

Please put your name here: _____ and return this sheet.

PROXIMATE CAUSATION TORTS QUIZ

Prof. Bell

NOTE: Choose the one best answer to each question, applying the Restatement of Torts (2d) and relevant case law. As on the MBE, you have 1.8 minutes/answer.

Question 1

Steve, taking a stroll while smoking a cigarette, took a shortcut through a gas station—a location where the law forbids smoking. His exhaled smoke caused Nancy, a patron of the station, to sneeze. Her convulsion caused her to spill a few drops of fuel on her bare leg. She suffered a rare allergic reaction, had to have her leg amputated, and brought a negligence claim against Steve.

- (a) Steve should win because he could not have foreseen the extent of harm Nancy would suffer.
- (b) Steve should win because he could not have foreseen the type of harm he caused.
- (c) Nancy should win because Steve's violation of the law established that he violated a duty.
- (d) Nancy should win because she is a classic "egg-shell" plaintiff.

Question 2

Debbie negligently injured Rob, causing him to spend the night in the hospital. While he was there, a thief saw Rob's house unattended, broke in, and stole his television set. Rob sued Debbie for having negligently caused the loss of his TV.

- (a) Rob should win because he would not have suffered the loss of his TV but for Debbie's negligence.
- (b) Rob should win because Debbie's negligence increased the risk that he would suffer such a theft.
- (c) Debbie should win because the thief's acts introduced an independent cause between her negligence and Rob's loss.
- (d) Debbie should win because her negligence did not create so much of a risk of theft as to render that a foreseeable outcome.

PROXIMATE CAUSATION TORTS QUIZ--ANSWER KEY

1. This question should remind you of such cases as *Kinsman* or *United Novelty*.
 - (a) is wrong because, once having been found liable for negligence, Steve might well have to compensate for unforeseeable harms.
 - (b) is the best answer because Steve is not liable, despite his carelessness *per se*, for harm different in kind from those occasioned by such acts.
 - (c) is wrong because, while Steve did act negligently *per se*, his liability does not extend to unforeseeable types of harms.
 - (d) is wrong because, while Nancy is a classic egg-shell plaintiff, that goes only to show the extent of her recoverable damages; it does not establish liability.

2. This case should remind you of *Bauer*, even though liability should go the other way.
 - (a) is wrong because it concerns but-for causation, whereas proximate causation is the real issue, here.
 - (b) is wrong because, though true, it does not suffice to establish liability.
 - (c) is wrong because, as *Bauer* demonstrated, the introduction of independent agents into the causal chain does not necessarily preclude liability.
 - (d) is right, as it effectively distinguishes this case from *Bauer*.