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**Torts**

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# Questions & Answers **Torts**

FIFTH EDITION

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

**Anita Bernstein**

ANITA AND STUART SUBOTNICK PROFESSOR OF LAW  
BROOKLYN LAW SCHOOL



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# Contents

<b>Preface: How to Use This Book</b>	<b>vii</b>
<b>About the Author</b>	<b>ix</b>
<b>Questions</b>	
Topic 1: Negligence: The Duty of Care	3
Topic 2: Negligence: Breach of Duty	9
Topic 3: Negligence: Causation—Actual and Proximate	17
Topic 4: Defenses to Negligence	23
Topic 5: Damages	29
Topic 6: Multiple Defendants and Vicarious Liability	33
Topic 7: Strict Liability and Nuisance	39
Topic 8: Products Liability	47
Topic 9: Intentional Torts: Battery and Assault	53
Topic 10: Intentional Torts: Invasions into Land, Harm to Property, and False Imprisonment	59
Topic 11: Defenses to Intentional Torts	65
Topic 12: Defamation	69
Topic 13: Invasion of Privacy	73
Topic 14: Emotional Distress	77
Topic 15: Harm to Economic Interests	83
Practice Final Exam: Questions	91
<b>Answers</b>	
Topic 1: Negligence: The Duty of Care	111
Topic 2: Negligence: Breach of Duty	117
Topic 3: Negligence: Causation—Actual and Proximate	125
Topic 4: Defenses to Negligence	129
Topic 5: Damages	135
Topic 6: Multiple Defendants and Vicarious Liability	139
Topic 7: Strict Liability and Nuisance	143
Topic 8: Products Liability	151
Topic 9: Intentional Torts: Battery and Assault	155
Topic 10: Intentional Torts: Invasions into Land, Harm to Property, and False Imprisonment	161
Topic 11: Defenses to Intentional Torts	167

Topic 12: Defamation	171
Topic 13: Invasion of Privacy	175
Topic 14: Emotional Distress	179
Topic 15: Harm to Economic Interests	185
Practice Final Exam: Answers	191
<b>Index</b>	<b>205</b>

# Preface: How to Use This Book

The law of torts deals with a broad range of human conduct. From punches in the nose to automobile accidents; from affronts to dignity to environmental pollution; from defective products to infliction of emotional distress. 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. At the same time, the rules ought to make the law at least reasonably predictable and the results of the cases both fair to individuals and conducive to social prosperity.

With these far-reaching goals in mind, modern rules of tort law are written in broad strokes. They seldom seek to prescribe or proscribe 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. In the subject-specific chapters, most of the time the questions start relatively easy and get harder. The difficulty order on the Practice Final Exam is (purposely) random, which resembles the lack of explicit labels found on real final exams.

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 tort litigation in the real world by not announcing up front, the way the chapter headings do, which topics are at issue. Whether you're in your beginning or

ending stage of pulling torts material together, then, you'll find coverage at a level suited to that need.

Like most torts classes, the book emphasizes black-letter 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 ...

... or at least an outline. Don't just suppose what you would write. It's too easy to think you have a cogent and articulate response when you haven't committed to what you do and do not say. Your instructor will grade what you produce, not what you intend.

When you reach the end of the semester, consider taking the Practice Final Exam. 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 asks about something you didn't cover, you'll probably 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 students who over many years challenged me, and David too, to dig deeper into the whys and wherefores of this fascinating subject. Some multiple-choice questions in this book originated in their ideas. Maria Raneri and Joanne Tapia worked on the manuscript. Jennifer Fried, Jack Berry, and Veronica Mishkind provided research assistance. Keith Rowley and Heather Dean got the book started; while Carolina Academic Press, publisher of the Q&A series since 2016, provides steadfast support, Carol McGeehan as editor deserves particular thanks.

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# About the Author

**Anita Bernstein**, Anita and Stuart Subotnick Professor of Law at Brooklyn Law School, has also taught at Chicago-Kent, Cornell, Emory, Fordham, Iowa, Michigan, New York, and Seton Hall law schools. She served as chair of the Torts & Compensation Systems section of the Association of American Law Schools, and has published extensively on the relation between torts and other subjects including feminist theory, legal history, comparative law, and the sociology of products liability. Her torts books include *Understanding Torts* (with John L. Diamond and Lawrence C. Levine) and *A Products Liability Anthology*.

