

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

- 1) Chantal has sued Phi Corp for negligence. Which of the following statements is TRUE with respect to the duty of care? 1) _____
- A) A duty of care will not be recognized unless Chantal suffered a physical injury.
 - B) A duty of care will be imposed on Phi Corp unless it proves that Chantal was not a reasonably foreseeable victim of its carelessness.
 - C) The court will conduct a full inquiry into the existence of a duty of care only if the facts of the case do not fall within a recognized category.
 - D) A duty of care will be recognized only if Phi Corp and Chantal had a pre-existing relationship.
 - E) Since it is based on the reasonable person test, a duty of care can be owed by a person to a corporation, but not by a corporation to a person.
- 2) Andreas has sued Kathryn for negligence. Kathryn argues that she did not owe a duty of care to Andreas. Which of the following statements is TRUE? 2) _____
- A) The court cannot recognize a duty of care if Andreas and Kathryn were parties to the same contract.
 - B) The court may refuse to recognize a duty of care even if it was reasonably foreseeable that Andreas might be injured as a result of Kathryn's carelessness.
 - C) The court cannot recognize a duty of care if Kathryn was Andreas's mother.
 - D) The court cannot recognize a duty of care if Andreas was injured as a result of Kathryn's omission, rather than by her action.
 - E) A court may recognize a duty of care even if it was not reasonably foreseeable that Andreas might be injured as a result of Kathryn's carelessness .
- 3) The case of *Donoghue v Stevenson* established the concept of 3) _____
- A) the learned intermediary rule.
 - B) market share liability.
 - C) contributory negligence.
 - D) a general duty of care.
 - E) professional negligence.
- 4) Careless statements are different than careless acts because 4) _____
- A) people are almost always more careful with words than with actions.
 - B) careless statements seldom cause substantial losses.
 - C) careless statements can never support a duty of care.
 - D) careless statements can often be repeated in a way that careless acts cannot.
 - E) careless statements always result in pure economic losses.
- 5) Luke sued Michelle for negligence. In formulating the standard of care, the court will properly consider whether or not 5) _____
- A) Michelle has liability insurance.
 - B) there was great social utility to the act that Luke was performing when he was injured.
 - C) there was great social utility to the act that Michelle was performing when she injured Luke.
 - D) Luke has personal injury insurance.

E) none of the above

- 6) Which of the following statements is TRUE with respect to the standard of care in negligence? 6) _____
- A) A child is never required to meet the standard of a reasonable adult.
 - B) The standard of care never takes account of the defendant's subjective characteristics.
 - C) The defendant can never escape liability by proving a mental disability.
 - D) The standard of care is always met if the defendant followed an approved practice within a particular industry.
 - E) The sudden peril doctrine allows the defendant to act in a way that would normally be considered careless.
- 7) The Iota Corp sued Araceli for negligence. It claims that it suffered a loss as a result of her careless performance of a professional service. Which of the following statements is TRUE with respect to the issue of breach? 7) _____
- A) Araceli cannot possibly be held liable if she did not realize that her services were careless when she performed them.
 - B) Araceli cannot possibly be held liable if she did her best, but her best was not good enough because she had received very poor training in school.
 - C) Araceli cannot possibly be held liable if Iota Corp should have realized that she was incompetent.
 - D) Araceli may not be held liable for an error in judgment even if another professional in her position would have acted differently.
 - E) Araceli cannot possibly be held liable if she complied with a practice that was approved by her professional body.
- 8) Chyna acted as Evan's accountant. In the course of her professional duties, she made a mistake that caused Evan to lose \$100 000. Evan has sued Chyna for negligence. She claims, however, that she did not breach the standard of care. Chyna can avoid liability by proving that 8) _____
- A) she was not really a qualified accountant, even though she had told Evan that she was.
 - B) Evan paid her less than the market rate.
 - C) she was inexperienced at the time of the mistake and by proving that a reasonable novice accountant might have made the same mistake.
 - D) her mistake seems careless only in hindsight.
 - E) her carelessness occurred while she was performing a contractual obligation.
- 9) Jennet recently sued Lamda Corp for failing to warn her about the risks associated with a widget that it manufactured and that caused her to suffer an injury. Lamda Corp seeks to avoid liability on the basis of the learned intermediary rule. Which of the following statements is TRUE? 9) _____
- A) The learned intermediary rule applies only if at least one other party was involved in the events leading up to Jennet's injury.
 - B) The learned intermediary rule is usually considered in connection with the issue of causation.
 - C) The learned intermediary rule applies only if Lamda Corp's experts knew of the risk that led to Jennet's injury.
 - D) The learned intermediary rule applies only if Jennet had been trained in the proper use of widgets.
 - E) The learned intermediary rule is usually considered in connection with the duty of care.

- 10) You work as a risk management advisor for Sigma Ltd. Sigma Ltd intends to place a new type of widget on the market. It wants to know what steps it should take with respect to warning people about the dangers associated with that type of widget. Which of the following statements is TRUE? 10) _____
- A) Sigma Ltd only needs to issue a warning with respect to dangers that it is aware of before the widgets are sold.
 - B) As the manufacturer, Sigma Ltd is the only party that could be required to issue a warning.
 - C) Sigma Ltd only needs to issue a warning to people who purchase widgets.
 - D) Sigma Ltd is not required to warn about every possible danger that it knows about when a widget is sold.
 - E) Sigma Ltd only needs to issue a warning with respect to dangers that arise when a widget is used for its intended purpose.
- 11) Which of the following statements most accurately describes the but-for test? 11) _____
- A) The but-for test is relevant to the issue of negligence, but not to the issue of contributory negligence, because the plaintiff does not owe a duty of care to him or herself.
 - B) The defendant may be held liable if the answer to the but-for test is "no."
 - C) The defendant may be held liable if the answer to the but-for test is "yes."
 - D) The but-for test requires proof beyond a reasonable doubt.
 - E) The but-for test compares the actual events with the events that would have occurred if the defendant had breached the standard of care.
- 12) Which of the following statements is TRUE with respect to the issue of factual causation in negligence? 12) _____
- A) Liability cannot be imposed if the defendant's carelessness was only *a cause*, and not *the only cause*, of the plaintiff's losses.
 - B) Liability cannot be imposed if the defendant's carelessness was only *a cause*, and not *the most important cause*, of the plaintiff's losses.
 - C) The issue of factual causation is always decided on the basis of the but-for test.
 - D) The plaintiff may recover full damages even if the evidence shows only that there was a 75 percent chance that the defendant's carelessness caused the plaintiff's injury.
 - E) The issue of factual causation is decided on the basis of the reasonable person test.
- 13) Selena has cancer. She has sued the Tau Corp for negligence. She claims that her condition was caused by fumes that the Tau Corp carelessly allowed its factory to emit. Which of the following statements is TRUE with respect to the issue causation? 13) _____
- A) If Selena proves that there is a 65 percent chance that her condition was caused by Tau Corp's carelessness, she will receive 100 percent of her damages.
 - B) If Selena proves that there is a 75 percent chance that her condition was caused by Tau Corp's carelessness, she will receive 75 percent of her damages.
 - C) If Selena proves that there is a 50 percent chance that her condition was caused by Tau Corp's carelessness, she will receive 50 percent of her damages.

- D) If Selena proves that there is a 50 percent chance that her condition was caused by Tau Corp's carelessness, she will receive 100 percent of her damages.
- E) If Selena proves that there is a 25 percent chance that her condition was caused by Tau Corp's carelessness, she will receive 25 percent of her damages.
- 14) Diana and Naomi both carelessly shot in Randall's direction at the same time. He was struck by one bullet. He can prove that the bullet came from either Diana's gun or from Naomi's gun, but he has no way of determining which woman shot him. Which of the following statements is TRUE? 14) _____
- A) Randall's claim will be decided by the concept of market share liability.
- B) Diana and Naomi will be held jointly and severally liable even though Randall cannot satisfy the requirement of causation in the usual way.
- C) Neither woman will be held liable because Randall cannot prove, on a balance of probabilities, which one fired the bullet that hit him.
- D) The difficulty in this case involves the issue of remoteness of damage.
- E) The court most likely will impose liability upon one defendant only.
- 15) The concept of remoteness 15) _____
- A) is most closely connected to the concept of the standard of care.
- B) asks whether a person in the plaintiff's position could have reasonably foreseen that loss that occurred because of a breach of care.
- C) arises for consideration under concept of duty of care.
- D) is a defence to the action in negligence.
- E) is relevant only if the defendant in fact carelessly caused the plaintiff's loss.
- 16) Kendra suffered a broken back as a result of Duncan's carelessness. Duncan has argued, however, that Kendra's injury is remote from his carelessness, and that he therefore cannot be held liable. Which of the following statements is TRUE? 16) _____
- A) Duncan will be held liable only if Kendra's injury was a direct result of his carelessness.
- B) Duncan cannot be held liable unless the type of injury that Kendra suffered was reasonably foreseeable.
- C) Duncan cannot be held liable unless the manner in which Kendra suffered her injury was reasonably foreseeable.
- D) If Kendra was unusually vulnerable to a back injury, Duncan cannot be held liable unless the severity of Kendra's injury was reasonably foreseeable.
- E) Duncan cannot be held liable unless Kendra's injury was likely to occur as a result of his carelessness.
- 17) Which of the following statements is TRUE with respect to the concept of remoteness? 17) _____
- A) The concept of remoteness has been rejected as a test in cases of intervening acts.
- B) The concept of remoteness is based mostly on statutes.
- C) The concept of remoteness is part of the test for a duty of care.
- D) The concept of remoteness has been rejected as a test in thin skull cases.

E) The concept of remoteness is connected with the element of causation.

18) The concept of a crumbling skull

18) _____

- A) allows the plaintiff to recover some damages when the defendant's negligence hastens the occurrence of a loss that the plaintiff eventually would have suffered in any event.
- B) is exactly the same as the concept of a thin skull.
- C) does not exist in Canadian law.
- D) allows a court to find that the defendant did not owe a duty of care to the plaintiff.
- E) allows the plaintiff to recover damages for the full extent of his or her loss, as long as it was reasonably foreseeable that the defendant's negligence would cause a normal person to suffer some injury.

19) Jamari negligently hit Samantha in the head with a stick. Most people would have suffered a simple bruise as a result of that accident. If so, damages would have been worth \$200. Such damages were reasonably foreseeable before the accident occurred. Samantha, however, actually suffered brain damage because she had an unusually fragile skull. Consequently, she suffered a loss valued at \$5 000 000. A loss of that size was not reasonably foreseeable before the accident occurred. Which of the following statements is TRUE?

19) _____

- A) Jamari is liable for \$5 000 000.
- B) Jamari is liable for \$200.
- C) Jamari is liable for \$5 000 000 only if he actually knew that Samantha had a fragile skull before he hit her.
- D) Jamari is liable for \$5 000 000 only if Samantha knew that she had a fragile skull before the accident occurred.
- E) Jamari is not liable for any damages because the actual consequences of his negligence were not reasonably foreseeable.

20) Psi Corp owned a ship called *The Greek*. It intended to use that ship to fulfill a contract with Omega Inc under which it promised to deliver widgets from Vancouver to Los Angeles. If it failed to perform that contract, it would be required to pay \$5 000 000 to Omega Inc. Wilson negligently created a fire that destroyed *The Greek*. Psi Corp wanted to buy a replacement ship for the purpose of performing its contract with Omega Inc, but could not immediately afford the purchase price of \$20 000 000. It therefore rented a ship, *The Canadian*, for \$2 000 000 and used it to fulfill its contractual obligation. Psi Corp has successfully sued Wilson for negligence. The court agrees that Psi Corp is entitled to \$20 000 000, which was the value *The Greek*. Psi Corp, however, claims that it is also entitled to \$2 000 000, representing the money that it was required to pay in order to rent *The Canadian*. Which of the following statements is TRUE with respect to Psi Corp's claim for \$2 000 000?

20) _____

- A) That claim will probably fail because there was no duty of care.
- B) That claim will be decided by the crumbling skull rule.
- C) That claim is properly decided under the concept of an intervening act.
- D) That claim will probably fail because there was a lack of factual causation.
- E) That claim traditionally would have failed because the relevant loss is partially attributable to the plaintiff's own poverty.

- 21) Oprah suffered a broken collarbone as a result of Sheldon's negligence. She later suffered a broken foot as a result of Tom's negligence. Tom dropped a heavy box on Oprah's foot while she was getting out of her car at her physiotherapist's office. She was visiting her physiotherapist for rehabilitation of her collarbone. She would not have been in that parking lot, and therefore would not have suffered a broken foot, if Sheldon had not negligently caused the first injury. Which of the following statements is most likely TRUE? 21) _____
- A) If Oprah's injuries cause her to miss work, she will be able to recover full damages from Tom and again from Sheldon.
 - B) A court will deny damages on the basis that Oprah voluntarily assumed the risk
 - C) Tom is liable for contributory negligence.
 - D) Tom did not owe a duty of care to Oprah because she already was injured.
 - E) The case involves an issue of intervening acts under the rules of remoteness.
- 22) The Town of Sussex Corner owned a bridge. Ruby negligently damaged the bridge by ramming it with a boat. At that point, it would have cost \$30 000 to repair the bridge. Before the town could do so, however, Oswald negligently rammed the bridge in a different spot with his own boat. The town had the damage from both incidents repaired at the same time for a total cost of \$50 000. Which of the following statements is TRUE? 22) _____
- A) Sussex Corner has the option of recovering \$50 000 from either Ruby or Oswald.
 - B) Ruby will not be held liable at all because Oswald's negligence is an intervening act.
 - C) Ruby and Oswald are jointly and severally liable for the full loss.
 - D) Oswald may be held liable for some damages even though Ruby had already damaged the bridge.
 - E) Oswald's conduct falls under the heading of contributory negligence.
- 23) Peter has sued Calista and Lailani for negligence. The evidence indicates that Peter's injury was caused by the combined effect of negligent acts by himself, Calista, and Lailani. That injury would not have occurred at all if any one of the three parties had acted carefully. The judge held that Calista and Lailani are jointly and severally liable. The judge also apportioned responsibility for the injury on the following basis: Peter 60 percent, Calista 30 percent, and Lailani 10 percent. The value of the loss that Peter suffered as a result of his injury is \$100 000. Which of the following statements is TRUE? 23) _____
- A) Peter cannot collect any damages from either Calista or Lailani because he was responsible for more than half of the loss that he suffered.
 - B) Peter can collect \$40 000 from Lailani.
 - C) Peter can collect \$60 000 from Calista and Lailani combined.
 - D) Peter can collect a total of \$100 000 from Calista and Lailani.
 - E) Peter can collect \$60 000 from Calista.
- 24) Coco sued Vincent for negligence. He has relied on the defence of contributory negligence. That defence may be successful only if the evidence indicates that 24) _____
- A) Coco breached the standard of care.
 - B) it was reasonably foreseeable that a careless act by Coco might inflict a loss upon Vincent.
 - C) Coco's carelessness created one injury and Vincent's carelessness

- caused a different injury.
- D) Vincent suffered some injury or loss.
- E) Coco actually knew that she might suffer a loss to herself if she acted carelessly.
- 25) Dashawn was severely injured while participating in a "fitness challenge" that was organized and operated by Zeta Inc. He has sued for negligence. Zeta relies on the defence of voluntary assumption of risk. In support of that defence, Zeta has produced a "Disclaimer of Liability" that Dashawn signed. Which of the following statements is TRUE? 25) _____
- A) The court will struggle to uphold the disclaimer clause and deny liability if at all possible.
- B) Because of general contractual principles, the disclaimer clause may be effective in response to a claim for breach of contract, but not in response to a claim for negligence.
- C) If the defence applies, the court will reduce liability only to the extent that is fair, so that Dashawn will still recover some damages.
- D) As a general rule, a disclaimer clause is effective only if the plaintiff carelessly contributed to his or her own loss.
- E) Zeta will be relieved of liability only if the disclaimer clause governed the legal risk of injury.
- 26) Demarcus sued Marguerite for negligence. She has relied on the defence of illegality. Which of the following statements is TRUE? 26) _____
- A) That defence will not apply if it would re-enforce a criminal penalty.
- B) That defence allows for the apportionment of responsibility between the parties.
- C) The Supreme Court of Canada has done away with the defence of illegality on the basis that it often creates unfair results.
- D) That defence may apply if the recovery of damages would allow Demarcus to avoid a criminal penalty.
- E) That defence could apply only if Demarcus committed a crime that was punishable by imprisonment.
- 27) Which of the following is generally a defence to the tort of negligence? 27) _____
- A) strict liability
- B) *res ipsa loquitur*
- C) *volenti*.
- D) mental incapacity
- E) inexperience
- 28) Which of the following statements is TRUE? 28) _____
- A) The effect of a thin skull is usually considered in the context of the breach of the standard of care.
- B) The concept of reasonable foreseeability requires proof, on the balance of probabilities, that the plaintiff would likely be injured by the defendant's carelessness.
- C) Product liability in Canadian tort law is strict.
- D) The defence of contributory negligence may apply even though the plaintiff's carelessness did not contribute to the creation of the accident, as long as it contributed to the extent of the plaintiff's injury.
- E) An "error in judgment" is a breach of the standard of care.
- 29) Which of the following statements is TRUE? 29) _____
- A) Canadian law includes the learned intermediary rule.

- B) because of its special role in society, the government always owes a duty of care for the purposes of a negligence case.
- C) The effect of an intervening act is usually considered in the context of the standard of care.
- D) Contributory negligence originally was a partial defence.
- E) Product liability may arise from a careless act in the manufacture of a product *or* carelessness in the design of a product *or* a careless failure to warn of the risks associated with a product.
- 30) The concept of reasonable foreseeability is directly relevant to 30) _____
- A) the standard of care, but not the defence of contributory negligence.
- B) contributory negligence, but not illegality.
- C) both the but-for test and the concept of an intervening act.
- D) factual causation.
- E) the duty of care and the standard of care, but not remoteness.
- 31) Halle is considering creating a new accounting company. She is, 31) _____
- however, concerned about the possibility of incurring liability under the tort of negligence if she acts carelessly. Restricting yourself to the possibility of liability for negligent statements, which of the following statements is TRUE with respect to Halle's proposed business?
- A) Under the tort of negligence, the same rules are applied in exactly the same way whether an allegation of negligence arises in connection with a careless statement or a careless action.
- B) Canadian courts are guided by the fact that "deeds are more volatile than words."
- C) Canadian judges do not apply special rules if the defendant's careless statement led to the plaintiff's physical injury.
- D) Halle's concerns would fall under the tort of professional negligence, which is different than the tort of negligence.
- E) Canadian judges apply precisely the same approach whether careless words cause physical injury or pure economic loss.
- 32) Dinar has sued Alpha Inc under the tort of negligence. The court must 32) _____
- decide whether or not the company owed a duty of care to Dinar. Which of the following statements is TRUE?
- A) The judge will require proof that someone within the company actually realized, as a matter of reasonable foreseeability, that someone might be hurt in the way that Dinar was hurt.
- B) The judge will require proof that the accident that injured Dinar was a probable outcome of the company's activities.
- C) While policy considerations may affect the measure of damages, it cannot affect the existence of a duty of care.
- D) Depending upon the availability of precedents, the judge may not need to consider the full duty of care test.
- E) Dinar must sue a person associated with Alpha Inc, rather than suing the company itself.
- 33) A Canadian court will determine the existence of a duty of care by 33) _____
- examining the factors of
- A) reasonable foreseeability, proximity, and policy.
- B) reasonable foreseeability, policy, and intention.
- C) proximity, policy, and intention.
- D) proximity, principle, and policy.
- E) precedent and practicality.

- 34) Zoe was injured last New Years Eve in a traffic accident that was caused by Miles. The accident would not have occurred if Miles had not been drunk. Because Miles has no assets and is not worth suing, Zoe has instead sued Davis, who was in control of the premises where Miles became drunk. The judge must determine whether or not Davis owed a duty of care to Zoe. Which of the following statements is TRUE? 34) _____
- A) A duty is less likely to be imposed if, without Davis' knowledge, Zoe also had been drinking alcohol immediately before the accident.
 - B) A duty of care is more likely to be imposed if liability in this case is likely to open the floodgates to litigation against private citizens who host informal parties in their own homes.
 - C) A duty is less likely to be imposed if the employee at Davis' tavern, who served alcohol to Miles, has liability insurance.
 - D) A duty is less likely to be imposed if Davis knew, on the basis of past experience, that Miles was likely to drive himself home after becoming drunk.
 - E) A duty of care is more likely to be imposed if Davis owned a commercial tavern where Miles became drunk.
- 35) Nelson has sued Shaniqua under the tort of negligence. A duty of care is most likely to be recognized by a court if 35) _____
- A) Nelson was injured by Shaniqua's carelessness while she carried him during pregnancy.
 - B) Nelson lost his entire retirement fund because Shaniqua, who had been appointed by the government to regulate investment brokers, had carelessly failed to notice that Nelson's broker was dishonest.
 - C) Nelson suffered his injuries mostly because Shaniqua, who was a complete stranger at the relevant time, refused to take simple and safe steps to rescue him from a danger that she had not created.
 - D) Nelson suffered a pure economic loss as a result of relying upon a financial statement that Shaniqua had prepared for private use by another person.
 - E) Nelson was injured by a driver who had become visibly intoxicated while drinking to excess at Shaniqua's tavern.
- 36) Which of the following statements is TRUE with respect to the test that Canadian judges apply to determine the existence of a duty of care? 36) _____
- A) Proximity concerns usually relate to the effect that a duty of care would have on society generally.
 - B) The fear of opening the floodgates is usually addressed under the heading of reasonable foreseeability.
 - C) The fear of interfering with political decisions is usually addressed under the heading of proximity.
 - D) Policy concerns usually relate to the relationship between the parties.
 - E) Canadian judges recently switched from a two-part test to a three-part test.
- 37) Arsenio was injured by a product that had been manufactured by Magic Enterprises Inc. Which of the following statements is TRUE with respect to Arsenio's claim against the company for product liability? 37) _____
- A) because liability for defective products in Canada is strict, Arsenio need not prove that Magic acted carelessly
 - B) The learned intermediary rule will apply if Arsenio uses a lawyer to bring his claim against the company.
 - C) The company may be held liable in contract, but not tort, if Arsenio bought the harmful product directly from the company.

- D) If Arsenio's injury occurred after he used the company's product in an improper way, there is no chance that the company will be held liable.
- E) It will be easier for Arsenio to win in his claim for product liability if his claim is based on an allegation of careless manufacture, rather than careless design.

- 38) Sarah sued Jerry and Tom in negligence. A court held that Jerry and Tom were jointly and severally liable. That means that 38) _____
- A) Sarah must collect half of her damages from Jerry and the other half from Tom.
 - B) Sarah is entitled to collect all of her damages from Tom, even if Jerry had acted with greater carelessness in causing her injuries.
 - C) Sarah must collect her damages from assets that Jerry and Tom own together.
 - D) Sarah must have suffered at least two distinct injuries.
 - E) Jerry and Tom must have acted together to create a single danger.
- 39) Which of the following statements is TRUE with respect to the standard of care that is applied to professionals? 39) _____
- A) An error of judgment constitutes a breach of the standard of care.
 - B) A judge will assess a professional's conduct in comparison to the "best practices" that exist within a profession at the time of trial.
 - C) More than usual is expected of specialists and less than usual is expected of beginners.
 - D) A professional may be held liable despite acting in compliance with an approved practice.
 - E) Because there is no separate tort of breach of a statutory duty, a court cannot consider the effect of a statute when it formulates the standard of care. 6.
- 40) Kirsten recently went through breast implant surgery. As a result of a rare occurrence, one of the implants ruptured and leaked harmful fluid into her body. Kirsten has sued the manufacturer of the implant under the tort of negligence. That manufacturer 40) _____
- A) will not be held liable if it issued a warning of that relevant risk to Kirsten's physician, even if it did not warn Kirsten herself.
 - B) cannot be held liable to Kirsten unless she personally paid it for the implant.
 - C) is subject to strict liability because its products are so dangerous.
 - D) can escape liability under the learned intermediary rule if it can prove that Kirsten could have discovered the risk if she had done sufficient research.
 - E) will not be held liable unless the implant was carelessly designed.

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

- 41) A duty of care may be imposed on a person, but not on a corporation. 41) _____
- 42) As a general rule, liability cannot be imposed under the tort of negligence if the defendant carelessly made a statement that caused the plaintiff to suffer a physical injury. 42) _____
- 43) Omikron Ltd hired Mekhi, a recent graduate from law school, to act as its lawyer in a business transaction. Omikron suffered a substantial financial loss as a result of a mistake that Mekhi made. Nevertheless, Mekhi cannot be held liable for the tort of negligence if he acted as a reasonable person with a similar level of experience would have acted, even if a more experienced lawyer probably would have acted differently. 43) _____

- 44) Shakira was injured by the explosion of a widget that was manufactured by Delta Corp. The evidence indicates that Delta was not careless with respect to the manufacture or design of the widget, nor did the company carelessly fail to issue a warning regarding the danger of explosion. Nevertheless, Delta may be held strictly liable to Shakira on the basis of some other cause of action if she bought the widget from the company. 44) _____
- 45) Maura was injured by the unexpected explosion of a widget that was manufactured by Theta Ltd. As a general rule, it will be easier for Maura to prove a claim in negligence against Theta if the explosion was caused by the negligent manufacture, rather than the negligent design, of the widget. 45) _____
- 46) Aisha suffered a stroke after consuming allergy medicine manufactured by Upsilon Inc. The evidence indicates that the stroke was caused by the combined effect of the medicine and Aisha's poor diet. The evidence also indicates that the stroke would not have occurred unless *both* of those factors was present. Finally, the evidence indicates that the medicine was 40 percent to blame for the stroke, while Aisha's poor diet was 60 percent to blame. The court held that Upsilon negligently failed to warn Aisha of the risk that its medicine could cause a stroke. If the total value of Aisha's losses is \$100 000, she will be entitled to receive \$100 000 from Upsilon. 46) _____
- 47) Maritza suffered a heart attack after consuming cold medicine manufactured by Omega Inc. The evidence indicates that there is a 75 percent chance that Maritza's heart attack was caused by the medicine and a 25 percent chance that it was caused by Maritza's poor diet. The court held that Omega negligently failed to warn Maritza of the risk that its medicine could cause a heart attack. If the total value of Maritza's losses is \$100 000, she will be entitled to receive \$75 000 in damages from Omega. 47) _____
- 48) Alpha Corp recently suffered two losses. First, as a result of the carelessness of its financial adviser, Jewel, it lost \$100 000 when it invested in worthless shares. Second, in a separate incident, it lost \$50 000 when its lawyer, Maia, failed to file a certain document at the land registry office on time. Both Jewel and Maia are liable to Alpha for the tort of negligence. Under the doctrine of joint and several liability, Alpha is entitled to claim \$150 000 from Jewel, and Jewel would then be entitled to claim \$50 000 in contribution from Maia. 48) _____
- 49) Ocala Corp operated a factory that caused corrosive particles to drift in the air and land on a building that was owned by Broderick Inc. Those particles damaged the roof of the building. The damage could have been repaired immediately at a cost of \$250 000, but Broderick did not have the money necessary to do so. It therefore sued Ocala in negligence. By the time the trial ended several years later, inflation had run rampant and the cost of repairing Broderick's roof has increased to \$900 000. Because of the modern approach to the "thin wallet" rule, Ocala cannot possibly be held liable for more than \$250 000. 49) _____

- 50) Jane carelessly caused an accident that resulted in Perry's leg being broken. Perry subsequently suffered a broken arm when he fell down a flight of stairs. Perry satisfied the judge, on the basis of expert evidence, that it is common for people who are wearing leg casts to fall more often than usual. That is true even for people who reasonably take extra precautions while wearing leg casts. Jane consequently may be held liable for Perry's broken leg and his broken arm. 50) _____
- 51) The courts use the test of reasonable foreseeability to determine whether or not the defendant is legally responsible for the effects of an intervening act. 51) _____
- 52) The defence of contributory negligence may apply even if the plaintiff carelessly contributed to the severity of the injuries that he or she suffered, but not to the actual occurrence of the accident that caused those injuries. 52) _____
- 53) Danica was injured as a result of an accident that also involved Elmer and Lloyd. The judge found that all three parties had acted carelessly, and that Elmer and Lloyd were jointly and severally liable. The judge also found that Danica was 50 percent to blame for her injuries, while Elmer was 30 percent to blame and Lloyd was 20 percent to blame. The losses caused by Danica's injuries are valued at \$100 000. Danica may be able to recover more than \$30 000 from Elmer if Lloyd is unable to pay anything because of his extreme poverty. 53) _____
- 54) After paying a price of \$50, Mustaffa jumped off a low bridge while tied to a bungee cord that was operated by X-Adventure Inc. He was injured when the bungee cord broke and he fell to the ground. X-Adventure denies liability on the basis of a document that Mustaffa carefully read and signed before jumping from the bridge. The relevant portion of that document said that Mustaffa accepted the "physical risk of injury." A court will probably reject Mustaffa's claim in negligence on the basis of the defence of voluntary assumption of risk. 54) _____
- 55) In determining whether or not the defendant can escape liability on the basis of the defence of illegality, a court is most influenced by the extent to which the plaintiff's illegal act involved violence or the threat of violence. 55) _____

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

- 56) Identify and briefly explain the primary social tension that the cause of action in negligence attempts to resolve. How is the flexibility of the action in negligence related to the resolution of that tension?
- 57) Gamma Corp carelessly allowed its factory to spew toxic chemicals into the environment. Gamma Corp's factory is located near a park. Mary often visited that park while she was pregnant with Antonio. Antonio was born with a severe disability. That disability was caused by one of two factors: the toxic chemicals that Gamma Corp's factory emitted or the cigarettes that Mary smoked during her pregnancy. Mary chose to chain-smoke during her pregnancy despite knowing the risks that her behaviour presented for her unborn child. Can Antonio recover compensatory damages if the evidence proves that his disability was caused by Gamma Corp? Can he recover compensatory damages if the evidence proves that his disability was caused by his mother's smoking? Provide the best explanation for your answer.

- 58) Leia was injured in a car accident with Hakim. At trial, Hakim admits that he crashed into Leia's vehicle, but he insists that he should not be held liable because, at the time of the accident, he was suffering from a form of mental illness that deprived him of control over his actions. The expert evidence supports Hakim's version of events, but it also reveals that Hakim is now fully cured of his illness. Will Hakim be held liable to Leia?
- 59) Explain the two-fold significance of the decision in *Donoghue v Stevenson*.
- 60) Jinyan wants to start a new Internet service provider business. Before she does so, however, she wants to ensure that she will be able to afford liability insurance premiums. In that regard, she wants to know how the test of reasonable foreseeability affects the issue of risk management. She has heard conflicting statements. Some suggest that the concept of reasonable foreseeability protects business people from liability. Others suggest that the same concept can unexpectedly lead to the imposition of liability. Which statement is true? Explain your answer.
- 61) Identify and briefly explain three ways in which careless statements are significantly different, in a legal sense, than careless actions.
- 62) Under the terms of a contract, Abigail provided accounting services to Theta Inc. Those services culminated in the production of a financial statement. Unfortunately, Abigail did her job carelessly and the financial statement was inaccurate. Raekwon, who is a shareholder in Theta Inc, suffered a loss after relying upon the financial statements that Abigail prepared. He has sued her for negligence. Identify and briefly explain the factors that a court will consider in deciding whether or not Abigail owed Raekwon a duty of care.
- 63) Shamar works as a financial adviser. He was recently asked by the Upsilon Corp to produce a report. Because Upsilon Corp is involved in a highly complex and highly volatile field, Shamar is very concerned about making a mistake and being held liable. The company is sympathetic to that concern, and is therefore willing to make some concessions in its contract with Shamar. Assuming that he wants to perform the project, what should he do, from a risk management standpoint, to avoid the possibility of liability. Provide the single best answer to that question.
- 64) Tyrek has sued Cassandra for negligence. The only issue at trial is whether or not Cassandra breached the standard of care. The parties agree that the court must use the reasonable person test, but they cannot agree on the identification of the reasonable person. Is it Tyrek? Cassandra? The judge? Explain your answer and indicate why the law provides that answer.
- 65) Tallal sued Fiona for negligence. She admits that she owed him a duty of care and that she caused his injury. She insists, however, that she cannot be held liable because she did not breach the standard of care. While she committed an act that would, in normal circumstances, be considered clearly careless, she did so while suffering from a severe mental illness. Is it possible for Fiona to escape liability on that basis? Explain your answer.
- 66) Samir has sued Beatrice for the negligent performance of a professional service. How is Beatrice's status as a professional person relevant to the standard of care? Would it matter if she was a novice at the time of the accident? What if she was an expert? What if she falsely claimed to be an expert? Explain your answers.
- 67) Indira has informed the Bogus Corp that she intends to sue it for product liability, but she has not yet provided details of her claim. The company is curious as to whether she is claiming negligent manufacture or negligent design. What is the factual difference between those two possibilities? What is the legal difference?

Which type of claim do courts approach more carefully?

- 68) "Liability in negligence is an all-or-nothing proposition." Is that statement true? How is that statement related to the concept of a "balance of probabilities"? Explain your answers.
- 69) Thalia has sued Pi Inc for negligence. The company admits liability, but can prove that most of Thalia's damages stemmed from the fact that she could not financially afford to mitigate her losses in a timely manner. The company therefore insists that it should not be held liable for those losses. How would a modern court resolve that issue?
- 70) What is the difference between a complete defence and an apportionment defence? Provide an example of each. Which type of defence do courts prefer? Explain your answer.

- 1) C
- 2) B
- 3) D
- 4) D
- 5) C
- 6) E
- 7) D
- 8) D
- 9) A
- 10) D
- 11) B
- 12) D
- 13) A
- 14) B
- 15) E
- 16) B
- 17) E
- 18) A
- 19) A
- 20) E
- 21) E
- 22) D
- 23) B
- 24) A
- 25) E
- 26) D
- 27) C
- 28) D
- 29) B
- 30) B
- 31) C
- 32) D
- 33) A
- 34) E
- 35) E
- 36) E
- 37) E
- 38) B
- 39) D
- 40) A
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) TRUE
- 45) TRUE
- 46) TRUE
- 47) FALSE
- 48) FALSE
- 49) FALSE
- 50) TRUE
- 51) TRUE
- 52) TRUE
- 53) TRUE
- 54) FALSE
- 55) FALSE
- 56) The law of negligence is often pulled in opposite directions.
 - On the one hand, it is desirable to compensate the plaintiff for losses that he or she has suffered. That statement has obvious normative appeal. Moreover, without

compensation, the plaintiff may not be able to be a fully functioning and productive member of society.

- On the other hand, it is desirable to treat defendants fairly and to protect socially useful activities from liability. A defendant should not be held liable unless it can properly be blamed for the plaintiff's loss. Moreover, there is a danger that some socially useful, though admittedly dangerous, activities may be eliminated if liability is imposed too readily. Rational actors will avoid such activities for fear of being held responsible. And in extreme cases, when the risk of liability is particularly pronounced, liability insurance may be prohibitively expensive or simply unavailable.

The cause of action in negligence is well-suited to allowing judges to resolve that tension. Although that claim invariably requires proof of three elements (duty of care, breach, and causation of harm), it relies heavily upon tests and concepts that are flexible enough to generally allow courts to arrive at appropriate solutions on a case-by-case basis. That is particularly true with respect to the notion of "reasonable foreseeability," which is used, in one form or another, with respect to the duty of care, the standard of care, and remoteness of damage. The notion of reasonable foreseeability is highly malleable and consequently, without improper manipulation, can be used to sensitively resolve the tensions inherent in a negligence action.

- 57) This question requires students to appreciate the role that policy factors play in the recognition of a duty of care. The short answer to the question is that Gamma Corp can be held liable if its carelessness caused Antonio's disability, but liability cannot be imposed on Mary if Antonio's disability is attributable to her decision to smoke during pregnancy. There is no difference between the two cases in terms of reasonable foreseeability. Indeed, if anything, the claim may be stronger in that regard against Mary than it is against Gamma Corp. However, as discussed in Ethical Perspective 6.1, the Supreme Court of Canada held in *Dobson v Dobson* that a duty of care may be owed toward a child who is subsequently born with a disability by anyone in the world *except* his mother. The Court decided that it would be unfair and improper to subject a pregnant woman to constant scrutiny during pregnancy. Because everything that a pregnant woman does may affect her unborn child, the recognition of a duty of care arguably would impose an intolerable burden. That consideration does not apply, however, with respect to third parties, like Gamma Corp.
- 58) As a general rule, the standard of care requires the defendant to act as the reasonable person would act in similar circumstances. As a result of that general rule, it normally is impossible for the defendant to escape liability by proving that, as a result of a mental disability, he was unable to meet the usual standard. However, an exception to that rule applies if the defendant suffered from a mental illness that was so severe as to deprive him of the ability to control his actions. That is true in this case. Moreover, because the issue of breach is assessed at the time of the accident, and not at the time of trial, it is irrelevant that Hakim has now recovered from his illness.
- 59) *Donoghue v Stevenson* is significant for two related reasons.
- First, it created a generalized duty of care for negligence. Historically, the plaintiff could succeed in an action for negligence only if the facts fell within a previously recognized category (e.g. physician-patient, innkeeper-traveler, railway-passenger). In *Donoghue v Stevenson*, however, Lord Atkin drew the general principle from those categories and held that the plaintiff could succeed if it satisfied the neighbour principle. That principle states that reasonable care must be taken to avoid acts or omissions that could hurt someone who might, with reasonable foreseeability, be hurt by carelessness.
 - Second, *Donoghue v Stevenson* firmly established the proposition that the manufacturer of a defective product owed a duty of care not only to a customer, but also to a consumer. Earlier cases indicated that the victim of a defective product could recover compensatory damages only if it contractually purchased the item. *Donoghue*, however, held that relief may be available, regardless of privity of contract, to anyone injured by a defective product.
- 60) Both statements are true. The concept of reasonable foreseeability pertains to the issues of duty of care, standard of care, and remoteness of damage. It can both help and hurt a business.

On the positive side, the concept of reasonable foreseeability means that Jinyan will not be liable for every loss that she inflicts, even if she acts carelessly. For instance, she is entitled to be as careless as she pleases, as long as she does not owe a duty of care to an injured person. Likewise, even if she owed a duty of care, breached the standard of care, and in fact caused a plaintiff to suffer a loss, she will be relieved of liability if the plaintiff's damage was too remote from her carelessness. She is responsible only to the extent that the plaintiff's loss was a reasonably foreseeable consequence of her conduct.

On the negative side, the concept of reasonable foreseeability can be unforgiving. As long as the notion of reasonable foreseeability is satisfied, Jinyan may be held liable even if she honestly did her best. For instance, as a novice Internet service provider, she may not be aware of the various ways in which her business can harm others. She nevertheless may be held liable if a reasonable Internet service provider would have recognized the danger. The notion of reasonable foreseeability is objective, and therefore does not generally make allowances for the defendant's subjective inadequacies (however understandable).

Finally, it should be noted, from a risk management perspective, that the reasonable foreseeability test is open-ended and consequently somewhat unpredictable. Given its inherent flexibility, it can often be judicially manipulated to secure a result that is, in the judge's perception, appropriate. Of course, it may be difficult in advance to predict how an individual judge will respond to the facts, the evidence, and the witnesses. As a result, it may be difficult to know whether or not liability will be imposed. The prudent approach therefore is either to act with additional caution, or at least to acquire sufficient liability insurance coverage.

- 61) The courts are much more reluctant to impose a duty of care with respect to careless statements, than with respect to careless actions. The most significant reason for that caution is the fear of "opening the floodgates of litigation," by imposing a duty of care in circumstances that will lead an intolerable number of plaintiffs to claim relief. That fear, in turn, is based on three differences between careless statements and careless actions.
- Since the dangers associated with physical conduct are usually obvious, the need for precautions is normally clear as well. In contrast, since the risks associated with statements are often hidden, the need for care is less apparent. Consequently, people tend to speak loosely, especially in social settings.
 - As said in *Hedley Byrne & Co v Heller & Partners Ltd*, "[w]ords are more volatile than deeds." In most situations, the risk created by a careless action is limited in time and space. The threat created by a drunk driver is generally limited to the motorists and pedestrians in his path. Furthermore, he will likely be stopped once an accident occurs. In contrast, if a duty of care exists for a careless statement, there is a danger of "liability in an indeterminate amount for an indeterminate time to an indeterminate class," in the words of *Ultramares Corp v Touche*. For instance, a financial report created for personal purposes may be mistakenly distributed to the public. If it contains inaccurate information, many people may later rely upon it and suffer financial losses when they make bad investments.
 - Finally, careless actions usually result in property damage or personal injuries. A negligent driver may crash through a fence or run down a pedestrian. Careless statements, in contrast, usually result in pure economic losses that are not tied to any property damage or personal injuries. For example, if a person follows a stockbroker's negligent advice and makes a poor investment, the only result will be the loss of money. And significantly, the law is more reluctant to provide compensation for pure economic losses, than for property damage or personal injuries. Some things are more important than others.
- 62) Raekwon's claim will be governed by *Hercules Management Ltd v Ernst & Young*, which was discussed in Case Brief 6.2. As always, the existence of a duty of care depends upon two factors: reasonable foreseeability and policy considerations. However, because the claim is based on a negligent statement giving rise to a pure economic loss, the court will proceed with extra caution.

The first part of the test requires proof that it was *reasonably foreseeable* that Raekwon would suffer a loss as a result of Abigail's careless production of a financial statement. A duty of care is more likely to be imposed with respect to a statement in the following situations.

- Abigail possessed, or claimed to possess, *special knowledge*. That seems to be true because she was hired to provide accounting services. She presumably was an accountant.
 - Abigail's statement was communicated on a *serious occasion*. That is true because it was contained within a financial statement.
 - Abigail's statement was made in response to *an inquiry*. That was true because it was rendered pursuant to a contractual request.
 - Abigail received a *financial benefit* in exchange for the statement. That presumably was true because the statement was rendered pursuant to a contract.
 - Abigail communicated a *statement of fact*, or an *opinion or prediction based on fact*, rather than a purely personal opinion. That presumably was true of the financial statement.
- In contrast, a duty of care is less likely to be imposed in the following situation.
- Abigail issued a *disclaimer* along with her statement. Such a disclaimer might have been contained in her contract with Theta Inc.

Given the facts of the case, it probably was reasonably foreseeable that Raekwon might suffer a loss as a result of relying upon Abigail's carelessly prepared financial statement.

At the second stage of the duty of care analysis, a court would be concerned about indeterminate liability and the prospect of opening the floodgates of litigation. It would recognize a duty of care only if two factors are met.

- Abigail knew that Raekwon (either individually or as a member of a defined group) might rely upon the statement, and
- Raekwon relied upon that statement for its intended purpose.

The first branch of that test could probably be satisfied. There are insufficient facts, however, to determine whether or not the second branch could be met. In that regard, a court would have to know the purpose for which Abigail prepared the financial statement.

- 63) Shamar should protect himself by inserting a disclaimer clause into his contract with Upsilon Corp. That clause would relieve him of liability even if he owed a duty of care, breached the standard of care, and thereby caused the company to suffer a loss. Liability is possible only if it would be reasonable for the company to rely on Shamar's report. A reasonable person, however, does not rely upon a report that was created by a financial adviser who was unwilling to accept responsibility.
- 64) The reasonable person is not Tyrek, Cassandra, or the judge. It is a fictional character that the courts use to determine whether or not the defendant acted with requisite care with respect to the plaintiff. The reasonable person test is generally objective, rather than subjective. That means that while it will reflect the circumstances of the case, it generally will not make allowances for Cassandra's idiosyncrasies. It will, however, require her to live up to any special training or expertise that she has or claimed to have. A reasonable person, after all, does not ignore such qualities.

The objective reasonable person test is used to strike a fair balance between the parties' interests.

- It would be unfair to hold Cassandra liable for *every* injury that she inflicted upon Tyrek. More specifically, it would be improper to hold her liable for an injury that was not reasonably foreseeable. She would not have any practical means of protecting herself against liability in such circumstances. There is no way of knowing how to avoid an unforeseeable risk. Nor is there any way of sensibly arranging liability insurance.

- At the same time, it would be unfair to subject Tyrek to Cassandra's personal shortcomings. Tyrek is entitled to assume that members of the community, like Cassandra,

will at least live up to the standard of the reasonable person. Her deficiencies should not be his problem.

- 65) The reasonable person test is used to determine the standard of care. That test is primarily objective. While it reflects the circumstances of the case, it generally does not make allowances for the plaintiff's idiosyncrasies. Consequently, if Fiona merely suffered from a mild or moderate mental illness, she could still be held liable to Tallal. She would not be permitted to place the burden of her own inadequacies upon him. He is entitled to assume that every one in the community will act reasonably.

As mentioned in footnote 13 of the text, however, an exception may be made if Fiona's mental illness is so severe as to deprive her of any control over her actions. In such circumstances, it is thought to be morally improper to impose liability upon a person who effectively was without volition.

- 66) In one sense, the standard of care is always the same: the defendant must act as a reasonable person would act *in similar circumstances*. The italicized words, however, introduce an element of flexibility that allows a court to tailor the contents of the standard of care to the actual facts of a case. Consequently, as a professional person providing a professional service, Beatrice must have done more than would be expected of a reasonable layperson. She must have acted as the reasonable professional would have acted.

As generally is true, the reasonable person test does not make allowances for the professional's inadequacies. A customer is entitled to expect services of a reasonably high quality. Consequently, Beatrice could not escape liability by proving that she satisfied the standard of a reasonable novice. Her inexperience is not Samir's problem.

On the other hand, if Beatrice was an expert, she would be required to live up to that elevated standard. A reasonable professional does not ignore special training when providing professional services.

Finally, the same would be true if Beatrice falsely claimed to be an expert. As a reasonable person, she must expect that Samir would rely upon that purported expertise.

- 67) Negligent manufacture occurs when the defendant committed an act of carelessness in the actual creation of a product. For instance, in *Donoghue v Stevenson*, a snail was allowed to crawl into a bottle of ginger beer before capping. In contrast, negligent design occurs when the defendant committed an act of carelessness when drawing up the plans for a product. That would be true, for instance, if a car company failed to realize that the gas tank on a particular model of vehicle was susceptible, in the event of an accident, to being punctured by a nearby bolt.

Both forms of negligence can result in liability. The courts are more cautious, however, when dealing with the latter. The reason turns on the fear of opening the floodgates of litigation. An instance of negligent manufacture is relatively less likely to affect every item that the defendant produced. There is no evidence, for instance, that every bottle of Mr Stevenson's ginger beer contained a snail. (Indeed, it has long been rumored that there never was a snail, and that the parties simply concocted the facts in order to get the case before the House of Lords.) In contrast, there is a strong possibility that negligent design will affect every item that the defendant produced. After all, every item presumably was built to the same, careless specifications.

- 68) The opening statement is generally true. Subject to the effects of the defence of contributory negligence, the plaintiff in a negligence action recovers damages with respect to either all or none of its recognized losses.

The right to recovery depends upon proof of the elements of the cause of action in negligence (duty of care, breach, causation of harm) on a balance of probabilities. If there is at least a 51 percent chance that the defendant's negligence caused the plaintiff's loss, then the court will award damages for *all* of that loss. In contrast, if there is less than a 51 percent chance that the defendant's negligence caused the plaintiff's injury, then the court

will not award damages for *any* of that loss.

- 69) The facts raise the thin wallet rule. That rule is related to the thin skull rule. Both concepts fall under the rubric of remoteness.

The thin skull rule applies when the defendant acts carelessly and the plaintiff suffers to an unusual extent because she was unusually vulnerable to injury. That would be true, for instance, if the plaintiff literally had a thin skull, with the result that she suffered brain damage, rather than merely the sort of bruising that would be reasonably expected, when the defendant hit her with a stick. The general rule is that the plaintiff is entitled to receive damages with respect to the *full extent* of her injury, as long as it was reasonably foreseeable that a normal person would suffer *some loss* as a result of the defendant's carelessness.

Traditionally, however, the courts refused to extend that reasoning by analogy and to adopt a thin wallet rule. In other words, the defendant was not responsible for losses that the plaintiff suffered because the plaintiff was, in an economic sense, unusually vulnerable to loss. The typical case involves a situation in which the defendant carelessly inflicted a loss that a normal victim would immediately pay money in order to mitigate. The plaintiff suffered an unusually large loss, however, because it was unable to afford mitigation. The losses flowing from the defendant's carelessness consequently continued to grow.

More recently, however, the courts have begun to subsume the thin wallet cases into the general rules for remoteness of damage. Consequently, Thalia may be entitled to recover damages to the extent that her losses were reasonably foreseeable to Pi Inc before the company acted carelessly.

- 70) Voluntary assumption of risk and illegality are complete defences. The statutory form of contributory negligence is an apportionment defence.

If effective, a complete defence precludes the plaintiff from recovering *any* damages. In contrast, if effective, an apportionment defence allows the court to split the plaintiff's loss between the parties. The courts much prefer the latter because it allows for a more sensitive balancing of the parties' interests. The plaintiff is not invariably denied all recovery because of what may be, in the circumstances, a relatively insignificant consideration. For that reason, the defences of voluntary assumption of risk and illegality have been very narrowly confined by the Supreme Court of Canada. Those defences apply only in exceptional circumstances. Contributory negligence, in contrast, is applied quite often.