

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

- 1) Francisco parked his car on a street and went shopping. While he was away, Joyce damaged Francisco's car by scratching it with a set of keys. Before she did so, the car was worth \$5000. Afterwards, it was worth \$4000. Which of the following statements is TRUE? 1) _____
- A) A court would probably award Francisco nominal damages worth \$1000.
 - B) Francisco should exercise a right of recaption.
 - C) Joyce has committed a tort in connection with Francisco's chattel.
 - D) Joyce has committed the tort of battery because she made offensive contact with Francisco's personal belongings.
 - E) Joyce has committed the tort of detinue.
- 2) Maureen alleges that Joe committed an intentional tort against her. To succeed in that claim, Maureen must satisfy the court that 2) _____
- A) Joe intended to cause harm.
 - B) Joe intended to act in a certain way, even if he did not know that that action was wrongful.
 - C) Joe knew that the tort in question existed, even if he did not intend to commit it.
 - D) Joe intended to commit some tort, even if it is not the same tort that he actually committed.
 - E) Joe had previously promised Maureen that he would not act in a particular way.
- 3) Marco was secretly in love with Kylie, who is his roommate. Each night as she slept, he gently kissed her once on her lips. Kylie became very upset when she learned about Marco's behaviour. She had always regarded him as a good friend, but nothing more. Which of the following statements is TRUE? 3) _____
- A) Marco has not committed the tort of battery because Kylie did not suffer any physical injury as a result of being kissed.
 - B) Marco has not committed any tort because Kylie was his roommate and because his actions therefore were merely normal social interaction.
 - C) Marco has not committed the tort of assault because Kylie did not suffer any physical injury as a result of being kissed.
 - D) Marco has not committed the tort of assault because Kylie was asleep when he kissed her.
 - E) Marco has not committed the tort of battery because Kylie was asleep when he kissed her.
- 4) Which of the following situations would most likely allow Brian to successfully sue April for the tort of battery? 4) _____
- A) April smashed a bottle against Brian's car while he was asleep in his bed.
 - B) April used a knife to slice a hole in a shirt that Brian was wearing.
 - C) April, who is a security guard, gently tapped Brian on his shoulder to get his attention during a scuffle.
 - D) April aimed a loaded gun at the back of Brian's head without his knowledge.
 - E) After Brian was brought into a hospital in an unconscious condition, April, who is a surgeon, performed a life-saving operation that Brian would have requested if he had been conscious.

- 5) Which of the following situations is most likely to allow Derek to successfully sue Mila for the tort of assault? 5) _____
- A) Mila told Derek that she would kill him at the end of one year if he did not pay \$100 000 to her in the meantime.
 - B) Mila ate a peanut butter sandwich, not knowing that Derek, who was sitting nearby, was terrified because he has a life-threatening allergy to peanuts.
 - C) Mila angrily swung her fist at Derek, but did not actually hit him.
 - D) Mila angrily pointed a gun at Derek, which she thought was unloaded, but which he knew was a toy.
 - E) Mila put poison into Derek's meal without his knowledge.
- 6) Sandra could successfully sue Prem for the tort of 6) _____
- A) trespass of image if, without her authority, he used a picture of her to attract customers to his store.
 - B) detinue if he refused to leave her land after she asked him to do so.
 - C) invasion of privacy if he told a newspaper secret information that she had disclosed to him.
 - D) false imprisonment if he refused to let her into his store.
 - E) battery if he spit on her.
- 7) Which of the following situations would allow Dudley to successfully sue Inga for the tort of false imprisonment? 7) _____
- A) Inga, who works as a security guard in a store, physically detained Dudley after she caught him shoplifting.
 - B) Inga, a bus driver, refused to make an un-scheduled stop for Dudley, even though she easily could have done so.
 - C) Inga, who works as a police officer, detained Dudley after she reasonably, but incorrectly, suspected him of shoplifting.
 - D) Inga, who works as a security guard in a store, verbally coerced Dudley into remaining in a back room after she reasonably, but incorrectly, suspected him of shoplifting.
 - E) Dudley was detained by the police after Inga, who works as a security guard in a store, honestly, but incorrectly told the police that Dudley was shoplifting.
- 8) Which of the following statements is TRUE? 8) _____
- A) A false imprisonment usually occurs though the victim consented to being detained.
 - B) A storekeeper may commit the tort of false imprisonment by directing the police to detain a suspected shoplifter, even if the storekeeper does not personally detain the suspect.
 - C) A restaurant generally has the authority to detain a customer who honestly disputes a bill.
 - D) False imprisonment is just one type of a larger tort that is known as malicious prosecution.
 - E) A false imprisonment occurs even if the alleged victim could easily escape.
- 9) Anna believes that Hugh has infringed her right to privacy. He took a photograph of her sunbathing on a secluded beach, and then published it in a magazine. She has sued him. Which of the following statements is TRUE? 9) _____
- A) Hugh has committed the tort of false imprisonment if Anna is so embarrassed by the photograph that she refuses to leave her house.
 - B) Hugh has committed the tort of conversion because he turned Anna's image into a profit-making scheme.

- C) If Anna wants to sue Hugh for a tort of invasion of privacy, she probably will have to persuade a court to create a new tort of that name.
- D) Every province and territory in Canada has a privacy statute that would allow Anna to successfully sue Hugh for damages.
- E) Hugh has committed the tort of trespass to person.
- 10) Which of the following situations would allow Jocky to successfully sue Lydia for some type of trespass? 10) _____
- A) Lydia, who works for the city as a meter reader, walked into Jocky's backyard even though he had not given her permission to do so.
- B) Lydia, who is a police officer, entered Jocky's house to perform a search warrant.
- C) Lydia took a photograph of Jocky without his permission.
- D) Lydia installed a pool in Jocky's backyard while he was on vacation because she mistook his house for the house of his neighbour, who had requested the pool.
- E) Without actually entering the physical premises, Lydia painted a picture of Jocky's mansion without his permission.
- 11) Anoop owns and operates a movie theatre. Which of the following situations would most likely allow Anoop to successfully sue Samantha for the tort of trespass to land? 11) _____
- A) Samantha, who works for a utility company, walked around the property during the day while the theatre was not open, and without Anoop's knowledge, in search of a gas meter.
- B) Samantha walked up to the front of the theatre to see the movie posters even though Anoop had not expressly given his permission for her to do so.
- C) Samantha, who talked very loudly during a movie, refused to leave after Anoop lawfully asked her to do so and offered to refund the price of her ticket.
- D) Samantha, who had purchased a ticket, refused to accept a refund and leave after Anoop asked her to do so because he objected to her religious beliefs.
- E) Samantha, who had shown her ticket to one of Anoop's employees when she entered the theatre, refused to show her ticket again when leaving the theatre.
- 12) Elliot and Margaret are neighbours. Elliot built a swimming pool in his backyard at a cost of \$10 000. That pool increased the value of Elliot's property by \$15 000. One side of that pool extends one metre onto Margaret's property. It would cost \$7000 to re-build the pool so that it does not touch Margaret's land. Which of the following statements is necessarily TRUE? 12) _____
- A) Margaret is entitled to compensatory damages of \$10 000.
- B) Margaret is entitled to compensatory damages of \$7000.
- C) Margaret is entitled to receive an injunction even if she consented to the location of Elliot's pool.
- D) Margaret is entitled to compensatory damages of \$15 000.
- E) Even though Elliot's pool trespasses on Margaret's property, a court may not award an injunction to Margaret, especially if Elliot did not deliberately commit the tort.
- 13) Which of the following statements is TRUE? 13) _____
- A) The right of recaption only applies to the recovery of land.
- B) The tort of conversion usually leads to a forced sale.
- C) A trespass to chattels can never be committed unless the plaintiff's

- property was damaged.
- D) The tort of detinue can never be committed unless the plaintiff first asks the defendant to voluntarily return the disputed property.
- E) Chattels are immoveable forms of personal property.
- 14) Johan owns an antique chair that has been in his family for generations. During a party at his house, Esther carved her initials into the underside of the chair's seat. She did so because she felt publicly humiliated after Johan had refused to dance with her. The chair has not been destroyed, but it will cost \$10 000 to repair the damage. Johan would like to repair and retain the chair. Which of the following statements is TRUE? 14) _____
- A) For remedial purposes, Johan must sue for the tort of conversion.
- B) For remedial purposes, Johan should sue for the tort of detinue.
- C) For remedial purposes, Johan should sue for the tort of trespass to chattels.
- D) Because the damage can be repaired, Esther cannot be held liable for punitive damages.
- E) Johan should ask the court to award an injunction.
- 15) Yvonne used Benoit's bicycle. Which of the following factors would best support Benoit's action in detinue? 15) _____
- A) Yvonne did not cause any damage to the bike.
- B) Benoit had intended to sell the bike to his brother.
- C) Yvonne used the bike only once and only because there was an emergency.
- D) Yvonne honestly believed that the bike belonged to her.
- E) Yvonne has refused to return the bike to Benoit even though he has sued her.
- 16) Bridget borrowed a book from Stefano. She later refused to return it to him when he asked. Which of the following statements is TRUE? 16) _____
- A) If Stefano sues for the tort of conversion, he will succeed only if Bridget claimed to be the true owner of the book.
- B) If Stefano sues Bridget for both conversion and detinue, he may be entitled to receive compensatory damages representing twice the book's value.
- C) If Stefano wants to get the book back, he should sue for the tort of recaption.
- D) If Stefano sues for the tort of detinue, the court may simply order Bridget to pay damages equal to the value of the book.
- E) If Stefano sues for the tort of detinue, he will receive damages only if Bridget damaged the book in some way.
- 17) Which of the following statements is TRUE? 17) _____
- A) The tort of false imprisonment always involves a tort of battery as well.
- B) The tort of false imprisonment can only be committed by a police officer or a security guard.
- C) Even if it did not commit a false imprisonment, a defendant may be liable for malicious prosecution if, for some improper purpose, it wrongly persuaded the government to bring criminal proceedings against the plaintiff.
- D) A business cannot exercise the right to remove an unwelcome customer if it would require the use of any force whatsoever.
- E) The right of recaption cannot be used if it would require the use of any force whatsoever.

- 18) The Supreme Court of Canada's decision in *Aubry v Editions Vice-Versa Inc* supports the proposition that 18) _____
- A) a tavern may be held vicariously liable for battery if a bouncer uses unreasonable force in removing a drunken customer from the premises.
 - B) a defendant who commits a tort of detinue may be required to return the property, instead of paying damages.
 - C) a land owner may use reasonable force to remove a trespasser.
 - D) a company that publishes photographs may need to secure consent of a person who appears in a photograph.
 - E) an assault is committed only if the plaintiff feared that offensive bodily contact was to happen soon.
- 19) Roark Construction Inc built a new high-rise apartment building on a piece of land that it called Randville. Six months after the building was completed, Cooper, the owner of the neighbouring property, proved on the basis of records and documents at the land titles office that Roark's new building extended one metre over the boundary between the two properties, and therefore is partially located on Cooper's property. Roark was entirely unaware of that fact during the construction process. Which of the following statements is TRUE? 19) _____
- A) Cooper cannot successfully sue for damages because it did not notify Roark of the problem until after the building was completed.
 - B) A court almost certainly will grant an injunction that requires Roark to demolish its building and start the construction project over again.
 - C) Roark will be held liable for a trespass to land only if it unreasonably failed to check the documents at the land titles office.
 - D) Because Roark committed a foolish, though honest, mistake the court will likely award punitive damages to Cooper.
 - E) Roark may be held liable for an intentional tort even though it did not intend to commit any tort at all.
- 20) Gary successfully sued Nomi for the tort of battery. That may be TRUE if 20) _____
- A) Nomi saved Gary's life by performing a blood transfusion. Although Nomi had no way of knowing Gary's wishes, his religious beliefs actually prohibit blood transfusions.
 - B) Nomi threw a cup of hot coffee on a jacket that Gary had hung on a coat rack.
 - C) Nomi verbally abused Gary to the point where he tried to kill himself in order to get some relief.
 - D) Nomi shot Gary in broad daylight, as he broke into her house, even though he obviously was so drunk that he was harmless.
 - E) Nomi threatened to kiss Gary against his wishes, but did not actually do so.
- 21) Nick was severely injured after he was physically pulled out of Discount Sound. Which of the following statements is TRUE on the basis of those facts? 21) _____
- A) Nick cannot possibly succeed in an action for battery if he was trespassing in Discount Sound at the time of injury.
 - B) Nick may be entitled to collect damages even if a store employee used something more than reasonable force in removing him from the premises.
 - C) Nick cannot possibly succeed in an action for battery if the person who pushed him out of Discount Sound made contact with Nick's

jacket, but not with his skin.

- D) Nick cannot possibly succeed in an action for battery if he was physically pulled from the store by a police officer.
- E) Nick can succeed in an action for false imprisonment if he was removed from Discount Sound by an employee of the store who had wrongfully accused Nick of trying to steal a CD.

22) Joe walked into JP's Pets, picked up a hamster that he had fallen in love with during a previous visit to the store, and walked out without even stopping at the cash register. Which of the following statements is TRUE? 22) _____

- A) The store has accused Joe of "detinue," which is from the French word "detenure," which refers to animals that were taken from nature.
- B) If an employee of the store ran after Joe and grabbed the hamster, that employee will have committed an act of recaption.
- C) If Joe accidentally hurts the hamster while running away from the store, he will be held liable for battery.
- D) If the store sues for the tort of conversion, the court will automatically order Joe to return the hamster.
- E) If the store wants to recover the hamster, rather than the value of the hamster, it should sue for the tort of trespass.

23) Svends works for Save-the-Forest, a non-profit organization aimed at stopping logging operations in the interior of British Columbia. The organization has said that it will use "any means necessary" to achieve its goals. One common tactic is to steal, damage, or destroy logging trucks and equipment. Svend recently was caught carrying out acts of sabotage against equipment that belongs to Xarol Logging Inc. Which of the following statements is TRUE? 23) _____

- A) Svend may be held liable for the tort of detinue if he destroyed equipment by setting it on fire.
- B) If Svend destroyed a machine belonging to Xarol, it may be liable for the tort of trespass or for the tort of conversion.
- C) If Svend stole equipment that Xarol wants back, the company should sue for the tort of trespass to chattels.
- D) Svend can be held liable for the tort of conversion only if he converted the equipment to his own use by taking it with the intention of keeping it.
- E) Svend cannot be held liable for trespass to chattels if he took equipment that he found on public land, rather than private property.

24) Until recently, Aranxta earned a living by taking customers for rides in her vintage bi-plane. She was forced to give up that business, however, after Nadil, who was her primary business competitor, deliberately destroyed her bi-plane. Which of the following statements is TRUE? 24) _____

- A) Nadil may be held liable for both compensatory and punitive damages.
- B) A court would likely order Nadil to transfer ownership of his bi-plane to Aranxta.
- C) Aranxta will likely receive nominal damages if she takes her case to court.
- D) Nadil has committed the tort of detinue.
- E) Aranxta may sue for trespass, but not for conversion.

- 25) Nelson borrowed a computer, free of charge, from Compu-Rent Inc. After Nelson became bankrupt, his trustee in bankruptcy took control of everything that she found on Nelson's premises, including the computer. Compu-Rent has demanded possession of the computer, but the trustee in bankruptcy has refused. Compu-Rent therefore claims that the trustee has committed a tort. Which of the following statements is TRUE? 25) _____
- A) If Compu-Rent sues for the tort of trespass to chattels, a judge will almost certainly order the trustee in bankruptcy to return the computer to the plaintiff.
 - B) The trustee in bankruptcy is not liable for conversion unless she claims that she personally owns the computer.
 - C) If Compu-Rent asks for a right of recaption, the court will order the trustee in bankruptcy to return the computer to the plaintiff.
 - D) The trustee in bankruptcy automatically committed the tort of conversion as soon as she touched the computer.
 - E) If the trustee in bankruptcy has committed the tort of conversion against the computer, it will likely be treated as if she had purchased the thing.
- 26) Walter is an experienced and highly successful gambler. He is most successful when betting on horse races. Until recently, he frequently placed bets at the Scarborough Downs Race Track. The track's manager, however, ordered her employees to deny Walter entry to the premises. The manager decided that Walter was winning too much money. Which of the following statements is TRUE? 26) _____
- A) If Walter sneaks into the premises, the Race Track can remove him using whatever force is required to accomplish the task.
 - B) The Race Track has the right to exclude Walter from its premises, even if it does so because it objects to the colour of his skin.
 - C) If Walter continues to sneak into the Race Track, a judge might award an injunction against him.
 - D) The Race Track has no right to exclude Walter from its premises.
 - E) Once the Race Track invites Walter onto its premises, it can ask him to leave only if he commits a crime.
- 27) In *R v Asante-Mensah*, the Supreme Court of Canada held that 27) _____
- A) the tort of false imprisonment requires proof that the defendant did not have a reasonable means of escape.
 - B) the tort of trespass to land may be committed if the defendant psychologically detains the plaintiff.
 - C) because trespass to land is an equitable tort, the plaintiff may be entitled to an injunction.
 - D) a trespass to land occurs only if the visitor committed a crime.
 - E) an occupier may be entitled to use reasonable force to remove a trespasser.
- 28) Jorge bought a ticket to see the Blue Jays in the SkyDome. During the game, he left his seat and visited a restaurant in the stadium. When he left the restaurant and tried to return to his seat, he was asked by one of the team's attendants to show his ticket. He refused. The dispute escalated. He was then arrested by one of the team's security guards. That arrest purportedly occurred under the *Trespass to Property Act*. That Act states that an offence is committed if a person who is "not acting under a right or authority conferred by law" refuses to leave a property after being asked to do so. Jorge subsequently sued the baseball team in tort. The main issue at trial was whether or not Jorge was entitled to remain in the stadium without showing his ticket. Which of the following statements is TRUE? 28) _____

- A) The arrest was lawful as long as the security guard reasonably believed that Jorge was a trespasser.
- B) Jorge did not commit a tort by refusing to show the attendant his ticket.
- C) If the court finds that Jorge was a trespasser, he cannot possibly recover damages unless the defendant's behaviour caused him to suffer physical injuries.
- D) Jorge will likely be held liable for nominal damages and punitive damages.
- E) The team will be liable for the tort of false imprisonment if it wrongfully prevented Jorge from returning to his seat.

29) Fabrizio works at the Silk Nights Lingerie Shop in Polo Park Shopping Mall in Winnipeg. Despite being the store's leader in sales, he was not Silk Nights' most highly paid employee. In an effort to draw public support for his demand for higher wages, Fabrizio staged a picket inside of the mall when he was not working. Susana, who is employed by the mall as a security guard, was directed to remove Fabrizio from the premises. When he refused to leave voluntarily, she firmly took hold of his arm and led him out onto the street. Which of the following statements is TRUE?

29) _____

- A) Susana is liable for the tort of battery.
- B) Susana was entitled to use reasonable force to remove Fabrizio from the premises.
- C) Fabrizio was entitled to use reasonable force to resist Susana's efforts to remove him from the premises.
- D) Susana, as a security guard, generally has the same rights and responsibilities as a police officer.
- E) Fabrizio cannot be held liable for the tort of trespass to land because he is an employee of Silk Nights.

30) Regulations are in place at Toronto's Pearson Airport to control the operation of taxi cabs. Daniel simply ignored those regulations. He was a persistent "scooper" who routinely picked up passengers at the airport even though he did not have a permit. He was charged more than twenty times with trespassing, but he simply shrugged off the fines. The airport authorities therefore decided to take more drastic measures. During one of Daniel's frequent visits, an airport inspector attempted to make a citizen's arrest. A scuffle occurred after the inspector put his hand on Daniel's shoulder and tried to detain him. Daniel knocked the inspector down and fled the scene. The airport inspector had acted under s 9(1) of the *Trespass to Property Act*, which says that a "police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises" improperly. That provision does not expressly allow a citizen to use force during an arrest. In these circumstances, a court will say that

30) _____

- A) the airport inspector briefly committed the tort of false imprisonment.
- B) the case is governed by *R v Asante-Mensah*.
- C) the airport inspector committed the tort of battery.
- D) because of the existence of the statute, the common law rules of tort are irrelevant.
- E) since the legislation did not expressly allow for the use of force, Daniel was entitled to forcefully resist the attempted arrest.

- 31) Jack and his friends were dining at Daniel's Kentucky Home restaurant. Along with the meal, Jack had ordered several bottles of alcohol for his friends and him to share. When the clock struck midnight, Louella, the waitress who had served Jack's table, correctly informed Jack that she was required by law to remove a bottle of whisky that had been opened, but not consumed. Jack initially protested, but eventually was persuaded by his friends to give up possession of the bottle. He became very angry, however, when Louella returned a few minutes later with the bottle (which she had re-capped) and a bill that included a charge for the whisky in question. Jack angrily refused to pay for the disputed bottle. He stuck his business card onto the bottle with a piece of tape, paid for the rest of the meal, and began to leave. Before he could get out of the restaurant, however, Louella directed several other employees to lock the door. Jack and his friends were able to leave only after the police arrived about an hour later. Which of the following statements is TRUE? 31) _____
- A) Louella is liable for the tort of false imprisonment.
 - B) Jack is guilty of the tort of conversion as a result of his actions with the bottle.
 - C) Louella was entitled to detain Jack until he paid the entire bill.
 - D) Louella is liable for the tort of assault.
 - E) Louella almost certainly is liable for malicious prosecution.
- 32) The Scholar's Diner is located at the edge of a college campus. Not surprisingly, most of its customers are college students. And most of those students are law-abiding patrons. There is, however, a substantial number of students who frequently "dine-and-dash." They sneak out the restaurant's back door after they have eaten, but before they have paid for their meals. Lily is one of those students. Which of the following statements is TRUE? 32) _____
- A) If Lily is convicted of a crime, she cannot also be held liable in private law.
 - B) If Lily is caught sneaking out the back door, the restaurant will be entitled to sue her for breach of contract, but it will not be entitled to detain her.
 - C) If Lily is caught sneaking out the back door of the diner, she may be lawfully arrested by either one of the restaurant's employees or by another diner.
 - D) If Lily is held liable in tort, she cannot later be charged with a crime in connection with the same events.
 - E) If Lily is caught sneaking out the back door, she may be arrested by a police officer, but not by one of the restaurant's employees.
- 33) Shaniqua successfully sued Goldie for false imprisonment. That may be TRUE if 33) _____
- A) Goldie, a security expert at an airport, detained Shaniqua and searched through her carry-on luggage, even though Shaniqua was not actually carrying anything improper.
 - B) Goldie, a practical joker, tricked Shaniqua into a boat, and then cut the boat loose from the dock and thereby causing it to quickly drift into deep water, despite knowing that Shaniqua could not swim.
 - C) Goldie, a car park attendant, refused to let Shaniqua drive her car out of the parking lot, even though Shaniqua had demonstrated that she had lost her wallet and did not have any money to pay the parking fee.
 - D) The fact that Goldie is liable for false imprisonment must mean that Shaniqua did not commit any tort during the same set of events.
 - E) Goldie, the foreman at a construction site, would not send an

elevator up to collect Shaniqua at the top of a construction platform until the time for a coffee break arrived, even though Shaniqua wanted to quit her job immediately.

- 34) Like many students, Dahlia has financial problems. And like many students, she tries to find ways to make her money go farther. Some of her strategies are better than others. She recently was detained by a security guard after she switched price tags on two pairs of pants, and tried to buy the more expensive pair with the less expensive tag on it. Which of the following statements is TRUE? 34) _____
- A) Dahlia has committed a crime.
 - B) Courts usually award injunctions in this sort of case.
 - C) Dahlia was lawfully entitled to resist the security guard's attempt to detain her.
 - D) Dahlia can avoid liability in tort as long as she pay the proper price before the court delivers judgment in her case.
 - E) Dahlia committed the tort of trespass to chattels as soon as she touched the pair of pants.
- 35) During a recent incident at a shopping centre, Munier grabbed hold of Ishtla and held her until a police officer arrived. Which of the following statements is TRUE? 35) _____
- A) If Munier was another shopper, he cannot be held liable for false arrest, even if Ishtla had not committed a crime, as long as he reasonably believed that she had committed a crime and she was being pursued by a police officer.
 - B) If Munier owned a store, and he reasonably believed that Ishtla had stolen some of his merchandise, he cannot be held liable for false arrest, even if Ishtla had not committed a crime.
 - C) Munier will be held liable for malicious prosecution as long as a court decides, after a full trial, that Ishtla did nothing wrong.
 - D) If Munier is a security guard, he cannot be held liable for false arrest as long as he reasonably believed that Ishtla had committed a crime, even if Ishtla had not done so.
 - E) If Munier is a police officer, he may be held liable for a false arrest unless Ishtla actually committed a crime.
- 36) Tommy and Niki were both bright and ambitious young analysts with Premier Investments Inc. The president announced that they were both under consideration for promotion to vice-president and a hefty increase in salary. Given recent scandals in the financial world, Tom knew that the president was anxious to uphold the company's reputation for honesty. Tom therefore concocted an allegation that Niki had wrongfully diverted client funds to her own personal use. The president immediately fired Niki upon hearing the allegation. It eventually became clear, however, that Tom's allegation was totally false and that Niki had never acted improperly. Niki then sued Tom for malicious prosecution. The judge, however, rejected her claim. The judge might properly have found in favour of Tom on the basis that 36) _____
- A) the tort of malicious prosecution is available only against a police officer.
 - B) Tom's primary motivation was to hurt Niki, rather than help himself.
 - C) company records showed that Tom was a better employee than Niki.
 - D) Niki had committed fraud while working for another company years earlier, even though Tom knew that she was not guilty of the crime that he alleged.
 - E) The truth came to light before Niki had been charged with any

crime.

- 37) The elements of malicious prosecution include proof that 37) _____
- A) the defendant was a police officer or an officer of the court.
 - B) the defendant had committed the crime that the plaintiff had been accused of committing.
 - C) the defendant either wrongfully detained the plaintiff or caused the police to wrongfully detain the plaintiff.
 - D) the defendant maliciously caused the plaintiff to be sued.
 - E) the plaintiff was acquitted of the alleged crime.
- 38) After enjoying a meal on the outdoor veranda of a restaurant, Heena paid the amount stated on the bill, put a leash on Pierre, her miniature Chihuahua, and began to leave. At that point, Gaston, the waiter, dashed over to her table and asked why Heena had not left a tip. Heena agreed that the service and food had been excellent, but explained that she is cheap and never leaves a tip. Gaston then grabbed Pierre and refused to give him back unless Heena left a tip. Heena became very distraught, but still refused to leave a tip. The scene lasted for nearly an hour. Heena felt able to leave only after Pierre snapped at Gaston and jumped into Heena's arms. Diners are expected, but not legally required, to leave tips if they enjoy their meals. Which of the following statements is most likely TRUE? 38) _____
- A) To prove the tort of false imprisonment, Heena must show, amongst other things, that she did not commit any crime or tort during the entire episode.
 - B) Gaston committed the tort of false imprisonment against Heena.
 - C) Because he grabbed a living creature, rather than an inanimate object, Gaston cannot be held liable for trespass to chattels, conversion, or detainee.
 - D) By remaining on the premises after she had finished her meal, Heena committed the tort of trespass to land.
 - E) Gaston acted lawfully as long as he reasonably believed that Heena was legally obligated to leave a tip.
- 39) Raja owns a corner store. Because he had suffered a great deal of theft in recent months, he was eager to catch a thief. He therefore kept an eye on Francine, a young homeless person, after she entered his store and began wandering around in a suspicious manner. Raja immediately summoned a police officer, JD Copper, who was walking nearby. Raja said that he had seen Francine put a pack of gum in her pocket, and he insisted that Francine must be arrested. Because JD (i) knew that Raja had been the victim of numerous thefts, (ii) reasonably believed that Raja was telling the truth, and (iii) reasonably agreed that Francine was acting in a suspicious manner, JD walked up to Francine and put handcuffs on her. Despite her pleas of innocence, Francine was detained at the front of the store, in front of other customers, for fifteen minutes while JD ran a police check on her. JD eventually released Francine after he realized that she had no police record and no stolen merchandise in her pockets. Which of the following statements is most likely to be TRUE? 39) _____
- A) Raja may be liable to JD for malicious prosecution.
 - B) Raja may be held liable to Francine for malicious prosecution.
 - C) JD may be held liable to Francine for battery.
 - D) JD may be held liable to Francine for false arrest.
 - E) Raja may be held liable to Francine for false imprisonment even though he personally never touched or talked to her.

- 40) Which of the following statements is TRUE with respect to the concept of invasion of privacy? 40) _____
- A) Statutes that create causes of action for invasion of privacy usually impose liability only if the defendant knew, or should have known, that it was violating the plaintiff's privacy rights.
 - B) Although a number of Canadian legislatures have considered the possibility, none have created a statutory action for invasion of privacy.
 - C) A distinct tort of invasion of privacy clearly exists in New Zealand, but not in Canada.
 - D) A distinct tort of invasion of privacy can be created by a legislature, but not by a court. 79-80
 - E) The Canadian *Charter of Rights and Freedoms* creates a cause of action for invasion of privacy.

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

- 41) As a practical joke on April Fools Day, Hannah put a mask over her face, carried a toy gun, and knocked on the door of her good friend, Woody. When Woody opened the door and saw the apparent intruder, he fainted and hit his head on a wall. Hannah may be held liable for assault even though she did not intend to cause any harm to Woody. 41) _____
- 42) Axl was physically detained by two security guards who worked for a department store. Axl is entitled to sue for false imprisonment only if he proves that the security guards knew that he had not committed any crime. 42) _____
- 43) Detlef, who was shopping in a store, was approached by two security guards who asked him to accompany them to a back room "to see the manager." When he asked the purpose for the request, he was told that he was "under suspicion." Detlef complied with the request because he wanted to avoid a public spectacle. He will not be able to successfully sue the security guards or the store unless he proves that someone, at some point, made physical contact with him. 43) _____
- 44) Zirka owns a vacant piece of land. Without her consent or knowledge, Jonathan has been using that property as a motorcycle race course. She can sue him for both trespass and conversion. 44) _____
- 45) The most significant advantage to the tort of detinue is that it gives the plaintiff an absolute right to recover the disputed property, whereas the tort of conversion only allows the plaintiff to recover the monetary value of the disputed property. 45) _____
- 46) Jules and Jim are neighbours. Because their relationship was poor, Jules built a high fence to prevent Jim from looking into his back yard. Although Jules did not realize it at the time, he has since been informed that the fence sits partially on Jim's property. In this situation, the judge may award an injunction that requires Jules to remove the fence from Jim's property, even though Jules did not deliberately commit any tort. 46) _____
- 47) Despite the usual terminology, an intentional tort may be committed either intentionally or carelessly in some circumstances. 47) _____

- 48) Leah threw a log onto a pathway. As Leah knew, equestrians regularly rode their horses on that pathway. Scott was injured when the horse that he was riding tripped over the log and stumbled to the ground. If the court strictly applies the traditional rules regarding intentional torts, Leah cannot be held liable because Scott's injury was not a direct result of her actions. 48) _____
- 49) Necessity, consent, and provocation are all classified as complete defences. 49) _____
- 50) The defendant will be held liable for the tort of assault as long as the court is satisfied that a reasonable person in the plaintiff's circumstances would have believed that offensive bodily contact was imminent. 50) _____
- 51) Cassie is an internationally famous model. Her tremendous success is due to a combination of her stunning good looks and the "clean-living" image that she has carefully cultivated. That image was dealt a devastating blow, however, after a newspaper printed a photograph of her emerging from a building, along with a caption that explained that the building belonged to Clean Horizons. The caption further explained that Clean Horizons is a support centre for people who are addicted to various types of illegal drugs. Even though Cassie was photographed in a public place, she may, according to an English court decision, successfully sue for a tort of abuse of private information. 51) _____
- 52) Marshall is an internationally famous musician. His wedding was one of the best publicized events of the past year. Because of his dislike of the media, however, he strictly forbade anyone other than invited guests from attending the ceremony, which was held within his tightly-guarded estate. Despite the presence of dozens of security personnel, however, Kimberley, a freelance photographer, managed to sneak onto Marshall's property and capture the entire wedding on film. If these facts were analyzed from the perspective of the traditional Canadian rules in tort, Kimberley will be held liable for both trespass to land and invasion of privacy. 52) _____
- 53) George is a famous water-skier. He uses a distinctive photograph of himself water-skiing for commercial purposes. Media Visions Inc, a public relations firm, copied that photo and made a line drawing out of it. It then used that drawing in a brochure that it prepared for an organization that operated summer camps for children. The brochure did not identify George by name. Nor did it try to associate George with the camp. The brochure was merely intended to inform the public that water-skiing was one of the activities that was offered at the summer camps. Nevertheless, anyone who was familiar with George would immediately recognize that his image was on the brochure. Media Visions may be held liable to George on the basis of a tort known as misappropriation of personality. 53) _____
- 54) Rocky sued Angela for the tort of malicious prosecution. Even if the other elements of the tort are proven, Angela will not be held liable if she satisfies the court her actions were a product of an honest, though foolish, mistake. 54) _____
- 55) The right of recaption is used by a person who wants to recover a piece of land that another person is wrongfully occupying. 55) _____

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

- 56) Antonia, a businesswoman, was held liable to Romeo for committing an intentional tort. She is very frustrated by that verdict. Discuss the nature of "intention" in the context of intentional torts. Explain why that concept of "intention" creates special problems from a risk management perspective.
- 57) Seamus sat drinking in Kitty's Bar for several hours. When Kitty noticed that he had become drunk, she wanted him to leave. Is Kitty entitled to exclude Seamus from her bar if she initially invited him in for a drink? If so, is she entitled to use force to remove him?
- 58) Serge quickly left a busy sporting goods store looking suspicious and clutching his jacket closed. Myriam approached him and said, "Unless you accompany me back into the store to talk to the manager, we're going to have a real problem." Serge complied with Myriam's request even though she never actually touched him. Myriam later learned that Serge had not stolen anything from the store, nor had he committed any other crime. Can Serge successfully sue Myriam for false imprisonment? Do you require any more information before you answer that question?
- 59) Explain why tort law has been reluctant to create a general tort of invasion of privacy.
- 60) Herman has committed the tort of trespass to land against Sonia. List four remedies that Sonia might receive and briefly explain a situation in which each would be appropriate.
- 61) Which tort leads to the remedy of a "forced sale"? What is the justification for that remedy?
- 62) What is the right of recaption? When does it arise? What special risk management problem does it create?
- 63) Jessica and Nick recently broke off their relationship after living together for several years. While their separation has been largely amicable, Nick is very upset that Jessica took his dog, Blue, with her when she moved out of the house that they had shared. The evidence clearly indicates that Nick had adopted Blue even before he met Jessica, and that both parties considered Blue to be Nick's dog. Jessica nevertheless refuses to part with the animal, although she is willing to buy Nick another dog. Nick intends to sue Jessica for the tort of interference with chattels. If he wants to get Blue, rather than the monetary value of Blue, which tort should he focus upon? What would Nick have to prove to succeed in his claim?
- 64) List and briefly explain the elements of the tort of malicious prosecution.
- 65) Tobias, a college student, was waiting in line to purchase a textbook at his campus bookstore. He first noticed Marnie, who was standing in a nearby aisle of books, because she is stunningly beautiful. As he watched her, however, he noticed that she was placing a book into her jacket pocket. It seemed to Tobias that Marnie was stealing the book. Xavier, a security guard who works in the store, saw Marnie and thought the same thing. Xavier immediately called over a police officer and explained his suspicion. The police officer then approached Marnie and told her that she was under arrest for theft. When she began to loudly protest her innocence, the officer asked the people in line if they had seen anything unusual. Tobias stepped forward, looked at Marnie, and said sweetly, "Now why would an angel come down here and steal a book?" Marnie, who resents constantly being the focus of unwanted male attention, snapped at Tobias, "Stay out of this, creep!" When it became clear that he would not be winning a date with Marnie, Tobias turned to the police officer and said, "Well, I can't be sure, but it looked to me like she was stealing something."

Marnie was then charged with theft. Before the case could get to trial, however, she proved to the police that she had previously purchased the book in question, and that she had never stolen anything from the store. Marnie now wants to sue Tobias for malicious prosecution. She is embarrassed by the whole episode and deeply resents his role in her arrest. Explain whether or not she will succeed in that action.

- 66) Orson is one of Hollywood's most successful movie producers. Lana is one of Hollywood's most popular actresses. Naturally, when the couple announced their plans to be married in Orson's palatial home, there was great interest in the wedding. Orson and Lana decided to profit from that interest by selling the rights to photograph the ceremony to Hi! Magazine. Both the magazine and the newlyweds were therefore very upset, two days after the ceremony and a full week before Hi! Magazine was scheduled to run the photos, to see a set of wedding photos in a rival publication, Okay! Magazine. Okay! Magazine had obtained those photos from a freelance photographer named Cesar. Cesar had sneaked into the wedding, uninvited, by dressing up as a priest. He caught the entire ceremony on film by using a small camera that he had hidden in his priestly frock. Orson now wants to sue the parties that he believes are responsible for ruining "one of the greatest days of my life." Explain whether he can successfully sue for any of the torts discussed in Chapter 4.
- 67) Canadian common law does not yet recognize a general, independent tort of invasion of privacy. As Chapter 4 explained, however, several other torts can be used, in certain circumstances, to indirectly protect privacy interests. Identify and briefly explain those torts.
- 68) Prem bought a radio from Hedy for \$75. He paid with a cheque, rather than with cash. When Hedy tried to obtain payment, however, the bank refused to cash the cheque. The bank explained that the cheque was invalid because it was so poorly written that it was largely illegible. Rather than contact Prem, Hedy immediately called the police and said that Prem had committed the crime of fraud by deliberately writing an ineffective cheque. She also suggested that Prem was likely to leave town soon, and that his crime should therefore be addressed promptly. The next day, the bank unexpectedly contacted Hedy and explained that, following its own investigations, it was clear that the defective nature of the cheque was due to Prem's sloppiness, rather than any intentional wrongdoing. Hedy thought about passing that information along to the police, but because she was still angry at Prem for causing such a hassle, she decided to remain silent. Later that same day, a police officer arrived at Prem's house, put him into handcuffs, drove him to a police station, and locked him into a cell. Prem was released several hours later after convincing the arresting officer that while he has dreadful handwriting, he is not a criminal. Upset and embarrassed by the episode, Prem now wants to sue Hedy in tort. Explain whether or not Hedy had committed any of the torts discussed in Chapter 4.
- 69) Identify, explain, and compare the different torts that fall under the heading of "interference with chattels."
- 70) The Sports Gambling Network (SGN) is a network of radio stations targeted at the growing number of people who are interested in sports or betting or both. Because it is quite new, SGN does not have the financial resources that are available to some of its competitors. The network consequently tries to minimize expenses whenever possible. It recently formulated a plan for broadcasting live sporting events without paying licensing fees to the teams, leagues, and organizations that are involved in those events. SGN's goal is to acquire (either by purchasing or leasing) properties located near outdoor stadiums and race tracks, to erect observation towers on those properties, and to then broadcast live transmissions of those events. The Association of Professional Sporting Leagues (the APSL) has learned of SGN's plan and intends

to vigorously oppose it. The Association is worried that if SGN is able to broadcast sporting events without first obtaining licences from the relevant teams or leagues, other broadcasters would not be willing to pay substantial amounts for the right to broadcast those same games. The APSL's position is based in part on its argument that SGN's plan necessarily involves the commission of several torts. Is that true? Explain whether or not, in carrying out its plan, SGN would commit any of the torts discussed in Chapter 4.

- 1) C
- 2) B
- 3) D
- 4) B
- 5) C
- 6) E
- 7) D
- 8) B
- 9) C
- 10) D
- 11) C
- 12) E
- 13) B
- 14) C
- 15) E
- 16) D
- 17) C
- 18) D
- 19) E
- 20) D
- 21) B
- 22) B
- 23) B
- 24) A
- 25) E
- 26) C
- 27) E
- 28) B
- 29) B
- 30) B
- 31) A
- 32) C
- 33) B
- 34) A
- 35) A
- 36) E
- 37) E
- 38) B
- 39) E
- 40) C
- 41) TRUE
- 42) FALSE
- 43) FALSE
- 44) FALSE
- 45) FALSE
- 46) TRUE
- 47) TRUE
- 48) TRUE
- 49) FALSE
- 50) FALSE
- 51) TRUE
- 52) FALSE
- 53) TRUE
- 54) FALSE
- 55) FALSE
- 56) An intentional tort can be committed as long as the defendant intended to act in a particular manner. For instance, the tort of trespass to land may be committed as long as the defendant intended to step onto a particular piece of ground. Significantly, the

defendant can be held liable even if she did not intend to cause any harm to the plaintiff, and even if she did not intend to act in a wrongful way. Consequently, trespass to land may be committed even if the defendant believed that the land upon which she was walking was her own.

That definition of "intention" creates special problems from a risk management perspective because the defendant may be held liable without knowing that it was doing anything wrong at all. In the business context, a striking example can occur when a business person buys goods that she honestly and reasonably believes belonged to the apparent seller. If, in fact, the apparent seller was a thief, the purchaser will be liable in conversion to the true owner of the goods.

57) This question requires students to discuss two separate torts.

First, it requires students to identify the issue of trespass to land. The facts state that Kitty initially invited Seamus into her establishment. In fact, unless there is evidence to the contrary, it is assumed that a commercial establishment implicitly extends an invitation to the general public. However, the owner or occupier of premises is generally entitled to revoke that invitation at any time. Kitty therefore has the right to tell Seamus to leave. If he refuses to do so, he becomes a trespasser.

Second, students are expected to address the issue of Seamus's actual removal from the premises. As a general rule, an owner or occupier should first ask an unwanted visitor to leave voluntarily. If he refuses to comply, then reasonable force can be used to eject him. The issue of reasonableness is assessed having regard to all of the circumstances. A court would consider the danger posed by the trespasser, the potential for an escalation in violence, the size and strength of the trespasser, and so on. If excessive force is used, the trespasser will be entitled to sue for battery.

58) One additional piece of information is required before the question can be properly answered: it must be known whether Myriam was a *police officer* on the one hand, or a *private citizen* on the other. Myriam would fall into the latter category even if she owned the store or worked as a security guard.

- A *police officer* can arrest anyone who is reasonably suspected of: (i) being in the act of committing a crime, or (ii) having committed a *serious* crime in the past. If that test is satisfied, the police officer does no wrong, even if the person who was arrested was actually innocent. Consequently, since Serge was acting in a suspicious manner, Myriam would be relieved of liability as long as she did in fact suspect him of a crime.

- The rules are much narrower for *private citizens*. As a general rule, a private citizen can only arrest someone who is actually committing a crime. If, in fact, no crime was being committed, the arrest is unjustified. Consequently, if Myriam fell into this category, she would be guilty of false imprisonment. That would be true even if she acted honestly and reasonably. The law generally favours a customer's freedom of movement over a store's desire to protect its property.

Finally, students should recognize that if the elements of the tort are otherwise established, Myriam may be held liable for false imprisonment even if she never actually touched Serge. The courts have recognized that an arrest or detention may be achieved *psychologically*. A court in this case would be required to determine whether Serge voluntarily complied with Myriam's request, or whether, for instance, he did so only for fear of public embarrassment.

59) As generally is true in tort law, there is a need to balance competing social values. On the one hand, there is a desire to protect privacy. In many ways, the law recognizes that there are some things that we all prefer to keep private. Consequently, it may be possible, for instance, to sue for breach of confidence if a secret is improperly disclosed. Likewise, several provinces have enacted legislation specifically for the purpose of allowing one person to sue another for wilfully violating another person's privacy.

On the other hand, however, there are several factors that inhibit the creation of a general tort of invasion of privacy. That sort of wrongdoing often creates a loss or injury (such as

embarrassment) that is difficult to quantify in monetary terms for the purpose of awarding damages. Much more importantly, however, the law has always placed a high value on freedom of information and freedom of speech. It therefore is reluctant to create a tort that would inhibit people from investigating and discussing matters. Furthermore, it is difficult to identify issues that the community as a whole accepts should remain private. For instance, some people, at least, believe that they are justified in wanting to know about the personal habits and social activities of politicians, athletes, and entertainers. Others consider such information to be irrelevant or "out of bounds." The creation of a general tort of invasion of privacy would require a court to answer those sorts of questions.

- 60) A trespass to land occurs when the defendant improperly interferes with the plaintiff's land. That definition covers a wide range of situations. A trespass to land may be committed by a violent burglar or by a child who refuses to leave a store after being asked to do so. Consequently, it supports a variety of remedies. Each remedy is designed to reflect the nature of the wrong that the defendant actually committed.
- The usual remedy for trespass to land is *compensation*. Herman could be ordered to pay damages to Sonia with respect to any losses that she suffered. For instance, if Herman committed the tort by throwing a brick through her window, he would be required to pay to have the window fixed.
 - Many trespasses cause no harm at all. For instance, Herman may have committed the tort by simply sleeping in Sonia's backyard without her knowledge. Since trespass is actionable *per se*, Sonia would be entitled to a verdict in her favour. However, since she suffered no loss, she might be limited to *nominal damages*. Such damages are awarded in a small sum (e.g. \$10) and are intended to merely symbolize the fact that the defendant committed a wrong against the plaintiff. (As discussed in Chapter 7, nominal damages may constitute a Pyrrhic victory. Because judges do not like to waste time on trivial matters, they sometimes award costs against the party to whom they awarded nominal damages. Consequently, in the final analysis, the plaintiff might actually lose money.)
 - Sonia might be entitled to *punitive damages* if Herman committed the tort in a particularly harsh, vindictive, high-handed, reprehensible, or malicious way. The text cites the case of *Horseshoe Bay Retirement Society v SIF Development Corp*, in which the defendant land developer cut down a row of trees on the plaintiff's land in order to enhance the view from, and hence value of, its own property.
 - Finally, a court may award an *injunction* to prevent the continuation or recurrence of a trespass. That might be true, for instance, if Herman built a structure on Sonia's land. The court might order him to remove it. Likewise if he persistently cut across Sonia's lawn on his way to work. The court might order him to refrain from doing so in the future. If Herman refused to comply with an injunction, he would be in contempt of court and could be fined or imprisoned (in addition to being held liable to Sonia for damages of some sort).
- 61) The remedy of "forced sale" occurs in connection with the tort of conversion. It means that the plaintiff is entitled to receive compensatory damages that are calculated on the basis of the value of the chattel at the time of conversion. In exchange, the defendant is entitled to retain the chattel (if, in fact, the defendant still has possession of it). That remedy is justified because the tort of conversion consists of the actions that are inconsistent with the plaintiff's right of ownership or right to possession. The defendant is not allowed to blow hot and cold at the same time. By denying the plaintiff's rights, the defendant is taken to have purchased them.
- 62) The right of recaption arises when a chattel is taken from a person who was in lawful possession of it. That party has the right to take the property back without a court order. However, great caution must be exercised in such circumstances. The person who is entitled to possession is only entitled to use reasonable force in re-acquiring possession. The law does not want minor property disputes to escalate into violent confrontations. The use of excessive force may result in the commission of the tort of battery. Likewise, the tort of trespass to land may be committed if the person who is trying to exercise the right of recaption improperly enters upon someone else's property.
- 63) As a general rule, the only tort that allows a judge to order a defendant to give back property, rather than merely the value of property, is detinue. In order to succeed in his claim, Nick would first have to prove that Jessica has committed that tort. Detinue consists of the wrongful detention of a chattel. And because the focus is on detention, the plaintiff normally must prove that the defendant refused a request to return the chattel. Nick has

satisfied that element in this case. Once Nick established the commission of a detainee, he would have to satisfy the court that monetary damages would not provide him with an adequate remedy. He should be able to do so in this case by showing that he had a special relationship with Blue, and that buying another dog simply would not be the same as getting Blue back.

- 64) Malicious prosecution occurs when the defendant improperly causes the plaintiff to be prosecuted. The focus is not on the plaintiff's detention or imprisonment, but rather on the fact that he or she was subject to criminal proceedings. That might be true, for instance, if a business concocted a story about shoplifting and persuaded the government to lay charges against the plaintiff. Malicious prosecution is, however, difficult to prove. The court has to be satisfied that: (i) the defendant started the proceedings, (ii) out of malice, or for some improper purpose, and (iii) without honestly believing on reasonable grounds that a crime had been committed, and that (iv) the plaintiff was eventually acquitted of the alleged crime.
- 65) Marnie will not succeed in her claim of malicious prosecution against Tobias. That tort occurs when the defendant improperly causes the plaintiff to be prosecuted. The focus is not on the plaintiff's detention or imprisonment, but rather on the fact that he or she was subject to criminal proceedings. Malicious prosecution is difficult to prove. The court has to be satisfied that (i) the defendant started the proceedings, (ii) out of malice, or for some improper purpose, and (iii) without honestly believing on reasonable grounds that a crime had been committed, and that (iv) the plaintiff was eventually acquitted of the alleged crime.

On these facts, Marnie can prove the final element, but not the other three. (i) Tobias did not start any criminal proceedings against Marnie. He merely responded to a question that the police officer had asked. (ii) While he may have been embarrassed by Marnie's comment toward him, he did not act out of malice. He merely provided the police officer with his honest opinion. (iii) While he clearly was wrong, Tobias did honestly form his suspicion on reasonable grounds. The reasonableness of his belief that Marnie was stealing a book is supported by the fact that Xavier, the security guard, drew the same conclusion from Marnie's actions.

- 66) Orson will be able to successfully sue for trespass to land and breach of confidence.

Cesar personally committed a trespass to land by sneaking into Orson's mansion without permission. While the law may recognize an implied consent to enter a person's house in some circumstances, that rule would not apply here because, given the circumstances, it was clear that Orson did not want uninvited intruders on his property.

According to a case discussed in the text (dealing with Michael Douglas and Catherine Zeta-Jones), Cesar and Okay! Magazine are both liable for breach of confidence. Given the circumstances, they knew that Orson wanted images from his wedding to be kept secret until photos were published in Hi! Magazine.

The real gist of Orson's complaint is that Cesar and Okay! Magazine invaded his privacy. As the law currently stands in Canada, however, there is no independent tort of that name.

67) Depending upon the circumstances, seven torts may be used to protect privacy interests.

- *Trespass to land* may be used if the defendant entered onto the plaintiff's property. That may be true, for instance, if a photographer sneaked into a celebrity's mansion in order to capture a few candid shots.
- *Breach of confidence* may be used if the defendant disclosed confidential information about the plaintiff without the plaintiff's permission. That may be true, for instance, if a former employee publishes a book that contains previously unknown details of a celebrity's private life.
- *Abuse of information* is a tort that has been recognized by English courts (though Canadian courts have not yet expressly followed suit). That tort prohibits a defendant from making improper use of private information. In the leading case, a British newspaper ran a photo of a famous model walking out of a building, and explained that the building belonged to Narcotics Anonymous. It had not previously been publicly known that the model was in therapy for drug abuse.
- *Misappropriation of personality* occurs when the defendant commercially exploits the plaintiff's image, without the plaintiff's permission. In the leading case, a company made unauthorized use of an immediately recognizable image of a famous water-skier in order to advertise its summer camps.
- *Negligence* is a broad tort that imposes liability if the defendant carelessly caused an injury to the plaintiff. (Chapter 6 is devoted to the tort of negligence.) Negligence sometimes may be used to indirectly protect privacy interests. That may be true, for instance, if a newspaper improperly discloses the identity of an undercover police officer who had been sexually assaulted.
- *Invasion of privacy* has not yet been recognized by Canadian courts as a general, independent tort. In exceptional circumstances, however, judges have applied such a tort. That was true, for instance, when an unfriendly neighbour installed a surveillance camera on the side of his house and aimed it at his neighbours' backyard. He did so for the exclusive purpose of spoiling his neighbours' use of their backyard. In another case, *Aubry v Editions Vice-Versa Inc*, the Supreme Court of Canada held that a photographer must obtain consent from a person who appears in a shot, if it is reasonable and possible to do so. (That decision was rendered under the private law of Quebec, rather than the common law, but it may nevertheless signal an increasing willingness to protect privacy interests.)
- *Privacy statutes* have been enacted in some provinces. (At the time of writing, the list included British Columbia, Manitoba, Newfoundland and Labrador, and Saskatchewan.) Those statutes create a statutory tort that prohibits the willful violation of another person's privacy. In one case, for instance, a television station was held liable for the embarrassment that a man experienced after it aired a story that showed the man receiving a hair graft. Prior to that program appearing on television, it was not widely known that the man had undergone that procedure.

68) Prem can rely upon two torts: malicious prosecution and false imprisonment.

The tort of malicious prosecution occurs when the defendant improperly causes the plaintiff to be prosecuted for a crime. The focus is not on the plaintiff's detention or imprisonment, but rather on the fact that he was subject to criminal proceedings. Malicious prosecution is, however, difficult to prove. The court has to be satisfied that (i) the defendant started the proceedings, (ii) out of malice, or for some improper purpose, and (iii) without honestly believing on reasonable grounds that a crime had been committed, and that (iv) the plaintiff was eventually acquitted of the alleged crime. In this case, Prem would be able to establish all of those elements. While Hedy presumably acted appropriately when she first contacted the police, her failure to correct the erroneous perception that Prem had committed the tort of fraud was based on her malicious desire to hurt Prem, rather than on an honest and reasonable belief in his guilt. Furthermore, the proceedings against Prem were discharged in his favour when the police dropped the charges.

Prem could also succeed in an action for false imprisonment. The imprisonment occurred

when Prem was taken into police custody and held in a jail cell for several hours. By the time that those events occurred, Hedy knew that her accusations against Prem were false. And finally, while the arrest and detention was performed by the police, this is *not* a case in which the defendant simply provided facts to the police and then allowed them to exercise their own judgment, after an investigation, into the plaintiff's supposed guilt. Instead, Hedy *directed* the police to apprehend Prem.

- 69) Chattels are moveable forms of tangible property, such as cars and cows. Tort law protects possession of chattels primarily through three torts: trespass to chattels, conversion, and detinue. While there is considerable overlap between those three torts (with the result that the plaintiff sometimes has the option of suing for more than one), each tort is, in some respects, unique.

Trespass to chattels occurs when the defendant interferes with chattels in the plaintiff's possession. The element of interference is satisfied if the defendant damages, destroys, takes, or uses the plaintiff's goods. The amount of protection that the tort provides depends upon the circumstances. While trespass would not be committed if the defendant merely touched the plaintiff's brick, the tort might be committed if the defendant touched the plaintiff's painting, which is ancient, valuable, and fragile. Moreover, the tort may be committed even if the defendant believed that they were dealing with their own property. It is sufficient that the defendant intended to commit the relevant act with respect to a particular chattel. The general remedy for trespass to chattels is compensatory damages. If the plaintiff's chattel is destroyed, the defendant must pay the full value of the thing (after accounting for the fact that, if the thing is old, it may have depreciated in value over time). If the plaintiff's chattel is merely damaged, the defendant may be required to pay either the replacement value or the repair value.

The tort of *conversion* occurs when the defendant interferes with the plaintiff's chattels in a way that is serious enough to justify a forced sale. That may be true if the defendant takes, detains, uses, buys, sells, damages, or destroys the plaintiff's property. If so, the defendant will be required to buy the item by paying the market value that the chattel had at the time of the tort. In exchange for that payment, the defendant acquires the property. The central difficulty with the tort of conversion lies in the need to determine whether or not the defendant's interference was so serious as to justify a forced sale. It once again is clear that the tort may be committed even if the defendant thought that it was dealing with its own property. Beyond that, the courts consider all of the facts, including: (i) the extent to which the defendant exercised ownership or control over the chattel, (ii) the extent to which the defendant intended to assert a right that was inconsistent with the plaintiff's right to the property, (iii) the duration of the defendant's interference, and (iv) the expense and inconvenience caused to the plaintiff.

The tort of *detinue* occurs when the defendant fails to return a chattel that the plaintiff is entitled to possess. The word "detinue" is derived from the old French word "*detenue*," which means detention. Because the tort is based on a wrongful detention, the plaintiff is normally required to demand possession of the property before bringing an action. That requirement is removed, however, if the demand would obviously be refused. The fact that detinue consists of a wrongful detention also affects the remedies that may be available to a plaintiff. First, the tort comes to an end as soon as the defendant returns the property to the plaintiff. At that point, the plaintiff is normally limited to compensation for losses that it suffered during the detention, as well as for any harm done to the item. Second, if the property has not been returned by the time of trial, the plaintiff can ask the court to compel the defendant to do so. The court usually gives the defendant the option of either giving the property back or paying damages. However, the judge may require the property to be returned if it is special or if damages would not satisfy the plaintiff.

Finally, Chapter 4 also discussed the concept of *recaption*. Recaption is not a tort, but rather a self-help remedy. It allows the plaintiff to physically re-acquire possession of a chattel that the defendant had unjustifiably taken, as long as that re-acquisition can be done without using unreasonable force.

- 70) It does not appear that SGN's plan would necessarily involve any of the torts discussed in

Chapter 4. APSL's arguments would focus on three sets of torts.

- *Trespass to land* would not be committed by SGN as long as the network operated from premises that it either leased or purchased for itself. That is true even though SGN would be describing the events that it observed occurring on other parties' properties. The tort of trespass to land requires proof that the defendant either physically entered upon the plaintiff's land or caused something to do so.
- *Interference with Chattels* would not be committed either. The torts of trespass to chattels, conversion, and detinue require proof that the plaintiff interfered with an object to which the plaintiff was entitled to possess. Those sorts of torts cannot be committed with respect to ideas or events, such as the state of play in a football game.
- *Invasion of property* does not yet exist as an independent tort in Canada. There are, however, increasing indications that such a tort may eventually be adopted. However, even if that development does occur, it is unlikely to prohibit SGN's proposed activities. As explained in the text (at the text accompanying note 4), one of the leading common law cases on privacy expressly held that no tort was committed when the defendant broadcast horse races that it observed, from its own property, occurring on the defendant's land. The courts are reluctant to restrict people from simply watching and talking. Moreover, it is doubtful that the activities that SGN plans to describe could be considered "private." To the contrary, professional sports teams and leagues earn enormous revenues by charging high prices to people who want to purchase tickets or acquire exclusive broadcasting rights.