

1. Mark intentionally pushes Don. Don falls to the ground and breaks his arm. Mark is liable for the injury
  - a. only if Mark did not intend to break Don's arm.
  - b. only if Mark had a bad motive for pushing Don.
  - c. only if Mark intended to break Don's arm.
  - d. if Mark intended to push Don.
  
2. Jill accuses of Ken of committing an assault. A person commits an assault if he or she creates in another an apprehension or fear of
  - a. future harm.
  - b. immediate harm.
  - c. past harm
  - d. past, present, or future harm.
  
3. Alan writes Beth a private letter falsely accusing her of stealing office supplies from their employer, Consolidated Industries, Inc. This is
  - a. defamation, but not libel or slander.
  - b. libel.
  - c. slander.
  - d. none of the above.
  
4. Joe is a used-car salesperson. Joe commits fraud if, to make a sale, he
  - a. represents as a fact something he knows is untrue.
  - b. states an opinion concerning something about which he knows nothing.
  - c. uses puffery, or seller's talk.
  - d. all of the above.
  
5. As a joke, Adam takes Beth's business law book and hides it so that Beth cannot find it during the week before the exam. Adam may have committed
  - a. conversion.
  - b. infliction of emotional distress.
  - c. placing a person in a false light.
  - d. trespass to personal property.

6. If a person breaches a duty of care and another person suffers an injury, the breach must have caused the harm for liability to result.
7. In many states, the plaintiff's negligence is a defense that may be raised in a negligence suit.
8. Negligence per se may occur on the violation of a statute.
9. Kelly is injured when she slips and falls on Lee's sidewalk. To determine whether Lee owed a duty of care to Kelly, Lee is subject to the standard of
  - a. a realistic person.
  - b. a reasonable person.
  - c. a recognizable person.
  - d. a reliable person.
10. Lana hires Mike, an architect, to design a warehouse. Lana is dissatisfied with the look of the new building and sues Mike, alleging negligence. Mike can successfully defend against the suit by proving that
  - a. he is not familiar with every principle of art.
  - b. his design is as attractive as an ordinary person's.
  - c. Lana could not have designed a more attractive building.
  - d. Lana was not injured in any way.
11. Ira is injured when he slips and falls in Jolly Breakfast Cafe. Ira files a suit against Jolly for \$50,000. If Ira is 20 percent at fault and Jolly is 80 percent, under a contributory negligence doctrine, Ira would recover
  - a. \$0.
  - b. \$25,000.
  - c. \$40,000.
  - d. \$50,000.

12. Frank is injured when he slips and falls in Gail's Harbor Tour Boat. Frank files a suit against Gail's for \$50,000. If Frank is 20 percent at fault and Gail's is 80 percent, under Texas rule of comparative negligence principles, Frank would recover
  - a. \$0.
  - b. \$25,000.
  - c. \$40,000.
  - d. \$50,000.
  
13. Under the objective theory of contracts, the intention to enter into a contract is judged by outward, objective facts as interpreted by a reasonable person.
  
14. A contract can be created only when an offer is accepted by the offeree's performance.
  
15. An express contract must be in writing.
  
16. Owen claims that Paula breached their contract. Paula asserts that they had no contract. In deciding whether a contract was formed, a court would not look at
  - a. the circumstances surrounding the alleged contract.
  - b. the parties' conduct at the time of the alleged contract.
  - c. the parties' statements at the time of the alleged contract.
  - d. the parties' subjective beliefs at the time of the alleged contract.
  
17. Jill offers to pay Ken \$500 if he jogs across the Golden Gate Bridge. Ken can accept the offer only by jogging across the bridge. If Ken jogs across the bridge, he and Jill will have formed
  - a. a bilateral contract.
  - b. a moral obligation.
  - c. a social contract.
  - d. a unilateral contract.

18. Which contracts do not arise from a mutual agreement but are imposed by a court to avoid unjust enrichment?
  - a. Express contracts
  - b. Implied contracts
  - c. Quasi contracts
  - d. Unilateral contracts
  
19. If an ad to sell a single item gets more than one acceptance, the offeror must sell the item to each party who accepted or be liable for breach of contract.
  
20. An auction with reserve is one in which the seller cannot withdraw the goods at any time before the auctioneer closes the sale.
  
21. If an acceptance materially changes an offer, the acceptance may be held to implicitly reject the offer.
  
22. Janet tries to start her car with no success. She yells in desperation that she would sell the car to anyone for \$100. Bill, a passerby, hands Janet \$100. Bill's act
  - a. constitutes a valid acceptance.
  - b. constitutes a valid acceptance only if Janet and Bill already know each other.
  - c. does not constitute a valid acceptance, because \$100 is not be a fair price for the car.
  - d. does not constitute a valid acceptance, because Janet does not seriously intend to sell the car.
  
23. Sam announces that he plans to sell his business at a price below its market value. Tina gives Sam a check for the stated amount. Sam
  - a. is bound to sell his business to Tina.
  - b. may refuse to accept the check, because he only expressed an intent to do something in the future.
  - c. may refuse to accept the check, because he only expressed an opinion as to the worth of the business.
  - d. may refuse to accept the check, because he only expressed a willingness to discuss a possibility of entering into a contract.

24. Bob offers to sell Carol his computer but conditions the sale on Carol accepting the offer by May 1. Bob may revoke the offer
- a. before Carol accepts the offer.
  - b. before May 1, whether or not Carol has accepted the offer.
  - c. only after Carol accepts the offer.
  - d. only after May 1.

## Chapter 6 – Intentional torts

The following are the answers to 2 questions which can be found in the questions following chapter 6 of the text.

6-3A. (Chapter 6—Pages 128–131)

(a) Gerrit committed two types of trespass: a trespass on ABC's land and a trespass of ABC's personal property, called a tort of conversion. ABC must establish Gerrit as a trespasser before rights, duties, and liabilities under trespass law apply. A person can be expressly established as a trespasser by notice, such as a sign, or impliedly, such as by entering the premises to commit an illegal act. When Gerrit first entered the premises, he was not a trespasser. When Steward ordered him off the premises, ABC established Gerrit as a trespasser. When Gerrit took ABC's tools without consent or privilege, he denied ABC its right of exclusive possession and use of its personal property. This created a trespass of personal property and a conversion. ABC can legally force Gerrit to return the tools or be liable for any damages or loss, or both. The claim of back wages owed does not entitle Gerrit to take the tools in payment. Gerrit would have to reduce his claim to judgment and then, if unsatisfied, execute on that judgment by proper levy on ABC's nonexempt property.

(b) If Gerrit is established as a trespasser, ABC has the privilege of removing him through the use of reasonable force without liability for assault and battery. As long as the mechanics used reasonable force, neither they nor ABC as employer can be held liable.

6-4A. (Chapter 6—Pages 126–127)

Chandler might recover damages from Mulcahey for the commission of wrongful interference with a contractual relationship. A corporate officer can be held liable for interference with the contracts of his or her employer if he or she wrongfully and intentionally interferes with an employee's contract right against the employer. In this problem, Mulcahey willfully, intentionally, and purposefully misrepresented facts to Gingras. Mulcahey did not give advice honestly in good faith, but acted in bad faith to further his personal interests. The information that Mulcahey provided to Gingras was false, and

Mulcahey had been given charge of the credit department on Chandler's dismissal.

## Chapter 7 – Negligence and Strict Liability

Discussion questions:

1. In which of the following situations will the acting party be liable for the tort of negligence? Explain fully.

- a. Shannon goes to the golf course on Sunday morning, eager to try out a new set of golf clubs she has just purchased. As she tees off on the first hole, the head of her club flies off and injures a nearby golfer.
- b. Shannon goes to the golf course on Sunday morning. While she is teeing off at the eleventh hole, her golf ball veers off toward a roadway next to the golf course and shatters the windshield of a car.
- c. Shannon's physician gives her some pain medication and tells her not to drive after she takes it, as the medication induces drowsiness. In spite of the doctor's warning, Shannon decides to drive to the store while on the medication. Owing to her lack of alertness, she fails to stop at a traffic light and crashes into another vehicle, causing a passenger in that vehicle to be injured.

Answer: The correct answer is (c). The *Restatement (Second) of Torts* defines negligence as "conduct that falls below the standard established by law for the protection of others against unreasonable risk of harm." The standard established by law is that of a reasonable person acting with due care in the circumstances. Shannon was well aware that the medication she took would make her drowsy, and her failure to observe due care (that is, refrain from driving) under the circumstances was negligent. The answer is not (a) because Shannon

had no reason to believe the golf club was defective, and she could not have prevented the injury by the exercise of due care. The answer is not (b) because there's no indication that Shannon failed to exercise due care when she teed. The risk of a golf ball veering off is a risk inherent to the game of golf, but the presence of a risk is not enough to establish negligence. It must be shown that the defendant failed to exercise reasonable care in regard to that risk.

2. Ruth carelessly parks her car on a steep hill, leaving the car in neutral and failing to engage the parking brake. The car rolls down the hill and knocks down an electric line. The sparks from the broken line ignite a grass fire. The fire spreads until it reaches a barn one mile away. The barn houses dynamite, and the burning barn explodes, causing part of the roof to fall on and injure a passing motorist, Jim. Can Jim recover damages from Ruth? Why or why not?

Answer: There is no question that Ruth's actions breached the duty of reasonable care necessary to park a car on the hill. Furthermore, there is little doubt that Jim has been injured by a roof falling on him and not through his own negligence. Therefore, Jim's major task in defense will be connecting Ruth's breach of duty to his injury. The issue of foreseeability becomes a test of proximate cause, the connection needed for Jim's recovery for damages. In other words, Jim must show that the chain of events was a foreseeable result of Ruth's carelessness.

## Chapter 10 – Introduction to Contract

### Discussion questions

1. Suppose that Everett McCleskey, a local businessperson, is a good friend of Al Miller, the owner of a local candy store. Every day on his lunch hour, McCleskey goes into Miller's candy store and spends about five minutes looking at the candy. After examining Miller's candy and talking with Miller, McCleskey usually buys one or two candy bars. One afternoon, McCleskey goes into Miller's candy shop, looks at the candy, and picks up a \$1 candy bar. Seeing that Miller is very busy, he catches Miller's eye, waves the candy bar at Miller without saying a word, and walks out. Is there a contract? If so, classify it within the categories presented in this chapter.

Answer: The facts presented here indicate the presence of all the elements necessary for a valid contract. There are a serious offer and acceptance, consideration is exchanged (a candy bar for \$1), both parties have capacity, the selling of the candy is legal, and there is no particular form required for this type of contract. Thus, a contract exists and for the reasons given here is classified as valid, enforceable, and informal. In addition, this is a classic case of an implied in fact contract. There is no explicit agreement between the parties. Rather, an agreement is implied by McCleskey's action of waving the candy bar and by his past conduct. By his conduct McCleskey is telling Miller that because the store is crowded, he will pay for the candy bar later. The contract is also bilateral (as opposed to unilateral), because Miller impliedly promises to sell the candy bar to McCleskey in exchange for McCleskey's implied promise to pay. The contract is partially executory, as McCleskey has engaged to pay for the candy bar in the future. Because the contract is for a legal purpose, both parties have capacity, and reality of consent is not an issue, the contract is neither voidable nor void.

2. Janine was hospitalized with severe abdominal pain and placed in an intensive care unit. Her doctor told the hospital personnel to order around-the-clock nursing care for Janine. At the hospital's request, a nursing services firm, Nursing Services Unlimited, provided two weeks of in-hospital care and, after Janine was sent home, an additional two weeks of at-home care. During the at-home period of care, Janine was fully aware that she was receiving the benefit of the nursing services. Nursing Services later billed Janine \$4,000 for the nursing care, but Janine refused to pay on the ground that she had never contracted for the services, either orally or in writing. In view of the fact that no express contract was ever formed, can Nursing Services recover the \$4,000 from Janine? If so, under what legal theory? Discuss.

Answer: If Janine were unconscious or otherwise incapable of agreeing to a contract while she was in the hospital, as presumably she was in the situation described in this problem, she would not have been able to contract for the nursing services that she received. She did obtain a substantial benefit from the provision of those services, however. In this situation, to prevent Nursing Services from recovering from Janine for the services it provided would, in effect, unjustly enrich Janine at the expense of Nursing Services. To prevent injustice, in this and similar cases the law may impose a "fictitious" or implied-in-law contract on the parties. Under this implied contract (called a quasi contract), Nursing Services would be able to recover the value of the services that it provided. If Janine were aware of the provision of services after she was sent home and could reasonably have refused those services, Nursing Services could recover for those services under an implied-in-fact contract. Under this type of contract, the conduct of the parties creates and defines the terms. Thus, in Janine's case, Nursing Services should be able to recover the value of its in-hospital (emergency) services to Janine, as well as for the value of the at-home care.

3. Atencio is confined to his bed. He calls a friend who lives across the street and offers to sell her his watch next week for \$100. If his friend wishes to accept, she is to put a red piece of paper in her front window. The next morning, she places a red piece of paper in her front window. Has a bilateral or a unilateral contract been formed? Explain.

Answer: A bilateral contract is formed. To be accepted, Atencio's offer required only a promise of payment, not actual payment. His neighbor's acceptance was the act of placing a red piece of paper in her front window. In a unilateral contract, a promise is made, on the condition that the other party do a particular act. The performance of the act in question constitutes an acceptance if such performance results in the contract becoming executed (fully performed by the offeree). But here, the actual performance of payment is to take place at a later date. There is no unilateral contract.

## Chapter 11 - Agreement

### Discussion questions:

1. Ball writes Sullivan and inquires how much Sullivan is asking for a specific forty-acre tract of land Sullivan owns. In a letter received by Ball, Sullivan states, "I will not take less than \$60,000 for the forty-acre tract as specified." Ball immediately sends Sullivan a telegram stating, "I accept your offer for \$60,000 for the forty-acre tract as specified." Discuss whether Ball can hold Sullivan to a contract for sale of the land.

Answer: For an offer to exist, the offeror must show a definite intention to make and be bound by the offer. Invitations to trade or negotiate or mere statements of intentions to enter into a contract upon further bargaining do not constitute offers but are instead preliminary negotiations. Thus, any attempted acceptance would not bind the parties to a contract as there is no offer in existence to be accepted. Sullivan stated only a price from which to bargain further, not an intention of a definite commitment to sell at \$60,000. There is no contract between Sullivan and Ball.

2. Sachs, operating a sole proprietorship, has a large piece of used farm equipment for sale. He offers to sell the equipment to Barry for \$10,000. Discuss the legal effects of the following events on the offer:
- a. Sachs dies prior to Barry's acceptance, and at the time he accepts, Barry is unaware of Sachs's death.
  - b. The night before Barry accepts, fire destroys the equipment.
  - c. Barry pays \$100 for a thirty-day option to purchase the equipment. During this period, Sachs dies, and later Barry accepts the offer, knowing of Sachs's death.
  - d. Barry pays \$100 for a thirty-day option to purchase the equipment. During this period, Barry dies, and Barry's estate accepts Sachs's offer within the stipulated time period.

Answer: (a) Death of either the offeror or the offeree prior to acceptance automatically terminates a revocable offer. The basic legal reason is that the offer is personal to the parties and cannot be passed on to others, not even to the estate of the deceased. This rule applies even if the other party is unaware of the death. Thus, Sachs's offer terminates upon Sachs's death, and Barry's later acceptance does not constitute a contract.

(b) An offer is automatically terminated by the destruction of the specific subject matter of the offer prior to acceptance. Thus, Barry's acceptance after the fire does not constitute a contract.

(c) When the offer is irrevocable, under an option contract, death of the offeror does not terminate the option contract, and the offeree can accept the offer to sell the equipment, binding the offeror's estate to performance. Performance is not personal to Sachs, as the estate can transfer title to the equipment. Knowledge of the death is immaterial to the offeree's right of acceptance. Thus, Barry can hold Sachs's estate to a contract for the purchase of the equipment.

(d) When the offer is irrevocable, under an option contract, death of the offeree also does not terminate the offer. Because the option is a separate contract, the contract survives and passes to the offeree's estate, which can exercise the option by acceptance within the option period. Thus acceptance by Barry's estate binds Sachs to a contract for the sale of the equipment.

3. On Thursday, Dennis mailed a letter to Tanya's office offering to sell his car to her for \$3,000. On Saturday, having changed his mind, Dennis sent a fax to Tanya's office revoking his offer. Tanya did not go to her office over the weekend and thus did not learn about the revocation until Monday morning, just a few minutes after she had mailed a letter of acceptance to Dennis. When Tanya demanded that Dennis sell his car to her as promised, Dennis claimed that no contract existed because he had revoked his offer prior to Tanya's acceptance. Is Dennis correct? Explain.

Answer: Yes. For a revocation to be effective, it must be received by the offeree. In this case, because Tanya received Dennis's revocation before her acceptance (it had been received via fax by her office, which is the place she had authorized as the place for such communications to be sent—see the Restatement (Second) of Contracts, Section 68), the offer was effectively revoked. Tanya's acceptance is not valid (although an acceptance becomes effective on dispatch, under the mailbox rule, when sent by authorized means).

## Objective question answers

- |     |   |
|-----|---|
| 1.  | D |
| 2.  | B |
| 3.  | D |
| 4.  | A |
| 5.  | D |
| 6.  | T |
| 7.  | T |
| 8.  | T |
| 9.  | B |
| 10. | D |
| 11. | A |
| 12. | C |
| 13. | T |
| 14. | F |
| 15. | F |
| 16. | D |
| 17. | D |
| 18. | C |
| 19. | F |
| 20. | F |
| 21. | T |
| 22. | D |
| 23. | B |
| 24. | A |