

QUESTIONS & ANSWERS: TORTS

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QUESTIONS & ANSWERS: TORTS

Third Edition

***Multiple Choice, Short Answers,
Essay Issue-Spotters, and
90-Minute Practice Final Exam***

ANITA BERNSTEIN

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Brooklyn Law School

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MATTHEW  BENDER

DEDICATION

In memory of David P. Leonard
1952–2010

PREFACE AND HOW TO USE THIS BOOK

The law of torts deals with an extremely broad range of human conduct. From punches in the nose to automobile accidents; from affronts to dignity to environmental pollution; from defective products to fraud. Not only must rules of tort law regulate vastly different types of potentially harmful behavior, but they must also be flexible enough to account for the almost limitless variety of fact patterns within each type. No two punches in the nose are exactly alike. And yet, the rules must be fashioned in such a way as to make the law at least reasonably predictable and the results of the cases both fair to individuals and conducive to social prosperity.

For these reasons, modern rules of tort law are written in broad strokes. They seldom seek to prescribe specific behavior in specific circumstances (always stop, look, and listen before crossing a railroad track). Rather, they set forth general principles to guide behavior in a variety of circumstances (always exercise reasonable care). Instead of purporting to tell us exactly what to do, they provide us with standards against which our conduct may be measured.

The generality of tort rules is what makes the study of tort law difficult. But tort is not unstructured. Every claim for relief and every affirmative defense has a set of required *elements*. These elements tell lawyers what they must allege and prove in order to demonstrate their clients' entitlement to relief or why their clients should not be held responsible. It is your task to learn what these elements are and how to apply them to real and hypothetical fact patterns.

How can *Questions and Answers: Torts* help you in this task? Recognizing that torts coverage varies somewhat from school to school, instructor to instructor, and even day to day in the same course, this book follows a comparably varied path to give you what you need.

You will find a range of difficulty. Some questions are tough while others are pretty easy. A panel of second-year students who completed Torts successfully have assigned the Easy, Medium, and Hard ratings that you will find under Answers. To maximize the value of these rankings, the questions appear in the order of Easy → Medium → Hard . . . with two exceptions: First, when a scenario yields more than one question you might find a harder question followed by an easier one. Second, the difficulty order on the Practice Final Exam is (purposely) random.

Multiple choice questions, which predominate in this book, always offer four alternatives and only rarely resort to something like "none of the above." They might ask you to pick the best of a list, the worst of a list, the correct one of two contrary outcomes accompanied by the best rationale, or the story that illustrates a point of doctrine most effectively, as well as other routes to mastery of the material. Short-answer questions ask you to analyze scenarios or communicate discrete points. A little (simple) arithmetic comes up now and then — just as it does for practicing lawyers. The Practice Final Exam simulates reality by not announcing up-front, the way the chapter headings do, which topics are being tested. Whether you're in your beginning or ending stage of pulling torts material together then, you'll find coverage at a useful level.

Like most torts classes, the book emphasizes blackletter law but also goes beyond it. While most of its questions use the familiar issue-spotter approach to doctrine — an approach you can probably expect to see on your final — a number of questions will help you review social policy, economic theory, fairness, and the insights of famed common law judges. Most torts teachers expect you to think about torts at this more conceptual level while also mastering rules and elements.

Despite its wide swath, this book is neither a casebook nor a treatise. Its purpose is to help you test your comprehension of the elements of the most important tort claims and defenses. It does not purport to teach you the law in the first instance: that is the purpose of your torts class. Therefore, you should not attempt to answer the questions in any particular part of this book until you have studied the applicable law.

Once you have completed an area of study, you can work your way through the problems in that part of the book to test your understanding of the subject matter. Take your time. Try to answer each question before reviewing the answers and the explanations they provide. If the question calls for a response in your words, write something before reviewing the answer — at least an outline. Don't just think about what you would say. It's too easy to think you have the perfect response in your mind. Your instructor will grade what you produced, not what you intended.

When you reach the end of the semester, consider taking the Practice Final Exam. Give yourself 90 minutes to answer it and do so under conditions of the kind your instructor imposes — for example, closed book or open book depending on what you'll face. If the question tests on something you didn't cover, you'll know and can skip it. Try to avoid the temptation to peek at the answers until after you've finished. This exercise can give you a better idea of how to allocate your study time before your actual final.

Many people helped me and my much-missed co-author of the first and second editions, David P. Leonard, to reach the point where we could put these questions before you with confidence that you will benefit from them. First to be thanked are the Torts

PREFACE AND HOW TO USE THIS BOOK

students who over many years challenged me, and also David, to dig deeper into the whys and wherefores of this fascinating subject. The manuscript could not have been prepared without help from Frances Buonarota of Brooklyn, Jack Glezen of Cornell, and Rhonda Heermans of Emory. Jennifer Fried provided thoughtful research assistance. Professor Keith Rowley and Heather Dean of Lexis-Nexis got the book started.

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Brooklyn, New York
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