

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

- 1) Darius, a security professional, agreed to guard Myrna's house. That contract contained a number of terms. One clause required Darius to "take every precaution possible to ensure that no personal belongings are improperly removed from the house." In fact, Darius himself stole several objects of art from Myrna's house. Darius has committed _____
- A) a crime and a breach of contract, but not a tort.
 - B) a crime, a tort, and a breach of contract.
 - C) a crime and a tort, but not a breach of contract.
 - D) a breach of contract, but neither a tort nor a crime.
 - E) a tort and a breach of contract, but not a crime.
- 2) During an argument, Sylvia flew into a rage and hit her friend Ian in the head with a baseball bat. Which of the following statements is TRUE? _____
- A) Sylvia breached a public obligation that she owed to Ian personally.
 - B) In the normal course of events, Ian could prosecute Sylvia for her crime.
 - C) Sylvia probably has committed both a tort and a crime.
 - D) Sylvia breached a civil obligation that she owed to society as a whole.
 - E) If a court decides that Sylvia has violated a public obligation, it will probably award damages against her.
- 3) Which of the following statements is TRUE with respect to the comparison between a tort and a contract? _____
- A) Although the same set of facts may support both a claim for tort and a claim for breach of contract, the plaintiff cannot sue for both at the same time.
 - B) From a risk management perspective, tort obligations are often more dangerous than contractual obligations because tort obligations generally are not voluntarily created.
 - C) If the same events involve both a tort and a breach of contract, the plaintiff generally is entitled to collect damages for both.
 - D) Both a tort and a contract always involve the breach of a civil obligation that gives rise to an award of damages.
 - E) Damages look backward in contract, but forward in tort.
- 4) Steven committed a trespass to Rundeeep's land by building a fence on her property. He did so in the belief that the property actually belonged to him. Steven has a liability insurance policy that he purchased from Burlington Life & Accident Ltd (BLA). Which of the following statements is TRUE? _____
- A) BLA's duty to defend is an obligation that it owes to Rundeeep.
 - B) If BLA pays damages on Steven's behalf, tort law's compensatory and deterrence functions will be equally served.
 - C) BLA probably has a duty to defend that requires it to pay Steven's legal expenses.
 - D) If Rundeeep is awarded an injunction, rather than damages, Steven's insurance policy will be of no benefit to him because the court's order will not require him to pay any money to Rundeeep.
 - E) BLA must compensate Steven if he suffered any property damage as a result of his own trespass.
- 5) Which of the following statements is TRUE? _____
- A) Nominal damages are generally restricted to torts that are actionable *per se*.

- B) Security guards and police officers have the same authority to detain people suspected of committing crimes.
- C) Punitive damages cannot be awarded at the same time as compensatory damages.
- D) The word "tort" is derived from the Greek word for "obligation" or "duty."
- E) Studies prove that tort law has a very effective deterrent function.

6) Brian takes great pride in being obnoxious. One of his favourite ploys is to talk loudly on his cell phone during movies. Unfortunately for him, few people see the humour in his behaviour, and some become positively hostile. Brian learned that lesson several months ago during a late night show at the Bijou Theatre. After he rudely refused to quiet down, Brian was asked by Myriam, the theatre's night manager, to leave the premises. Brian loudly refused that request as well. Myriam then announced that she was going to the lobby to call the police to escort Brian off the premises. The moment she left the room, however, another customer named Ivan jumped Brian from behind, knocked him senseless with a single, vicious blow to the back of his head, and dragged his limp body out the exit and into the alley behind the theatre. Which of the following statements is most likely TRUE?

- A) If Ivan's actions constitute a crime, then he will be held liable to Brian for compensatory damages only if there is proof beyond a reasonable doubt that Ivan also committed a tort.
- B) Given the violent nature of Ivan's attack on Brian, a court almost certainly would apply a strict liability tort.
- C) Ivan may be liable for punitive damages even if he is not convicted of any crime.
- D) As long as Ivan and Brian both contribute to a workers' compensation scheme, Brian will be entitled to compensation from that scheme.
- E) because Ivan, by removing Brian from the premises, was performing the type of act that is normally performed by an employee, the theatre may be vicariously liable for any torts that Ivan may have committed

7) The Kingston Maroons Corp (usually known simply as the Maroons) owns and operates both a hockey team by that name and the Kingston Arena. The Maroons employ Gilbert Douglas, who is the team's star player. During a recent game, Douglas was sent to the penalty box by the referee. Unhappy with the referee's decision, Douglas slammed the penalty box door shut. That caused the protective glass attached to the penalty box to shatter. Cherie, a fan who was sitting nearby, was cut by the broken glass. The evidence indicates that the accident was caused partly by Douglas's carelessness in slamming the penalty box door shut, and partly by the fact that the Maroons organization had carelessly installed the protective glass. Both Douglas and the Maroons therefore committed the tort of negligence. Which of the following statements is probably TRUE?

- A) If Douglas is an employee of the Kingston Maroons, then he must be an independent contractor as well.
- B) The Kingston Maroons Corp is personally liable to Cherie only if Douglas is classified as an independent contractor.
- C) The Kingston Maroons Corp is vicariously liable only if Douglas is personally liable.
- D) Douglas is relieved of personal liability if the Kingston Maroons Corp is held vicariously liable.
- E) Douglas is not personally liable to Cherie in tort because her case falls within the workers' compensation scheme.

6) _____

7) _____

- 8) Which of the following statements is TRUE with respect to the doctrine of vicarious liability? 8) _____
- A) Because personal liability and vicarious liability are separate concepts, a successful plaintiff usually is entitled to collect full damages from both the employee and the employer.
 - B) A person who is injured by a tort that was committed by an employer personally can use the doctrine of vicarious liability to sue any of the employer's employees.
 - C) As a general rule, an employee who has paid damages for a tort that he or she personally committed is entitled to use the doctrine of vicarious liability to recover that same amount of money from his or her employer.
 - D) Vicarious liability serves tort law's compensatory function by increasing the possibility that the tortfeasor will receive damages from someone.
 - E) While vicarious liability provides employers with more incentive to act carefully when selecting, training, and supervising employees, it also tends to provide employees with less incentive to act carefully as they perform their jobs.
- 9) Elise owns and operates a convenience store. Because that store is located near a high school, it loses a great deal of profit to shoplifting. Last week, Elise caught Hakan in the act of stealing a magazine. She physically detained him and called the police. The police arrived and placed Hakan in handcuffs. At that point, Elise calmly and intentionally punched Hakan in the face and said, "I've been waiting a long time for the chance to do that." Elise has a liability insurance policy that she purchased from the Pacific All Risk Insurance Co. Which of the following statements is TRUE? 9) _____
- A) Elise almost certainly committed the tort of false imprisonment.
 - B) If Elise is found liable for the tort of battery, the police department will also be held vicariously liable for the same tort.
 - C) PARI will probably be required to pay damages on Elise's behalf with respect to Hakan's claim for false imprisonment.
 - D) Because Elise was acting on behalf of her store, a court could impose liability upon the store, but not upon Elise.
 - E) If Elise is found liable for the tort of battery, she will probably have to pay the damages herself.
- 10) During an argument in a nightclub, Marie deliberately slapped Caesar's face. She had done so many times before, with few consequences. On this occasion, however, the slap caused Caesar to suffer a blood clot that led to a serious injury. The medical evidence indicates that Caesar had always suffered from a rare condition that made him unusually vulnerable to such complications. Neither Caesar nor Marie had any way of knowing about that pre-existing condition. Which of the following statements is TRUE? 10) _____
- A) The rules of remoteness are important only if the court awards punitive damages.
 - B) An injury is *never* considered to be too remote if it was a direct consequence of a tort.
 - C) The doctrine of remoteness is based on the court's desire to award compensatory damages in every case.
 - D) Because she committed an intentional tort, Marie cannot avoid liability on the basis of the general doctrine of remoteness.
 - E) Caesar will probably receive an injunction.

- 11) Gawain and Julie are neighbours. Gawain committed the tort of trespass to land by smashing a window in Julie's attic with a baseball bat. Julie could have quickly and easily fixed that damage by paying a home repair company \$1000. Instead, she did nothing for eight months. At the end of that period, a thunderstorm caused rain to pour into Julie's attic through the broken window. Julie then paid a home repair company \$4000 to fix both the broken window and the damage caused to the attic by the rain. Which of the following statements is TRUE? 11) _____
- A) A court would probably award Julie compensatory damages of \$1000.
 - B) A court would probably award Julie compensatory damages of \$4000.
 - C) The doctrine of mitigation would not apply because Gawain committed an intentional tort.
 - D) The doctrine of mitigation is used to deter the commission of torts.
 - E) A court would probably impose an injunction to require Gawain to fix the damage to Julie's house himself.
- 12) Which of the following statements is TRUE? 12) _____
- A) Punitive damages are only available for unintentional torts.
 - B) Punitive damages are only available for intentional torts.
 - C) Punitive damages may be awarded even if the defendant is not guilty of a crime.
 - D) Punitive damages serve the same basic purpose as nominal damages.
 - E) Punitive damages cannot be awarded in addition to compensatory damages.
- 13) Which of the following statements is TRUE? 13) _____
- A) The phrase "nominal damages" refers to any type of damages that have a name.
 - B) Nominal damages are generally only available for torts that are actionable *per se*.
 - C) Nominal damages are intended to punish the tortfeasor.
 - D) Nominal damages are always awarded in addition to compensatory damages.
 - E) Nominal damages are generally only available for the tort of negligence.
- 14) Which of the following statements is TRUE with respect to alternative compensation schemes? 14) _____
- A) No-fault automobile accident schemes only apply to accidents that were not the fault of either party.
 - B) No-fault automobile accident schemes always prevent the victim of a traffic accident from suing in tort.
 - C) Most alternative compensation schemes are funded by a tax that is imposed on damages that are awarded in tort cases.
 - D) Most workers' compensation schemes are funded by voluntary donations from employees.
 - E) Workers' compensation schemes usually prevent the victim of a workplace accident from suing in tort.
- 15) Which of the following statements is TRUE? 15) _____
- A) Liability in tort law always requires proof of deliberate or careless wrongdoing.
 - B) A person may be subject to an obligation in tort law even if they did not agree to that situation.
 - C) The victim of a tort is called a tortfeasor.
 - D) The concept of privity is part of every tort.

E) In exceptional circumstances, a person may be imprisoned for committing a tort.

- 16) Christine entered into a contract with Vernon. She was required to pay \$5000 and he was to provide advice regarding a business venture that she was pursuing. If Vernon had performed properly, Christine would have earned a profit of \$20 000. As a result of Vernon's careless performance, however, Christine suffered a loss of \$10 000 (in addition to the \$5000 that she had paid to Vernon). Christine wants to sue Vernon in both contract and tort. Which of the following statements is TRUE? 16) _____
- A) As the terms were explained in the text, Vernon owed a primary obligation to Christine in both tort and contract.
 - B) Christine will receive damages of \$20 000 if her claim in tort is successful.
 - C) Christine must choose between tort and contract, and cannot sue for both at the same time.
 - D) As the terms were explained in the text, Vernon owed a primary obligation in contract and a secondary obligation in tort, at the moment before he acted carelessly.
 - E) Christine will receive damages of \$5000 if her claim in tort is successful.
- 17) Terry committed a tort against Julia by using her computer, without her permission, while she was away on vacation. Which of the following statements is TRUE? 17) _____
- A) because he breached the secondary obligation that he owed to Julia, Terry is now subject to a primary obligation to provide her with compensatory damages
 - B) Terry may be held liable in tort even if he has already been convicted of a crime as a result of his use of Julia's computer.
 - C) Terry cannot be held liable in tort if he already has been convicted of a crime as a result of his use of Julia's computer.
 - D) Julia is entitled to an injunction that would force Terry to pay for the monetary value of his use of her computer.
 - E) Julia is entitled to either sue Terry for damages in tort or prosecute him of a crime.
- 18) Which of the following statements is TRUE with respect to the concept of a blood feud? 18) _____
- A) The concept referred to the fact that the common law traditionally executed tortfeasors.
 - B) The concept is more closely tied to contracts than to torts.
 - C) The concept allowed the family of a murder victim to kill the murderer or someone in the murderer's family.
 - D) The concept of a blood feud traditionally applied only if a tortfeasor attacked a close relative.
 - E) The concept refers to the fact that many rules in tort developed as a result of the historical tension between Parliament and the courts in England.
- 19) Makayla successfully sued Deacon for the tort of defamation. In that situation, the term *tortfeasor* refers to 19) _____
- A) the court as a representative of society's concern, or fear, or anti-social behaviour.
 - B) the fact that Makayla's tort caused Deacon to fear that he would suffer an injury.
 - C) Deacon as the person who committed the tort.
 - D) the traditional idea, or theory, of tort law.

E) Makayla as the person who suffered, or felt, the tort.

20) Which of the following statements is TRUE with respect to the relationship between tort and contract? 20) _____

- A) The obligation to behave in a certain way is considered primary in contract and secondary in tort because contract is a more important area of law.
- B) A plaintiff who is entitled, on the basis of the same set of facts, to sue in both tort and contract should always sue in tort because tort damages are always worth at least as much as contractual damages.
- C) Damages look backwards in contract but forwards in tort.
- D) The concept of privity is important in contract but not in torts.
- E) A plaintiff who is entitled, on the basis of the same set of facts, to sue in both tort and contract should always sue in contract because contractual damages are always worth at least as much as tort damages.

21) Werner owns a number of animals that live in and around his home. Because Werner's house is located in a secluded area, he has little interaction with people outside of his immediate family. He consequently had never received any complaints about his animals until recently. That complaint has come in the form of a tort action by Madonna, who claims that she was wrongfully hurt by one of Werner's animals. The evidence establishes that she was bitten by the animal as she knocked on Werner's door with the intention of asking him to donate to a charity. Which of the following statements is TRUE? 21) _____

- A) Strict liability is a type of vicarious liability.
- B) Under the traditional common law rules, Werner may be relieved of liability if the animal that bit Madonna was a pet dog who had never before bitten anyone.
- C) Under the traditional common law rules, if the animal that bit Madonna was a wild wolverine, Werner could be held liable only if he knew that the animal was dangerous.
- D) There are no defences to a strict liability tort.
- E) Under the traditional common law rules, the owner of an animal may be held liable for any damage caused by the animal only if that owner intentionally or carelessly created the situation that resulted in the damage.

22) Jose has sued Sharona in tort as a result of an injury that he suffered while visiting her property. Given the facts of the case, it is possible, at least in theory, for Jose to prove a number of different torts. Which of the following statements is TRUE? 22) _____

- A) because the traditional category of torts was developed in both the courts of law and the courts of chancery, that category is generally said to include both legal and equitable wrongs
- B) Jose is entitled to sue for a number of different torts at the same time and he is not required to sue for one particular that he believes will lead to the best result.
- C) If Jose sues for an intentional tort, he must prove that Sharona intended to hurt him.
- D) If Jose sues for a negligence tort, he must prove that Sharona deliberately neglected to protect him from harm.
- E) While the common law traditionally recognized a few strict liability torts, those torts frequently created unfair results, and consequently they have now been abolished in Canada.

- 23) Beverley, who is a Canadian judge, has just heard the parties' arguments in a tort case. Given the complexity of the situation, she feels the need to do some independent research into the relevant law before she gives her decision. Which of the following statements is TRUE? 23) _____
- A) Beverley will have to examine the rules pertaining to strict liability torts if the case before her deals with a conspiracy.
 - B) Beverley will need to examine the law of defences if the case before her deals with an intentional tort but not if it deals with a strict liability tort.
 - C) Beverley will need to examine the rules pertaining to intentional torts if the case before her deals with product liability.
 - D) Every type of intentional tort requires proof that the defendant intended to cause the plaintiff to suffer an injury.
 - E) Beverley is entitled to impose liability only if she is satisfied that the defendant breached an obligation, even if the case deals with a strict liability tort.
- 24) You have been hired by a law reform commission to examine ways in which tort law can be used to affect behaviour. As part of that project, you have been asked to consider the level of mental culpability that the plaintiff is required to prove before the defendant can be held liable by a court. Which of the following statements is TRUE with respect to tort law as it currently exists in Canada? 24) _____
- A) Because of the need to discourage tortious behaviour, negligence forms the smallest category of tort.
 - B) Strict liability allows people to engage in unusually hazardous activities, but also requires them to pay for any damage that occurs, even if they took every reasonable precaution.
 - C) The concept of strict liability always applies if a person intentionally causes another person to suffer an injury.
 - D) An intentional tort occurs only if the defendant intended to cause the plaintiff to suffer a loss.
 - E) An intentional tort occurs only if the defendant intended to breach an obligation.
- 25) Which of the following torts fall within the category of intentional torts? 25) _____
- A) trespass to land, conspiracy, and product liability
 - B) interference with chattels, professional negligence, and product liability
 - C) battery, false imprisonment, and nuisance
 - D) *Rylands v Fletcher*, control of wild animals, and intimidation
 - E) false imprisonment, trespass to land, and interference with chattels
- 26) Which of the following torts fall within the category of strict liability torts? 26) _____
- A) negligence, nuisance, and occupiers' liability
 - B) deceit, battery, and trespass to land
 - C) nuisance, battery, and negligence
 - D) *Rylands v Fletcher*, deceit, and false imprisonment
 - E) control of wild animals, *Rylands v Fletcher*, and arguably vicarious liability

- 27) Faye is a wildlife expert who works for a major zoo. Because her love of animals does not end when she leaves work each night, she has a number of exotic pets in her home, including a small capuchin monkey that she calls Kong. Unfortunately, although Kong had no history of violent behaviour, he viciously attacked a door-to-door canvasser named Ray who rang Faye's doorbell one evening. Which of the following statements is TRUE? 27) _____
- A) Liability for wild animals is a type of intentional tort.
 - B) because the common law imposes absolute liability on anyone who has control of a wild animal, Faye will be held liable for Ray's injuries and there no defences that are available to her
 - C) Under the traditional common law rules, Faye cannot be held liable because Kong had not previously bitten anyone.
 - D) Faye cannot be held liable unless the court is satisfied that she either carelessly controlled Kong or intentionally caused Kong to attack Ray.
 - E) Even if she would otherwise be held strictly liable for Ray's injuries, Faye may escape liability by proving that before ringing her doorbell, Ray had seen a sign that clearly warned of the danger of wild animals and directed strangers not to approach the house.
- 28) As a result of dumping toxic materials into the water supply, Acme Corp has been held liable under the tort of nuisance to several of its neighbours. While the company's directors are concerned about the bad publicity, they do take comfort in the fact that Acme holds a liability insurance policy that applies in this situation. Which of the following statements is TRUE? 28) _____
- A) The doctrine of the duty to defend requires Acme to defend itself against its neighbour's claims in order to protect the insurance company from having to pay any money.
 - B) Because of the insurance policy, the deterrent effect of the court's judgment will be lessened.
 - C) The insurance policy would have required the insurance company to pay for the costs associated with the lawsuits that were brought against the company.
 - D) Because of the insurance policy, Acme's neighbours are entitled to be paid twice, once by Acme and again by the insurance company.
 - E) A duty to defend exists under the insurance policy only if the directors are not liable for the nuisance.
- 29) Case Brief 3.2 discusses the Supreme Court of Canada's decision in *Non-Marine Underwriters, Lloyds of London v Scalera*. As a result of that decision 29) _____
- A) sexual abuse may involve a crime, but it never creates liability in tort.
 - B) liability insurance is never available if a tort is committed against a child.
 - C) the plaintiff in the case was more likely to receive compensation.
 - D) it is now clear that an insurance company may, depending upon the wording of a liability insurance policy, deny coverage if the insured party intentionally committed a tort.
 - E) liability insurance always defeats tort law's deterrence function.
- 30) Omega Inc purchased a liability insurance policy from WorldWide Insurance Ltd. Which of the following statements may be TRUE? 30) _____
- A) The insurance policy may protect World Wide from liability in tort.
 - B) A liability insurance policy is important only if and when a person

- is held liable by a court.
- C) Omega probably purchased liability insurance because it was worried that it might not be able to collect full damages if it was hurt by a tortfeasor.
 - D) Despite issuing the liability insurance policy, WorldWide may not be required to pay damages on behalf of Omega if Omega acted in a way that was not only tortious, but also deliberate and intentional.
 - E) The insurance policy will protect Omega only if Omega has a contract with at least one other party.
- 31) Ethical Perspective 3.1 discussed the Supreme Court of Canada's decision in *Bazley v Curry*. Which of the following statements is TRUE? 31) _____
- A) The court held that an employer may be held vicariously liable for the torts of an independent contractor.
 - B) The court held that an employer will be held vicariously liable for an employee's tort only if the employee committed a tort by doing something that the employer had directed the employee to do.
 - C) The court's decision focused on the concept of liability insurance.
 - D) The court held that an insurance company may deny coverage if an insured party committed a tort that also amounted to a deliberate and criminal act.
 - E) The court held that an employer may be held vicariously liable for an employee's tort even if that employee committed a tort by doing something that the employer expressly prohibited the employee from doing.
- 32) Gold Star Investment Inc is in the business of providing financial advice to clients. Alan, who is the company's managing director, hires all of the company's staff. Unfortunately, he tends to hire not on the basis of formal qualifications, but rather on the basis of physical beauty. Consequently, among Gold Star's staff are Brad and Angie, a pair of exceptionally attractive, but dull-witted, financial advisors. When Jennifer retained Gold Star to provide investment advice, her file was assigned to Brad and Angie. Through sheer incompetence, the pair managed to lose virtually all of Jennifer's money on bad investments within a very short time. If Gold Star is held vicariously liable 32) _____
- A) it must hold a liability insurance policy.
 - B) Gold Star will have to compensate Brad and Angie if Jennifer collects damages from those two individuals.
 - C) Jennifer will not be entitled to sue Brad and Angie.
 - D) it will have to pay damages to Jennifer only if Brad and Angie cannot afford to do so.
 - E) it may also be held personally liable to Jennifer if the court finds that the company committed a tort against her.
- 33) Miriam worked as a financial advisor with Acme Investments Inc. Over the period of several years, she stole millions of dollars from the company's clients. She did so by means of a complex and carefully planned series of fraudulent transfers. The company had no reason to believe that anything was wrong until the police arrived one day and explained the entire situation to Acme's president. Which of the following statements is TRUE? 33) _____
- A) If Miriam holds a liability insurance policy, she will be protected from liability, even though she deliberately defrauded the company's customers, as long as she is sued for a tort rather than prosecuted for a crime.
 - B) While Acme may have liability insurance against personal liability, it cannot have liability insurance against vicarious

- liability.
- C) Acme may be held vicariously liable even though it had no reason to believe that Miriam was acting improperly.
 - D) The doctrine of vicarious liability means that Acme has a duty to defend Miriam if she is sued in tort.
 - E) If the company's clients sue Miriam in tort law, she may be punished by a term in prison.
- 34) Abdul worked for Primus Finance Co. Following a series of disastrous losses, several of the company's customers have sued Abdul in tort. Because Abdul has relatively little money, however, those customers also want to sue Primus Finance. Primus Finance denies vicarious liability by arguing that Abdul was an independent contractor rather than an employee. A court is more likely to decide that Abdul was an independent contractor if
- 34) _____
- A) the customers who are suing protected themselves against losses through insurance policies.
 - B) in order to perform his work, Abdul used an office and computer system that belonged to Primus Finance.
 - C) Abdul was paid a consistent amount by Primus Finance every two weeks.
 - D) Abdul decided for himself when, where, and how he would provide services to Primus Finance.
 - E) Abdul committed his torts against the company's clients deliberately, rather than carelessly.
- 35) Max worked in a warehouse owned by Fortress Storage Inc. His job consisted mainly of moving and storing expensive and sensitive pieces of computer equipment that Fortress had received from its customers. Unfortunately, while Max normally was among the company's most trusted workers, he carelessly dropped a computer that belonged to HAL Inc and that HAL had asked Fortress to store. Which of the following statements is TRUE?
- 35) _____
- A) The court may apply the doctrine of vicarious liability only if Fortress has liability insurance.
 - B) Fortress may be vicariously liable only if a court decides that Max is not liable.
 - C) If Fortress is held vicariously liable, then HAL will be prevented from suing Max.
 - D) As a matter of risk management, Max and Fortress both should have purchased liability insurance.
 - E) Max may be vicariously liable for Fortress's tort even if HAL's equipment was damaged while Max was doing something that Fortress had told him not to do.
- 36) Teach Inc sold a computer consulting business to Blackbeard Corp. Blackbeard was persuaded to enter into that sale contract by documents that Teach had produced that suggested that Blackbeard would enjoy a profit of \$1 000 000. In fact, as Teach knew, the business was really worth far less. As a result of purchasing the business, Blackbeard has actually suffered a total loss of \$400 000. Blackbeard has successfully sued Teach in both tort and contract. Though it may also be entitled to other relief, Blackbeard is entitled to damages of
- 36) _____
- A) \$600 000 in contract.
 - B) \$400 000 in contract.
 - C) \$600 000 in tort.
 - D) \$1 000 000 in tort.
 - E) \$400 000 in tort.

- 37) Bentham Inc sued Locke Ltd in tort. The judge denied liability on the grounds of remoteness. That means that 37) _____
- A) the tort must have been committed by a person who worked for Locke as an independent contractor.
 - B) the tort that Locke committed was not an intentional tort.
 - C) the tort occurred outside of Canada.
 - D) Locke's tort did not in fact cause Bentham's loss.
 - E) Bentham waited too long before starting its lawsuit against Locke.
- 38) Paine Enterprises sued Montesquieu Corp in tort. The court held that there had been a failure to mitigate damages. That means that 38) _____
- A) the tort that Montesquieu committed was not an intentional tort.
 - B) the loss that Paine suffered was not a reasonably foreseeable loss of Montesquieu's tort.
 - C) Paine started its lawsuit against Montesquieu too late.
 - D) Paine may still be entitled to damages for losses that could not have been mitigated.
 - E) Paine committed a tort that wiped out the effect of Montesquieu's tort.
- 39) Rawls Inc sued Nozick Ltd in tort. The court awarded nominal damages. That means that 39) _____
- A) Nozick must have committed the tort of negligence.
 - B) the court calculated the amount of damages for the primary purpose of deterrence.
 - C) Nozick must have committed an equitable wrong rather than a legal wrong.
 - D) Nozick must have committed the tort of defamation.
 - E) Rawls did not prove that it suffered a loss as a result of Nozick's tort.
- 40) Jojo suffered a catastrophic injury while she was at work. Although she strongly suspects that the accident that injured her was caused by the carelessness of one of her co-workers, she cannot prove that fact. She therefore hopes to receive compensation for her loss from a workers' compensation scheme. Which of the following statements is TRUE? 40) _____
- A) Jojo is not entitled to workers' compensation unless she voluntarily contributed money toward the workers' compensation fund.
 - B) Workers' compensation schemes operate in less than half of Canada's provinces.
 - C) If Jojo receives workers' compensation, she will likely be entitled to receive less than she would have been entitled to received if she had been able to prove that her injury was caused by a tort.
 - D) Jojo cannot receive workers' compensation unless she can prove who caused the accident that resulted in her injury.
 - E) If Jojo is entitled to receive workers' compensation, she will receive compensation for her loss directly from her employer.

TRUE/FALSE. Write 'T' if the statement is true and 'F' if the statement is false.

- 41) Although the same set of events may support both a law suit in tort and a criminal prosecution, a civil action will not succeed if a wrongdoer has already been convicted of a criminal offence. 41) _____
- 42) You may be held liable in tort even though you were unaware of the fact that you owed an obligation to the plaintiff. 42) _____

- 43) Miles was sued in tort. He previously purchased a liability insurance policy from Western Mutual Insurance Co. Even if the law suit against him ultimately fails, that insurance policy may be beneficial to Miles because it will require the insurance company to pay for the costs associated with the trial. 43) _____
- 44) The deterrent function of tort law is based on the belief that the high costs associated with litigation will discourage plaintiffs from starting law suits that have little chance of success. 44) _____
- 45) Felipe bought a liability insurance policy. That policy included a clause that excluded coverage for injuries inflicted through "intentional or criminal acts." Felipe deliberately broke a bottle over a store clerk's head during a robbery. Because of the compensatory function of tort law, a court will require the insurance company to pay damages to the victim of the wrong, but it will also give the insurance company the right to sue Felipe for that same amount. 45) _____
- 46) Sidhu was injured when Melissa, a construction worker, carelessly dropped a hammer out of a window. Sidhu has successfully sued both Melissa, on the basis of her personal liability, and Melissa's employer, on the basis of the employer's vicarious liability. Sidhu must now choose between recovering all of his damages from Melissa or all of his damages from her employer. 46) _____
- 47) Damages in tort look backward, whereas damages in contract look forward, primarily because the courts realize that the victim of a tort is relatively more likely to suffer a serious physical injury. 47) _____
- 48) Suneel committed the tort of battery against Jodi. The injuries that she suffered were unexpectedly severe. Suneel can be held fully liable for Jodi's losses even if those losses were not reasonably foreseeable. 48) _____
- 49) A tort is considered to be actionable *per se* (which means "actionable in itself") only if the same facts also support a criminal prosecution. 49) _____
- 50) Most alternative compensation schemes apply only if an injury is the result of a wrongful act. 50) _____
- 51) Robert successfully sued Marjorie in tort. Marjorie has liability insurance. In this situation, Marjorie is considered the tortfeasor. 51) _____
- 52) According to one old English case, Ethelred was entitled under the doctrine of blood feud to kill Halebert. If the same facts arose today, the Canadian legal system would deal with the situation through a combination of tort law and contract law. 52) _____
- 53) Suneeta successfully sued Olaf in tort. In this situation, it is accurate to say that while Olaf's primary obligation was imposed by law, his secondary obligation was voluntarily created. 53) _____
- 54) Lupine Inc successfully sued Wolf Finance Ltd in both tort and contract. In this situation, it is accurate to say that Wolf Finance owed obligations to Lupine, one that arose by operation of law and the other that arose through voluntary agreement. 54) _____

- 55) Nelson successfully sued Horatio in tort. The court awarded an injunction, nominal damages, and punitive damages. It therefore must be true that Horatio deliberately breached an obligation that he owed to Nelson in connection with a strict liability tort. 55) _____

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

- 56) Celine physically attacked Roger. She therefore committed both a tort and a crime. Briefly identify and explain any important differences between court proceedings concerning the tort and court proceedings concerning the crime.
- 57) Briefly identify and explain the manner in which tort obligations and contractual obligations generally arise. Briefly explain why tort obligations create a greater hazard for the purposes of risk management.
- 58) Explain, from a risk management perspective, why liability insurance may be more important with respect to liability in tort than with respect to liability for breach of contract.
- 59) The Ozark Carnival Corp (OCC) owns a traveling fairground that it operates in shopping mall parking lots. It hired Cletus to run "The Splasher," which is one of its amusement rides. It provided Cletus with the most extensive training possible. Nevertheless, while operating The Splasher, Cletus carelessly failed to fasten the safety harness on Celia, a five-year-old passenger. Celia was thrown from the ride and suffered serious injuries. Cletus has admitted liability in negligence. Unfortunately, he has no money with which to pay Celia's damages. The court also held OCC vicariously liable for Celia's injuries. Identify and briefly explain three possible justifications for the doctrine of vicarious liability.
- 60) Ramon cut the grass that surrounded a condominium complex owned by Acme Inc. He carelessly failed to check the ground for dangerous objects before doing so. As a result, he ran the lawnmower over a pile of rocks. One of the rocks shot out from the lawnmower and hit Irene in the eye. Irene is sure that Ramon committed the tort of negligence, but she also realizes that he has very little money. She therefore wants to claim damages from Acme Corp on the basis of the doctrine of vicarious liability. Is she entitled to do so? Do you require any additional information before answering that question? Explain your answers.
- 61) Cheyenne committed the tort of battery against Joey. A court held that Joey is entitled to recover damages from her. Identify and briefly explain three types of damages that the court might have awarded.
- 62) Sasha committed a tort against Katarina. Katarina wants to recover compensatory damages. Identify and briefly explain two doctrines that may limit the amount of money that she actually receives.
- 63) What is an "alternative compensation scheme"? From the perspective of an injured person, what are the advantages and disadvantages of receiving relief under an alternative compensation scheme, rather than under tort law?
- 64) Explain how torts are classified according to the degree of mental culpability. Your answer should include examples of each category within that classification system.
- 65) Eliza adores animals. Consequently, although she works in a small office, she brings a number of pets to work with her every day. She always brings Higgins, her poodle. Depending upon the circumstances, she often also brings Henry, her badger. For the most part, the animals cause no problems. Eliza is very conscientious and she takes every precaution to ensure that her animals do not cause any damage to the people and property around them. Unfortunately, as a result of a thunderstorm, both Henry and Higgins became unusually agitated one

day at Eliza's office. And despite Eliza's best efforts to comfort and control them, they both bit Rex, a courier delivery person, as he entered Eliza's office. Eliza is very apologetic, but she does not believe that she should be liable for the losses that Rex suffered as a result of the attack. She did, after all, do her best to protect Rex from harm, both by training Henry and Higgins to behave gently toward strangers and by trying to calm them down during the storm. Based on the common law rules discussed in Chapter 3, would a court hold Eliza liable to Rex? If so, on what basis?

- 66) The provincial government has become very concerned about the number of torts that occur each year that result in personal injuries. Aside from the human misery that they cause, those accidents cost society a great deal of money. A tort victim cannot be a productive member of the work force while they are recuperating at home or in hospital. The provincial government consequently has asked you to prepare a report on how the rules in tort law might be reformed to more effectively deter tortious behaviour. Your report should include a discussion of (a) the availability of liability insurance, and (b) the rules of vicarious liability. You have also been asked to consider whether it is always desirable to deter activities that may result in tortious losses.
- 67) Until recently, Tamara worked in a warehouse, earning \$3000 a month. She was required to quit her job, however, after being injured in a skiing accident that was tortiously caused by Buck. That injury required Tamara to spend two months in the hospital. After being discharged from the hospital, Tamara was further required to complete an intensive physiotherapy program over the course of a month. At the end of that month, her physician told her that while she could not return to work in a warehouse, she should immediately take up employment in a less demanding (and lower paying) job. Nevertheless, for the next two months, Tamara chose to do nothing at all beyond watching television and listening to music. As her financial difficulties deepened, she eventually decided to re-train as a secretary. She therefore enrolled in a three-month secretarial course, for which she was required to pay a total of \$3000. At the end of that course, Tamara promptly returned to workforce, this time as a secretary at a salary of \$2000 per month. Exactly one year has now passed since Tamara began working as a secretary. How much is she entitled to receive from Buck by way of damages for lost income in the past?
- 68) Sinead owns a cottage that has been in her family for generations. Until recently, the natural beauty of the property was enhanced by surrounding forest, which consisted of old-growth trees that had taken generations to reach full maturity. Sinead was therefore devastated when she last visited her cottage and discovered that all of those trees had been cut down and dragged away. It was not difficult to identify the culprit. Xarol Developments Inc had purchased a number of nearby properties with the intention of building new, luxury cottages for the high-end market. In order to add to the value of those properties, Xarol had entered onto Sinead's land and cut down her trees, thereby allowing the new cottages that it was building to have unobstructed views of the nearby lake. Xarol has admitted to committing a trespass to land and has offered to pay for the value of the trees. It does so secure in the knowledge that it would still reap a substantial profit of \$100 000 from its actions as a result of being able to sell its new cottages for higher prices. Sinead disagrees. She believes that she is entitled, in addition to compensatory damages for her loss, to punitive damages worth \$5 000 000. She settled on that figure after watching a television program that dealt with punitive damages in American courts. (She could not find a similar program on Canadian law.) Is a Canadian court likely to award punitive damages? If so, it is likely to award punitive damages worth \$5 000 000? Explain your answer.
- 69) Alpha Corp owns a large plot of land called Blackacre. Except for one corner of that property, where Alpha's factory, offices, and warehouse are located, Blackacre is undeveloped. Omega Inc owns a piece of land that shares a common border with

Blackacre. That border is located at the edge of an undeveloped section of Blackacre. Omega's property contains a number of buildings, including a manufacturing plant. That plant generates a considerable amount of waste. For the past ten months, Omega has greatly reduced its waste disposal expenses by simply dumping its waste onto Blackacre, rather than transporting the waste to a proper dumpsite. Alpha objected to the waste from the outset and initially tried to resolve the issue through friendly negotiations. It eventually became clear, however, that Omega would not voluntarily stop dumping waste onto Blackacre. Alpha consequently sued Omega for trespass to land. The court agreed with the claim and imposed liability upon Omega. The judge is now required to decide which remedy or remedies Alpha is entitled to receive. In that respect, Alpha has shown three things. (i) It will cost \$75 000 to remove Omega's waste from Blackacre. (ii) Omega will dump waste onto Blackacre again in the future unless there is something to prevent it from doing so. And (iii) deliberate dumping of this sort has become a widespread problem because manufacturers, such as Omega, often believe that while the expense of properly disposing of waste material is much the same whether the work is done immediately or whether it is done only after a court has imposed liability, there is always a chance that the victim of a tort will not, for some reason, actually take the problem to court. Consequently, manufacturers often believe that there is little to lose, and potentially much to gain, by tortiously dumping waste on neighbouring properties. What remedies should be awarded against Omega on these facts?

- 70) Bondi Shipping Corp steered its ship, *The Surf*, into a dock that was owned by Bradman Inc. Bondi intended to make certain repairs to *The Surf*. During the course of those repairs, Bondi's employees carelessly allowed a chemical, known as australite, to leak into the water surrounding the dock. The australite, which floated on the surface of the water, caught fire after sparks from a welding gun that Bondi's employees were using fell into the water and onto the australite. The flames spread quickly and Bradman's dock was entirely destroyed. The total cost of the damage is \$2 000 000. The court has found that Bondi is vicariously responsible for the actions of its employees, and that those employees committed the tort of negligence when they carelessly allowed australite to leak out of *The Surf* and onto the water. The court also found that while it is now obvious that australite is flammable in some circumstances, no one knew (or could have known) at the time of the accident that australite is flammable. Will Bondi be held liable to Bradman for compensatory damages? Provide the best explanation for your answer.

- 1) B
- 2) C
- 3) B
- 4) C
- 5) A
- 6) C
- 7) C
- 8) E
- 9) E
- 10) D
- 11) A
- 12) C
- 13) B
- 14) E
- 15) B
- 16) A
- 17) B
- 18) C
- 19) C
- 20) D
- 21) B
- 22) B
- 23) E
- 24) B
- 25) E
- 26) E
- 27) E
- 28) C
- 29) D
- 30) D
- 31) E
- 32) E
- 33) C
- 34) D
- 35) D
- 36) E
- 37) B
- 38) D
- 39) E
- 40) C
- 41) FALSE
- 42) TRUE
- 43) TRUE
- 44) FALSE
- 45) FALSE
- 46) FALSE
- 47) FALSE
- 48) TRUE
- 49) FALSE
- 50) FALSE
- 51) TRUE
- 52) FALSE
- 53) FALSE
- 54) TRUE
- 55) FALSE
- 56) Roger will sue Celine for the tort of battery. Battery is a civil wrong. It is based on a private obligation that Celine owed to Roger personally. For that reason, the legal proceedings will generally be restricted to Celine as the defendant, and Roger as the plaintiff. Society is not

directly involved in the matter. (Society is, however, indirectly involved in the matter because it provides the legal rules and the court system through which the claim will be resolved. Furthermore, society does, of course, prefer victims to prevail over wrongdoers.) If Roger's claim is successful, he will receive damages, most likely in the form of compensatory damages (for any losses that he suffered as a result of the attack), but possibly in the form of nominal damages (if he suffered no loss) or punitive damages (if the court believes that it is necessary to express its disapproval of Celine's outrageous behaviour).

Criminal proceedings are concerned with public wrongs. Celine would be prosecuted not so much because she owed an obligation to Roger personally, but rather because she owed an obligation to the community to refrain from physical attacks. Consequently, she would not be sued by Roger. Instead, she would be prosecuted by the government (or the Crown), which acts on behalf of society as a whole. If Celine is convicted of a crime, she will probably be punished in some manner. For instance, she may be fined or imprisoned.

- 57) As a general rule, tort obligations are imposed by law. For instance, you are required to refrain from committing the tort of battery simply because you are a member of Canadian society. It is irrelevant that you never promised to do so. In contrast, contractual obligations are voluntarily created by the parties themselves. For instance, you will have an obligation to pay \$10 000 to me, and I will have an obligation to transfer a car to you, only if we agree to that arrangement.

Tort law consequently often creates a greater hazard for the purposes of risk management. The risks associated with a contractual obligation are relatively easy to manage because they are usually quite obvious. You know that you promised to pay \$10 000 to me and I know that I promised to transfer a car to you. In contrast, because tort obligations are imposed by law, they have effect even if you are entirely unaware of them. Almost everyone knows, at least implicitly, that battery is prohibited. Some torts, however, are more complicated and far less obvious. The rules regarding false imprisonment and false arrest are illustrative. As a store owner, for instance, you might honestly and reasonably believe that you are entitled to detain people suspected of shoplifting, even if they did not actually commit that crime. In fact, as discussed in this chapter, you do not have the right to do so. Moreover, by detaining an innocent person, you commit a tort.

- 58) This question builds upon the last. Tort obligations are generally imposed by law. Contractual obligations, in contrast, are generally voluntarily created by the parties. Consequently, there is a much greater chance that a person will, without knowing it, be subject to a tort obligation. And as a result of that fact, there is a much greater chance that that person will not take active and effective steps to avoid the conduct that leads to liability in tort law. Therefore, there is a greater need to manage a risk on the back end, not by avoiding the prohibited conduct itself, but rather by purchasing liability insurance that will provide a source of funds from which damage awards can be satisfied. Of course, even that risk management tactic requires some knowledge of tort law. It is necessary to recognize, in broad terms at least, the sort of insurance protection that is needed.
- 59) The text provided three possible justifications for the doctrine of vicarious liability.
- First, it serves the compensatory function of tort law because it allows Celia to claim damages from both Cletus (who has no money) and OCC (which is more likely to have money, or at least liability insurance).
 - Second, vicarious liability may serve the deterrence function of tort law by providing OCC with an incentive to avoid unusually hazardous activities and to hire the best people available. Although OCC properly trained Cletus, it may be that he was beyond hope, from a risk management perspective. For instance, he may be the sort of person who simply does not pay attention, regardless of how much training he receives. Furthermore, OCC should realize that carnival rides are inherently dangerous and perhaps are not appropriate for small children, who cannot watch out for their own interests, under any circumstances.
 - And finally, it may be, as a matter of fairness, that OCC should take responsibility for the losses that its activities create, even if those losses are caused by the carelessness of well-trained employees. If OCC wants the profits associated with the operation of a

traveling carnival, it arguably should have to accept the costs as well.

- 60) This question requires students to realize that the doctrine of vicarious liability applies only if the worker personally responsible for the commission of a tort was an employee, rather than an independent contractor. It therefore would be necessary to determine the capacity in which Ramon was cutting grass for the company. In that regard, a court would consider a number of factors. It would be more inclined to find that Ramon was an employee if:
- Acme Corp controlled what he did, how he did it, when he did it, and where he did it.
 - Ramon used equipment (such as a lawnmower) belonging to Acme Corp.
 - Ramon was paid a regular wage or salary, as opposed to a lump sum at the end of each project.
 - Ramon was integrated into Acme Corp's business and was not in business for himself.
- 61) The court probably awarded *compensatory damages*. Such damages would be intended to compensate Joey for the losses and injuries that he suffered as a result of the battery. For instance, he might receive damages with respect to medical bills that he incurred or income that he lost as a result of being unable to work.

Battery is actionable *per se*. That means that Cheyenne committed the tort merely because she made offensive bodily contact with Joey. Joey was entitled to successfully sue even if he did not suffer any loss or damage as a result of the tort. (Indeed, as discussed in Case Brief 10.2 dealing with *Malette v Shulman*, the plaintiff may succeed in an action for battery even if the defendant's actions were actually beneficial, so long as they were unwanted.) In that case, Joey would have received *nominal damages*. Such damages involve a very small amount of money (e.g. \$10) and are intended to symbolize that the defendant acted wrongfully, even though she did not cause any harm.

Finally, the court might have awarded *punitive damages*. Such damages are awarded in addition to either compensatory damages or nominal damages. They are intended to express the court's disapproval at the defendant's outrageous conduct. They deter future wrongdoing and impose a punishment on the wrongdoer. They would be appropriate, for instance, if Cheyenne's battery was particularly harsh, vindictive, high-handed, reprehensible, or malicious.

- 62) Katarina presumably is entitled to receive compensation with respect to all of the losses and injuries that she suffered as a result of Sasha's tort. However, the measure of recovery may ultimately be limited by two factors.
- First, compensatory damages may be denied with respect to losses that are *remote*. A loss is remote if it would be unfair to hold the defendant responsible for it. For instance, even though there may *in fact* be a causal connection between the commission of the tort and the creation of a particular injury, Sasha might not be held responsible if, as a matter of *legal policy*, it would be unfair to impose liability upon him. The issue of remoteness is decided on the basis of the reasonable person test. The court would ask whether a reasonable person in Sasha's position would have realized before the tort was committed that a certain form of conduct created a risk of the sort of harm that Katarina suffered. Significantly, however, the issue of remoteness would not apply if Sasha committed an *intentional tort* (though it would apply if he committed some other type of tort, such as negligence). The law has decided that people who commit intentional wrongs should not be allowed to hide behind the reasonable person test.
 - Second, compensatory damages would be denied to the extent that Katarina unreasonably failed to *mitigate* a loss. The doctrine of mitigation states that the plaintiff is denied recovery if she could have, but did not, take reasonable steps to minimize the losses flowing from the defendant's tort. Suppose, for instance, that Sasha's tort caused Katarina to miss work and therefore lose income. Suppose further that while she was required to miss ten months of work, she could have been back on the job in six months if she reasonably had undergone an operation. In that situation, she would receive damages for loss of income for six months, but not for the other four. The concept of mitigation applies to all torts, including intentional torts.
- 63) An alternative compensation scheme is a system that allows a person who has suffered an

injury to receive compensation without bringing an action in tort. Two common examples apply to injuries suffered in the workplace (workers' compensation schemes) or in traffic accidents (no-fault automobile insurance schemes).

There are two main advantages to alternative compensation schemes. First, the tort system provides compensation only to those people who are injured as a result of torts. Many injuries, however, occur without anyone's fault. Those injuries fall outside the tort system. An alternative compensation scheme, in contrast, can provide relief in some such cases because it is not premised upon wrongdoing. (Significantly, however, no alternative compensation scheme provides redress for every injury howsoever caused. Such a scheme is financially unfeasible.) A second advantage to an alternative compensation scheme is that even if an injury was caused by a tort, it may be difficult or expensive to prove that cause of action. Once again, such proof is unnecessary under an alternative compensation scheme.

The most significant disadvantage of an alternative compensation scheme is that while it provides compensation more easily, more often, and to more people, it also provides it in smaller amounts. The system must work within a finite set of resources. It could not possibly provide full compensation to every person who suffered an injury. A second disadvantage is that a person who is injured as a result of another's tort may actually be prevented from suing in tort, even though such an action would yield a higher level of compensation. That is true, for instance, under the workers' compensation scheme (though not under all no-fault automobile accident schemes).

- 64) Tort law needs to respond to a variety of social problems. In each instance, it must strike a sensitive balance between competing interests. It must, for instance, balance the defendant's right to exercise freedom of action against the plaintiff's desire to receive compensation for losses. In each instance, it must therefore strike a balance that best serves society's interests.

Tort law accordingly recognizes three categories of wrongs. Each category strikes a different balance.

- *Intentional torts* require proof that the defendant intentionally acted in a certain way. The central element of intention is, however, defined in a way that is sometimes surprising. It is enough that the defendant intended to act in a certain way and the plaintiff need not prove that the defendant also intended either to act wrongfully or to inflict an injury. For example, a trespass to land occurs as long as the defendant intended to erect a fence on a particular piece of ground, even if the defendant believed that it was acting lawfully because it believed that it owned the land in question. As a result, the intentional torts provide very strong protection for the plaintiff's interests in personal well-being (e.g. battery), land (e.g. trespass to land), and personal property (e.g. interference with chattels).
 - *Negligence torts* require proof that the defendant carelessly caused the plaintiff to suffer a loss. As a result, the defendant enjoys a relatively greater degree of personal freedom. He or she is entitled to act in a certain way, and will not be held liable for any resulting losses unless the acts in question were performed without reasonable care for the plaintiff's interests.
 - *Strict liability torts* merely require proof that the plaintiff suffered a loss as a result of a situation over which the defendant had control. The plaintiff need not further prove that the defendant either acted intentionally or acted without reasonable care. The defendant is entitled to engage in the behaviour in question, but subject to narrowly circumscribed defences, must pay for any resulting damage. Given the substantial burden upon the defendant, strict liability torts are accordingly confined to circumstances in which the defendant is engaged in some ultra-hazardous activity (e.g. such as the care and control of wild animals).
- 65) Liability for damage caused by animals depends upon the circumstances. The law draws a distinction between *wild* animals and *tame* animals. Higgins, the poodle, presumably is tame; Henry, the badger, presumably is wild.

- *Tame animals* generate liability for their owners in relatively narrow circumstances.

T determine whether or not Higgins, though classified as a tame animal, was
 h unusually dangerous. If Higgins had not previously bitten anyone, and if Eliza had
 e no reason to believe that he would hurt Rex, then she will not be held liable simply
 c on the basis of her relationship to the dog. As explained in a footnote in the text,
 o the law allows tame animals "one free bite." In contrast, if Eliza knew that Higgins
 u posed a danger, perhaps because he previously had bitten someone, then she will
 r be held liable to Rex even though she otherwise exercised reasonable care in the
 t circumstances.
 • *Wild animals* create far more serious risk management issues for their owners. Wild
 m animals are not entitled to "one free bite." To the contrary, they are presumed
 u dangerous. The court consequently will hold that as Henry's owner, Eliza is strictly
 s liable for the damage that the badger inflicted upon Rex. It is irrelevant that she
 t otherwise acted reasonably in the circumstances

The question requires the case to be decided on the basis of the traditional common law.
 Some students might nevertheless also mention that some Canadian jurisdictions have
 enacted legislation that hold dog owners strictly liable, in much the same way that wild
 animals generate strict liability. If such a statute applied in this case,, then Eliza might be
 held liable for the damage that Higgins inflicted upon Rex, even if Eliza had no reason to
 believe that Higgins might behave in such a way.

- 66) Deterrence is said to be one of the primary goals of tort law (compensation being the other). As explained in the text, however, the empirical evidence suggests that tort law actually does surprisingly little to prevent wrongful injuries. It therefore is open to debate as to whether there is anything that the provincial government can do, within reasonable boundaries, to substantially increase tort law's deterrent effect.

It is also important to appreciate that there is a danger of too much deterrence. Costs are associated with every type of behaviour. At some point, those costs will become prohibitively high and people will avoid certain types of activities. In some cases, that might well be desirable (e.g. it might be desirable to eliminate certain forms of behaviour that cause injuries and contribute little benefit to society). In other situations, however, it is preferable to allow the activity to occur, even knowing that accidents occasionally will happen (e.g. it is desirable for some physicians to work in obstetrics despite the risk of medical mishap). People will engage in those activities, however, only if they are able to protect themselves against the risk of personal liability.

(a) *Liability insurance* tends to diminish the deterrent effect of tort law. The fear of being held liable in tort consists not so much of the stigma of being branded a tortfeasor, but rather the financial consequences of being held responsible for the plaintiff's injuries. Because a person with liability insurance is relieved of the need to personally pay for the expenses associated with litigating a lawsuit and satisfying an award of damages, tort law holds relatively little to fear. Consequently, it would seem that tort law's deterrent effect could be enhanced by abolishing or narrowly confining the availability of liability insurance.

Of course, such a development would also carry a substantial disadvantage. Tortfeasors very often do not have sufficient funds to satisfy awards of damages. Tort judgments often are satisfied only because an insurance company pays damages on behalf of the tortfeasor.

(b) *Vicarious liability* often allows the victim of a tort to recover damages from the employer of a tortfeasor as long as the tort occurred within the context of employment. To the extent that vicarious liability can be used to deter wrongful behaviour, it appears that it already does so. For instance, the doctrine encourages employers to exercise care in hiring and training employees. It would be difficult to expand the scope of the doctrine any further without creating results that are intolerably unfair to employers (e.g. by extending vicarious liability to *any* tort committed by an employee, regardless of context).

One possibility, however, is to extend vicarious liability beyond employees to include torts

committed by independent contractors (to whom the doctrine currently does not apply). In some situations, it already is difficult to draw a distinction between employees and independent contractors. In that sense, the proposed development would not create any greater sense of unfairness to employers. In other situations, however, such a development arguably would create intolerable hardship. Many independent contractors work entirely independently. The parties that hire them have little, if any, real control over their activities. It therefore would be relatively more difficult to justify the imposition of vicarious liability.

- 67) As a general rule, Buck is required to compensate Tamara for the loss of income that she suffered as a result of the tort. Damages will, however, be reduced to the extent that Tamara unreasonably failed to mitigate her losses. It is easiest to calculate the final total in four stages.

First, Buck undoubtedly is liable for the loss of income that Tamara suffered immediately after the accident, when she was hospitalized and in physiotherapy, and consequently unable to mitigate her losses by working. That period lasted for three months. Because Tamara lost income of \$3000 per month, she is entitled to receive \$9 000.

In the following two months, Tamara did not receive any income, but the explanation was not so much Buck's tort, as Tamara's voluntary choice to remain idle. Consequently, because she unreasonably failed to mitigate her damages while staying at home for two months, she will be denied compensation for that period.

Tamara then missed another three months of work as a result of her decision to re-train as a secretary. In addition to the loss of income, that course also cost Tamara \$3000. Because those losses are attributable to Tamara's reasonable efforts to mitigate her losses, she is entitled to compensation from Buck in the amount of \$12 000 (\$3000 for the course + \$3000 per month for 3 months for loss of income).

Finally, when Tamara did return to work, she did so at a lower rate of pay. She consequently worked for 12 months at a salary of \$2000 per month, rather than \$3000 per month. Buck is liable for the cumulative loss of \$12 000 of income ($\$3000 - \$2000 = \$1000 \times 12 \text{ months} = \$12\,000$) under this heading.

Adding all of the damages together, Buck's liability for past loss of income is \$33 000 ($\$9\,000 + \$12\,000 + \$12\,000$). Buck will, of course, also be liable for the fact that Tamara will continue to suffer a reduced income in the future, and for the fact that Tamara may have incurred expenses connected to her medical treatment and physiotherapy.

- 68) Sinead is likely about half right. Punitive damages are available in Canadian tort law where the tortfeasor breaches an obligation in a "harsh, vindictive, reprehensible and malicious" manner. The facts of this case are based on *Horseshoe Bay Retirement Society v SIF Developments Corp* (mentioned in Chapter 3 at note 32) in which that test was satisfied. In *Horseshoe Bay Retirement Society*, however, the court awarded punitive damages of only \$100 000. Furthermore, the highest amount of punitive damages ever awarded by a Canadian court was \$1 000 000 (in *Whiten v Pilot Insurance Co*, which is mentioned in Chapter 3 at note 33). As a matter of precedent, it therefore is unlikely that Xarol would be held liable for punitive damages of anything near \$5 000 000. The court would instead likely calculate punitive damages at something near \$100 000. That amount would both deter future wrongdoers and ensure that Xarol did not profit from its tort.

Sinead was misled by the television program that she watched that dealt with punitive damages in the United States. Punitive damages are awarded much more often, and in much higher amounts, by American courts.

- 69) The facts demonstrate three distinct problems, each of which should receive a specific response.
- *Compensatory damages* should be awarded with respect to the loss that Alpha has suffered as a result of Omega's trespass to land. The purpose of compensatory damages in tort is to place the plaintiff in the position that it enjoyed before the tort was committed. In this case it will cost \$75 000 to remove the waste from Blackacre,

a t Blackacre and Alpha back into their original conditions.

n • *Injunctive relief* should be awarded in order to prevent Omega from dumping
d waste onto Blackacre in the future. The obligation that underlies the tort of trespass
t to land in this case already prohibits Omega from dumping waste onto Blackacre.
o As the evidence indicates, however, that obligation is not enough to deter Omega.
t Nor, as the evidence further indicates, is the threat of monetary damages sufficient
t to deter Omega. A court would therefore impose an injunction on Omega. Alpha is
h entitled to have its rights respected.

e • *Punitive damages* should also be awarded. Punitive damages are intended to punish
r "harsh, vindictive, reprehensible and malicious behaviour" and in doing so, to
e deter other potential tortfeasors from disregarding their obligations. The facts in
b this case seem especially well-suited to such relief for two reasons. First, it is clear
y that Omega deliberately and cynically committed trespass to land, and continued
to do so even after Alpha had asked it to stop. Second, it is also clear that the threat
of mere compensatory damages is not sufficient to deter this sort of cynical breach.

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- 70) Bondi will not be held liable for Bradman's loss. Bondi is vicariously liable for its employees' actions. It therefore will be held liable only if those employees could be held liable.

It initially may appear that those employees could be held liable to Bradman. They committed the tort of negligence, and that tort, as a matter of fact, caused Bradman's dock to burn down at a cost of \$2 000 000. However, as explained in the text, compensatory damages generally are limited by the doctrine of *remoteness*. Regardless of a factual connection between a tort and a loss, the defendant generally will not be held liable if the loss is too remote from the wrong. In this case, it would be unfair to hold the employees liable, or Bondi vicariously liable, for a fire that no one knew, or could have known, might occur. Reasonable people are expected to guard against reasonably foreseeable risks. They simply cannot take precautions against risks that were not foreseeable. Bradman consequently will suffer the full burden of the accident unless it insured the dock— a point that was not discussed in this Chapter, but that will be discussed in Chapter 17.)