

Torts

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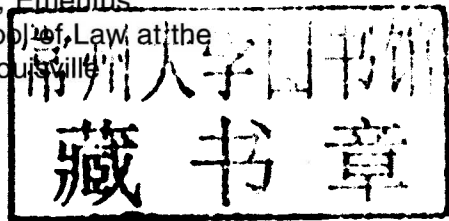
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Torts

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As you compare your answers to those given in the book, do not be content merely to check to see if you selected the correct letter. The answers given in the book provide a good discussion of why the correct answer should be chosen and why the other answers are incorrect. It is important for a student to be able to make those distinctions. Many of the question and answer sets in this book will allow you to make fine, subtle distinctions in the law. A careful use of the questions and answers will assist you in understanding those distinctions. In addition, that close study will allow you to be better prepared for a final exam.

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Table of Contents

Chapter	Page
1. Intentional Torts	1
Questions:	1
Answers:	18
2. Privileges: Defenses To Intentional Torts	29
Questions:	29
Answers:	37
3. Negligence	41
Questions:	41
A. Duty	41
1. Adults	41
2. Children	48
3. Professionals	49
4. Negligent emotional distress	55
5. Negligence per se	57
B. Breach	58
1. Burden of proof	58
2. Res ipsa loquitur	60
C. Injury	62
D. Causation	63
1. Cause in fact	63
2. Proximate cause	68
E. Defenses	70
1. Contributory/Comparative Fault	70
2. Assumption of Risk	72
3. Statutes of limitations	73
4. Immunities	74

Chapter	Page
Answers:	77
A. Duty	77
1. Adults	77
2. Children	78
3. Professionals	79
4. Negligent emotional distress	81
5. Negligence per se	82
B. Breach	82
1. Burden of proof	82
2. Res ipsa loquitur	84
C. Injury	84
D. Causation	85
1. Cause in fact	85
2. Proximate cause	87
E. Defenses	88
1. Contributory/Comparative Fault	88
2. Assumption of Risk	89
3. Statutes of limitations	89
4. Immunities	90
4. Vicarious Liability	91
Questions:	91
Answers:	110
5. Strict Liability	117
Questions:	117
A. Animals	117
B. Ultrahazardous and abnormally dangerous activities	126
Answers:	134
A. Animals	134
B. Ultrahazardous and abnormally dangerous activities	137

Chapter	Page
6. Nuisance	141
Questions:	141
A. Public	141
B. Private	145
C. Substantial harm	146
D. Bases of liability	147
E. Remedy	149
F. Defenses	151
Answers:	153
A. Public	153
B. Private	154
C. Substantial harm	154
D. Bases of liability	155
E. Remedy	155
F. Defenses	156
7. Wrongful Death And Survival	159
Questions:	159
Answers:	167
8. Products Liability	171
Questions:	171
Answers:	183
9. Defamation	191
Questions:	191
Answers:	198
10. Privacy	201
Questions:	201
Answers:	206

Chapter	Page
11. Misrepresentation Torts	209
Questions:	209
Answers:	216
12. Damages	221
Questions:	221
Answers:	227

CHAPTER 1

INTENTIONAL TORTS

QUESTIONS:

Use the following facts for Questions 1 through 3. Jess, who walked with the aid of a cane, was standing on a street corner one day, waiting for the traffic light to change. Pranks quietly walked up behind Jess and, thinking it would be a good gag, kicked the base of Jess's cane. Although the bottom of the cane came off the ground, Jess had not been leaning on it heavily. Jess lost his balance slightly, but did not fall, and was not injured. Jess turned around to see Pranks laughing at him. Jess got mad and whacked Pranks over the head with the cane.

1. If Jess sues Pranks for battery, who will prevail?
 - A. Jess will prevail because losing his balance counts as "harm."
 - B. Jess will prevail because the contact with his cane, while he was holding it, is the equivalent of an offensive contact with his person.
 - C. Pranks will prevail because he intended only to play a joke, not to cause any physical harm.
 - D. Pranks will prevail because Jess suffered no actual injury.
2. If Jess sues Pranks for assault, who will prevail?
 - A. Jess will prevail because the intent sufficient for battery will also support a claim of assault.
 - B. Jess will prevail because every battery includes an assault.
 - C. Pranks will prevail because he intended only contact with the cane, and not to cause apprehension.

- D. Pranks will prevail because Jess never saw the contact coming and therefore experienced no apprehension of harmful or offensive contact.
3. If Pranks sues Jess for battery, who will prevail?
- A. Jess will prevail because Pranks was the original aggressor.
- B. Jess will prevail because most jurisdictions do not require the victim of an assault or battery to retreat before engaging in self-defense.
- C. Pranks will prevail because he actually suffered an intended harmful contact.
- D. Pranks will prevail because Jess used a weapon.
4. A mentally disturbed individual went into a crowded gym, pulled out a gun, and began firing into the crowd, wounding several people. Later, after being arrested, the individual insists that he did not intend to hit anyone in particular, and in fact did not care if he hit anyone or not. If those who were wounded in the incident sue the shooter for battery, who will prevail?
- A. The plaintiffs will prevail if the shooter knew that, by firing into the crowd, it was substantially certain that someone would be struck by a bullet.
- B. The plaintiffs will prevail because the shooter created an unreasonable risk of harmful contact.
- C. The shooter will prevail because it was not his purpose to cause a harmful contact with anyone, and he therefore lacked the intent necessary for battery.
- D. The shooter will prevail because the mentally ill cannot commit an intentional tort.
5. A landowner decided to do some target practice on her rural land. She went to an open field and began firing at large, dead tree about 400 yards away. The landowner was aware that the tree was near her property line and that hikers used a trail in the state forest on the other side of the line. One of her shots missed the dead tree and carried onto public property, where it wounded a hiker whom the landowner had not seen.

If the hiker sues the landowner for battery, who will prevail?

- A. The hiker will prevail, because the landowner knew that members of the public visited the state forest on the other side of the property line.

- B. The hiker will prevail, because harmful contact in fact resulted.
 - C. The landowner will prevail because she did not have the intent necessary for liability for battery.
 - D. The landowner will prevail because she was on her own property when she fired.
6. Alex saw Barber, whom he disliked intensely, walking about fifty yards away. Alex picked up a large rock, took aim at Barber, and threw. In a one in a million chance, Alex hit Barber in the head with the rock. If Barber sues Alex for battery, who will prevail?
- A. Barber will prevail because she suffered an intended harmful contact.
 - B. Barber will prevail only if Alex was skilled enough at rock-throwing that harmful contact was substantially certain to occur.
 - C. Alex will prevail because, at that distance, he only created a remote risk of harmful contact.
 - D. Alex will prevail because he must have known that it was unlikely that he could hit Barber with the rock.
7. Art, Phil and Susan were walking along the street engaged in a heated argument. Art became angry at something Phil said and violently shoved him against Susan. Susan was knocked to the ground and hurt her leg. Phil landed on top of her, but was not physically injured. Which of the following statements is true?
- A. Susan can successfully sue both Art and Phil for battery.
 - B. Susan and Phil can both successfully sue Art for battery.
 - C. Phil can successfully sue Art for battery, and Susan can successfully sue Phil for battery.
 - D. Phil has the only valid battery action since he is the only one whom Art intended to contact.

Use the following facts for Questions 8 and 9. Matty, ten years old, was riding her bicycle along the street when she saw Tom standing on the sidewalk. A big puddle of muddy water lay in the street near where Tom stood. As a joke, Matty steered her bike into the puddle for the purpose of splashing Tom. Matty did not see Hannah, a pedestrian walking across the street from the other direction. Matty

rode through the puddle, throwing muddy water on Tom and running into Hannah, knocking her down.

8. If Tom sues Matty for battery, who will prevail?
 - A. Matty will prevail because muddy water does not cause bodily harm.
 - B. Matty will prevail because she was too young to be capable of an intentional tort.
 - C. Tom will prevail if he saw her coming and suffered apprehension.
 - D. Tom will prevail because being splashed with muddy water in this way constitutes an intended offensive contact.
9. If Hannah sues Matty for battery, who will prevail?
 - A. Hannah will prevail because Matty intended an offensive contact with Tom.
 - B. Hannah can only recover for offense, and not for physical harm, because Matty only intended offense.
 - C. Matty will prevail because she did not see Hannah, so that the contact with her was unintended.
 - D. Matty will prevail in a battery claim because her conduct toward Hannah constituted negligence.
10. Ashley downloaded a ring-tone to her cell phone that sounds exactly like the buzzing of an angry bee. Ashley then snuck up behind Bart, whom she knew to be severely allergic to bee stings and therefore deathly afraid of bees. Ashley activated the ring-tone while holding the cell phone inches away from the back of Bart's head. Bart was startled and jumped away, waving his hands frantically to ward off the supposed bee.
 - A. Bart has no claim so long as Ashley did not actually touch him with the cell phone.
 - B. Bart has no claim because no bee was actually present, so Ashley could not have in fact inflicted a harmful contact.
 - C. Bart has an assault claim because Ashley knew of his fear of bee stings.
 - D. Bart has a battery claim because the cell phone was so close to his head.

11. Zach and Al were engaged in a heated argument. Zach became enraged and said to Al, “I am going to go get my baseball bat and beat you to a pulp.” Zach walks away in the direction of his car, where Al has reason to believe that Zach does, in fact, keep a baseball bat. If Al sues Zach for assault, who will prevail?

- A. Al will prevail because Zach threatened him with a harmful bodily contact.
- B. Al will prevail only if he actually feared that Zach not only had a baseball bat in his car, but also would actually hit him with it.
- C. Zach will prevail if he did not intend to actually hit Al with the bat.
- D. Zach will prevail because the threat of harmful bodily contact was not imminent.

12. Use the following facts for Questions 12–14: Dale insulted Mark in front of a number of people. Mark told Dale, “I can’t deal with you here, in front of all these people, but if I ever run across you when you are alone, I will beat you up with my bare hands.” The next day, Dale was jogging in the park. No one was around. Suddenly, Mark stepped out onto the jogging trail about twenty feet in front of him. “Prepare to meet your doom,” said Mark, smiling evilly. Dale turned around and ran (not jogged) in the opposite direction. If Dale sues Mark for assault under these facts, which of the following is correct?

- A. Dale will prevail because the facts show he apprehended a harmful contact with his person.
- B. Dale will only prevail if Mark was stronger than he was.
- C. Mark will prevail because he had not actually started to attack before Dale ran away.
- D. Mark will prevail because he was too far away for the threat to be “imminent.”

13. Use the same facts as Question 12. In addition, assume that Dale was known to Mark to be a timid person who always tried to avoid any physical confrontation. Mark himself was rather small and puny, so that a normal person would not have feared him at all. If Dale sues Mark for assault under these facts, which of the following is correct?

- A. Dale will prevail because the threat is enough, and Dale does not in fact have to believe that Mark will actually attack.

- B. Dale will prevail because Mark in fact intended to cause him apprehension of a harmful contact.
 - C. Mark will prevail because Dale's fear was unreasonable.
 - D. Mark will prevail because he knew Dale would run away, so that he would not have to actually carry out his attack.
14. Use the same facts as Question 12. For this question, however, assume that Dale was a champion martial artist who had no doubts that he could defend himself from attack by Mark. However, he turned and ran away because he was on parole from a prison sentence for a criminal battery on another person. Dale knew that his parole could be revoked and he could be sent back to prison if he became involved in another fight. Under these circumstances, which of the following statements is true?
- A. Mark will prevail because Dale did not fear him.
 - B. Mark will prevail because Dale could have defended himself from Mark's attack.
 - C. Dale will prevail because public policy encourages people to avoid physical confrontations.
 - D. Dale will prevail because he need only experience apprehension of harmful contact.
15. Pam was searching for a parking place in a crowded mall parking lot on a holiday weekend. Seeing another motorist backing out of a spot two rows over, Pam sped up, drove the wrong way down that row of parking spaces, and backed up into the now empty spot. In doing so she cut off Rob, who had been approaching the space from the proper direction. Rob, angered, shook his fist at Pam and shouted obscenities at her through the closed windows of his car, before driving off to look elsewhere for a place. Pam was upset and unnerved by the violence of Rob's reaction. If Pam sues Rob for assault, who will prevail?
- A. Pam will prevail because Rob's gesture was a threat of harmful contact, and put Pam in apprehension.
 - B. Pam will prevail because she in fact felt threatened by Rob's actions.
 - C. Rob will prevail because, sitting in his car, he did not have the present ability to inflict a harmful contact on Pam.
 - D. Rob will prevail because Pam's fears were unreasonable.

16. Bet, the owner of Bet's Bookstore, a small establishment in a modest strip mall, was standing at the door to her establishment one morning when she saw a particularly annoying political canvasser emerge from one of the other stores in the mall and then enter the next store closer to Bet's. Not wanting to deal with the canvasser, Bet watched him come down the line of stores until he exited the store next to hers. Bet quickly locked the door of her store, switched the "Open" sign to "Closed", and hid behind the counter. While she was doing this the only other person in her store was Bill, who was browsing the magazines in the rear. Bill began to walk towards the front of the store as the canvasser left, and he saw Bet quickly unlock the door, switch the sign back, and return to her sales counter. Bill asked what had happened and was incensed that Bet had locked him in the store. If Bill sues Bet for false imprisonment who will prevail?

- A. Bet will prevail because Bill voluntarily entered the store.
- B. Bet will prevail because Bill was not aware of the confinement until it was over.
- C. Bill will prevail providing that Bet knew he was in the store.
- D. Bill will prevail because confinement itself counts as "injury" in a false imprisonment claim.

17. This question is set in the same bookshop as Question 16. Bet, the owner, was in the habit of locking up each day at 1:00 p.m. so that she could eat her lunch in peace. One day she locked the front door of the shop and heated some soup in her microwave oven. She was just sitting down to enjoy her nice, hot soup when Mary, a customer whom she did not know was still in the store, tried the front door and found it locked. Mary asked Bet to open the door so she could leave, but Bet told her she would have to wait until she finished her lunch. This took about 15 minutes, after which Bet opened the door and let a very angry Mary depart. If Mary sues Bet for false imprisonment, who will prevail? (Assume in this question that no rear entrance is available.)

- A. Mary will prevail because she was confined without her consent.
- B. Mary will prevail because Bet was negligent in locking the store without checking to see if customers were present.
- C. Bet will prevail because she did not know Mary was there when she locked the door.