

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 11, “Rescuers, Justifiable Reliance, and Special Relationships.” 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. 11. Rescuers, Justifiable Reliance, and Special Relationships

The traditional rule has been that the *failure* to act is ordinarily no basis for liability, but modern cases have created important exceptions. Where the plaintiff is not blaming defendant’s *act* (at least in part) for causing the plaintiff’s injury, but instead is blaming the defendant’s *failure to act* in such a way as would have prevented the injury, then the court must determine whether the defendant owed a duty to exercise reasonable care toward the plaintiff. A defendant is under a duty to use reasonable care in two kinds of cases: first, if the courts determine that there was a *special relationship*, either between the defendant and the victim or between the defendant and the perpetrator of the harm (*e.g.*, the *Tarasoff* case). Second, a defendant owes a duty of reasonable care if he has *induced justifiable reliance* that care will be used to



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avoid an injury. For example, if an ambulance service responds to a 911 call with an assurance that they are on their way, they have assumed a duty to use reasonable care to perform. In applying both tests courts weigh policy considerations as to whether it is appropriate to impose a duty of care on the defendant.




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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.

Questions:

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Question #1

Brad Berry, M.D. is a psychiatrist. Although he has the requisite training and licensing to perform medical procedures, his work focuses upon psychiatric illness. As he was driving home from work one day he saw an automobile accident. Although the parties appeared to need medical assistance, Berry detoured around the scene. It was later discovered that because of the lack of medical assistance, Thelma, one of the accident victims, suffered permanent injuries. Can Thelma recover damages from Berry?

- (1). Yes, if he could have stopped without significant cost or danger to himself;
- (2). Yes, if the jurisdiction has a "good Samaritan" statute;
- (3). No, because he had no duty to stop;
- (4). No, assuming Berry had a reasonable belief that medical personnel were on their way.



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Sorry, that's incorrect. Although one jurisdiction, Vermont, has a statute that makes it a misdemeanor to fail to help someone (e.g. throw a life buoy to a drowning victim), most jurisdictions have rejected an affirmative duty to be a "good Samaritan." Try again.



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Sorry, that's incorrect. A “Good Samaritan” statute doesn't *create* a duty to help; it simply provides that where a person acts as a good Samaritan, the standard won't be reasonable care (which might discourage people from helping where they're unsure of their skills); rather, the standard--again, if they *choose* to act--is whether they have avoided gross negligence. Try again.



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That's correct. Berry's conduct would be classified as "nonfeasance." That is, he never acted, and he did nothing to induce justifiable reliance on his acting. Although it might be morally wrong for him to avoid helping someone in need, there is no *legal* duty to act unless he has induced justifiable reliance upon his using reasonable care. Try again.



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Sorry, that's incorrect. The qualification is unnecessary; even if Berry *didn't* believe medical personnel were on their way, and simply chose to avoid getting involved for his own selfish interest, there still would be no duty to act. Try again.



Question #2

The Pico Fire Department in Pico, Evergreen just purchased a new alarm system for industrial buildings. It automatically triggers a fire alarm when smoke builds up. Because a fire department employee installed a fuse upside down, the alarm wasn't properly activated. A fire broke out in the Acme Warehouse, and because it was not reported until the fire was quite advanced, half a million dollars in property damage resulted. Can Acme recover from the Pico Fire Department?

- (1) Yes, assuming that the Fire Department is not protected by sovereign immunity;
- (2) Yes, because the employee was acting in the course and scope of employment;
- (3) No, unless Acme justifiably relied upon the Fire Department;
- (4) No, if the decision to employ the system was a discretionary function.



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Sorry, that's incorrect. Even if Evergreen has adopted a ^{^H}sovereign immunity^{^H} waiver, that doesn't create a duty to use reasonable care. Evergreen could claim that they were guilty at best of ^{^H}nonfeasance^{^H}--failure to act--rather than misfeasance. The real issue will be whether or not their failure to act occurred after Acme had justifiably relied upon them to prevent the injury. Try again.



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Sorry, that's incorrect. Even though the employee didn't use reasonable care, that doesn't answer the question of whether he (or his employer) owed a duty to use reasonable care in the first place. The issue of duty is prior to the issue of whether or not the person acted as a reasonably prudent person. Try again.



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That's correct. The issue would be whether or not there was ^Hjustifiable reliance^H by Acme that the Fire Department would come to their rescue. In an ordinary case, there probably wouldn't be justifiable reliance, so even if the fire department acts negligently, no duty would be owed. However, in this case there was a ^Hspecial relationship^H that might have caused Acme to abandon other preventive measures. If, so, a duty of care might be owed.



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Sorry, that's incorrect. Although the decision to install the system might have been a discretionary one, the implementation of the system would not be covered by a discretionary function exception. Installing a fuse upside down doesn't constitute a policymaking activity. Try again.



Question #3

Trailback Lodge is a residential treatment center in rural Columbia for emotionally disturbed teens. It is surrounded by a high fence topped with barbed wire and the supervision is fairly strict. Most of Trailback's residents are referrals from juvenile courts in Columbia's urban areas. Martin Mischief, a particularly troubled inmate, escapes one day by donning the clothing and using the ID of a state inspector. Before he is recaptured he causes some particularly vicious injuries to inhabitants of the nearby town. Could the victims recover from Trailback for their injuries?

- (1) Yes, if Trailback's employees didn't use reasonable care in preventing his escape;
- (2) Yes, if the victims can establish that they reasonably relied upon Trailback's security;
- (3) No, because Mischief was a superseding cause of their injuries;
- (4) No, unless Trailback was a profit-making institution.



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That's correct. Trailback could be seen in this case to have increased the risk of injury to the nearby residents by collecting them in this one place. This is not a case of ^{^H}nonfeasance^{^H}, but rather of ^{^H}misfeasance^{^H}, since Trailback acted to bring these youths to the location. Once doing so, they had a duty to use reasonable care to prevent injury to the nearby residents. If they fail in that duty they could be held liable.



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Sorry, that's incorrect. The claim of the residents in the nearby town would not be based upon ^Hjustifiable reliance^H; rather, they would claim that Trailback had increased the danger to them by collecting dangerous people and putting them in their backyard. Try again.



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Sorry, that's incorrect. A ^{^H}superseding cause^{^H} would be one that was not reasonably ^{^H}foreseeable^{^H}. The whole nature of the institution is in recognition of the fact that these kids, if allowed to escape, could be dangerous. Remember that the Restatement speaks specifically to cases like this: the cause is not superseding if the very thing that makes the act negligent is that it provides an opportunity for the intervening cause to do mischief. Try again.



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Sorry, that's incorrect. Whether Trailback is a for-profit or non-profit institution doesn't determine whether they owe a duty of reasonable care. The two questions to ask before determining a duty of care are (1) Did the defendant help bring about the risk that caused the injury? and (2) If not, did the defendant induce ^Hjustifiable reliance^H? Neither of these questions makes the defendant's status as a for-profit or non-profit entity decisive.



END

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