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Intentional Torts

1. If the governor asserts against the television station a claim of damages for intentional infliction of emotional distress, will the governor prevail?

The governor of a state signed a death warrant for a convicted murderer. Two protesters are active opponents of the death penalty. At a demonstration protesting the execution of the murderer, the protesters carried large signs that stated, "The governor - Murderer." A television station broadcasted news coverage of the demonstration, including pictures of the signs carried by the protesters.

- Yes, because the broadcast showing the signs caused the governor to suffer severe emotional distress
- Yes, because the assertion on the signs was extreme and outrageous
- No, because the governor did not suffer physical harm as a consequence of the emotional distress caused by the signs
- **No, because the television station did not publish a false statement of fact with "actual malice."**

Note:

To establish a prima facie case for intentional infliction of emotional distress, the following elements must be proved: (i) an act by the defendant amounting to extreme or outrageous conduct; (ii) an intent by the defendant to cause the plaintiff to suffer severe emotional distress, or a recklessness by the defendant as to the effect of their conduct; (iii) causation; and (iv) damages in the form of severe emotional distress.

To establish a prima facie case for defamation, the following elements must be proved: (i) defamatory language on the part of the defendant; (ii) that the defamatory language was of or concerning the plaintiff; (iii) publication of the defamatory language by the defendant to a third person; and (iv) damage to the reputation of the plaintiff. When defamation refers to a public concern or involves a matter of public concern, the plaintiff also needs to prove falsity and fault by the defendant.

As held by the United States Supreme Court in New York Times v. Sullivan, to prevail against a defendant on defamation of a public figure, the plaintiff must establish actual malice by the defendant by demonstrating that the defendant knew the statement was false or had a reckless disregard as to its truth or falsity.

D is correct. The governor would not prevail on a claim for intentional infliction of emotional distress against the television station, because the television station did not publish a false statement of fact with "actual malice." For the governor to prevail against the television station on his claim, he would be required to demonstrate that the television station engaged in extreme and outrageous conduct with an intent to cause him to suffer severe emotional distress. Not only is there no evidence of malicious intent by the station directed specifically at the governor, but as a threshold matter, none of the television station's actions would qualify as extreme or outrageous conduct.

The television station needed to have acted with actual malice in order for its news coverage to be considered extreme or outrageous conduct. Here, however, there is no indication that the station knowingly or recklessly published false statements. In particular, the protest signs are not statements of fact false but are statements of opinion. The governor would not prevail on a defamation claim against the television station due to the absence of actual malice, and the governor's intentional infliction of emotional distress claim fail, because absent actual malice, the station's reporting could not have qualified as extreme or outrageous conduct. Therefore, the television station would not be liable for the intentional infliction of emotional distress.

A is incorrect. The governor would not prevail on his claim for intentional infliction of emotional distress against the television station on the basis that the broadcast caused him to suffer severe emotional distress. Although damages in the form of severe emotional distress are one element of a prima facie case for intentional infliction of emotional distress, they are only one element and therefore, are not sufficient in themselves to allow liability to attach to the defendant. A plaintiff is also required to prove that the defendant engaged in extreme or outrageous conduct with the (successful) intent to inflict emotional distress. There is no evidence supporting either claims under the facts as presented. Further, even if the broadcast did qualify as extreme or outrageous conduct, there is no evidence that it was broadcast with an intent to cause the governor to suffer from emotional distress.

B is incorrect. The governor would not prevail on his claim for intentional infliction of emotional distress against the television station on the basis that the assertion on the signs was extreme and outrageous. Even if it was extreme and outrageous for the protestors to display signs branding the governor as a murderer, this factor would be irrelevant to the governor's claim against the television station, because the protestors are third parties unconnected to the claim.

C is incorrect. Although the governor would not prevail against the television station on a claim for intentional infliction of emotional distress, the governor's recovery would not be barred because the governor did not suffer physical harm as a consequence of the emotional distress caused by the signs. Although physical injury caused by severe emotional distress can be cited as evidence of damages, a plaintiff is not required to submit evidence of physical harm in order to prevail for intentional infliction of emotional distress.

2. In a suit by the plaintiff against the defendant to recover damages for the plaintiff's broken leg, the plaintiff will

A plaintiff and a defendant were in the habit of playing practical jokes on each other on their respective birthdays. On the plaintiff's birthday, the defendant sent the plaintiff a cake containing an ingredient that he knew had, in the past, made the plaintiff very ill. After the plaintiff had eaten a piece of the cake, he suffered severe stomach pains and had to be taken to the hospital by ambulance. On the way to the hospital, the paramedic, who was driving the ambulance, suffered a heart attack, which caused the ambulance to swerve from the road and hit a tree. As a result of the collision, the plaintiff suffered a broken leg.

- **Prevail, because the defendant knew that the cake would be harmful or offensive to the plaintiff**
- Not prevail, because the paramedic was not negligent
- Not prevail, because the defendant could not reasonably be expected to foresee injury to the plaintiff's leg
- Not prevail, because the paramedic's heart attack was a superseding cause of the plaintiff's broken leg

Note:

To establish a prima facie case of battery, a plaintiff must prove that there was an act by the defendant which brought about harmful or offensive contact with the plaintiff's person, that the defendant intended to bring about harmful or offensive contact to the plaintiff's person, and causation. The defendant is not required to have personally carried out the offensive or harmful contact with the plaintiff, as long as the defendant set into motion an action with purpose or knowledge to a substantial certainty that the offensive or harmful contact would result. Intentionally wrongful actions render the defendant liable for all consequences of those acts, even if unintended and unforeseen.

A is correct. The plaintiff would prevail on a battery claim because the defendant knew that the cake would be harmful or offensive to the plaintiff. Although the defendant did not personally make any physical contact with the plaintiff, and neither broke the plaintiff's leg or had any reason to anticipate that injury, the defendant would be liable for battery the plaintiff's resulting injury, because the defendant committed battery against the plaintiff through setting into motion an action with purpose or knowledge to a substantial certainty that the offensive or harmful contact would result. Specifically, the defendant intentionally supplied the cake with the knowledge/intent that it would make the plaintiff sick. Consequently, the defendant would be liable to the plaintiff for the injuries which resulted, whether foreseeable, like the stomach ailment, or unforeseeable, like the broken leg.

B is incorrect. The plaintiff would not be barred from recovery against the defendant on the basis that the paramedic was not negligent. To the contrary, the negligence or lack thereof by the paramedic would be irrelevant to both the amount of damages the plaintiff could recover, and would not sever the defendant's liability to the plaintiff. Intentionally wrongful actions render defendants liable for all consequences of those acts, even if unintended and unforeseen.

Although it was unforeseeable that the paramedic would have a heart attack causing an accident and by extension, the plaintiff's broken leg, the hospital transport, and accident were both consequences resulting from the defendant's intentional wrongful actions. Consequently, just as the paramedic's accident would not sever the defendant's liability for battery, the ambulance driver's level of negligence would be irrelevant.

C is incorrect. Intentionally wrongful actions render defendants liable for all consequences of those acts, even if unintended and unforeseen. The plaintiff suffered a stomach ailment from the cake made by the defendant, necessitating ambulance transportation to the hospital. In turn, the plaintiff's broken leg occurred during the hospital transport. Although the plaintiff's leg injury was not reasonably foreseeable, it was still a consequence of the defendant's intentional wrongful actions, and the defendant would be liable to the plaintiff for damages for the leg injury.

D is incorrect. Superseding and intervening causes are generally applicable where another party's act, whether negligent or intentional, occurs which relieves the original tortfeasor of liability for negligence. Here, the defendant committed battery, an intentional tort. Intentionally wrongful actions render defendants liable for all consequences of those acts, even if unintended and unforeseen.

The paramedic's heart attack was not a superseding cause, because the plaintiff's ambulance transport injury was still a consequence of the defendant's intentional wrongful action, even though it was an unintentional and unforeseen consequence.

3. Assume that the plaintiff did not suffer physical harm as a result of the defendant's conduct, but did suffer severe emotional distress. If the plaintiff asserts a claim against the defendant based on intentional infliction of emotional distress, will the plaintiff prevail?

The defendant, in a loud voice, demanded to see the plaintiff and said that if he did not receive payment immediately, he would file a criminal complaint charging her with fraud. The plaintiff, hearing the conversation, came to the door. The defendant, in a loud voice, repeated his demand for immediate payment and his threat to use criminal process. The defendant went to the plaintiff's house and when the plaintiff's mother answered the door, the defendant told her that he was there to collect a bill owed by the plaintiff. The mother told the defendant that because of the plaintiff's illness, the plaintiff had been unemployed for six months, that she was still ill and unable to work, and that she would pay the bill as soon as she could. The defendant operates a collection agency. He was trying to collect a valid \$400 bill for medical services rendered to the plaintiff by a doctor that was past due.

- **Yes, because the plaintiff suffered severe emotional distress as a result of the defendant's conduct**
- No, because the bill for medical services was valid and past due
- No, because the plaintiff did not suffer physical harm as a result of the defendant's conduct
- No, because the defendant's conduct created almost no risk of physical harm to the plaintiff

Note:

To establish a prima facie case for intentional infliction of emotional distress, a plaintiff must prove (i) that there was an act by the defendant amounting to extreme and outrageous conduct; (ii) that there was an intent on the part of the defendant to cause the plaintiff to suffer severe emotional distress, or recklessness as to the effect of the defendant's conduct; (iii) causation; and (iv) damages in the form of severe emotional distress.

A is correct. The plaintiff would prevail because she suffered severe emotional distress as a result of the defendant's conduct. Under the facts at issue, the plaintiff suffered severe emotional distress based on the defendant's actions. Further, the defendant's conduct would likely be considered extreme and outrageous based on the aggressive and threatening means he used to collect the debt, particularly in light of the plaintiff's health. In fact, courts have identified "extreme business conduct" by debt/bill collectors as an illustration of extreme and outrageous conduct for the purposes of an intentional infliction of emotional distress claim. The defendant's conduct here would fit this classification. Likewise, the defendant's conduct could be understood as intended to cause the plaintiff emotional distress, given that the plaintiff's mother attempted to calmly resolve the situation and the defendant persisted being confrontational. To this end, the plaintiff would prevail on a claim for intentional infliction of emotional distress, because the defendant engaged in extreme and outrageous conduct with an intent to inflict severe emotional distress on the plaintiff, and the plaintiff suffered severe emotional distress as a result.

B is incorrect. The plaintiff would not be barred from recovery on the basis that the bill for medical services was valid and past due. Courts consider "extreme business conduct" an example of conduct which is extreme and outrageous, despite being legal. To this end, the fact that the plaintiff actually owed money would be irrelevant to her ability to recover. Further, the defendant's loud and confrontational methods and threats of criminal charges here would likely be considered extreme and outrageous.

C is incorrect. The plaintiff would not be barred from recovery on the basis that she did not suffer physical harm as a result of the defendant's conduct. Although physical harm can result from intentional infliction of emotional distress and can provide evidence of damages, it is not necessary for a plaintiff to prevail. Under the facts as presented, the plaintiff suffered severe emotional distress based on conduct by the defendant which would likely be considered extreme and outrageous and intended to cause emotional distress. Therefore, the plaintiff would likely prevail on intentional infliction of emotional distress.

D is incorrect. The plaintiff would not be barred from recovery on the basis that the defendant's conduct created almost no risk of physical harm to the plaintiff. It is not a threshold requirement of a claim for intentional infliction of emotional distress that the defendant's conduct created a risk of physical harm to the plaintiff. Further, while manifestations of physical harm can be cited as evidence of severe emotional distress, no actual physical harm to plaintiff or risk of physical harm is necessary to prevail on an intentional infliction of emotional distress claim. Instead, the plaintiff is required to show that the defendant engaged in extreme and/or outrageous conduct with an intent, which succeeded, in inflicting severe emotional distress.

4. Which, if any, of the following allegations, without additional facts, would provide a sufficient basis for a claim by the plaintiff against the defendant?

A car driven by the defendant entered land owned by and in the possession of the plaintiff, without the plaintiff's permission.

- **The defendant intentionally drove his car onto the plaintiff's land**
- The defendant's car damaged the plaintiff's land
- The defendant negligently drove his car onto the plaintiff's land
- The defendant's car damaged the plaintiff's personal property

Note:

Liability for an intentional tort requires the plaintiff to prove that the defendant acted, with intent, and his action caused the result that gave rise to liability.

To establish a prima facie case for trespass to land, the following elements must be proved: (i) an act of physical invasion of plaintiff's real property by the defendant; (ii) intent by the defendant to bring about a physical invasion of the plaintiff's real property; and (iii) causation. Mistake as to the lawfulness of the entry is no defense as long as the defendant intended the entry upon that particular piece of land. Intent to trespass is not necessary, only intent to enter the land is required. As with most intentional torts, damage is presumed, i.e., actual injury to the land is not an essential element of the cause of action.

Exam Tip: This question is asking you to consider the facts given and, by process of elimination, determine which of the additional facts offered would amount to a claim against the defendant. In other words, one by one, IF true, which of the facts would satisfy a prima facie case?

A is correct. A close reading of the facts shows that the only possible claim against the defendant is trespass to land, which requires a showing that the defendant physically invaded the plaintiff's property, with the intent to invade it, and his actions caused the result. The facts state that the defendant physically invaded the plaintiff's land by driving a car, which satisfies the first and third elements of a trespass claim. This answer choice, that the defendant intentionally drove his car onto the plaintiff's land, would satisfy the second and final element, giving rise to a prima facie case for trespass.

B is incorrect. If the defendant's car caused damage to the plaintiff's land, and no other facts are true, this would fall short of a sufficient trespass claim because there is no evidence that the defendant intended to physically invade the plaintiff's land, as explained above. Moreover, as with most intentional torts, damages are presumed. Actual injury to the land is not an essential element of trespass.

C is incorrect. A showing that the defendant negligently drove his car onto the plaintiff's land would actually defeat a trespass claim, not bolster it. If the defendant entered the land unintentionally, even if negligently, his intent to enter the land could not be shown and the claim would fail.

D is incorrect. As previously stated, a showing of damages is not required for a trespass claim. Damages are presumed, as with most intentional torts. Moreover, if there were no additional facts besides damage to the plaintiff's personal property, the intent element would not be satisfied and the claim would fail.

5. If the equestrian brings an action for damages against the property owner, the result should be for

While an equestrian was riding her horse on what she thought was a public path, the owner of a house next to the path approached her, shaking a stick and shouting, "Get off my property." Unknown to the equestrian, the path on which she was riding crossed the private property of the shouting owner. When the equestrian explained that she thought the path was a public trail, the man cursed her, approached the equestrian's horse, and struck the horse with the stick. As a result of the blow, the horse reared, causing the equestrian to fear that she would fall. However, the equestrian managed to stay on her horse, and then departed. Neither the equestrian nor the horse suffered bodily harm.

- The equestrian, for trespass to her chattel property
- **The equestrian, for battery and assault**
- The defendant, because the equestrian suffered no physical harm
- The defendant, because he was privileged to exclude trespassers from his property

Note:

B is correct. The equestrian suffered two specific tort injuries. The first was assault. For assault, the defendant must have the apparent present physical ability to complete his threatened battery for the tort of assault to be complete. Words alone are not sufficient. This first tort occurred when the owner approached her, yelling and shaking a stick at her. The second was a battery. A battery is caused by an intentional harmful or offensive touch to the plaintiff's person or an extension thereof, without consent or privilege. When the owner struck the horse the equestrian was seated on, he committed a battery by striking an extension of the equestrian, causing an offensive touch. Choice B appropriately lists both torts.

A is incorrect. Trespass to chattels is an interference with the equestrian's possessory interest in her personal property. To prevail in trespass to chattels, however, the equestrian would have to prove actual damages, measured according to the diminution of the chattel's value. Since the facts clearly state the horse suffered no damage, this claim would not prevail.

C is incorrect. A battery claim does not require bodily harm or severe emotional distress.

D is incorrect. The defendant had no privilege to use any type of force against the equestrian unless she was a threat to the owner's personal safety.

6. If the vice president asserts a claim against the president based on assault, will the vice president prevail?

A bank vice president took substantial kickbacks to approve certain loans that later proved worthless. Upon learning of the kickbacks, the bank's president fired the vice president, telling him, "If you are not out of this bank in 10 minutes, I will have the guards physically throw you out." The vice president left at once.

- No, because the guards never touched the vice president
- **No, because the president gave the vice president 10 minutes to leave**
- Yes, because the president intended to cause the vice president severe emotional distress
- Yes, because the president threatened the vice president with a harmful or offensive bodily contact

Note:

B is correct. In a claim for assault, the vice president must show that the president had the apparent present physical ability to immediately complete his threatened battery in order for the vice president to have had an apprehension of an imminent harmful or offensive contact. Words alone are not sufficient. Therefore, the president did not commit an assault.

A is incorrect. Actual contact is not required for an assault.

C is incorrect. Intent to cause severe emotional distress is not the element of an assault claim; it is an element of the tort of intentional infliction of emotional distress.

D is incorrect. Words alone are not sufficient if not accompanied by some overt act. Further, the threat must be of immediate harm, and the president gave the vice president 10 minutes to leave.

7. If the plaintiff asserts a claim against the defendant based on conversion, the plaintiff should recover a judgment for

A defendant, an inexperienced driver, borrowed a car from the plaintiff, a casual acquaintance, for the express purpose of driving it several blocks to the local drug store. Instead, the defendant drove the car, which then was worth \$12,000, 100 miles to another city. While the defendant was driving in the other city the next day, the car was hit by a negligently driven truck and sustained damage that will cost \$3,000 to repair. If repaired, the car will be fully restored to its former condition.

- **\$12,000**
- \$3,000
- \$3,000 plus damages for the loss of the use of the car during its repair
- Nothing, because the defendant was not negligent

Note:

Liability for an intentional tort requires the plaintiff to prove that the defendant acted, with intent, and his action caused the result that gave rise to liability.

To establish a prima facie case for conversion, the following elements must be proved: (i) an act by the defendant interfering with the plaintiff's right of possession in the chattel; (ii) intent to perform the act to bring about the interference with the plaintiff's right of possession; (iii) causation; and (iv) damages, meaning an interference that is serious enough in nature or consequences to warrant that the defendant pay the full value of the chattel.

Conversion includes, for example, wrongful acquisition (e.g., theft, embezzlement), wrongful transfer (e.g., selling, misdelivering, pledging), wrongful detention (e.g., refusing to return to owner), substantially changing, severely damaging or destroying, and misusing the chattel.

A is correct. If the plaintiff alleges that the defendant is liable for conversion, the plaintiff should recover the full value of the car at \$12,000. Conversion occurs when a defendant intentionally commits an act depriving the plaintiff of possession of her chattel or interferes with the plaintiff's chattel in a manner so serious as to deprive the plaintiff use of the chattel. The damages are the full value at the time of the conversion. In this case, when the defendant intentionally drove the car beyond the local drug store to the other city, he interfered with the plaintiff's possessory interest by using the car beyond the scope of the plaintiff's permission. When the defendant kept the car overnight and continued to drive it the next day in the other city, the conduct constituted such a substantial possessory interference that the plaintiff had a claim for conversion as a result. The conversion occurred even if the defendant did not intend to get into an accident and was not negligent while driving the car. The plaintiff may, therefore, recover the fair market value of the car, which was \$12,000 before it was damaged.

B is incorrect. Damages in the amount of \$3,000 (the amount of damages incurred in the accident to the car while it was in the defendant's possession) would be insufficient for remedying the conversion of the plaintiff's car by the defendant. As stated above, damages for conversion include the full market value of the chattel at the time of the conversion. Here, the value of the car was \$12,000, which is what the plaintiff is entitled to here.

C is incorrect. The defendant's actions amount to a claim of conversion, and the appropriate damages are the fair market value of the car at the time of the conversion, which is the full \$12,000, not merely the repairs plus the loss of use value.

D is incorrect. Whether the defendant was negligent is not the issue, the issue is whether the defendant intentionally acted in a way that amounted to a conversion of the plaintiff's car. If the defendant had been negligent, his intentional use of the car still makes him liable. As such, the plaintiff is entitled to the full fair market value of the car, as explained above.

8. If the plaintiff asserts a claim against the guard based upon battery, will the plaintiff prevail?

In the course of a bank holdup, a robber fired a gun at a guard. The guard drew his revolver and returned fire. One of the bullets fired by the guard ricocheted, striking the plaintiff, who was simply a customer at the bank.

- Yes, because the plaintiff was not the robber's accomplice
- Yes, under the doctrine of transferred intent
- **No, because the guard fired reasonably in his own defense**
- No, because the guard did not intend to shoot the plaintiff

Note:

Liability for an intentional tort requires the plaintiff to prove that the defendant acted, with intent, and his action caused the result that gave rise to liability.

To establish a battery claim, a plaintiff must prove that the defendant intentionally inflicted harmful or offensive bodily contact upon the plaintiff's person. The defendant is liable not only for direct contact, but also indirect contact, i.e., it will be sufficient if he sets in motion a force that brings about harmful or offensive contact to the plaintiff's person.

Intent can be established by showing the defendant's intent to cause EITHER: (i) harmful or offensive bodily contact or (ii) imminent apprehension by the plaintiff of a harmful or offensive bodily contact. The doctrine of transferred intent does apply in battery cases. Thus, a defendant acting with the intent to commit an assault, which causes harmful or offensive contact to the plaintiff, has committed a battery.

When a person has reasonable grounds to believe that he is being, or is about to be, attacked, he may use such force as is reasonably necessary for protection against the potential injury. Invoking self-defense requires first, a determination that the privilege exists, and second, whether the defendant was privileged to use the degree of force that she did, in fact, use. A defendant has the burden to prove that he reasonably believed there was a real threat of harmful or offensive bodily contact or threatened confinement or imprisonment. The defendant may only use the degree of force necessary to prevent that harm. The defendant will be liable for any force used that was beyond what was necessary.

If a defendant is entitled to use force in his self-defense, and he does so, but he injures an innocent bystander, the use of force as to the third party will also be privileged, assuming the defendant was not negligent.

C is correct. The plaintiff will not prevail in a battery claim against the guard because he was properly acting in self-defense. A defense to the intentional tort of battery is the privilege of self-defense, which applies when the defendant reasonably believed he was about to suffer harmful or offensive bodily contact. The defendant is privileged to use the degree of force necessary to defend against such threatened harm. In this case, the robber shot a gun at the guard, and in his own defense, the guard returned fire with his gun. This was a reasonable act of self-defense, and the fact that an innocent bystander (the plaintiff) was injured, does not negate his self-defense shield. This is because self-defense will transfer to a third party as long as the defendant did not act deliberately or negligently.

A is incorrect. This answer choice incorrectly applies the facts and improperly invokes a doctrine of criminal law - accomplice liability - in the context of an intentional tort case.

B is incorrect. Even though the guard's intent to shoot the robber transferred to the plaintiff, this is not dispositive here. As explained above, the guard acted reasonably in self-defense when he shot at the robber, and that privilege will extend to the plaintiff, who was injured accidentally during the exchange.

D is incorrect. This answer reaches the correct answer with the wrong reasoning. The plaintiff will not prevail, but not because the guard lacked the intent to shoot the plaintiff. In fact, when a defendant commits a battery against someone and injures a third party, he may be liable under the theory of transferred intent. Nevertheless, this guard-defendant will not be liable because he was acting reasonably within the privilege of self-defense in returning fire to the robber, which will extend to the plaintiff's injuries.

9. If the plaintiff asserts a claim against the defendant based on battery, which of the following, if supported by evidence, will be the defendant's best defense?

A plaintiff was walking peacefully along a public street when he encountered the defendant, whom he had never seen before. Without provocation or warning, the defendant picked up a rock and struck the plaintiff with it. It was later established that the defendant was mentally ill and suffered recurrent hallucinations.

- The defendant did not understand that his act was wrongful
- The defendant did not desire to cause harm to the plaintiff
- **The defendant did not know that he was striking a person**
- The defendant thought the plaintiff was about to attack him

Note:

Liability for an intentional tort requires the plaintiff to prove that the defendant acted, with intent, and his action caused the result that gave rise to liability. A person can have the intent necessary for an intentional tort even though he does not desire to "harm" the victim. It is irrelevant that the defendant did not know that the action would constitute a tort or a crime, which means ignorance of the law is no excuse.

Under the majority view, insane people will be liable for their intentional torts. If an insane person is capable of forming an intent to do a harmful act, he may be liable for the intentional tort just as a normal person would be. Even if his insanity was the cause of the intent, it is irrelevant.

To establish a battery claim, a plaintiff must prove that the defendant intentionally inflicted harmful or offensive bodily contact with the plaintiff's person. The defendant is liable not only for direct contact but also indirect contact, i.e., it will be sufficient if he sets in motion a force that brings about harmful or offensive contact to the plaintiff's person. Intent can be established by showing the defendant's intent to cause EITHER: (i) a harmful or offensive bodily contact or (ii) an imminent apprehension by the plaintiff of a harmful or offensive bodily contact.

When a person has reasonable grounds to believe that he is being, or is about to be, attacked, he may use such force as is reasonably necessary for protection against the potential injury.

C is correct. The issue here is, which of the defenses addresses whether the defendant had formed the intent necessary to complete the battery? The best defense would be that the defendant did not know he was striking a person, which would defeat intent. Mental disability does not generally provide immunity for intentionally tortious conduct. Thus, if the defendant threw the rock with the purpose of hitting the plaintiff or the knowledge that he would hit the plaintiff with the rock, he had formed intent, regardless of his understanding or motive. However, if he did not know he was striking a person, then he could not have formed the intent to hit a person. As such, the only defense that has a chance of prevailing is one where the defendant did not intend to hit the plaintiff at all.

A is incorrect. Mistake of law, or ignorance that one's act(s) are illegal, is generally not a defense. Therefore, if the defendant intended to throw the rock but did not understand that it was illegal to do so, it will not save him from liability. And as stated above, mental disability does not generally provide immunity.

B is incorrect. Even if the defendant did not desire to harm the plaintiff, he would still be liable. This is because a person can have the requisite intent for an intentional tort, including battery, even without a desire to harm. Battery specifically only requires the intent to cause the harmful or offensive touching.

D is incorrect. In this scenario, the defendant's belief that the plaintiff was about to attack him would have been unreasonable because the plaintiff was peacefully walking down the street. A proper self-defense claim requires the defendant to reasonably believe the force is necessary to guard against harm to himself.

10. If the plaintiff asserts a claim for damages against the defendant based on trespass, which of the following would be a correct disposition of the case?

A plaintiff owned a large tract of land on the shore of a lake. The defendant lived on a stream that ran along one boundary of the plaintiff's land and into the lake. At some time in the past, a channel had been cut across the plaintiff's land from the stream to the lake at a point some distance from the mouth of the stream. From where the defendant lived, the channel served as a convenient shortcut to the lake. Erroneously believing that the channel was a public waterway, the defendant made frequent trips through the channel in his motorboat. His use of the channel caused no harm to the land through which it passed. Once the defendant learned of the plaintiff's ownership of the channel, he stopped using it as a shortcut.

- **Judgment for the plaintiff for nominal damages, because the defendant intentionally used the channel**
- Judgment for the defendant, because he did not use the channel after learning of the plaintiff's ownership claim
- Judgment for the defendant, because he caused no harm to the plaintiff's land
- Judgment for the defendant, because when he used the channel he believed it was a public waterway

Note:

A is correct. Trespass is an intentional entry onto the land of another, without permission. The intent only refers to the intent to enter the property; the defendant need not know that it is another's private property. For an intentional trespass to land, damage is not required; the court will award nominal damages based on the trespass alone. The facts here support a claim for trespass because the defendant intentionally used the channel, without permission, even though he incorrectly believed it was a public waterway. All other answer choices may be eliminated because they find in favor of the defendant.

B is incorrect. The fact that the defendant stopped using the channel after learning of the plaintiff's ownership does not preclude a trespass violation, which does not require the defendant to be aware of the plaintiff's ownership.

C is incorrect. A trespass claim does not require a showing of damages.

D is incorrect. As explained above, a trespass claim does not require the defendant to know that the property belongs to someone else; here, the defendant's belief that it was a public waterway does not protect him from liability.
