Answers (a) and (b) above. As for joint and several liability, the facts expressly state that New Vermont has adopted several liability—not joint and several.

- (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.

**1 point.** *Explanation:* There are two possible causes of the brain injury: the crash and the kick. If the cause of the injury were the crash, then Guest's negligently approaching the horse would be irrelevant. If the cause of the injury were the horse, then Tesla would not be liable because Tesla had nothing to do with the horse's kick. Moreover, the prompt expressly states that New Vermont adopted comparative negligence, abolishing the defense of contributory negligence.

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.

**6 points.** *Explanation:* Many good points, however this answer misses a critical factual premise. The latch failed because of the bolt breaking—not because of the attachment to the wooden gate. Since Holmes's improper installation of the latch does not satisfy the but-for test, it is not a cause-in-fact of the horse's escape, and hence cannot be a cause-in-fact of the brain injury, and therefore cannot be a superseding cause.

- (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.

**1 points.** *Explanation:* First, Holmes's improper installation of the latch and Failsafe's defective product are not "concurrent causes." Concurrent causes are independent events which combine to produce a single injury. Next, alternative liability is the remedy in cases involving *alternative causation*—where either of two causes *could* have resulted in the injury, but only one actually did, and it is indeterminate which. See *Summers v. Tice*. In cases involving alternative liability, the burden of proving which of two possible injurers actually caused the harm shifts from the victim to the injurers. Here, no burden shifting is required because there is no uncertainty whether the failure of the latch was due to Holmes or Failsafe. The latch failed because of the defective bolt—not because of the improper installation. This is not an instance of alternative causation. The product defect caused the latch to fail. Ergo, Failsafe—not Holmes—was the cause-in-fact.

- (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%.

**2 points.** *Explanation:* This answer suffers from the same problems as Answer (b), except that it additionally misapplies comparative negligence and the standard of proof. Comparative negligence apportions liability according to fault—not according to causal probabilities. However, although it also inappropriately applies alternative liability, it applies it correctly. This is an advantage over Answer (b), which inappropriately applies alternative liability incorrectly.

- (d) Holmes is liable for no damages arising from Guest's brain in-

jury. 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.

**3 points.** *Explanation:* Under modified comparative negligence, the plaintiff cannot recover if she is more than 50% at fault for the accident. If Holmes were the *only* defendant, then it would be true that if his fault were less than 50%, then Guest's fault would necessarily be greater than 50%. However, this question instructs you to assume that Failsafe is liable for the faulty latch, and Tesla is liable for the crash. Therefore it could be the case that *neither* Holmes nor Guest bear more than 50% of the fault, in which case Holmes *would* have to pay damages in proportion to his share of the fault.

It is also arguable as a factual matter whether Holmes's fault does not exceed 50%, given that he was keeping a partially wild animal and falsely imprisoned Guest during the critical time period. I think good arguments exist absolving him of liability for both of these claims against him. However it's a bit conclusory simply to assume that his fault does not exceed 50%. But this is more of a jury question than a legal issue.

- (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.

**7 points.** *Explanation:* In order for the false imprisonment to be a superseding cause, it must also be a cause-in-fact of the permanent brain damage. There is a compelling argument that it was not. See Question 6 Answer (e). However, if the false imprisonment were a cause-in-fact, then it would likely supersede, because it was an unforeseeable voluntary act by a third party.

- (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.

**7 points.** *Explanation:* This answer is premised on three assumptions. First, the product defect was a manufacturing defect. Second, the false imprisonment was a cause of the brain damage. Third, the false imprisonment was foreseeable.

The first assumption is plausible. See Question 7 Answer (a). The second assumption seems to me less plausible. See Question 6 Answer (e). Crucially, I think the third assumption is doubtful. See Answer (e) (to this question). The foreseeability of the false imprisonment is critical, because if it's not foreseeable, then it supersedes. Comparative negligence can only apply if it is an intervening but not superseding cause. This is ultimately a fact question. However, it is unlikely that a reasonable jury would say that it's foreseeable.

- (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.

**4 points.** *Explanation:* This answer misapplies comparative negligence and assumes too unquestioningly that the false imprisonment was a but-for cause of the brain injury. See Question 6 Answer (e).

- (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.

**6 points.** *Explanation:* Guest’s failure to mitigate should substantially reduce Holmes’s liability. However, it is arguable that she could *not* “have avoided [the harm] by the use of reasonable effort,” because *if she had* attempted to seek medical care after the kick, then she would have discovered that the door was locked. Hence, even though she didn’t *realize* it, she could *not* have avoided the harm in fact.

The law is ambiguous here. If “harm that [Guest] could have avoided” means harm that it was *feasible to avoid*, then Holmes should be liable. If it means that there existed reasonable precautions which the plaintiff failed to take, then Holmes should not be liable. The text alone is not dispositive, and some consideration of policy would be warranted. On the one hand, assigning liability to Holmes seems to compensate Guest for an injury which she herself took no steps to prevent. This creates bad incentives for prospective victims. On the other hand, Holmes made it impossible for Guest to obtain timely medical care (even though she ultimately did not seek it) by falsely imprisoning her. Letting him off the hook for that could also create bad incentives.

However, it is unlikely that either allocation of the accident loss will seriously affect incentives, because the circumstance is so idiosyncratic it is unlikely to be internalized by prospective injurers or victims. If liability is assigned to Holmes, then it will not dissipate victims’ incentives to mitigate except in the extraordinary situation where they are unknowingly falsely imprisoned. If liability is not assigned to Holmes, then it will not dissipate injurers’ incentives not to falsely imprison except in the extraordinary situation where the victim’s failure to discover their confinement constitutes a breach of the duty to mitigate.

Comparative negligence might be a solution, but jurisdictions differ on whether Restatement (Second) §918(1) is a subset of comparative negligence or a distinct doctrine. Ultimately, I am doubtful that there is a compelling answer either way. For the purpose of assigning points, this is a plausible answer, although there are also plausible counterarguments.

10. Assume the following premises are true:

- 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.

**7 points.** *Explanation:* Holmes being strictly liable for keeping a dangerous animal is significant. The question is whether Failsafe’s liability or Tesla’s liability dilutes some of Holmes’s liability. It is plausible that they do not. Arguably the product defect was not the proximate cause of the brain injury because the false imprisonment supersedes. And the crash was not the cause-in-fact of Guest’s brain injury. However, this answer does not provide those crucial arguments, which prevents the answer from being worth more points. That said, a critical point in its favor is its framing of foreseeable danger: even if the specific sequence of events leading to Guest’s brain injury were unforeseeable, the end effect was surely a foreseeable risk of keeping a feral animal. See *United Novelty Co. v. Daniels* (“fire rat”).

- (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.

**2 points.** *Explanation:* This answer is very similar to Question 9 Answer (b). In both answers, alternative liability is used inappropriately. How-

ever, This answer is slightly better, because it at least applies the rule correctly, even if this is not the appropriate circumstance for it. Specifically, rather than claiming, “Under the doctrine of alternative liability, since neither Holmes nor Failsafe were non-negligent, they should each pay half the damages,” this answer says, “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 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%.

**0 points.** *Explanation:* This answer is very similar to Question 9 Answer (c). In both answers, alternative liability is used inappropriately. However, This answer is slightly worse, because it applies the incorrect rule *incorrectly*. Specifically, rather than claiming, “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,” this answer states, “Under the doctrine of alternative liability, since neither Holmes nor Failsafe were non-negligent, they should each pay half the damages,”

- (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.

**2 points.** *Explanation:* This answer is very similar to Question 9 Answer (d). However, this answer is slightly worse, because in this question the assumption that Holmes is strictly liable for keeping a dangerous animal almost certainly tips his share of the “fault” over the 50% threshold.

- (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.

**4 points.** *Explanation:* This answer asserts that Holmes's strict liability (for owning a dangerous animal) trumps Failsafe's strict liability (for selling a defective product). But why should this be the case? Neither party is necessarily "negligent," nor at "fault," and therefore comparative negligence seems inapplicable. Rather, the appropriate allocation of damages will come from the doctrine of several liability, apportioning damages according to each party's causal contribution to the harm.

- (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.

**7 points.** *Explanation:* This answer is identical to Question 9 Answer (e), and it is still plausible given the factual assumptions for this question.

- (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.

**6 points.** *Explanation:* This answer is identical to Question 9 Answer (f), and it is still plausible given the factual assumptions for this question.

- (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.

**4 points.** *Explanation:* This answer is identical to Question 9 Answer (g), and it is still plausible given the factual assumptions for this question.

- (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.

**6 points.** *Explanation:* This answer is identical to Question 9 Answer (h), and it is still plausible given the factual assumptions for this question.

11. 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 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.

**7 points.** *Explanation:* This answer systematically ties the faulty latch to Guest's brain injury. However, it does not address the critical issue whether the false imprisonment supersedes, breaking the chain of causation connecting Failsafe's defective product to Guest's 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.

**1 point.** *Explanation:* This is similar to Question 9 Answer (b) and Question 10 Answer (b), with the comparatively worse analysis of alternative liability.

- (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.

**3 points.** *Explanation:* This answer is substantially similar to Question 9 Answer (d), misapplying modified comparative negligence.

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

**7 points.** *Explanation:* The argument works, although it is contestable

on the facts. Whether the harm was foreseeable depends on the scope of analysis. See *United Novelty Co. v. Daniels* (“fire rat”).

- (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.

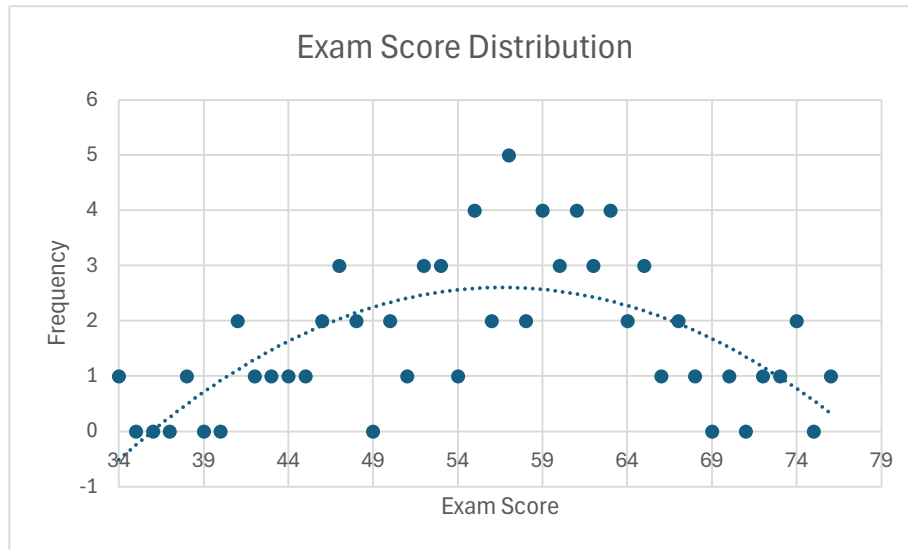
**7 points.** *Explanation:* This answer is the logical complement to Question 9 Answer (f). Although it is contestable on the facts, it is legally an apt application of comparative negligence.

- (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.

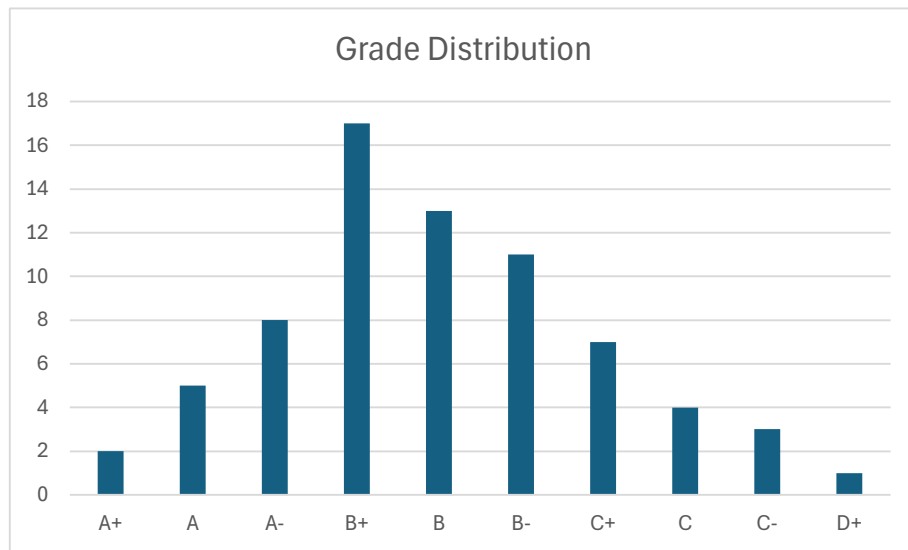
**6 points.** *Explanation:* This is substantially similar to Question 9 Answer (h) and Question 10 Answer (i).

### 3 Final Grades and Grade Distribution

The following graph represents the distribution of exam scores.



The next graph represents the distribution of final grades.



- Grade Statistics
  - Consistent with [Law School Rule IV\(B\)\(2\)](#), the average grade for the class was a *B* (precisely, 3.00915).
- Exam Statistics
  - The maximum possible score was 89 points.
  - The minimum possible score was 5 points.
  - The highest score achieved was 76 points.
  - The average exam score was 56.8732394 points.
  - The mode exam score was 57 points.
  - The standard deviation was 8.98501033 points.
- Quiz Statistics
  - The highest Quiz 1 score was 10/10.
  - The lowest Quiz 1 score was 6/10.
  - 61 Quiz 1 submissions were a perfect 10/10.
  - 10 Quiz 1 submissions were less than 10/10.
  - The highest Quiz 2 score was 10/10.
  - The lowest Quiz 2 score was 3/10.
  - 48 Quiz 2 submissions were a perfect 10/10.
  - 23 Quiz 2 submissions were less than 10/10.
  - Quiz 1 and Quiz 2 were identical. All the answers were provided in advance.

But for some minor variations due to quiz scores or participation bumps (each of which constitute 10% of the final grade), the primary determinant of the final grade was the final exam. The conversion from exam scores to grades ended up being *roughly*:

Grade	Exam Score
<i>A+</i>	> 74
<i>A</i>	69–73
<i>A–</i>	64–68
<i>B+</i>	59–63
<i>B</i>	55–58
<i>B–</i>	50–54
<i>C+</i>	46–49
<i>C</i>	41–45
<i>C–</i>	37–41
<i>D+</i>	32–36