

Torts Tutorial Chapter 0: An Overview of Tort Law

INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year torts class and is based on [DeWolf, Cases and Materials on Torts](#). You have accessed the tutorial for Chapter 0, "Introduction," which deals with introductory material, including how to read a case and basic principles of civil and appellate procedure. Prior to doing these exercises you should read Appendix A in DeWolf, Cases and Materials on Torts.



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EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question.

You may begin the exercise by click on a question number below. Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Information Button  takes you to the Torts Glossary. The Home Button  takes you to the Torts Tutorial Home Page.

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Question #1

Sue Happy was injured in an automobile collision. She filed a complaint seeking damages from Duncan Driver. If Sue loses her case at trial and files an appeal, which of the following is true:

- (1) Sue can argue that the jury's decision was not based upon the best evidence;
- (2) In deciding the case, the appeals court will be bound by prior cases;
- (3) Driver will be able to submit affidavits from the jurors explaining why they decided in his favor;
- (4) Sue can only win if the trial judge committed an error.



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(4) Sue can only win if the trial judge committed an error.

Sorry, that's incorrect. Although the parties' lawyers will argue as persuasively as they can that the evidence is in their clients' favor, the jury's decision on the FACTS, once made, is binding. Occasionally the jury's decision will have no evidence at all to support it, and in such cases the appellate court will reverse the decision. But in such cases it is reversing the trial judge, not the jury. Where the evidence is conflicting, the jury is the exclusive arbiter of which evidence is "best."



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- (3) Driver will be able to submit affidavits from the jurors explaining why they decided in his favor;
- (4) Sue can only win if the trial judge committed an error.

Sorry, that's not entirely correct. Although judges usually follow the principle of STARE DECISIS--literally, "let the prior decision stand"--in many of the cases in your casebook you will find judges overruling a previous decision. The most famous case of overruling prior precedent is BROWN v. BOARD OF EDUCATION, in which the doctrine of "separate but equal" accommodations was found unconstitutional. Though in less dramatic ways, appellate courts reviewing cases of personal injury or contract breach will occasionally decide that their prior decisions are unsound, and will refuse to follow them.



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- (2) In deciding the case, the appeals court will be bound by prior cases;
- (3) Driver will be able to submit affidavits from the jurors explaining why they decided in his favor;**
- (4) Sue can only win if the trial judge committed an error.

Sorry, that's incorrect. Although the jury is supposed to make its decision on the basis of the evidence and a correct interpretation of the law, the jurors are not asked to justify their conclusions. Affidavits about juror deliberation are admissible only if a party believes that there was misconduct by the jury (e.g. one or more jurors announces he will not follow the jury instructions given by the judge). Try again.



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- (2) In deciding the case, the appeals court will be bound by prior cases;
- (3) Driver will be able to submit affidavits from the jurors explaining why they decided in his favor;
- (4) Sue can only win if the trial judge committed an error.**

That's correct. All appellate cases are based upon a claim by the losing party that the trial judge committed an error. It is the appealing party's job to persuade the appellate court that the trial judge's ruling on the law (for example, in formulating a jury instruction) was incorrect.



Question #2

Renee Patchman was injured in a grocery store when she fell on a slippery patch of linoleum. She decides to sue the grocery store and her lawyer asks for a jury trial. In the trial, which of the following will be true:

- (1) The judge will decide the liability issues, but the jury will determine damages;
- (2) The judge will decide what the law is, and the jury will apply that law to the facts;
- (3) The jury will decide who was at fault, but the judge will decide what damages are to be awarded;
- (4) None of the above.



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- (4) None of the above.

Sorry, that's incorrect. Juries are responsible for deciding both the issues of fault (liability) and damages. Try again.



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- (4)None of the above.

That's correct. In our system, the judge is responsible for questions of LAW, while issues of FACT are for the jury. However, the judge must tell the jury what law applies to the case, and he does so by giving the JURY INSTRUCTIONS. It is often in those jury instructions that the losing party tries to locate a reversible error.



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- (3)The jury will decide who was at fault, but the judge will decide what damages are to be awarded;
- (4)None of the above.**

Sorry, that's incorrect. There is an acceptable answer among the other three. Please try again.



Question #3

Shaun Fine was injured when a construction worker allowed a piece of wall board to fall upon him while Shaun walked down the street. Which describes the correct sequence of steps by the plaintiff's attorney?

- (1) Discovery, Investigation, Trial, Complaint, Appeal
- (2) Complaint, Discovery, Trial, Investigation, Appeal
- (3) Discovery, Complaint, Investigation, Trial, Appeal
- (4) Investigation, Complaint, Discovery, Trial, Appeal
- (5) Investigation, Discovery, Complaint, Trial, Appeal



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(1)Discovery, Investigation, Trial, Complaint, Appeal

(2)Complaint, Discovery, Trial, Investigation, Appeal

(3)Discovery, Complaint, Investigation, Trial, Appeal

(4)Investigation, Complaint, Discovery, Trial, Appeal

(5)Investigation, Discovery, Complaint, Trial, Appeal

Sorry, that answer is incorrect. The complaint comes before the trial.



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(2) Complaint, Discovery, Trial, Investigation, Appeal

(3) Discovery, Complaint, Investigation, Trial, Appeal

(4) Investigation, Complaint, Discovery, Trial, Appeal

(5) Investigation, Discovery, Complaint, Trial, Appeal

Sorry, that's incorrect. Unless the statute of limitations is about to run and there is no opportunity to investigate, the lawyer ordinarily is under an obligation to conduct a reasonable investigation before filing the complaint. The investigation may vary from conducting an interview with his client to a visit to the premises, to interviewing the witnesses, etc. The amount of investigation that will satisfy the lawyer that the claim is reasonably based upon fact will depend upon the circumstances. Try again.



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- (2) Complaint, Discovery, Trial, Investigation, Appeal
- (3) Discovery, Complaint, Investigation, Trial, Appeal
- (4) Investigation, Complaint, Discovery, Trial, Appeal**
- (5) Investigation, Discovery, Complaint, Trial, Appeal

That's correct. The plaintiff's attorney must first investigate, then (if the investigation supports a good faith belief in the legal sufficiency of the complaint) commencement of litigation through filing the complaint, then the conducting of discovery, then trial, and finally appeal.



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- (1) Discovery, Investigation, Trial, Complaint, Appeal
- (2) Complaint, Discovery, Trial, Investigation, Appeal
- (3) Discovery, Complaint, Investigation, Trial, Appeal
- (4) Investigation, Complaint, Discovery, Trial, Appeal
- (5) Investigation, Discovery, Complaint, Trial, Appeal**

Sorry, that's incorrect. Discovery is a formalized mechanism to permit the attorneys to gather evidence (for example, through written questions to the other party, through depositions, and through the inspection of documents and other relevant evidence) in preparation for trial. Although there are some circumstances in which discovery is conducted before the filing of the complaint, that's pretty rare. Try again.



Question #4

In an appellate case on appeal, there is always a party seeking reversal of some aspect of the trial court's decision, and a party defending the court's judgment. Each of the following terms is an acceptable description of the party seeking a reversal, EXCEPT:

- (1)The appellant
- (2)The petitioner
- (3)The plaintiff in error
- (4)The complainant



Torts Tutorial Chapter 0: An Overview of Tort Law

In an appellate case on appeal, there is always a party seeking reversal of some aspect of the trial court's decision, and a party defending the court's judgment. Each of the following terms is an acceptable description of the party seeking a reversal, EXCEPT:

(1)The appellant

(2)The petitioner

(3)The plaintiff in error

(4)The complainant

Sorry, that's not a correct answer. The "appellant" is the most common form of referring to the party who is appealing the trial court's judgment. Try again.



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(1)The appellant

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Sorry, that's not a correct answer. Particularly in the United States Supreme Court, the party who is appealing a lower court decision will be referred to as "Petitioner." Try again.



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(1)The appellant

(2)The petitioner

(3)The plaintiff in error

(4)The complainant

Sorry, that's incorrect. The term "plaintiff in error" is quite old, however. The "plaintiff" designation refers to the fact that the appellant is the one seeking relief; the "in error" portion means that this party is seeking relief from an error committed by the trial court. Try again.



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In an appellate case on appeal, there is always a party seeking reversal of some aspect of the trial court's decision, and a party defending the court's judgment. Each of the following terms is an acceptable description of the party seeking a reversal, EXCEPT:

- (1)The appellant
- (2)The petitioner
- (3)The plaintiff in error
- (4)The complainant**

That's correct. Each of these terms is used, depending upon the court. The term "plaintiff in error" is quite old, however. The "plaintiff" designation refers to the fact that the appellant is the one seeking relief; the "in error" portion means that this party is seeking relief from an error committed by the trial court.



Question #5

In appellate cases, each of the following is a proper designation of the party seeking to defend the decision of the lower court, EXCEPT:

- (1)The defendant;
- (2)The respondent
- (3)The appellee
- (4)The defendant in error



Torts Tutorial Chapter 0: An Overview of Tort Law

In appellate cases, each of the following is a proper designation of the party seeking to defend the decision of the lower court, EXCEPT:

(1)The defendant;

(2)The respondent

(3)The appellee

(4)The defendant in error

That's correct. There is no guarantee that the party who won below will be the defendant. Frequently, the plaintiff wins a judgment at the trial court, which is then appealed by the defendant. In the appellate court decision, the original plaintiff will be seeking to defend the trial court's judgment against the legal attack mounted by the defendant.



Torts Tutorial Chapter 0: An Overview of Tort Law

In appellate cases, each of the following is a proper designation of the party seeking to defend the decision of the lower court, EXCEPT:

- (1)The defendant;
- (2)The respondent**
- (3)The appellee
- (4)The defendant in error

Sorry, that's incorrect. "Respondent" is the most frequent term used to describe the party "responding" to the appeal. The respondent is the one who is trying to convince the appellate court that no error was committed by the trial court, thus preserving the judgment entered below. Try again.



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- (1)The defendant;
- (2)The respondent
- (3)The appellee**
- (4)The defendant in error

Sorry, that's incorrect. In many courts the parties on appeal are designed "appellant" and "appellee." Linguistically, the terms are like "employer" and "employee" or "lessor" and "lessee." The "appellee" is the one against whom the appeal has been filed. He's the one trying to defend the trial court's judgment against the attack mounted by the appellant. Try again.



Torts Tutorial Chapter 0: An Overview of Tort Law

In appellate cases, each of the following is a proper designation of the party seeking to defend the decision of the lower court, EXCEPT:

(1)The defendant;

(2)The respondent

(3)The appellee

(4)The defendant in error

Sorry, that's incorrect. Although it's an older term, the description corresponds to the designation of the appellant as the "plaintiff in error." Just like the defendant in the trial court proceeding, the defendant "in error" is trying to preserve the status quo. However, he's trying to preserve the new status quo, which is a judgment in his favor at the trial court level. Thus, in the proceeding "in error"--to determine whether the trial court was in error--the winner (regardless of what his status was at the trial court) is now the "defendant in error."



Question #6

Michael Riesman was badly frightened when a car driven by Prudence Standish lost control and smashed into a storefront, narrowly missing him. If Michael Riesman sues Prudence, which of the following (if granted by the trial judge) would result in the dismissal of the complaint:

- (1) A nonsuit
- (2) A motion for directed verdict
- (3) A motion for Summary judgment
- (4) A motion for judgment notwithstanding the verdict



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That's correct. A "nonsuit" means that the plaintiff has failed to allege sufficient facts (or, once the plaintiff has presented his case in court, that he has failed to produce evidence to support his allegations) to make out a "prima facie" case. In modern civil procedure terms, a nonsuit is usually called a "motion to dismiss for failure to state a claim."



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Sorry, that's incorrect. A motion for a directed verdict is made at the close of the evidence, when the party bringing the motion wants the judge to decide that a reasonable jury could only decide the issue in one way. That's pretty rare. Usually the evidence is conflicting, and it's up to the jury to weigh the evidence and form their own judgment. However, here there's nothing to say that the directed verdict is in the defendant's favor. Try again.



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Sorry, that's incorrect. A summary judgment motion COULD be brought by either party. It is granted when the judge finds that there are no factual issues in dispute, and that there is no reason for a jury to weigh the evidence and decide. Since juries decide only factual issues, a case without any factual issues doesn't require a trial. However, there's nothing here to suggest that the summary judgment motion was brought by the defendant. Try again.



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- (1) A nonsuit
- (2) A motion for directed verdict
- (3) A motion for Summary judgment
- (4) A motion for judgment notwithstanding the verdict**

Sorry, that's incorrect. The "JNOV" as it is sometimes called (based on the Latin "non obstante verdicto") may be brought by either party, after the jury reaches a verdict. The judge will grant such a motion only when a jury did not have evidence upon which it could have reached the verdict that it did. Try again.



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Question #7

Gabriel Clark was sued by Cary Phischer for injuries she received in an automobile accident. At trial the jury found for Cary and the trial judge entered a judgment against Clark. He appealed his case to the State Supreme Court. After hearing the case, a majority of the Justices decided to reverse the trial court. Justice Burroughs, one of the Supreme Court members, decides that the case should be retried, but disagrees with the reasoning by which the majority has reached its conclusion. His opinion would be found:

- (1) In the majority opinion, in a footnote.
- (2) In a concurring opinion
- (3) In a special concurrence
- (4) In a dissenting opinion



Torts Tutorial Chapter 0: An Overview of Tort Law

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(1) In the majority opinion, in a footnote.

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(4) In a dissenting opinion

Sorry, that's incorrect. While the majority opinion may refer to the opinion of a concurring or dissenting judge, the actual opinion itself will be set out separately. Try again.



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(1) In the majority opinion, in a footnote.

(2) In a concurring opinion

(3) In a special concurrence

(4) In a dissenting opinion

That's correct. A concurring opinion agrees with the JUDGMENT reached by the court (that is, in deciding who wins or loses), but disagrees with the means by which the judgment is reached. For example, if the majority decided to reverse the judgment because of the admission of improper evidence, a concurring justice might think the evidence should have been admitted, but has a separate reason for wanting to reverse the judgment.

You have now completed the exercise for the Introduction. You will now be returned to the menu.



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(1) In the majority opinion, in a footnote.

(2) In a concurring opinion

(3) In a special concurrence

(4) In a dissenting opinion

Sorry, that's incorrect. A special concurrence is an opinion in which the judge agrees with the result reached by the majority, and also agrees with the reasoning upon which the majority based its opinion. However, the judge wants to add something further. For example, suppose Justice Burroughs agreed that the judgment should be reversed, but thought that the case should be remanded to the trial court for dismissal, rather than retrial. He might then write a special concurrence to make that additional point. Here, however, Justice Burroughs cannot agree with the reasoning found in the majority opinion. Try again.



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(1) In the majority opinion, in a footnote.

(2) In a concurring opinion

(3) In a special concurrence

(4) In a dissenting opinion

Sorry, that's incorrect. A dissenting opinion not only disagrees with the court's reasoning, but disagrees on who should have won or lost. In this case, Justice Burroughs agrees with the outcome of the case. Therefore he would not file a dissenting opinion. Try again.



END

Find more exercises at the Torts Home Page by clicking the Home Action Button

