This examination consists of five multiple choice questions, unrelated to each other except as specifically indicated. Answer each multiple-choice question on the line to the left of the question number in this booklet using upper case letters. Each correct answer is worth four points. Pick the best available answer. There may be no answer you think is completely correct, but part of an attorney’s job is to distinguish promising arguments from less promising arguments.

There are three lines following each alternative in each multiple-choice question. Explain your reason for rejecting each alternative you do not select as the correct answer. You may also want to explain your reason for selecting the alternative that you did pick, since if your selection is incorrect you may earn partial credit for the explanation. You may earn up to two points for each explanation of an incorrect alternative, so there is a total of ten points available for each multiple-choice question.

In stating your explanations, you may use any abbreviation that I can understand just by looking at it. π for “plaintiff” and Δ for “defendant,” for example, are fine. “Corp.” for “corporation” works as well. The only thing I don’t want to have to deal with is some strange symbol or abbreviation for which I need a legend or key to translate.

Do not write more than three lines for any explanation; I will not read extra lines. This requires you to come immediately to the point of what, precisely, is wrong with the suggested alternative. Excessively small handwriting will result in an irate grader evaluating your paper. Please use a pen, not a pencil.

Write your examination number in the space provided at the top of each page of this booklet, to guard against the pages becoming separated and unidentifiable. Do not place any other identifying information anywhere on any examination materials. Violations of the anonymous grading system are serious disciplinary matters, and I must refer any to the Honor Board.

This is a closed-book examination. You may have no materials during the examination. You may not remove any materials from the examination room at any time. Deposit all materials with the proctor if you wish to leave the examination room before completing your examination.

N.B. You should assume that all states operate under the majority rules that we have studied unless a particular question directs you otherwise.

This examination booklet consists of 6 pages, including this page of instructions. Check the booklet now to ensure that you have all of them.
1. Defendant, who has been attempting to extort “protection money” from Plaintiff, visits Plaintiff in his office. Plaintiff indicates his disinclination to pay, upon which Defendant withdraws a gun from his jacket pocket and calmly announces, “Then I shall have to employ regrettably extreme methods until you see the light.” The gun is not loaded. Plaintiff sues Defendant for assault. On these facts, the court should

A. find for Defendant because he had no present ability to fire the weapon, and threats of future harm do not qualify as assault because they lack imminence.

B. find for Plaintiff if Plaintiff did not know the weapon was unloaded and the reasonable person would have apprehended an imminent battery.

C. find for Defendant if Defendant intended only to suggest to Plaintiff that he might shoot at Plaintiff at some undisclosed future time.

D. find for Plaintiff even if he knew that the weapon was unloaded on the ground that Defendant had the present ability to use the weapon as a bludgeon.

THE FOLLOWING FACT PATTERN APPLIES TO QUESTIONS ## 2-3.

Paul takes his prized antique automobile to Demon Motors for service and repairs. Demon performs, but a dispute arises over the amount of the bill. Demon refuses to release the vehicle to Paul until Paul pays the bill, asserting a mechanic’s lien, which, under the law of that state, permits a repairman to retain a vehicle until the customer has paid for the repairman’s services. Paul departs in a huff and consults an attorney. That night, Grudge, a neighbor of Paul’s who long has been nursing an irrational hatred of Paul, enters Demon’s lot, takes the car, and drives it to a hidden location where he intends to keep it in order to make Paul miserable wondering where it is. Paul develops insomnia. One week later,
Grudge returns the car to Paul, having first painted graffiti all over the outside of it. Paul is speechless with rage.

2. If Demon sues Grudge for conversion, Demon should
   A. prevail because Grudge is a thief.
   B. not prevail, because Demon does not own the car.
   C. prevail because Demon had a superior right to possession of the car to Grudge’s, and by returning the car to Paul (and in damaged condition at that), Grudge has destroyed Demon’s possessory interest.
   D. not prevail because Demon’s only proper course in the dispute with Paul was to commence an action against Paul to recover the amount of the disputed repair bill.

3. If Paul sues Grudge for intentional infliction of emotional distress, Paul should
   A. not prevail because he had no right to possession of the vehicle when Grudge took it from Demon’s lot.
B. prevail because Grudge had the requisite intention to commit the tort, and Paul lost considerable sleep thinking that his car had been stolen.

C. not prevail because he suffered no physical harm.

D. prevail if Grudge’s behavior either in secreting the vehicle or in returning it with graffiti all over it constitute extreme and outrageous conduct.

* * *

4. Plaintiff’s decedent perished when the car in which he was a passenger suddenly veered off the paved roadway and overturned in a ditch, killing all inside it. There was no other traffic on the road, and the road was well maintained. The weather was clear, and the roadway was dry. Post-accident examination of the vehicle indicated that the steering and braking mechanisms were in perfect working order at the time of the crash. All of the tires were intact and had plenty of tread left on them. Plaintiff sues the driver’s estate. Is Plaintiff entitled to a res ipsa loquitur instruction to the jury?

A. Yes, because Plaintiff’s decedent’s death leaves Plaintiff no other way to establish the driver’s negligence.

B. No, because the driver’s death means that the driver’s estate does not have superior opportunity for knowledge of the facts surrounding the event.
C. Yes, because cars do not ordinarily crash in the absence of driver negligence when the road is well maintained and there is no apparent mechanical malfunction of the vehicle.

D. No, because it is possible that the driver suffered a sudden illness or other unforeseeable incapacity that rendered him unable to control the vehicle.

5. Hertz leases a vehicle to Daredevil. Daredevil backs the vehicle out of its parking slot in the Hertz lot without checking to see if anyone is there. Bystander suddenly walks behind the vehicle, unaware that it is about to back up because the back-up lights are not functioning. (Assume that Bystander bears no responsibility for the ensuing accident.) Daredevil does not apply the brakes and strikes Bystander, who suffers serious injuries. Subsequent investigation reveals that the brakes were totally non-functional owing to defective maintenance by Hertz. In an action by Bystander against Daredevil and Hertz,

A. Bystander will prevail against both, because both are proximate causes of his injuries.

B. Bystander will prevail against Daredevil only, since the accident would have happened even if the brakes had been in perfect condition because Daredevil did not apply them. Hertz is therefore not even a but-for cause of the accident.
C. Bystander will prevail against Hertz only, since even if Daredevil had observed Bystander and applied the brakes, the accident would have happened as it did. Daredevil is therefore not even a but-for cause of the accident.

D. Bystander will not prevail, because each defendant’s negligence negates the effect of the other’s.