

Answers to Assignment 6 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

Educational Objective 1

- 1-1. The elements of negligence are that the defendant owed a legal duty of care to the plaintiff; the defendant breached that duty; the defendant's negligent act was the proximate cause of the plaintiff's injury or damage; and the plaintiff suffered actual injury or damage.
- 1-2. At the outset of a lawsuit, the defendant is presumed to have used due care until the plaintiff proves otherwise.

Educational Objective 2

- 2-1. The pure comparative negligence rule is the maximum departure from the contributory negligence rule because a plaintiff who is as much as 99 percent at fault can still recover 1 percent of the claimed damages.
- 2-2. Exculpatory agreements are void if they exclude willful or wanton misconduct.
- 2-3. The extent of public official immunity depends on whether the acts are administrative or ministerial acts.

Educational Objective 3

- 3-1. Yes. A landowner creating an artificial condition on land that could cause severe injury or death has a duty to warn of the hazard if a trespasser probably would not discover it without warning.
- 3-2. Under common law, the landlord was under no duty to protect tenants from intruders. However, many courts now impose a duty on landlords, hotel operators, and public entities to take reasonable precautions to secure their premises against foreseeable risks of harm by intruders.

Educational Objective 4

- 4-1. Battery requires touching, but assault does not involve touching.
- 4-2. Defenses to false imprisonment and false arrest relate to whether the acts occurred in connection with a crime, the nature of the crime, and the capacity of the individual involved.
- 4-3. The defenses for libel and slander are that the statement was true; that the defendant made or printed a retraction (partial defense); and that the statement had an absolute, conditional, or qualified privilege.

Educational Objective 5

- 5-1. In insurance cases, the tort of bad faith is based on an insurer's implied duty to act fairly and in good faith in discharging its duties under an insurance contract.



- 5-2. The torts relating to interference with relationships between others are injurious falsehood; malicious interference with prospective economic advantage; unfair competition; interference with employment; interference with copyright, patent, or trademark; interference with the right to use one's own name in business; and interference with family relationships.
- 5-3. A defendant can defend against a claim of trespass to real or personal property by alleging that the plaintiff did not own or possess the property, that the plaintiff consented to the defendant's entry, or that the defendant did not enter onto or take control of the property.

Educational Objective 6

- 6-1. A use or an activity is ultrahazardous or abnormally dangerous under these circumstances:
- It has a high degree of risk of serious harm.
 - It cannot be performed without the high degree of risk.
 - It does not normally occur in the area in which it is conducted.
- 6-2. The law differentiates between domestic and wild animals based on local custom.

Educational Objective 7

- 7-1. A breach of warranty lawsuit can involve either an express warranty or an implied warranty.
- 7-2. In a general negligence case involving products liability, the plaintiff must prove that the manufacturer failed to use reasonable care in designing or manufacturing the product that caused the injury. In a strict liability case, proof of either negligence or an intent to harm is not required. The manufacturer's conduct is irrelevant, and the focus is on the product itself.
- 7-3. A manufacturer should consider three factors in relation to warning about a product's danger:
- Degree of the danger
 - Knowledge of the danger
 - Foreseeability of dangerous use
- 7-4. In determining who has legal standing to sue, most courts use the traditional foreseeability test. Anyone who could foreseeably have been injured by the product has standing to sue.

Educational Objective 8

- 8-1. Compensatory damages include special and general damages.
- 8-2. A court can award punitive damages when a defendant actually intended to cause harm or acted oppressively, maliciously, or fraudulently.

Educational Objective 9

- 9-1. Under common law, joint tortfeasors were jointly and severally liable for the full amount of the damages. About half the jurisdictions have abolished this rule—today, they do not hold a joint tortfeasor automatically liable for all of a plaintiff's damages.



- 9-2. Under the expanded liability concept of concert of action, a plaintiff must prove either (1) that the defendants consciously parallel each other, as the result of an actual agreement or an implied understanding to do or not to do a given act, or (2) that even though the defendants acted independently, the effect of their acts was to encourage or assist others' wrongful conduct.
- 9-3. The principal and agent, employer and employee, and parent and child relationships can all give rise to vicarious liability.

