I. MAJOR TOPICS: Listed below are the major topics in this chapter. You should have a complete understanding of each of these topics and be able to conduct complete analyses that utilize the corresponding concepts, principles, etc.

1. Describe the three elements that are generally required for someone to be able to recover damages under the classical theory of tort. Is intent necessary for a plaintiff to be able to bring action against a defendant?

2. What are the two legal tests that are commonly used to determine causation in tort law? What is the relationship between the two tests?

3. The economic analysis of tort law is constructed by casting each of the elements of an actionable tort in economic terms. Construct the basic elements of the economic analysis of tort law by doing each of the following.
   - Use the theories of utility maximization and profit maximization to explain the concept of harm.
   - Use the economic concept of an externality to explain the concept of causation.
   - Use the concept of cost minimization to illustrate the economic determination of fault. Illustrate graphically the cost-minimizing level of precaution, i.e., the level of precaution that minimizes the sum of precaution and accident costs, and explain what you are illustrating in your graph.

4. What factors influence the social costs of accidents? What mathematical condition, derived from the Calabresi Rule, must be met in order to minimize the social costs of accidents? Explain, in your own words, what the condition means.

5. Be able to use marginal analysis to illustrate how one would go about identifying the level of precaution that minimizes the social costs of accidents. In addition, be able to use the same model to illustrate how a change in each of the determinants of the social costs of accidents would affect the cost-minimizing level of precaution.

6. Distinguish between situations characterized by unilateral precaution and those that are characterized by bilateral precaution.

7. How does a rule of strict liability differ from a negligence rule? Under what circumstances will a rule of strict liability provide incentives for a potential injurer to take the efficient level of precaution? In your answer, be sure to consider the concept of perfectly compensatory damages and distinguish between bilateral precaution and unilateral precaution.

8. Distinguish among the following forms of a negligence rule:
   - simple negligence,
   - negligence with a defense of contributory negligence,
   - comparative negligence, and
   - strict liability with contributory negligence.

Compare each of these negligence rules in terms of their effects on
   - the determination of fault,
   - the distribution of costs of precaution between potential injurers and potential victims, and
   - the impact of each rule on the incentives for each party to take the efficient level of precaution, i.e, the relative efficiency of each rule.
9. What is the “residual bearer of harm?” How do the concepts of the residual bearer of harm and activity levels combine to influence the economical efficient liability rule in a particular situation, i.e. how can the concept of residual bearer of harm be used in choosing which of the four negligence rules we analyzed should be applied in a particular situation?

10. Explain the Hand Rule

11. Differentiate between systematic errors and vague standards and uncertainty, and describe how each can affect the efficiency of behavior by injurers and victims in the case of strict liability versus some form of a negligence rule.

12. Considering the Calabresi rule, explain how administrative costs can alter the relative efficiency of strict liability versus a negligence rule. Under what circumstances might strict liability be preferred to a negligence rule or vice versa?

13. Discuss the relative efficiency implications of wholesale administrative rules and case-by-case adjudication.

II. PROBLEMS

1. Blood banks are organizations which collect blood from donors either for a payment in cash or for a promise to provide free blood in the near future if the donor or his family should require it. The blood banks sell the collected blood to those who, because of surgery, severe injury, and the like, need transfusions. Sometimes the recipients of blood from the blood bank contract severe illnesses—such as hepatitis and HIV—as a result of having received contaminated blood. A recipient thus injured may sue the blood bank for damages. Based on efficiency grounds, what liability standard would you impose in such a case? Why?

2. Describe how each of the following would affect the economically efficient level of precaution and explain your reasoning.
   a) A decrease in the per unit cost of precaution.
   b) An increase in the cost of a particular type of accident.
   c) An external change, i.e., something not attributable to the actions of potential injurers or victims, that reduces the marginal probability of an accident, *ceteris paribus*.

3. Provide an example which illustrates each of the changes described in question 2.

4. For each of the situations listed below, indicate whether strict liability or some form of a negligence rule would be preferred on efficiency grounds and explain your reasoning. In developing your answers you should consider the effects of each liability rule on both precaution and activity level, i.e., the question of who is the residual bearer of harm should be factored into your analysis.
   a) A boater is killed when his craft collides with another boat. Both boats were traveling at a high rate of speed toward the same destination along opposite sides of a point extending out into the lake. The land mass made it impossible for the boaters to see each other until they were almost at the destination.
   b) A person who is allergic to peanuts falls ill after eating food at a restaurant that contains peanuts. The menu did not indicate that the item in question contains peanuts.
   c) A motorist on an interstate highway is injured in a multi-car pileup. At the time of the accident there was blowing and drifting snow and high wind. In addition, the roads were snow covered. The motorist had barely stopped in time to avoid five cars that had just collided in front of him when he was struck in the rear by another driver who did not see the accident in time to slow down and avoid the ensuing collision.
   d) Some of the residents in a housing subdivision become ill as a result of the release of toxic fumes from a rail car that were released when the train the rail car was part of derailed near the subdivision.
5. Suppose the current legal rule regarding accidental injuries when someone rents a jet ski or similar recreational device is that the firm (provider of the item) is liable unless it can be shown that the renter did not exercise due care. Thus, if someone rents a jet ski and subsequently collides with another object or falls off, receiving injury, the firm is liable for the resulting losses unless it can be shown that the renter did not exercise due care.

   a) What liability standard is in effect according to the facts described above?
   b) In your opinion, is the liability standard in effect efficient? Why or why not?
   c) Assuming your answer to part b is no, what liability standard would you recommend as an alternative if economic efficiency is the primary objective? Why?

6. A significant portion of municipal wastes (i.e., household wastes generated by people such as you and me) are disposed of by placing them in commercially operated landfills. The owners of these disposal sites comply with state and federal regulations governing such factors as location, construction of the landfill, collection of runoff from the site, monitoring, and so forth. In addition, households are not supposed to send certain wastes, such as those that are toxic, to municipal waste sites. It is virtually impossible for the landfill operator to inspect the wastes that are sent to the landfill to ensure that no toxic chemicals are disposed of at the site.

   Suppose it is discovered that a municipal waste landfill that was in compliance with all known regulations and safety standards has been leaking waste materials and it is determined that an adjacent aquifer may have been contaminated with toxic chemicals. The aquifer serves as a source of drinking water for people and animals (pets and livestock) living near the landfill. Several years after the leaks were discovered, several people fall ill and bring suit against the landfill charging that the landfill is liable for their injuries. Assume all of the wastes deposited in the landfill come from the homes served by the aquifer that may have been contaminated.

   a) Considering the situation described above, would you argue it is characterized by unilateral or bilateral precaution? Why? Be specific.
   b) In order to promote economic efficiency, should the site owner be subject to a negligence standard—e.g., simple negligence, negligence with contributory negligence, or comparative negligence—or a strict liability standard? Why?
   c) Assume instead that the wastes deposited in the landfill came from homes that do not draw their drinking water from the affected aquifer. Would this affect your answer to part b in any way? If so, how and why? If not, why?