

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

- 1) Emily was involved in a business dispute with Jacob. During a private conversation with Jacob, Emily threatened to spread a rumor that he was having an affair with her unless he agreed to sign a certain document. She knew that that rumor was entirely untrue, but she also knew that Jacob was afraid of upsetting his wife, who is very jealous. On the basis of those facts alone, which of the following statements is TRUE? 1) _____
- A) Emily is liable to Jacob for the tort of deceit.
 - B) Emily is liable to Jacob for the tort of nuisance.
 - C) Emily is liable to Jacob for the tort of interference with contractual relations.
 - D) Emily is liable to Jacob for the tort of defamation.
 - E) Emily is not liable to Jacob.
- 2) Because Katelyn has a disability, she receives daily care from her neighbour, Savannah. Savannah provides that care out of the goodness of her heart. She does not have an agreement of any sort with Katelyn. Caleb held a grudge against Katelyn as a result of a business dispute. He wanted to find some way of hurting her. He therefore told Savannah that he would burn her house down if she continued to care for Katelyn. Caleb's plan backfired. Savannah told Katelyn of the threat, and together they reported Caleb to the police. He was convicted of a crime. Katelyn, however, also wants to sue him for the tort of intimidation. The claim in intimidation will fail because 2) _____
- A) Caleb was motivated by a desire to hurt Emily, rather than by a desire to benefit himself.
 - B) the intimidation was unsuccessful.
 - C) Caleb cannot be subject to both criminal prosecution and tort liability for the same act.
 - D) Caleb did not threaten Emily directly.
 - E) Caleb cannot be sued for intimidation because he did not act on behalf of the government.
- 3) To succeed in a claim for intimidation, the plaintiff must prove that 3) _____
- A) the defendant acted on behalf of the government.
 - B) the defendant actually committed an unlawful act against either the plaintiff or a third party.
 - C) the defendant threatened to commit a crime.
 - D) the defendant gained a benefit as a result of his or her actions.
 - E) the defendant's intimidation caused the threatened party to act in a certain way.
- 4) Juan entered into a contract with Makayla, under which he promised to add a solarium on to her house for \$25 000. After starting the project, he threatened to abandon the job unless she agreed to pay him an additional \$5000. Makayla wants to sue Juan for the tort of intimidation. Which of the following statements is TRUE? 4) _____
- A) The tort of intimidation has an unusually short limitation period.
 - B) That claim will probably fail because a court would prefer for Makayla to sue for breach of contract.
 - C) That claim will probably fail because the tort of intimidation is recognized in England, but not in Canada.
 - D) If that claim is successful, Makayla will actually receive damages in both tort and contract.
 - E) If that claim is successful, Makayla will probably receive an injunction that would force Juan to complete the job in exchange

for the additional price.

- 5) Connor and Sierra operated competing garages. Most of the work at Sierra's garage was performed by Vanessa, who was an excellent mechanic. One evening, Connor saw Vanessa at a bowling alley. He waited for the right moment and then dropped a bowling ball on her hand. Vanessa suffered a severe and permanent injury that will prevent her from working as a mechanic. Sierra wants to sue Connor for the tort of interference with contractual relations. To succeed in that action, Sierra must prove that
- 5) _____
- A) Connor knew the full details of Vanessa's employment contract with Sierra.
 - B) she paid Vanessa a higher salary than Connor was willing to pay Vanessa for the same work.
 - C) Connor intended to persuade Vanessa to work for him.
 - D) Connor's actions were, in addition to constituting the tort of interference with contractual relations, unlawful in themselves.
 - E) Connor intended to hurt Sierra's business.
- 6) Which of the following statements is TRUE with respect to the tort of interference with contractual relations?
- 6) _____
- A) Liability will never be imposed unless the defendant's actions actually caused a breach of contract.
 - B) If the defendant is held liable for the tort, he or she will always be held liable for breach of contract as well.
 - C) Liability will never be imposed unless the defendant intended to hurt the plaintiff.
 - D) Liability will never be imposed unless the defendant also committed a crime.
 - E) Liability will never be imposed unless the defendant was a party to the contract in question.
- 7) Miguel and Caitlin own competing computer software companies. The success of Caitlin's business was due largely to the work of her chief designer, Mia. During a recent party, Miguel asked Mia if she was happy working for Caitlin. Mia answered, "It's okay, I guess." Miguel then spent the next hour explaining to Mia how she would earn a great deal more money, and how she would be involved in much more interesting projects, if she worked for him instead. Which of the following statements is most likely TRUE?
- 7) _____
- A) Connor cannot be held liable to Caitlin for the tort of interference with contractual relations unless he committed some other tort, such as intimidation, against Mia.
 - B) Because he knows of the employment contract between Caitlin and Mia, Miguel can be liable for the tort of interference with contractual relations if he unsuccessfully attempted to persuade Mia to leave her job with Caitlin.
 - C) If Mia does leave her job with Caitlin and begins to work for Connor, Caitlin will certainly be entitled to receive damages from Connor.
 - D) Connor cannot be held liable to Caitlin for the tort of interference with contractual relations if the court is satisfied that he provided Mia with information about his organization, but did not actually persuade her to leave her job with Caitlin.
 - E) Because he knew that Mia worked for Caitlin, he automatically will be liable for punitive damages if the court finds that a tort has been committed.

- 8) Alpha Inc, Beta Inc, and Gamma Inc all produced and sold widgets. Alpha and Beta entered into an agreement that lasted for two years. Under that agreement, Alpha agreed to sell widgets only in the western provinces and Beta agreed to sell widgets only in the eastern provinces. The parties also agreed, for the two-year period, to sell their widgets for a price that was below their own costs. That agreement violated the *Competition Act*. As a result of the performance of that agreement, Gamma suffered enormous financial losses. Which of the following statements is TRUE? 8) _____
- A) The tort of conspiracy cannot be committed without intimidation.
 - B) Alpha and Beta have committed the tort of conspiracy only if the primary intention of their agreement was to hurt Gamma.
 - C) Alpha and Beta have committed the tort of interference with contractual relations.
 - D) Alpha and Beta may be held liable for the tort of conspiracy as long as they should have known that their agreement would cause Gamma to suffer a loss.
 - E) Alpha and Beta have committed the tort of intimidation.
- 9) Which of the following statements is TRUE with respect to the tort of conspiracy? 9) _____
- A) Liability can be imposed upon individuals, but not on organizations.
 - B) The tort requires at least two plaintiffs.
 - C) The tort is harder to prove if the defendants conspired to commit a lawful act than if they conspired to commit an unlawful act.
 - D) The defendants will be held liable only if the conspiracy caused someone to break a contract with the plaintiff.
 - E) The plaintiff is always entitled to punitive damages.
- 10) Brandon intended to start a new company. He issued a public statement regarding the proposed business venture. That document contained a false statement to the effect that Brandon had received government authorization to use nuclear power for his venture. In fact, authorization had not yet been granted and, indeed, was eventually refused. After reading Brandon's public statement, Abigail invested in the company. She later lost her investment when the company folded. She then sued Brandon for the tort of deceit. Which of the following statements is TRUE? 10) _____
- A) Brandon may be held liable even if he honestly believed that he had received government authorization to use nuclear power.
 - B) Brandon may be held liable if a reasonable person would have relied upon his statement, even if Abigail did not do so when she made her investment.
 - C) The tort of deceit usually causes a court to award an injunction.
 - D) Even if Brandon is held liable, Abigail will not necessarily receive damages representing the value that her investment would have had if Brandon's statement had been correct.
 - E) Brandon may be held liable even if he did not intend to deceive Abigail, as long as he did in fact deceive her.
- 11) Dylan committed the tort of deceit against Hilary. He tricked her into investing \$5000 in his business. If his statement had been true, her investment would now be worth \$8000. However, because his statement was untrue, her investment has fallen in value to \$4000. How much will Hilary probably receive in compensatory damages? 11) _____
- A) \$8000
 - B) \$5000
 - C) \$3000

- D) \$1000
- E) \$4000

- 12) Alejandro and Chloe were involved in negotiations for the purchase and sale of her business. She may be held liable for the tort of deceit if 12) _____
- A) she made a prediction about the profitability of the business that was based on income tax returns that she knew contained false information.
 - B) she misled Alejandro, even if she did not intend to do so.
 - C) she refused to make a prediction about the profitability of the business even though she had sufficient information with which to do so.
 - D) she provided accurate information to his lawyer, which the lawyer misinterpreted before advising Alejandro on the sale.
 - E) she offered an opinion about the profitability of the business that was based on information that he provided to her.
- 13) Jasmine operated a small chalet in a mountain region. Isaiah rented one of her rooms for the night. Under the traditional common law rules regarding the tort of occupiers' liability, he would best be classified as 13) _____
- A) a trespasser.
 - B) a covenantor.
 - C) an invitee.
 - D) a licensee.
 - E) a contractual entrant.
- 14) Generally speaking, there are three sets of rules for the tort of occupiers' liability: the traditional common law rules, the judicially modified common law rules, and the statutory rules. The concept of common humanity is relevant if the plaintiff is 14) _____
- A) a trespasser under the statutory rules.
 - B) either an invitee or a licensee under the modified common law rules.
 - C) either an invitee or a licensee under the traditional common law rules.
 - D) a trespasser under the modified common law rules.
 - E) a trespasser under the traditional common law rules.
- 15) Dakota sued Mariah for the tort of occupiers' liability in a jurisdiction that still used the traditional common law rules (as opposed to the judicially modified common law rules). The court held that Mariah was required to protect Dakota from unusual dangers that she should have known about. It therefore is most likely that Dakota was classified as a 15) _____
- A) contractual entrant.
 - B) licensee.
 - C) trespasser.
 - D) co-occupier.
 - E) invitee.
- 16) Generally speaking, there are three sets of rules for the tort of occupiers' liability: the traditional common law rules, the judicially modified common law rules, and the statutory rules. Which of the following statements is TRUE? 16) _____
- A) Under the judicially modified common law rules, an occupier must protect both licensees and invitees from unusual dangers.
 - B) Under the statutory rules, there is no need to classify a visitor when determining the precise content of an occupier's duty of care.
 - C) Under the traditional common law rules, a licensee was a person

- who had permission to be on the premises and whose presence on the premises furthered the occupier's economic interests.
- D) Under the traditional common law rules, an occupier was merely required to refrain from intentionally or recklessly injuring a licensee.
- E) No duty of care is owed to a trespasser under the new statutory rules.
- 17) The rules that apply under occupiers' liability statutes are different from the traditional common law rules in a number of ways. Which of the following statements is TRUE? 17) _____
- A) An occupier may be held liable for the activities of a third party under the statutory rules, but generally not under the traditional common law rules.
- B) The reason for the plaintiff's presence on the occupier's premises is relevant under the traditional common law rules, but not under the statutory rules.
- C) A landlord could be held liable for premises occupied exclusively by a tenant under the traditional common law rules, but not under the statutory rules.
- D) The new statutory rules are the same in every province because the relevant statute was enacted by Parliament.
- E) A person who rents a property may be considered to be an occupier under the statutory rules, but not under the traditional common law rules.
- 18) Ethan lives next door to Destiny. Which of the following activities might be considered a non-intrusive nuisance? 18) _____
- A) Ethan operates a metal press that causes Destiny's house to vibrate.
- B) Ethan consistently plays loud music at night.
- C) Ethan sells drugs out of his house and thereby attracts criminals to the neighbourhood.
- D) Ethan operates a chemical business that causes poisonous substances to seep underground into his neighbours' properties.
- E) Ethan operates a pig farm that creates a foul odor.
- 19) Isaac lives next door to Gabrielle. He operates a gun shop and firing range on his property. Gabrielle complains that Isaac's business creates a nuisance. In deciding whether or not Isaac's use of his own land is unreasonable, a court would be most influenced by which of the following factors? 19) _____
- A) the number of employees that work for Isaac's business
- B) the fact that bullets from the firing range occasionally shoot across Gabrielle's land
- C) the time of day when the firing range is open for business
- D) the profitability of Isaac's business
- E) the fact that Isaac has a criminal record
- 20) The Northwest Utility Co (NUC) received statutory permission from the government to lay electrical cables under residential properties. Ariana suffered severe injuries when she struck a buried cable while gardening. If Ariana sues for the tort of nuisance, NUC will be able to avoid liability on the basis of the defence of statutory authority 20) _____
- A) as long as a nuisance was the probable result of performing the statutorily authorized activity.
- B) only if Ariana knew of the statute when she was injured.
- C) as long as it did not intentionally create a nuisance when performing the statutorily authorized activity.

- D) only if a nuisance was the inevitable result of performing the statutorily authorized activity.
- E) as long as a nuisance was a reasonably foreseeable result of performing the statutorily authorized activity.

- 21) Bryce consistently commits the tort of nuisance against Aaliyah. She wants an injunction to stop him from doing so. Which of the following statements is TRUE? 21) _____
- A) A court will not grant an injunction unless Bryce acted maliciously.
 - B) Aaliyah has an absolute right to an injunction if Bryce's nuisance causes physical damage to her property.
 - C) Aaliyah cannot receive both an injunction and compensatory damages.
 - D) A court will grant an injunction only if Bryce's nuisance is intrusive.
 - E) An injunction is never available with respect to a nuisance.
- 22) Faith lives next door to Alphonse. He has sued her for committing the tort of nuisance. Which of the following statements is TRUE? 22) _____
- A) the claim in nuisance will probably be successful if Faith decorated her house in a way that detrimentally affected the market value of Alphonse's property.
 - B) Faith cannot be held liable unless she actually caused something to touch Alphonse's property.
 - C) nuisance is a strict liability tort.
 - D) Alphonse's claim will fail if Faith proves that he consented to her activities.
 - E) because nuisance is a strict liability tort, the law is concerned with Faith's motivation for acting as she did
- 23) Rex has sued Regina for the tort of *Rylands v Fletcher*. To succeed in that claim, he will be required to prove that 23) _____
- A) he was injured while visiting Regina's property.
 - B) he suffered some injury or loss.
 - C) the injury that he suffered was an inevitable result of the manner in which Regina used her property.
 - D) he occupied his property before Regina began to use her property in a dangerous manner.
 - E) Regina acted either carelessly or intentionally.
- 24) Winona has sued Ramon for the tort of *Rylands v Fletcher*. The court will impose liability if 24) _____
- A) Winona's injury was the inevitable result of the fact that Ramon performed a statutorily authorized activity.
 - B) Winona's injury was caused by a malicious act by a third party that Ramon could not have prevented.
 - C) Winona consented to the manner in which Ramon used his property.
 - D) Winona was injured even though Ramon used all reasonable care.
 - E) Winona's injury was caused by a force of nature that Ramon could not have prevented.

- 25) Cornelius recklessly stored a large box of fireworks on his residential property. The fireworks ignited when he carelessly threw a cigarette on them. Some of the fireworks shot off his property and struck a neighbouring house, which belonged to Cherilyn. Cherilyn's house was badly damaged by the fire. Although she could not, of course, recover compensation more than once for the same loss, she would probably be able to successfully sue Cornelius in tort for 25) _____
- A) *Rylands v Fletcher* and occupiers' liability but not nuisance.
 - B) nuisance but not *Rylands v Fletcher* or occupiers' liability.
 - C) *Rylands v Fletcher* and nuisance but not occupiers' liability.
 - D) *Rylands v Fletcher* and occupiers' liability and nuisance.
 - E) *Rylands v Fletcher* but not nuisance or occupiers' liability.
- 26) Brad made a false and unflattering statement about Concettina. He has been sued for defamation. That action can succeed only if the court is satisfied that 26) _____
- A) Brad knew that his statement was false.
 - B) Brad made his statement without first carefully checking the facts.
 - C) Concettina is still alive.
 - D) Brad knew Concettina's identity.
 - E) Brad's false statement mentioned Concettina by name.
- 27) Which of the following statements is TRUE with respect to the tort of defamation? 27) _____
- A) The requirement of publication is satisfied if the defendant communicates a false and unflattering statement to the plaintiff, as long as the plaintiff suffers a loss as a result.
 - B) Because the tort of defamation is concerned with the protection of reputations, liability may be imposed for a false statement that was made about a person, but not for a false statement that was made about a group of people.
 - C) The court may award compensatory damages, but not punitive damages.
 - D) The tort of defamation may be committed every time that the same statement is repeated.
 - E) If the plaintiff applies in a timely manner, a court will almost always grant an injunction to prevent the defendant from making a statement that may be defamatory.
- 28) Which of the following is the name of a defence to the tort of defamation? 28) _____
- A) public interest responsible journalism
 - B) due diligence
 - C) honesty
 - D) *pseudo* justification
 - E) qualified comment
- 29) Which of the following statements is TRUE? 29) _____
- A) The torts of intimidation and conspiracy have one thing in common: they both always require proof that the defendant committed an unlawful act in addition to committing the tort.
 - B) Because they are actionable *per se*, neither the tort of deceit nor the tort of conspiracy require proof that the plaintiff actually suffered a loss.
 - C) Liability under *Rylands v Fletcher* requires proof that the defendant was careless but not that he intentionally committed a wrong.
 - D) A person may be liable for a tort as a result of making a harmful and false statement about the plaintiff's business, rather than about the plaintiff.

- E) "Slander" refers to defamatory words that are written and "libel" refers to defamatory words that are spoken.

30) Which of the following statements is TRUE?

30) _____

- A) Liability for the tort of deceit may arise only if the defendant made a statement to the plaintiff.
- B) The tort of injurious falsehood always requires proof that the defendant made a false statement about the quality of the plaintiff's products.
- C) If the plaintiff cannot sue for the tort of private nuisance, then it also will be impossible to sue for the tort of public nuisance.
- D) Liability may be imposed under both the tort of intimidation and the tort of interference with contractual relations even if the defendant's primary purpose was to benefit itself, rather than hurt the plaintiff.
- E) The defence of absolute privilege does not apply if the defendant maliciously made a defamatory statement.

31) The Business Club of Edmonton (BCE) is a voluntary organization of businesses in Alberta's capital city. Until recently, Gino's Pizza was one of its members. Gino left the BCE, however, after the BCE advised its other members to not do business with Gino's until Gino issued a formal apology for employing a convicted murderer who had been released on parole. Although the BCE's organizing rules (or "constitution") entitled the organization to impose various sanctions on its members for various reasons, its actions in this case did not fall within the terms of that constitution. Gino's pizza suffered economic loss as a result of the BCE's decision. Which of the following statements is TRUE with respect to Gino's action against the BCE for unlawful interference with economic relations?

31) _____

- A) Gino must prove that BCE acted for a malicious purpose .
- B) BCE cannot be held liable unless its actions constituted a crime.
- C) BCE may be held liable even if it did not commit a crime.
- D) BCE cannot be held liable for a purely economic loss.
- E) Gino must prove that BCE conspired with another party.

32) Jimmy's Trucking Ltd has sued Hoffa Security Inc in tort. Jimmy's accuses Hoffa of committing torts that resulted in substantial economic losses. The evidence indicates that, aside from Jimmy's specific allegations in tort, Hoffa did not act in an unlawful or unauthorized way. The evidence further indicates that while Hoffa's actions were directed toward Jimmy's, Hoffa did not specifically intend to injure Jimmy's economic interests. On these facts, Hoffa may be liable for

32) _____

- A) interference with economic relations but not interference with contractual relations.
- B) direct inducement to breach of contract, but not indirect inducement to breach of contract.
- C) conspiracy but not interference with economic relations.
- D) intimidation but not conspiracy.
- E) conspiracy but not intimidation.

33) The tort of unlawful interference with economic relations

33) _____

- A) was recently rejected by the Supreme Court of Canada.
- B) requires proof that, among other things, the plaintiff suffered a physical injury.
- C) requires proof that, among other things, the defendant acted with an intention to injure the plaintiff.
- D) is one of the oldest torts.
- E) is a sub-set of the tort of intimidation.

- 34) Sweety Cola and Bubbly Cola are competitors in the cola market. As part of a recent advertising campaign, Sweety claimed that: its cola has zero calories; Bubbly's cola has caused cancer in laboratory rats; Bubbly sells its cola in bottles that actually belong to other beverage manufacturers; and Bubbly sells its cola in bottles that are designed to make consumers believe that they are buying Sweety's cola. Bubbly has sued Sweety for the tort of injurious falsehood. Sweety may be held liable if
- 34) _____
- A) Bubbly does occasionally sell its cola in bottles that belong to other beverage manufacturers.
 - B) its comments caused Bubbly to suffer an economic loss, even though all of those statements were true.
 - C) Bubbly does occasionally sell its cola in bottles that are designed to make consumers believe that they are buying Sweety's cola.
 - D) Bubbly Cola has not caused cancer in laboratory rats.
 - E) its cola has more than zero calories.
- 35) Brownie Inc and Chewy Ltd are competitors in the chocolate bar market. Their "trade war" involves several facts. First, as part of a recent advertising campaign, Brownie claimed that its own products are calorie-free. Second, Brownie said that Chewy uses only third-rate materials in its products. Third, Brownie said that Chewy's products are proven to cause cancer. And fourth, Brownie occasionally packages its products in such a way as to make consumers believe that they are buying Chewy products. Which of the following statements is TRUE?
- 35) _____
- A) As long as Chewy suffered a loss of sales and Brownie acted maliciously, Brownie may be held liable under the tort of injurious reliance even if it is true that Chewy uses only third rate materials in its products.
 - B) If Chewy's products do not cause cancer, Brownie may be held liable under the tort of deceit as long as it should have known that its statement was false.
 - C) Neither company can be held liable for injurious falsehood unless it knew that it was committing a tort when it made a particular statement.
 - D) Chewy may be held liable under the tort of passing off if Brownie does occasionally package its products in such a way as to make consumers believe that they are buying Chewy products.
 - E) If Brownie's products are not calorie free, Brownie may be held liable for misleading advertising.
- 36) Which of the following statements is TRUE with respect to the tort of injurious falsehood?
- 36) _____
- A) Because it requires proof of malice, it always leads to punitive damages.
 - B) It requires proof that the defendant's statement caused the plaintiff to suffer a loss.
 - C) It may be established on the basis of proof that the defendant should have known that the statement in question was false.
 - D) It is another name for the tort of defamation.
 - E) It always consists of a slander of title.
- 37) The Ontario Court of Appeal's decision in *Reach MD Inc v Pharmaceutical Manufacturers Association of Canada* is vitally important to the tort of
- 37) _____
- A) occupiers' liability.
 - B) deceit.

- C) interference with economic relations.
- D) intimidation.
- E) conspiracy.

- 38) Simon, who is nine years old, was recently injured after he wandered onto Regina's land. Simon was infected with a disease after he stepped barefoot on a syringe. The evidence indicates that Regina's land is routinely used by drug addicts to "shoot up." Regina was aware of that fact, but did nothing to stop it or post warning signs. Simon has sued Regina under the tort of occupiers' liability. Which of the following statements is TRUE? 38) _____
- A) If a court concludes that Simon's injury was caused by an activity on Regina's land, rather than the condition of Regina's land, then Regina may be held liable under statutory rules but not under the traditional common law rules.
 - B) If the statutory rules apply, then Regina will be held liable only if she created the danger that caused Simon's injury.
 - C) If the common law rules apply to the facts, then it will be necessary to classify Simon as a trespasser, licensee, invitee, or contractual entrant.
 - D) If the statutory rules apply, then the court will apply the doctrine of common humanity.
 - E) The tort of occupiers' liability has been abolished in most provinces.
- 39) Rande was injured by an accident that occurred on land belonging to the Acme Chemical Company. The company may be held liable 39) _____
- A) under the strict liability tort of nuisance if Rande was injured as a result of its reasonable actions.
 - B) under the tort of trespass to land if a toxic chemical drifted off its land and injured Rande while he waited for a bus on a public sidewalk.
 - C) under the tort in *Rylands v Fletcher* if Rande fell into an unmarked pit on the company's land.
 - D) under the tort of nuisance if a chemical drifted off the company's land and ruined the paint on Rande's car, even if that vehicle was parked on public property.
 - E) under the tort of occupiers' liability if a toxic chemical drifted off of its own land and onto Rande's land, where it caused him to give up occupation of his property.
- 40) Which of the following factors will influence a judge's decision as to whether or not a party accused of the tort of nuisance used its property in a reasonable manner? 40) _____
- A) the fact that the plaintiff and the defendant are closely related
 - B) the fact that the defendant's activity diminishes the value of the plaintiff's property
 - C) the nature of the damage that the plaintiff suffered
 - D) the fact that the defendant has property insurance.
 - E) the happiness that the defendant receives from the activity in question
- TRUE/FALSE. Write 'T' if the statement is true and 'F' if the statement is false.**
- 41) The tort of intimidation always requires proof that the defendant used a threat to cause a third party to act in a way that hurt the plaintiff. 41) _____

- 42) Jerome worked for Kerasic Corp. He left that job, however, when he received the promise of better pay from Goldshlager Inc. Goldshlager may be liable to Kerasic as long as, among other things, Goldshlager should have known that Jerome had a contract of employment with Kerasic. 42) _____
- 43) It is easier to prove the tort of indirect inducement to breach of contract than it is to prove the tort of direct inducement to breach of contract. 43) _____
- 44) The tort of conspiracy always requires proof that the conspirators committed a crime. 44) _____
- 45) Salvatore and Carolyn conducted lengthy negotiations that led to her purchase of his business. At the start of those negotiations, Salvatore made a number of statements regarding the business's profitability. Those statements were accurate when they were made. However, before the sale was finalized, the facts changed such that the earlier statements were no longer true. Salvatore knew of that change, but he did not provide Carolyn with updated information. Consequently, he may be held liable to her under the tort of deceit. 45) _____
- 46) Sarah made several statements to John. Because he acted in reliance upon those statements, John suffered a loss. Assuming that the other elements of the tort are established, Sarah may be held liable for deceit as long as John proves that she carelessly failed to realize that her statements were false. 46) _____
- 47) A person cannot be held liable for occupiers' liability unless he or she owned the premises upon which the plaintiff was injured. 47) _____
- 48) Jessica was injured while trespassing on Zach's land. Under the modified common law rules, a court will use the standard of common humanity in determining whether or not Zach exercised sufficient care with respect to a Jessica. 48) _____
- 49) Joel was injured while walking on Maureen's property. Under the statutory rules, it will generally be necessary for a court to determine Joel's precise status as a visitor before choosing the appropriate standard of care. 49) _____
- 50) An action for the tort of nuisance can succeed only if the plaintiff and the defendant occupied neighbouring pieces of land. 50) _____
- 51) Suki used her property in a way that interfered with the ability of her neighbour, Dick, to enjoy his property. If that interference is sufficiently severe, Suki may be held liable even if her actions were not unreasonable. 51) _____
- 52) The defence of statutory authority applies only if a nuisance was the inevitable result of the defendant's performance of a statutorily authorized activity. 52) _____
- 53) Mohana visited Ian's home. She was injured when his pet wolverine escaped from its cage and bit her while she sat in his kitchen. Under the traditional approach to the tort of *Rylands v Fletcher*, Ian may be held liable to Mohana. 53) _____

- 54) During recent proceedings, a Member of Parliament stood in the House of Commons and made an outrageously defamatory statement about the Prime Minister. The Prime Minister will not be able to successfully sue for the tort of defamation because the statement in question is protected by the defence of absolute privilege. 54) _____
- 55) Casey published an untrue, unfounded, and unfavourable statement about Acme Corp, but not about any of its employees. He nevertheless may be held liable if the statement would tend to make reasonable people have a lower opinion of the corporation. 55) _____

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

- 56) "To succeed in an action for intimidation, the plaintiff must prove that the defendant threatened to commit an unlawful act. Depending upon the circumstances, it may be sufficient if the plaintiff proves that the defendant threatened to commit a breach of contract." Explain the circumstances in which that statement is or is not true.
- 57) Amarjeet and Doris were competitors in the widget industry. In an over-exuberant effort to take over her business, Amarjeet told Doris that he would spread false and unflattering rumors about her unless she sold her company to him. While Doris was initially quite frightened by Amarjeet's behaviour, she eventually refused to sell her company to him. She has now sued him for the tort of intimidation. Amarjeet has argued in defence that he acted solely for the purpose of furthering his own financial interests, and not out of a desire to hurt Doris. The evidence indicates that he is telling the truth in that respect. He also resists liability on the basis that he never actually did defame Doris as he had threatened to do. Will either of those defences protect Amarjeet from liability? Is there any other basis upon which he can avoid liability? Explain your answers.
- 58) You and I are competitors in the publishing business. You and I both know that Mysty is my best employee and that much of my success is due to her efforts. You want to find some way of causing Mysty to stop working for me and, if possible, to start working for you. You have persuaded her to meet with you for a discussion of her future employment. You intend to tell her that I am a lousy employer. Identify and explain the risk management issues that you should bear in mind as you prepare for that meeting.
- 59) Johanna was employed by Raouf. Willie caused her to breach that employment contract. Raouf is trying to decide whether or not to sue Willie for interference with contractual relations. He therefore wants to know what facts he would be required to prove in order to succeed in such a claim. In that respect, why is it important for him to determine whether Willie provided Johanna with a direct or an indirect inducement to breach of contract?
- 60) Slobodan and Ashraf allegedly committed the tort of conspiracy against Vanessa. She is trying to decide whether or not she will sue them. She therefore wants to know what facts she would be required to prove in order to succeed in such a claim. In that respect, why is it important for her to determine whether the act that Slobodan and Ashraf conspired to commit was, in addition to potentially underlying the tort of conspiracy, unlawful in itself?
- 61) As a general rule, the tort of deceit is not committed if the plaintiff suffered a loss as a result of relying upon an opinion, prediction, or puff that the defendant made, even if that statement was incorrect or inaccurate. Identify and briefly explain the reason for that general rule.
- 62) Rachel owned the right to mine for gold on a particular piece of property. Because she lacked immediate financial resources, she issued a statement that was designed to attract investors. That statement was, as Rachel knew, inaccurate. It claimed that

the land held considerably more gold than it actually did. Relying upon the truth of the information contained in Rachel's statement, Siddharth invested \$100 000 in her mining project. On the basis of the statement, he expected to earn a net profit of \$250 000. In fact, he earned a much more modest profit of \$10 000. Siddharth has sued Rachel for the tort of deceit. How much will he receive as compensatory damages? Explain your answer.

- 63) Khalid was injured while trespassing on property owned and occupied by Charisse. He has sued her for the tort of occupiers' liability. Describe the relevant standard of care under: (i) the traditional common law rules, (ii) the modified common law rules, and (iii) the statutory rules.
- 64) Zeno was injured while he was either a licensee or an invitee on property owned and occupied by Kavita. He has sued her for the tort of occupiers' liability. Describe the relevant standard of care under: (i) the traditional common law rules, (ii) the modified common law rules, and (iii) the statutory rules.
- 65) Briefly explain the difference between the tort of private nuisance and the tort of public nuisance.
- 66) Bouba received special permission under the *Radio and Satellite Signal Reception Act* to erect a radio beacon on his property. The statute specified a number of technical requirements, but it did not impose requirements or restrictions regarding the height, shape, size, or location of the beacon. Bouba built a very tall beacon at the edge of his property, about 10 metres from a house that belonged to Virginia on the neighbouring piece of land. That beacon toppled over during a snowstorm and crashed through Virginia's roof. She has sued Bouba for the tort of nuisance. He argues, however, that he is protected by the defence of statutory authority. Is he correct? Explain your answer.
- 67) Identify and briefly explain the considerations that will influence a court's decision to grant an injunction to stop an ongoing nuisance.
- 68) Siegfried owns a rattlesnake that he keeps in his office in a large, locked aquarium. Bianca was severely injured during a recent meeting at Siegfried's office after she was bitten by the snake. She has sued for the tort of *Rylands v Fletcher*. Siegfried claims that he should not be held liable because he took every reasonable precaution in placing the snake in a locked aquarium. He also argues that it was entirely unforeseeable that the lock would spontaneously spring open and release the snake from its cage. (The manufacturer of the lock went out of business several years ago and cannot be sued.) The judge has accepted the factual truth of those arguments, but has not yet decided upon their legal significance. Can Siegfried avoid liability under *Rylands v Fletcher* on the basis that he neither carelessly nor intentionally injured Bianca? Is there any other basis upon which he might avoid liability? Explain your answers.
- 69) What interest is the tort of defamation intended to protect? How is the requirement of publication related to that interest?
- 70) What is the defence of justification? To which tort does it apply?

- 1) E
- 2) B
- 3) E
- 4) B
- 5) D
- 6) A
- 7) D
- 8) D
- 9) C
- 10) D
- 11) D
- 12) A
- 13) E
- 14) D
- 15) E
- 16) A
- 17) A
- 18) C
- 19) B
- 20) D
- 21) A
- 22) D
- 23) B
- 24) D
- 25) C
- 26) C
- 27) D
- 28) A
- 29) D
- 30) D
- 31) C
- 32) B
- 33) C
- 34) D
- 35) E
- 36) B
- 37) C
- 38) A
- 39) D
- 40) C
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) FALSE
- 45) TRUE
- 46) FALSE
- 47) FALSE
- 48) TRUE
- 49) FALSE
- 50) FALSE
- 51) FALSE
- 52) TRUE
- 53) FALSE
- 54) TRUE
- 55) TRUE
- 56) It is necessary to distinguish between two forms of the tort of intimidation.

Two-party intimidation occurs when the plaintiff is directly coerced by the defendant into

suffering a loss. For instance, the defendant may extract a payment from the plaintiff by threatening the plaintiff with the crime of murder or the tort of battery. A breach of contract is also an unlawful act. However, the cases indicate that the tort of intimidation is not established if the defendant merely threatened to breach a contract with the plaintiff. In that situation, the plaintiff is expected to bring a contractual, rather than a tortious, action against the defendant. A contractual claim is possible because both the plaintiff and the defendant are parties to the agreement.

Three-party intimidation occurs when the defendant coerces a third party into acting in a way that hurts the plaintiff. For instance, the defendant may use a threat of murder or battery to persuade a third party into inflicting a loss upon the plaintiff. The tort may also be committed if the defendant threatens to break a contract with the third party unless the third party inflicts some loss upon the plaintiff. The plaintiff is entitled to rely upon the defendant's threat to breach a contract in that situation because the plaintiff is not a party to the relevant agreement. The agreement exists exclusively between the defendant and the third party. Consequently, there is no way for the plaintiff to take action on the contract itself. And unless the plaintiff was allowed to sue in tort, it would not have any claim against the defendant.

- 57) Amarjeet cannot avoid liability on the basis of either of the arguments that he has made.
- As long as the other elements of the tort are established, it is irrelevant that he was motivated by a desire to profit, rather than by a desire to hurt Doris.
 - It is also irrelevant that he did not actually carry through on his threat to defame Doris. Indeed, the tort of intimidation is useful largely because it allows the plaintiff to sue on the basis of the threat, rather than an actual commission, of an independently actionable tort. If Amarjeet had, in fact, spread false and unflattering rumors about Doris, she could have sued him for defamation. (In that situation, she might have been able to sue him for both intimidation and defamation. The loss attributable to each might be different. The tort of defamation would have damaged her reputation. The tort of intimidation, if it occurred, would have caused her to sell her business to Amarjeet.)

There is, however, another reason why Amarjeet would not be liable to Doris. The tort of intimidation occurs only if the defendant's threat actually caused the plaintiff to suffer a loss. The tort is not actionable *per se*. In this case, Doris resisted Amarjeet's pressure. She ultimately refused to sell her business to him. Consequently, unless she suffered some other loss as a result of his threats, Doris cannot successfully sue Amarjeet for intimidation.

- 58) You are at risk of committing two torts.

First, you must be careful to not defame me. That could occur if you made a false statement to Mysty that could cause a reasonable person to have a lower opinion of me. You could avoid liability, however, if your statements were all justified. The defence of justification applies with respect to statements that are true.

Second, you must be careful to not commit the tort of interference with contractual relations. You would be held liable if you persuaded Mysty to quit her job with me (regardless of whether or not you also persuaded her to take a job with you).

Consequently, as a matter of risk management, you should carefully limit yourself to providing information regarding the relative benefits of working for you and me. You must leave the decision with her. You should not go further and actually suggest that she should breach her contract with me.

- 59) Whether the inducement was direct or indirect, Raouf would be required to prove that: (i) Willie knew about Johanna's contract with Raouf, (ii) Willie intended to cause Johanna to break her contract with Raouf, (iii) Willie actually did cause Johanna to break her contract with Raouf, and (iv) Raouf suffered a loss as a result of those events (*e.g.* because he lost the benefit of Johanna's services). However, if the inducement that Willie provided to Johanna was indirect, rather than direct, Raouf would also be required to prove that: (v) Willie's actions were, in addition to creating the tort of interference with contractual relations, unlawful in themselves. That would be true if Willie falsely imprisoned Johanna or stole her tools, and thereby prevented her from performing her contract with Raouf. It would not be true, however, if Willie merely persuaded Johanna to work for him instead of for

Raouf.

- 60) The tort of conspiracy is committed when two or more people collaborate to cause injury to the plaintiff. The elements of the claim differ somewhat, however, depending upon whether the act upon which the defendants conspired was lawful in itself (*e.g.* because it involved a consumer boycott of the plaintiff's products) or unlawful in itself (*e.g.* because they agreed to commit a crime or an independently actionable tort, or because they violated a regulatory scheme). If Slobodan and Ashraf conspired to commit an otherwise *lawful act*, then Vanessa would be required to prove that the conspirators' *primary purpose* was to inflict an injury upon her. In contrast, if Slobodan and Ashraf conspired to commit an otherwise *unlawful act*, then Vanessa would merely be required to prove that the conspirators *should have known* that their actions might be harmful to her.
- 61) To succeed in an action for deceit, the plaintiff must prove that he or she suffered a loss as a result of *reasonably relying* on a false statement by the defendant. As a general rule, however, a reasonable person only relies upon statements of past or existing facts. It is usually unreasonable to rely on a prediction because a prediction, by its very nature, pertains to the future and therefore may or may not actually occur. Likewise, it is usually unreasonable to rely on another person's personal opinion. A reasonable person usually forms his or her own opinions based on facts. And finally, it is usually unreasonable to rely on a puff, which is mere sales talk. Reasonable customers realize that sales people often somewhat exaggerate the benefits and qualities of their products.

The situation may be different, however, if the defendant, expressly or by implication, makes a false statement of fact upon which the prediction, opinion, or puff is based. In that situation, the plaintiff may succeed in the tort of deceit by proving that he or she suffered a loss by reasonably relying upon that underlying misstatement of fact.

- 62) Siddharth will not succeed in his action against Rachel and he will not receive *any* compensatory damages. The tort of deceit is not actionable *per se*. It is committed only if the plaintiff suffers a loss as a result of relying upon the defendant's false statement.

The idea of a "loss" can be defined in different ways in different parts of private law.

In the law of contract, the plaintiff may suffer a loss if an event turns out to be less profitable than the defendant promised. A breach of contract therefore supports compensation in the form of expectation damages. The plaintiff is entitled to be placed in the position that he or she would have enjoyed if the contract had unfolded as promised. In this case, Siddharth expected to receive a net profit of \$250 000. His actual net profit was only \$10 000. He therefore has been disappointed to the tune of \$240 000. A claim in deceit is not, however, a claim for breach of contract. Siddharth therefore is not entitled to have his expectations monetarily fulfilled. (He might, of course, be entitled to receive expectation damages if he establishes a concurrent action for breach of contract.)

In tort, "loss" is reckoned not with regard to the position that the plaintiff expected to enjoy in the future, but rather with regard to the position that he or she enjoyed before the wrongful event. Tort damages, in other words, are backward-looking, rather than forward-looking. Siddharth's current position is not, however, worse than his original position. It is, to the contrary, better by \$10 000. He therefore cannot succeed in his claim for deceit and he is not entitled to receive compensatory damages in tort.

- 63) Under the traditional common law rules, an occupier was merely required to refrain from intentionally or recklessly injuring a trespasser.

Under the modified common law rules, an occupier must do more than simply refrain from intentionally or recklessly hurting a trespasser. The law now uses a duty of *common humanity* that strikes a balance between the parties. The occupier's obligations are determined by a number of factors, including: (i) the age of the trespasser, (ii) the reason for the trespass, (iii) the nature of the danger that caused the injury, (iv) the occupier's knowledge of that danger, and (v) the occupier's cost of removing that danger.

Under the statutory rules, an occupier generally owes the same basic duty to all visitors: the occupier must use as much care as is reasonable in the circumstances. The precise

content of that standard depends, in any particular case, on a number of factors, including: (i) the potential danger to the visitor, (ii) the occupier's cost of removing the danger, (iii) the purpose of the visit, and (iv) the nature of the premises. The plaintiff's status as a trespasser may be relevant, especially to the third factor.

Some jurisdictions have special statutory rules that apply with respect to trespassers. For instance, in Alberta, an occupier is not required to protect adult trespassers from danger. He or she is merely prohibited from willfully or recklessly hurting them. In contrast, reasonable care must be taken to protect child trespassers that the occupier knows, or ought to know, are on the property. Likewise, an occupier in Ontario or Prince Edward Island does not have to use reasonable care to protect some types of trespassers. It is enough to simply refrain from intentionally hurting them. A similar rule applies in Manitoba, but only to trespassing snowmobilers.

- 64) A licensee is a person who has permission to be on another's premises, but who does not further the occupier's economic interests. In contrast, an invitee's presence does further the occupier's economic interests.

Under the traditional common law rules, Kavita would be required to protect Zeno from *hidden dangers* about which she *actually knew* if he was a licensee. In contrast, if he was an invitee, she would be required to protect him from *unusual dangers*, whether or not they were hidden, about which she *knew or should have known*.

Under the modified common law rules, Kavita's duty would be much the same whether Zeno was a licensee or an invitee. In either event, she would be required to protect him from unusual dangers, whether or not they were hidden. However, while the law remains somewhat unsettled, it may be that she would be liable for dangers that she should have, but did not actually, known about only if Zeno was an invitee.

Under the statutory rules, an occupier generally owes the same basic duty to all visitors: the occupier must use as much care as is reasonable in the circumstances. The precise content of that standard depends, in any particular case, on a number of factors, including: (i) the potential danger to the visitor, (ii) the occupier's cost of removing the danger, (iii) the purpose of the visit, and (iv) the nature of the premises. Zeno's status as a licensee or an invitee may be relevant to the third factor.

- 65) This question requires a very careful reading of the chapter. Although hints exist elsewhere in the text, the answer is found in footnote 26. A private nuisance occurs when the defendant unreasonably interferes with the plaintiff's use and enjoyment of its own land. The tort of public nuisance occurs when the defendant commits the crime of common nuisance against the public, but creates a special loss for the plaintiff: *Criminal Code*, RSC 1985, c C-46, s 180(2). For instance, that tort may arise if the defendant creates a hazard on a street that not only interferes with the general public's right to use that roadway, but also causes the plaintiff to be injured in a traffic accident: *Ryan v Victoria (City)* (1999) 168 DLR (4th) 513 (SCC).
- 66) The defence of statutory authority will not protect Bouba. That defence applies only if the nuisance that occurred was the inevitable result of Bouba performing the statutorily authorized act. The damage to Virginia's house was not inevitable. Although Bouba received permission to build a radio beacon, he was given a great deal of discretion as to the structure's height, shape, size, and location. He clearly could have built a beacon in a way that did not imperil Virginia. Depending upon the facts, he could have built it on another part of his property, he could have built it more sturdily, and so on.
- 67) The courts exercise a great deal of discretion in deciding whether or not to award an injunction to stop an ongoing nuisance. As always, a claim in nuisance requires a court to resolve a tension between the way in which the plaintiff wants to use its property and the way in which the defendant wants to use its property. Within that context, a court will be influenced by a number of factors.
- Perhaps most significantly, a court will be much more inclined to grant an injunction if the defendant's conduct creates a threat of physical damage to a person or to property.
 - A court will also have regard to: (i) the nature of the neighbourhood, (ii) the time of the nuisance, (iii) the intensity and duration of the nuisance, (iv) the social utility of the

defendant's conduct, and (v) the defendant's motivation for creating the nuisance.

- A court will generally refuse to grant an injunction if the plaintiff could be adequately compensated through an award of compensatory damages.

In deciding whether or not to grant an injunction, a court may also look beyond the interests of the immediate parties and consider the interests of the community as a whole. For instance, a court would be reluctant to award an injunction that stopped the defendant's nuisance, but that also forced the defendant to close down a factory that employs a substantial number of people. A claim in nuisance always requires an appropriate balance to be struck. And sometimes, even if it clearly suffers considerable harm, the plaintiff may not be entitled to its preferred remedy.

- 68) Siegfried cannot avoid liability on the basis that he neither intentionally nor carelessly injured Bianca. *Rylands v Fletcher* is a strict liability tort. That means that Siegfried may be held liable even if he took every conceivable precaution.

However, the tort of *Rylands v Fletcher* generally requires proof that the defendant brought onto his property a special and unusual danger that escaped and injured the plaintiff. A rattlesnake certainly qualifies as a special and unusual danger. Such creatures are extremely dangerous and they are very seldom found in office environments. Bianca will have a problem, however, proving the element of escape. Although the snake escaped its aquarium, it did not escape from Siegfried's property. The tort of *Rylands v Fletcher* is normally committed when something leaves the boundaries of the defendant's land. That did not happen here. There are, however, cases in which, as a matter of intuitive fairness and rough justice, the courts have ignored the element of escape in order to allow the plaintiff recovery. That might occur in this case. The court's motivation to bend the rules might be heightened by the fact that Bianca, who suffered a severe injury, could not sue for nuisance (because Siegfried did not interfere with her enjoyment of her own property), or occupiers' liability (because the judge accepted that Siegfried acted carefully), or negligence (once again, because the judge accepted that Siegfried acted carefully).

- 69) The purpose of the tort of defamation is intended to protect reputations. Defamation occurs when the defendant makes a false statement that could lead a reasonable person to have a lower opinion of the plaintiff.

The requirement of publication states that the tort of defamation is not committed unless a false and unflattering statement regarding the plaintiff is communicated by the defendant to a third party. The need for publication is directly related to the goal of protecting reputations. The plaintiff's reputation is based on what other people think of him or her. Other people will not think less of the plaintiff (in an actionable way) unless the defendant communicates an unflattering statement to them. Consequently, the tort of defamation is not committed if the defendant merely communicates a false and unflattering statement to the plaintiff as part of a private conversation. Although the plaintiff may be upset by such a statement, his or her reputation has not been damaged if a third party was not present to receive the statement.

- 70) The defence of justification applies to the tort of defamation. Defamation occurs when the defendant makes a false statement that could lead a reasonable person to have a lower opinion of the plaintiff. The defence of justification applies if the defendant's statement was actually true. Truth is a complete defence to the tort of defamation.