

Torts

NOTE: The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

- I. Intentional torts
 - A. Harms to the person: assault, battery, false imprisonment, infliction of mental distress
 - B. Harms to property interests; trespass to land and chattels, conversion
 - C. Defenses to claims for physical harms
 - 1. Consent
 - 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege
- II. Negligence
 - A. The duty question: including failure to act; unforeseeable plaintiffs; and obligations to control the conduct of third parties.
 - B. The standard of care
 - 1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
 - 2. Rules of conduct derived from statutes and custom
 - C. Problems relating to proof of fault, including *res ipsa loquitur*
 - D. Problems relating to causation
 - 1. But for and substantial causes
 - 2. Harms traceable to multiple causes
 - 3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
 - E. Limitations on liability and special rules of liability
 - 1. Problems relating to "remote" or "unforeseeable" causes, "legal" or "proximate" cause, and "superseding" causes
 - 2. Claims against owners and occupiers of land
 - 3. Claims for mental distress not arising from physical harm; other intangible injuries
 - 4. Claims for pure economic loss
 - F. Liability for acts of others
 - 1. Employees and other agents
 - 2. Independent contractors and nondelegable duties
 - G. Defenses
 - 1. Contributory fault: including common law contributory negligence and last clear chance, and the various forms of comparative negligence
 - 2. Assumption of risk
- III. Strict liability: claims arising from abnormally dangerous activities; the rule of *Rylands v. Fletcher* and other common law strict liability claims; defenses
- IV. Products liability: claims against manufacturers and others based on defects in manufacture, design, and warning; and defenses
- V. Other torts
 - A. Claims based on nuisance, and defenses
 - B. Claims based on defamation and invasion of privacy; defenses and constitutional limitations
 - C. Claims based on misrepresentations, and defenses
 - D. Claims based on intentional interference with business relations, and defenses

Approximately half of the Torts questions for each MBE will be based on category II, and approximately half will be based on the remaining categories, I, III, IV, and V. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.