

MASSACHUSETTS SCHOOL OF LAW

COMPARISON - TORTS

Mr. Martin

Fall, 2020

SYLLABUS

- Monday, August 10: Negligence
missing elements
negligence per se
respondeat superior
proximate cause
res ipsa loquitor
- Wednesday, August 12: Product Liability
elements of strict product liability
distinguish negligence liability from strict liability
defective products
- Nuisance
Animals
Abnormally dangerous activities
- Monday, August 17: Contributory and comparative negligence
Joint and several liability, contribution and indemnity
Defamation
Children
- Wednesday, August 19: Final Exam in Torts.

A NOTE ON MISSED QUIZZES

I return graded quizzes to students at the beginning of the next class. At this point the correct answers to the quiz questions are known and further use of the quiz has been compromised. Therefore, I do not allow students to make up missed quizzes. If you miss my class, you miss my quiz.

ASSIGNMENTS

In preparation for Comparison—Torts, please identify the Torts study materials that you will be using for your review of the subject. These should begin with the Torts outline in your Strategies & Tactics materials. Other study materials are a matter of your choice, but do not plan to survive Torts (or any other section of Comparison) without the aid of outside study resources. I recommend the Examples and Explanations book by Professor Joseph W. Glannon.

For the first class on Monday, August 10, review the following five subjects about negligence.

1. Elements of negligence and “missing element” questions about negligence. A “missing element” question conforms to a model that is used over and over by the bar examiners. In a missing element question the narrative or fact pattern contains all of the elements of the tort claim except for one. Of the four multiple choices, one supplies the missing element and is therefore the correct answer. Question no. 2 in your Torts Strategies & Tactics book is a missing element question. Ask yourself: what is the element that is missing or in doubt?
2. Violation of a statute or ordinance in connection with liability for negligence, sometimes called “negligence per se.”
3. Liability of the employer for torts committed by an employee, sometimes called “respondeat superior.”
4. Proximate cause.
5. Res ipsa loquitur.

On Monday, August 10, there will be a quiz with five questions, drawn from the foregoing five subjects.

For the class on Wednesday, August 12, please review strict liability for defective products. The quiz on that day (Quiz No. 2) will test your ability to distinguish strict liability concepts from negligence liability concepts in connection with defective products.

CLASSROOM DISCUSSION QUESTIONS
Monday, August 10

Five multiple-choice questions are printed below. For this class, you were asked to review the following five subjects all of which relate to the tort claim of negligence. (Fifty per cent of the multi-state questions on your bar exam will be about negligence):

1. Elements of negligence, and “MISSING ELEMENT” questions about negligence.
2. Violation of a statute or ordinance in connection with liability for negligence, sometimes called “NEGLIGENCE PER SE.”
3. Liability of the employer for negligent torts committed by an employee, sometimes called “RESPONDEAT SUPERIOR.”
4. PROXIMATE CAUSE.
5. RES IPSA LOQUITUR.

Each of the five distributed questions is drawn from, and relates to, one (and only one) of the above five subject areas. No two of the questions relate to the same subject area. In the spaces below, identify the Torts subject area from which each question is drawn and to which it relates. For brevity, use only the words above that are capitalized.

Question 1. _____

Question 2. _____

Question 3. _____

Question 4. _____

Question 5. _____

In the spaces below, write your answer to the five questions. Answer "A," "B," "C," or "D" only.

Question 1. _____

Question 2. _____

Question 3. _____

Question 4. _____

Question 5. _____

QUESTIONS FOR CLASSROOM DISCUSSION

Monday August 10

Question 1.

A car owner washed her car while it was parked on a public street, in violation of a statute that prohibits the washing of vehicles on public streets during rush hours. The statute was enacted only to expedite the flow of automobile traffic. Due to a sudden and unexpected cold snap, the car owner's waste water formed a puddle that froze. A pedestrian slipped on the frozen puddle and broke her leg. The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the statute. At the conclusion of the proofs, both parties moved for a directed verdict.

How should the trial judge proceed?

- (A) Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
- (B) Deny both motions and submit the case to the jury, because the jury may consider the statutory violation as evidence that the car owner was negligent.
- (C) Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.
- (D) Grant the pedestrian's motion, because of the car owner's admitted statutory violation.

Question 2.

A customer ate a spicy dinner at a restaurant on Sunday night. He enjoyed the food and noticed nothing unusual about the dinner.

Later that evening, the customer had an upset stomach. He slept well through the night, went to work the next day, and ate three meals. His stomach discomfort persisted, and by Tuesday morning he was too ill to go to work.

Eventually, the customer consulted his doctor, who found that the patron was infected with a bacterium that can be contracted from contaminated food.

Food can be contaminated when those who prepare it do not adequately wash their hands.

The customer sued the restaurant* for damages. He introduced testimony from a health department official that various health code violations had been found at the restaurant both before and after the customer's dinner, but that none of the restaurant's employees had signs of bacterial infection when they were tested one month after the incident.

The restaurant's best argument in response to the customer's suit would be that

- (A) no one else who ate at the restaurant on Sunday complained about stomach discomfort.
- (B) the restaurant instructs its employees to wash their hands carefully and is not responsible if any employee fails to follow these instructions.
- (C) the customer has failed to establish that the restaurant's food caused his illness.
- (D) the customer assumed the risk of an upset stomach by choosing to eat spicy food.

Question 3.

A woman went to Fantasyland, an amusement park, with her ten-year-old son. The woman took her son on Montezuma's Revenge, a high-speed ride. When the ride started, it malfunctioned due to inadequate maintenance. A metal rod broke off and struck the woman in the face.

As a result of the injury the woman temporarily lost vision in her right eye and was required to wear an eyepatch for one month. Two weeks after the accident at Fantasyland, the woman was shopping at Home Depot. She was walking in the lumber section of the store where a store employee was operating a forklift. He was driving the forklift negligently and struck the woman with the machine. She did not see the forklift because her peripheral vision was impaired by the eyepatch. If she had not been wearing the eyepatch, she would have easily seen the forklift and avoided the accident. As a result of the forklift accident, the woman suffered a broken arm.

If the woman asserts tort actions against Fantasyland and Home Depot to recover damages for her injuries, she would most likely

- (A) recover against Fantasyland only for the temporary loss of vision, and against Home Depot only for the broken arm which was caused by the negligence of its employee.
- (B) recover against Fantasyland for both the temporary loss of vision and for the broken arm.
- (C) recover against Fantasyland only for the temporary loss of vision, but neither defendant is liable for the broken arm because Sally was negligent in not seeing the forklift.
- (D) recover against Fantasyland only for the temporary loss of vision and recover 50% in damages from each defendant for the broken arm.

Question 4.

A shopper was riding on an up escalator in a department store when the escalator stopped abruptly. The shopper lost her balance and fell down the escalator steps, sustaining injuries. Although the escalator had been regularly maintained by an independent contractor, the store's obligation to provide safe conditions for its invitees was nondelegable. The shopper has brought an action against the store for damages, and the above facts are the only facts in evidence.

The store has moved for a directed verdict.

Should the court grant the motion?

- (A) No, because the finder of fact could infer that the escalator malfunction was due to negligence.
- (B) No, because the store is strictly liable for the shopper's injuries.
- (C) Yes, because an independent contractor maintained the escalator.
- (D) Yes, because the shopper has not produced evidence of negligence.

Question 5.

A patron who had been drinking heavily in a bar was stopped by two bouncers at the exit as he was getting his car keys out. The bouncers, who were employed by the bar owner, offered to call him a cab because he was too drunk to drive, but the patron refused. The bouncers then took the patron into a back room and locked

him in the room for an hour to sober him up, despite his protests that he was capable of driving. The bouncers then allowed him to leave the premises.

If the patron sues the owner of the bar for false imprisonment, is he likely to prevail?

- (A) Yes, because the patron did not consent to being locked in a room for an hour.
- (B) Yes, because employees of the bar were negligent in allowing the patron to become intoxicated.
- (C) No, because the bouncers were acting in the patron's best interests by keeping him there until he sobered up.
- (D) No, because an employer is not liable for the intentional torts of his employees.