Torts Tutorial Chapter 4 - Immunity

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 (http://guweb2.gonzaga.edu/~dewolf/torts/text). You have accessed the tutorial for Chapter 4, "Immunity." Prior to doing these exercises you should read the relevant material in DeWolf, Cases and Materials on Torts. A brief overview of this Chapter is provided below.

OVERVIEW

Ch. 4. Immunity

Although the plaintiff may have a perfectly good case against the defendant in terms of his traditional burden of proof, he may be stymied by the fact that the defendant is entitled to some form of *immunity*. The most important form of immunity is that enjoyed by governments. Courts have recognized that a sovereign is immune from tort liability unless it permits suits against it. Congress passed the Federal Tort Claims Act in 1946 to waive its immunity from certain kinds of suits, while retaining immunity for others. The overall goal of the statute was to provide for liability of the government "in the same manner and to the same extent" as would apply to a private party "under like circumstances."

Next Page Skip to Exercise

The tricky question, of course, is whether the government is analogous to a private party in particular cases. For example, a government vehicle that strikes a plaintiff in a crosswalk will generally result in liability against the government. But other activities of the government (e.g., repair of a weather buoy) may take place in the context of a larger function of government that is not analogous to what private parties do. An important retention of governmental immunity is where government engages in a *discretionary function*; government is not held liable for harms arising from allegedly poor decisionmaking; to do so would allow the judiciary to intrude into the separate powers of the executive or legislative branch.

Family immunity is another point at which the plaintiff's proof of negligence may not suffice to create liability. Although most states permit suits by a child against his parent for example for an automobile accident, most states still make the parent immune for suits alleging negligent discharge of the *parental function*; again, to make parents liable for letting Johnny play in a dangerous place would intrude upon the parental discretion permitted in our pluralistic society.

Finally, *worker's compensation* systems have generally replaced tort liability as a means of addressing workplace injuries. An employer is immune from ordinary tort claims unless the injury is intentionally inflicted on the worker.

Torts Tutorial Chapter 4 - Immunity

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.

Questions:

1 2 3 4 5 6

 First Page Previous Page 

Question #1

John Jones was walking in a crosswalk when he was struck and injured by Ralph Reese, a recruiter for the United States Army. Reese wasn't paying close enough attention to his driving because he was engaged in a heated debate with his fellow passenger about proposed cutbacks in defense allocations. If Jones seeks to recover for his injuries, which of the following will apply?

(1)He can sue Ralph individually, but not the United States, since they are immune.

(2)He can sue the United States, but he could only recover compensatory damages.

(3)He cannot sue either Ralph or the United States, because Ralph was engaged in a discretionary function.

(4)None of the above.

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(3)He cannot sue either Ralph or the United States, because Ralph was engaged in a discretionary function.

(4)None of the above.

No, that's incorrect. In the Federal Tort Claims Act Congress waived sovereign immunity where a federal employee's negligence injures a person, and where the action, if done by a private person, would create liability under state law. Try again.

Torts Tutorial Chapter 4 - Immunity

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(4)None of the above.

That's correct. The Federal Tort Claims Act gave a general consent to be sued for damages caused by the negligence of federal employees. However, the damages may not include punitive damages.

Torts Tutorial Chapter 4 - Immunity

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(3)He cannot sue either Ralph or the United States, because Ralph was engaged in a discretionary function.

(4)None of the above.

No, that's incorrect. In order to be a discretionary function, the activity must involve governmental policy making. The theory is that the judicial branch should not engage in second-guessing the policy decisions of another coordinate branch of government. To find Ralph negligent for poor driving doesn't involve any second-guessing of policy decisions. Try again.

Torts Tutorial Chapter 4 - Immunity

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(4)None of the above.

No, one of the answers is correct. Try again.

Question #2

Fred Farmer was driving down Highway 386 on a snowy winter afternoon. As he rounded a corner Brenda Beluga lost control of her car and slammed into him, causing serious injuries. Fred would like to recover for his injuries from the state highway department, which (contrary to its Policies and Procedures manual) failed to sand the corner where Brenda lost control. Which of the following is correct?

(1)Fred can sue Brenda for her failure to use reasonable care, but not the state, because it is immune.

(2)Fred can sue the state if the highway department's conduct was willful and wanton.

(3)Fred can sue the state if the Federal Tort Claims Act has waived immunity for such claims.

(4)Fred can sue both the state and Brenda.

Torts Tutorial Chapter 4 - Immunity

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(3)Fred can sue the state if the Federal Tort Claims Act has waived immunity for such claims.

(4)Fred can sue both the state and Brenda.

Sorry, that's incorrect. Most states have some form of a waiver of sovereign immunity. Although this might appear to fall into a "discretionary function exemption," note that there was already a state policy requiring sanding; a court would simply be enforcing state policy, not challenging the highway department's wisdom in adopting such a policy.

Torts Tutorial Chapter 4 - Immunity

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(3)Fred can sue the state if the Federal Tort Claims Act has waived immunity for such claims.

(4)Fred can sue both the state and Brenda.

No, that's incorrect. Most states do not require willful and wanton conduct on the part of state agencies, but instead make the state agency liable in circumstances where a private individual would also be liable. Try again.

Torts Tutorial Chapter 4 - Immunity

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(3)Fred can sue the state if the Federal Tort Claims Act has waived immunity for such claims.

(4)Fred can sue both the state and Brenda.

That's incorrect. The Federal Tort Claims Act only waives sovereign immunity (subject to certain conditions) for the *federal* government. Each state is sovereign, and the waiver of sovereign immunity by the federal government has no effect upon whether or not the states can be sued. Try again.

Torts Tutorial Chapter 4 - Immunity

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(3)Fred can sue the state if the Federal Tort Claims Act has waived immunity for such claims.

(4)Fred can sue both the state and Brenda.

That's correct. Every state has adopted some form of waiver of sovereign immunity. Fred may or may not win this case, but under the facts he would be entitled to sue. The standard for liability would be determined by the statutory language in the sovereign immunity waiver, which varies from state to state.

Torts Tutorial Chapter 4 - Immunity

Question #3

The State of New Columbia has a state park on Lake Brower, which includes a swimming area. In April 1990 a safety consultant advised the state parks department that they should install a new set of larger, brighter markers on the outer edge of the swimming area, to warn boats to stay away. The parks department scheduled installation of these markers for September 1990. In August 1990 a swimmer was injured when a water skier lost control and crashed into the swimming area. The state's sovereign immunity statute follows closely the Federal Tort Claims Act. Which of the following is correct?

(1)The decision to delay the installation is not a basis for liability, since it would be classified as a discretionary function.

(2)Whether or not the installation was a discretionary function is a question for the jury.

(3)The court would be able to classify the delay as negligence, since the decision to make the installation had already been made.

(4)None of the above.

Torts Tutorial Chapter 4 - Immunity

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(2)Whether or not the installation was a discretionary function is a question for the jury.

(3)The court would be able to classify the delay as negligence, since the decision to make the installation had already been made.

(4)None of the above.

Sorry that's incorrect. You can't say that for certain. Whether or not this decision involves policymaking (and therefore within the discretionary function exemption) must be determined by the judge. The judge may decide that it is simply a ministerial decision involving the implementation of existing policy. Try again.

Torts Tutorial Chapter 4 - Immunity

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(3)The court would be able to classify the delay as negligence, since the decision to make the installation had already been made.

(4)None of the above.

Sorry, that's incorrect. In the Federal Tort Claims Act (and we're assuming that the state copied it here), cases brought against the government are tried to the court sitting without a jury. Even if there were a jury, the question of whether this was a discretionary function would probably be a question of law for the judge, even though it involves a mixture of law and fact. Try again.

Torts Tutorial Chapter 4 - Immunity

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(1)The decision to delay the installation is not a basis for liability, since it would be classified as a discretionary function.

(2)Whether or not the installation was a discretionary function is a question for the jury.

(3)The court would be able to classify the delay as negligence, since the decision to make the installation had already been made.

(4)None of the above.

Sorry, that's incorrect. Although the decision to install the markers was already made, the decision to postpone installation until September may be based upon budgetary considerations, the avoidance of inconvenience to the users of the park, other demands on maintenance personnel, etc. Try again.

Torts Tutorial Chapter 4 - Immunity

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(3)The court would be able to classify the delay as negligence, since the decision to make the installation had already been made.

(4)None of the above.

That's correct. The other answers are wrong because neither outcome--liability or non-liability--can be predicted with much confidence. What is likely is that the question of whether the department exercised discretionary judgment will be analyzed by the court, and the outcome will depend on whether the decision required the policymaking judgment of the executive branch.

Question #4

Martin Mitchelson was washing his car on Saturday afternoon. While he was doing so he allowed his daughter Julie to play in the front yard with a ball, although it was a very dangerous street. The ball rolled down the hill and she ran out into the street to get it. Martin wasn't paying attention, and by the time he looked up, Lenny Leadfoot came speeding around the corner and ran over Julie, causing her serious injuries. Which of the following is correct?

(1)Julie could sue both Lenny and Martin, since they could be considered joint tortfeasors.

(2)Julie couldn't sue Martin because parents can't be sued by their children.

(3)Julie couldn't sue Martin but Lenny could sue Martin for indemnity.

(4)None of the above.

Torts Tutorial Chapter 4 - Immunity

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(2)Julie couldn't sue Martin because parents can't be sued by their children.

(3)Julie couldn't sue Martin but Lenny could sue Martin for indemnity.

(4)None of the above.

No, that's incorrect. Julie could only sue Martin because of an allegation that he failed to exercise reasonable care in supervising her. In other words, she would be saying that he is a bad parent. Claims for bad parenting are still excluded (in most jurisdictions) by the principle of parental immunity. On the other hand, if the claim is based on a duty owed independent of the family relationship (e.g., driver to passenger), and the parent-child relationship could be ignored, then there is no immunity. That's not the case here. Try again.

Torts Tutorial Chapter 4 - Immunity

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(1)Julie could sue both Lenny and Martin, since they could be considered joint tortfeasors.

(2)Julie couldn't sue Martin because parents can't be sued by their children.

(3)Julie couldn't sue Martin but Lenny could sue Martin for indemnity.

(4)None of the above.

Sorry, but that's incorrect. Most jurisdictions would allow parents to be sued by their children, removing parental immunity, so long as the duty arises from an obligation owed to all the world, not just to their children because of the parental relationship. Try again.

Torts Tutorial Chapter 4 - Immunity

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(2)Julie couldn't sue Martin because parents can't be sued by their children.

(3)Julie couldn't sue Martin but Lenny could sue Martin for indemnity.

(4)None of the above.

That's incorrect. In most jurisdictions Lenny could only sue Martin if Martin would be liable to Julie. Since parental immunity applies here, that isn't the case. Try again.

Torts Tutorial Chapter 4 - Immunity

Martin Mitchelson was washing his car on Saturday afternoon. While he was doing so he allowed his daughter Julie to play in the front yard with a ball, although it was a very dangerous street. The ball rolled down the hill and she ran out into the street to get it. Martin wasn't paying attention, and by the time he looked up, Lenny Leadfoot came speeding around the corner and ran over Julie, causing her serious injuries. Which of the following is correct?

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(3)Julie couldn't sue Martin but Lenny could sue Martin for indemnity.

(4)None of the above.

That's correct. Martin could not be sued, because the claim against him would arise from an allegation that Martin was negligent in supervising her. Maybe he was, but if the claim is essentially an argument that he was a "bad parent," such claims are exempted by parental immunity. That covers both claims brought by the child, as well as claims that are brought by a third party who accuses the parents of "bad parenting" and wants them to help pay for injury the third party has (also) been accused of causing.

Torts Tutorial Chapter 4 - Immunity

Question #5

George and Gena Prothro have a 13-year-old son, Paul. When they are gone at night they leave him home alone, and he has gotten into significant trouble in the past. One night while George and Gena are at a charity fund-raiser, Paul and his friends break into a neighbor's backyard to use their swimming pool. While they are there they start a fire that causes extensive damage to the neighbor's guest house. The neighbor sues George and Gena. Which of the following is correct?

(1) George and Gena could be held vicariously liable for Paul's negligence.

(2) George and Gena could only be held liable if the destruction of the guest house is found to be willful and wanton.

(3) George and Gena are immune from liability unless they knew in advance of Paul's dangerous tendencies.

(4) George and Gena are immune from liability since the claim arises from an exercise of their parenting function.

Torts Tutorial Chapter 4 - Immunity

George and Gena Prothro have a 13-year-old son, Paul. When they are gone at night they leave him home alone, and he has gotten into significant trouble in the past. One night while George and Gena are at a charity fund-raiser, Paul and his friends break into a neighbor's backyard to use their swimming pool. While they are there they start a fire that causes extensive damage to the neighbor's guest house. The neighbor sues George and Gena. Which of the following is correct?

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(3) George and Gena are immune from liability unless they knew in advance of Paul's dangerous tendencies.

(4) George and Gena are immune from liability since the claim arises from an exercise of their parenting function.

No, that's incorrect. In the case of suits against parents, it is not a theory of vicarious liability, in the way that an employer is made vicariously liable for the torts of his employees; rather, the parent is made liable (if at all) for *his own* negligence in failing to exercise proper supervision. (This kind of claim may also be made in the employment context, for example where the employer fails to instruct the employee properly in how to avoid a particular risk. However, in such cases the liability is not vicarious, but is predicated upon the negligence of the principal himself.)

Torts Tutorial Chapter 4 - Immunity

George and Gena Prothro have a 13-year-old son, Paul. When they are gone at night they leave him home alone, and he has gotten into significant trouble in the past. One night while George and Gena are at a charity fund-raiser, Paul and his friends break into a neighbor's backyard to use their swimming pool. While they are there they start a fire that causes extensive damage to the neighbor's guest house. The neighbor sues George and Gena. Which of the following is correct?

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(4) George and Gena are immune from liability since the claim arises from an exercise of their parenting function.

No, that's not correct. The potential for liability doesn't depend upon the culpability of the child's conduct (although the child's action must otherwise be actionable, as it certainly would be here). Rather, the court looks to whether or not the parents have any duty to avoid injury to third parties. Try again.

Torts Tutorial Chapter 4 - Immunity

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(3) George and Gena are immune from liability unless they knew in advance of Paul's dangerous tendencies.

(4) George and Gena are immune from liability since the claim arises from an exercise of their parenting function.

That's correct. Where a child injures a third party, the court may make remove parental immunity if: (1) the parents knew of the dangerous proclivity of the child; and (2) failed to take reasonable steps to avoid harm arising from those tendencies.

Torts Tutorial Chapter 4 - Immunity

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(3) George and Gena are immune from liability unless they knew in advance of Paul's dangerous tendencies.

(4) George and Gena are immune from liability since the claim arises from an exercise of their parenting function.

That's incorrect. The rule in the case of injuries to *third parties* is different from cases where the injury occurs to the *child*. If the child injures a third party, the court may set aside parental immunity if: (1) the parents knew of the dangerous proclivity of the child; and (2) failed to take reasonable steps to avoid harm arising from those tendencies.

Question #6

Kenneth Kraske worked at a lumber mill. He was injured one day when a circular saw, negligently operated by a fellow employee, caused a large block to fly out and hit him in the jaw. If Kenneth wanted to file a tort action against his employer for the injury, which of the following would be the case in a majority of jurisdictions?

(1)Any claim against the employer would be barred by the statute establishing the worker's compensation program.

(2)The claim would be barred because the injury arose out of the negligence of a fellow servant, not the employer.

(3)The claim would be barred because Kenneth probably assumed the risk.

(4)The claim would not be barred.

Torts Tutorial Chapter 4 - Immunity

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(2)The claim would be barred because the injury arose out of the negligence of a fellow servant, not the employer.

(3)The claim would be barred because Kenneth probably assumed the risk.

(4)The claim would not be barred.

That's correct. Most jurisdictions have enacted worker's compensation statutes that have good news and bad news. The good news (for the worker) is that the recovery is not based on fault, and so long as the injury arises out of the workplace, there is a guaranteed recovery. The bad news is that the schedule of benefits is quite limited, and is usually restricted to income replacement plus medical expenses. The system also adjusts the award to reflect temporary disabilities and partial disabilities, limiting the amount of wage loss.

You have now completed the exercises for Chapter 4. You will now be returned to the main menu.

Torts Tutorial Chapter 4 - Immunity

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(2)The claim would be barred because the injury arose out of the negligence of a fellow servant, not the employer.

(3)The claim would be barred because Kenneth probably assumed the risk.

(4)The claim would not be barred.

No, that's incorrect. Remember that, at least in the case of a corporate employer, the employer can only act through its employees. In any event, the employer would ordinarily be vicariously liable for the torts of its employees. Although the "fellow servant rule" applied in the days when litigation against the employer was based on the tort system, that is no longer the case. Try again.

Torts Tutorial Chapter 4 - Immunity

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(2)The claim would be barred because the injury arose out of the negligence of a fellow servant, not the employer.

(3)The claim would be barred because Kenneth probably assumed the risk.

(4)The claim would not be barred.

No, that's incorrect. Assumption of the risk applied in the employment context when tort actions were still permitted against the employer. However, in modern times the entire tort system has been replaced with a statutory scheme providing a no-fault worker's compensation recovery (with limited benefits) in favor of a fault-based tort system. Thus, assumption of risk has no application. Try again.

Torts Tutorial Chapter 4 - Immunity

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(1)Any claim against the employer would be barred by the statute establishing the worker's compensation program.

(2)The claim would be barred because the injury arose out of the negligence of a fellow servant, not the employer.

(3)The claim would be barred because Kenneth probably assumed the risk.

(4)The claim would not be barred.

That's incorrect. Although some states have adopted a system through which the worker can elect to sue the employer in tort or to rely upon the worker's compensation program, most jurisdictions would not permit a suit under these circumstances. Try again.

END

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