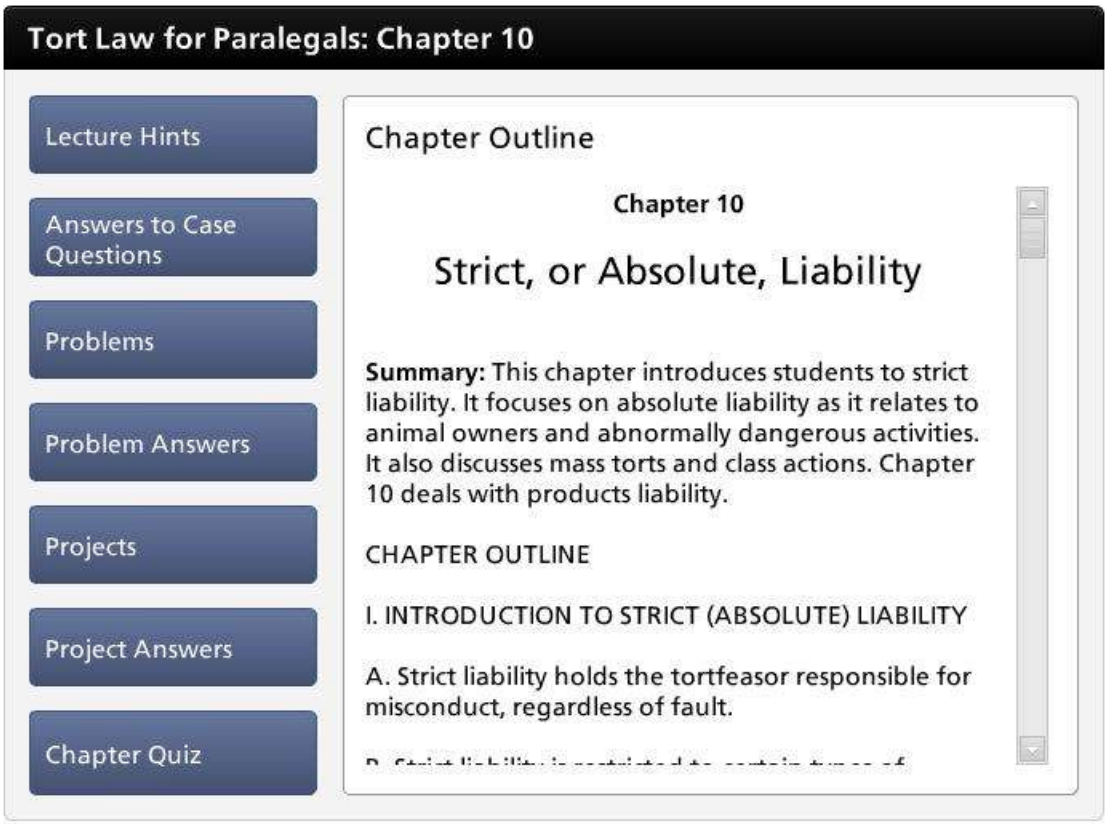
Tort Law for Paralegals: Chapter 10

Chapter Outline



Step Text

Chapter 10

Strict, or Absolute, Liability

Summary: This chapter introduces students to strict liability. It focuses on absolute liability as it relates to animal owners and abnormally dangerous activities. It also discusses mass torts and class actions. Chapter 10 deals with products liability.

CHAPTER OUTLINE

I. INTRODUCTION TO STRICT (ABSOLUTE) LIABILITY

A. Strict liability holds the tortfeasor responsible for misconduct, regardless of fault.

B. Strict liability is restricted to certain types of activities and situations, such as wild (or vicious) animals, ultrahazardous materials, and defective products.

C. Public policy objectives

1. Under absolute liability, society (through legislatures and courts) has decided to place the risk of liability upon persons (defendants) engaged in certain activities, such as those previously listed.

2. Theoretically, these defendants are in the best position to protect against injuries to innocent plaintiffs through insurance, spreading liability costs across many product purchasers, and so forth.

D. Historical development:

1. Ancient English common law held owners of animals, slaves, or objects absolutely liable when these "property" items caused the death of another person.

2. Such an object was called a deodand (thing to be given to God), because it had killed someone.

3. Deodands were seized by courts of chancery and placed into God's service through the church. King's courts also seized deodands for the crown's beneficent uses.

4. Gradually, English and American common law evolved to hold tortfeasors absolutely liable to victims, paying damages directly to the injured party.

II. WILD ANIMAL OWNERS' LIABILITY

A. Wild animal defined:

1. Ferae naturae = "wild nature." 2. Refers to wildlife (e.g., deer, bison, elk, bear, snakes, bees, etc.)

B. Wild animal ownership

1. The person controlling the wild animal (exercising dominion and control) becomes the legal owner of the beast.

2. If wildlife escapes control, then former possessor loses ownership until animal is recaptured by him or her.

C. Absolute liability: Owners are strictly liable for injuries caused by their wild animals.

III. DOMESTIC ANIMAL OWNERS' LIABILITY

A. Domestic animal defined:

1. Domitae naturae = "domesticated nature."

2. Tame animals (e.g., domestic livestock, dogs, cats, etc.).

B. Ordinary liability rule: Owners are liable for injuries caused by their domestic animals only based upon other torts, such as negligence, or certain intentional torts, such as assault, battery, and false imprisonment (when, e.g., owner intentionally orders dog to attack victim).

C. Vicious propensity rule

1. Owners are absolutely liable for injuries caused by their domestic animals only when those animals have vicious propensities.

2. Vicious propensity = domestic animal's ferocious behavior, as displayed through past biting or attack episodes, in which animal has hurt people (or property); animal has a reputation for viciousness. D. State dog-bite statutes: Most (probably all) states have statutes that determine owner liability (and available defenses) in dog-bite cases.

IV. DEFENSES IN ANIMAL ABSOLUTE LIABILITY CASES

A. Assumption of risk: Victim may assume risk of encountering wild (or vicious domestic) animal.

B. Contributory negligence: By encountering wild (or vicious domestic) animal, victim may be contributorily negligent.

C. Comparative negligence: See preceding.

D. Consent: Victim of wild (or vicious domestic) animal attack may consent to encounter causing injuries (e.g., employee training police dogs to attack criminals).

E. Self-defense or defense of others: Owner of wild (or vicious domestic) animal may use it for self-defense or defense of others.

V. ABNORMALLY DANGEROUS ACTIVITIES

A. Definition: Activities that are inherently perilous due to actions or devices involved. Examples: Use of explosives, flammable substances, noxious gases, poisons, or (in some jurisdictions) electricity, natural gas, or water supplied through unprotected utility lines. Also called ultrahazardous activities.

B. Restatement (Second) of Torts § 520

1. Persons engaged in abnormally dangerous activities shall be strictly liable for injuries caused by their actions.

2. Criteria for absolute liability:

a. The abnormally dangerous activity creates a high risk of substantial injury to the victim or the victim's property.

b. The risk cannot be removed through the use of reasonable care.

c. The activity or substance is not commonly undertaken or used (common usage principle).

d. The activity is inappropriately undertaken in a place where the victim was harmed.

e. Hazards created by the activity outweigh any benefits that the activity brings to the community.

3. Common usage principle: Activities or substances that are outside of common, everyday occurrence or use (e.g., explosives, toxic chemicals, poisonous gases).

C. Defenses

1. Most states have statutes protecting certain ultrahazardous activities from strict liability. Some states provide common law defenses. Examples: Statutes

protecting public utilities that distribute electricity or natural gas; private contractors performing public works, such as highway repair; municipal zoos.

2. Public policy justifications: Courts perform benefit-balancing analysis, asking whether benefits derived from abnormally dangerous activities (protected under statutes, or, in some jurisdictions, by common law) outweigh the risks created.

VI. SCOPE OF LIABILITY; Proximate Cause

A. Proximate cause in absolute liability cases is defined similar to proximate cause in negligence cases.

1. Animals or abnormally dangerous activities must proximately cause the victim's injuries.

B. The plaintiff's injuries must have been a reasonably foreseeable consequence of the defendant's actions.

C. The victim must have been a foreseeable plaintiff.

D. There is no duty of reasonable care in strict liability cases.

1. Negligence is irrelevant.

VII. MASS TORTS AND CLASS ACTIONS

A. When a large group of people are injured as a result of a single tortious act, this is called a mass tort.

B. This is distinguished from a class action, which is a legal action brought by a smaller group of plaintiffs who were harmed.

Lecture Hints

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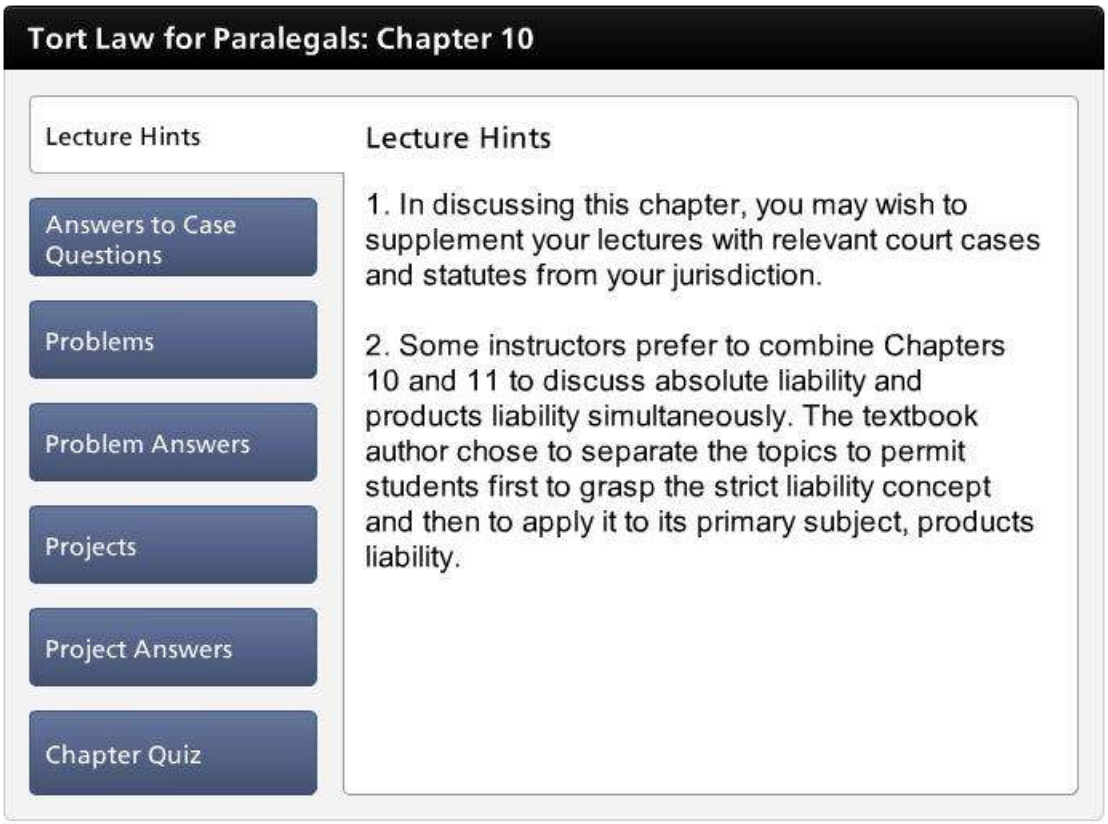

Step Text

1. In discussing this chapter, you may wish to supplement your lectures with relevant court cases and statutes from your jurisdiction.

2. Some instructors prefer to combine Chapters 10 and 11 to discuss absolute liability and products liability simultaneously. The textbook author chose to separate the topics to permit students first to grasp the strict liability concept and then to apply it to its primary subject, products liability.

Answers to Case Questions

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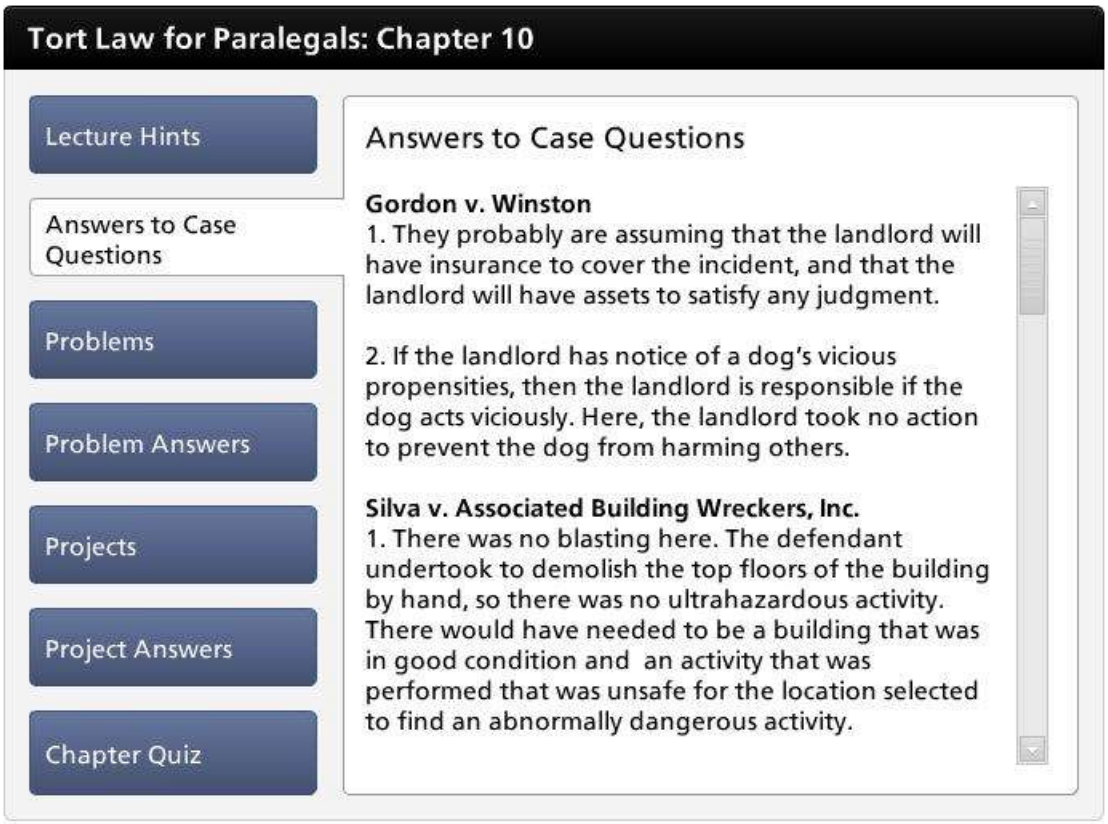

Step Text

Gordon v. Winston
1. They probably are assuming that the landlord will have insurance to cover the incident, and that the landlord will have assets to satisfy any judgment.

2. If the landlord has notice of a dog's vicious propensities, then the landlord is responsible if the dog acts viciously. Here, the landlord took no action to prevent the dog from harming others.

Silva v. Associated Building Wreckers, Inc.
1. There was no blasting here. The defendant undertook to demolish the top floors of the building by hand, so there was no ultrahazardous activity. There would have needed to be a building that was in good condition and

an activity that was performed that was unsafe for the location selected to find an abnormally dangerous activity.

2. Blasting in a small area where there were adjoining buildings would most likely have been considered an ultrahazardous activity, particularly if the building was in good condition and posed no safety risk.

Daniels v. Optek Technology, Inc.
1. The tolling of the statute of limitations makes it harder for a defendant to defend an action. However, because the defendant is usually the party in control of the dangerous condition, it would appear that the defendant still has the greater advantage as compared to the plaintiff. In this case it appears the defendants withheld knowledge of the dangerous chemicals from the plaintiff, so the tolling of the statute seems like a fair measure.

2. It is a bit hard to believe the plaintiff's claim of innocence as to the danger of the chemicals, but it is possible the plaintiff did not have time to read newspapers or watch television and had little knowledge about harmful substances.

Merrill v. Navegar, Inc.
1. Perhaps courts have routinely found the manufacture and sale of guns as not being ultrahazardous, as for the most part, they are used safely. Also, because the right to bear arms is in the U.S. Constitution, it would seem contradictory for the courts to find the sale of weapons as being ultrahazardous.

2. An action could have been brought by the plaintiffs against the shooter. Most likely the shooter did not have any assets or insurance to cover this type of incident.

In re Benzene Litigation
1. Offending products are not identified by brand name because the offense usually occurs over a period of time and several different brands of the same chemical product may have been used.

2. Depending on the time frame, an accused defendant may be able to prove that it had no involvement with a particular product during the specific time period.

Hoyte, M.D. v. Yum! Brands, Inc.
1. At first glance, this case could go either way. On the one hand, the dangers of fast food are common knowledge, especially to medical doctors. On the other hand, the public is weary of unsafe products and concerned about the dangers of increasing obesity in the population. When you see

that the restaurant's language is mere sales puffery rather than a legitimate or measureable promise, your thoughts about the case may begin to change.

2. It seems that the physician might genuinely have cared about public health, but there is the financial motive as well. Most likely, if he was purely altruistic, the physician would have lobbied for a change in law, rather than go after just one food chain.

3. A better way to change public behavior might be through education and public service commercials. There currently are several commercials aimed at controlling diet to avoid diabetes, as well as stop smoking advertisements, that might have influence over the public.

Problems

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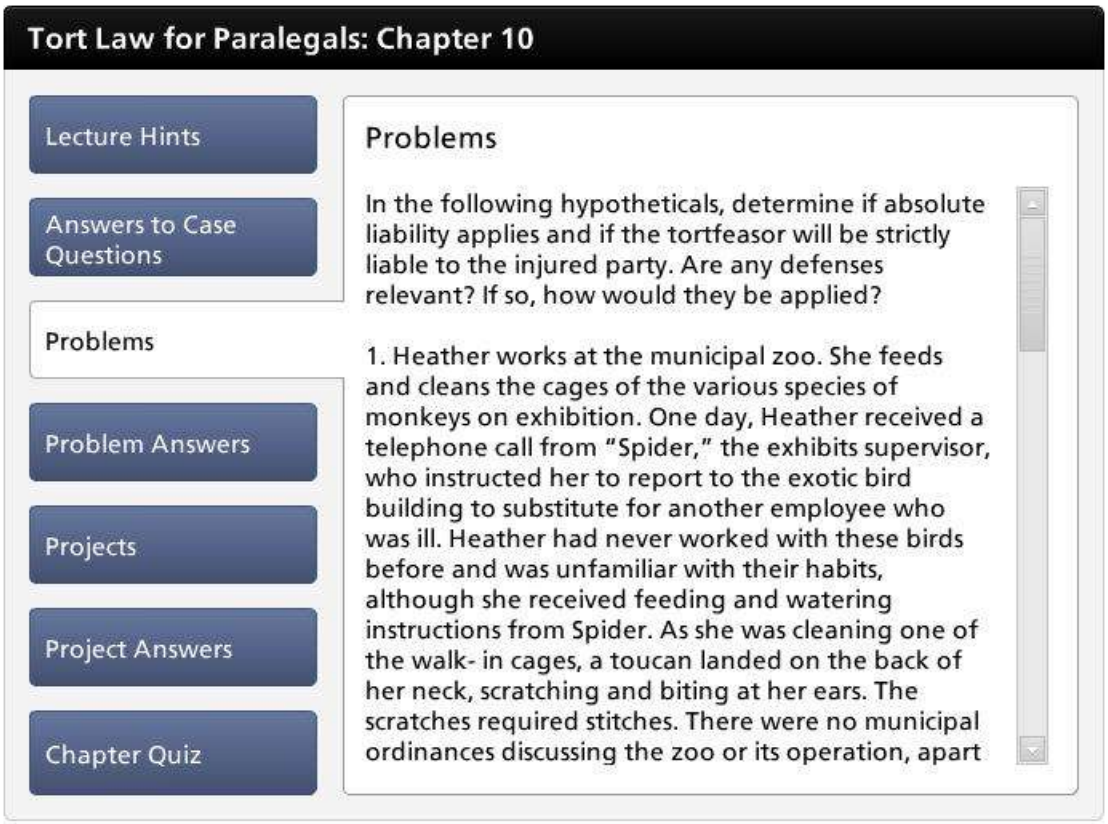

Step Text

In the following hypotheticals, determine if absolute liability applies and if the tortfeasor will be strictly liable to the injured party. Are any defenses relevant? If so, how would they be applied?

1. Heather works at the municipal zoo. She feeds and cleans the cages of the various species of monkeys on exhibition. One day, Heather received a telephone call from "Spider," the exhibits supervisor, who instructed her to report to the exotic bird building to substitute for another employee who was ill. Heather had never worked with these birds before and was unfamiliar with their habits, although she received feeding and watering instructions from Spider. As she was cleaning one of the walk- in cages, a toucan landed on the back of her neck, scratching and biting at her ears. The scratches required stitches. There were no municipal ordinances discussing

the zoo or its operation, apart from the enabling act that established the zoo and its supervision by the city's department of parks and recreation.

2. Willie owns a bulldog, which he kept chained in his backyard. The dog often barked and growled at anyone passing by the house on the sidewalk. One morning, Lisa, an employee of the electric company, visited Willie's house to read the meter, which was located in the backyard. Lisa had read Willie's meter before and knew about the dog. She peeked around the house but could not see the dog. She assumed it was inside the house, because the chain was lying on the ground. As she walked over to the meter, the dog leaped from the bushes, knocked Lisa down, and chewed on her arms and hands. Lisa was hospitalized as a result of these injuries.

3. Olaf owns a gas station. While a tanker truck was filling his underground fuel tanks, Olaf was using a welding torch inside his garage area to repair a customer's car. He inadvertently knocked over the torch, still lit, which fell into a puddle of gasoline from the tanker. The puddle ignited and burned across the ground to the tanker pipe connected to the underground tanks. Both the tanker truck and the fuel in the underground tanks then ignited and exploded. Several patrons were severely injured and their vehicles damaged.

4. The Belladonna Pharmaceutical Company manufactures medicines. It uses certain chemical solutions that turn bad and must be destroyed. These solutions are kept in steel barrels in the firm's back lot, awaiting pickup from a local waste disposal company. Brad works for the trash company. He had never collected trash from Belladonna before, as he normally rode the residential trash routes. Brad's supervisor failed to instruct him to take a special sealed-tank truck to get Belladonna's chemicals. Instead, Brad drove an open-top trash truck, which is used to haul dry garbage. Brad tossed the barrels into the truck, and several of them ruptured and leaked. As Brad drove down the highway to the dump, chemical sludge spilled out the back of the truck onto an automobile driven by Madison. Madison stopped and touched the sludge caked across the front of his car. It made his hands burn. Frightened, Madison drove to a local hospital emergency room. His skin had absorbed much of the chemical waste, and he became severely ill and had to be hospitalized for several weeks.

Problem Answers

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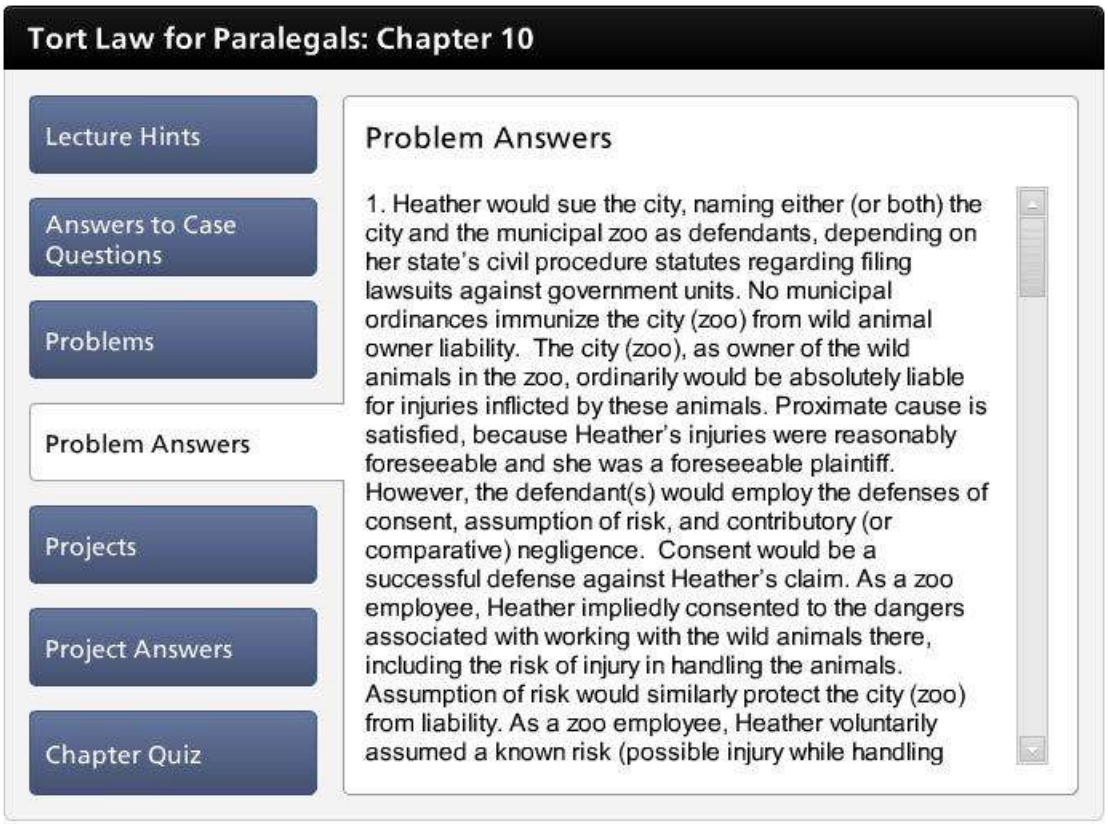

Step Text

1. Heather would sue the city, naming either (or both) the city and the municipal zoo as defendants, depending on her state's civil procedure statutes regarding filing lawsuits against government units. No municipal ordinances immunize the city (zoo) from wild animal owner liability. The city (zoo), as owner of the wild animals in the zoo, ordinarily would be absolutely liable for injuries inflicted by these animals. Proximate cause is satisfied, because Heather's injuries were reasonably foreseeable and she was a foreseeable plaintiff. However, the defendant(s) would employ the defenses of consent, assumption of risk, and contributory (or comparative) negligence. Consent would be a successful defense against Heather's claim. As a zoo employee, Heather impliedly consented to the dangers associated with working with the wild animals there, including the risk of injury in handling the animals. Assumption of risk would similarly protect the city (zoo) from liability. As a zoo employee, Heather

voluntarily assumed a known risk (possible injury while handling wild animals) with full appreciation of the dangers involved (large, wild birds can claw, peck, etc.). Heather's unfamiliarity with the specific habits of toucans would not affect this defense. She reasonably should have anticipated that frightened toucans might scratch and bite her if she (a stranger to the birds) entered their cages. Heather also committed contributory or comparative negligence. She breached her duty of reasonable care to herself by not taking precautions to prevent the birds from injuring her. For instance, she could have worn a heavy overcoat and hat, which exotic bird handlers often wear while cleaning cages. The reasonable person standard applied to Heather would be modified to reflect the experience and expertise of a reasonable zoo employee accustomed to handling wildlife. Accordingly, Heather's failure to take reasonable precautions contributed to her injuries. Contributory negligence would totally preclude Heather's claims. Comparative negligence would have the effect of removing strict liability from consideration and replacing it with assigned negligence percentages. This, in effect, converts the case from absolute liability to negligence.

2. Willie's bulldog exhibited vicious propensities through its past behavior of barking and growling at passersby. Lisa was aware of the dog's viciousness. As a reasonable person would have done, Lisa inspected the yard carefully for the dog before entering. She was reasonably convinced that the dog was inside Willie's house, as the chain was lying on the ground, and presumably Lisa had seen the dog chained up during past visits to read the meter. Lisa did not see the dog hiding in the bushes (this can be presumed from the facts). Under the vicious propensity rule, Willie would be absolutely liable for Lisa's injuries inflicted by the bulldog. Proximate cause is also satisfied, as the dog's attack was reasonably foreseeable and Lisa was a foreseeable plaintiff. No defenses apply in this hypothetical. Lisa did not consent to the attack. She was not contributorily or comparatively negligent, nor did she assume the risk. Although she knew about the dog's viciousness, she did not know that the dog was lurking in the bushes, waiting to attack. To Lisa, this was an unknown danger that she did not voluntarily assume.

3. The patrons would sue Olaf under strict liability for their physical injuries and damage to their vehicles. By using a welding torch while a gasoline tanker truck was unloading fuel, Olaf was engaged in an abnormally dangerous activity. Under the Restatement (Second) of Torts § 520, Olaf's torch use created a high risk of substantial injury to his patrons and their vehicles, in the event that the torch ignited the gasoline, as it did. Further, Olaf could not have removed the risk through the exercise of reasonable care, because using a torch at all in the proximity of gasoline vapors or fuel puddles is inherently dangerous-an explosion could occur at any instant. People do not commonly use torches around large quantities of gasoline. This is especially true of individuals who are experienced with fuels, such as gas- station owners. Using a torch in a gas station was inappropriate. Clearly, the hazards created outweighed the benefit to the

community (i.e., Olaf's welding for a customer's benefit versus the risk of massive explosion). Olaf would be absolutely liable under the Second Restatement rule. Proximate cause is satisfied because the injuries were reasonably foreseeable and the victims were all foreseeable plaintiffs. No defenses apply to this hypothetical.

4. Madison would probably sue both the local waste disposal company (Brad's employer, under respondeat superior) and the Belladonna Pharmaceutical Company. However, Belladonna is a red herring in this hypothetical. Belladonna did not proximately cause Madison's injuries. In fact, it did nothing to injure Madison. Although it did supply chemicals, Belladonna did not cause them to come into contact with Madison. Direct causation links Brad as the sole cause-in-fact of Madison's injuries. Thus, Belladonna would not be liable to Madison under any tort theory. Brad's employer, however, would not be so fortunate. By picking up the hazardous chemicals, the trash company engaged in an abnormally dangerous activity. Again, Restatement (Second) § 520 applies. The second element is the key to this hypothetical. Could Brad have removed the risk posed by the chemicals through the exercise of reasonable care? Yes. The company had a special sealed-tank truck to collect Belladonna's chemicals. This precaution constitutes reasonable care. However, the company failed to use reasonable care when the supervisor failed to instruct Brad to use the special truck. Failure to use reasonable care converts Brad's activities into ultrahazardous behavior. The Second Restatement's other elements are satisfied. By using an ordinary trash truck, Brad created a high risk of substantial injury to Madison. Hauling dangerous chemicals is not a common activity. Driving a trash truck that was leaking toxic chemicals along a public highway was inappropriate. Definitely, the hazards to other drivers, such as Madison, outweighed the benefits that toxic trash removal provided to the community. Proximate cause is satisfied, as it was reasonably foreseeable that the chemicals could leak from an unsealed truck onto adjacent vehicles and injure their occupants. As an adjacent driver, Madison was a foreseeable plaintiff. This case also illustrates another toxic tort situation: The federal Hazardous Materials Transportation Act would apply to this problem.

Projects

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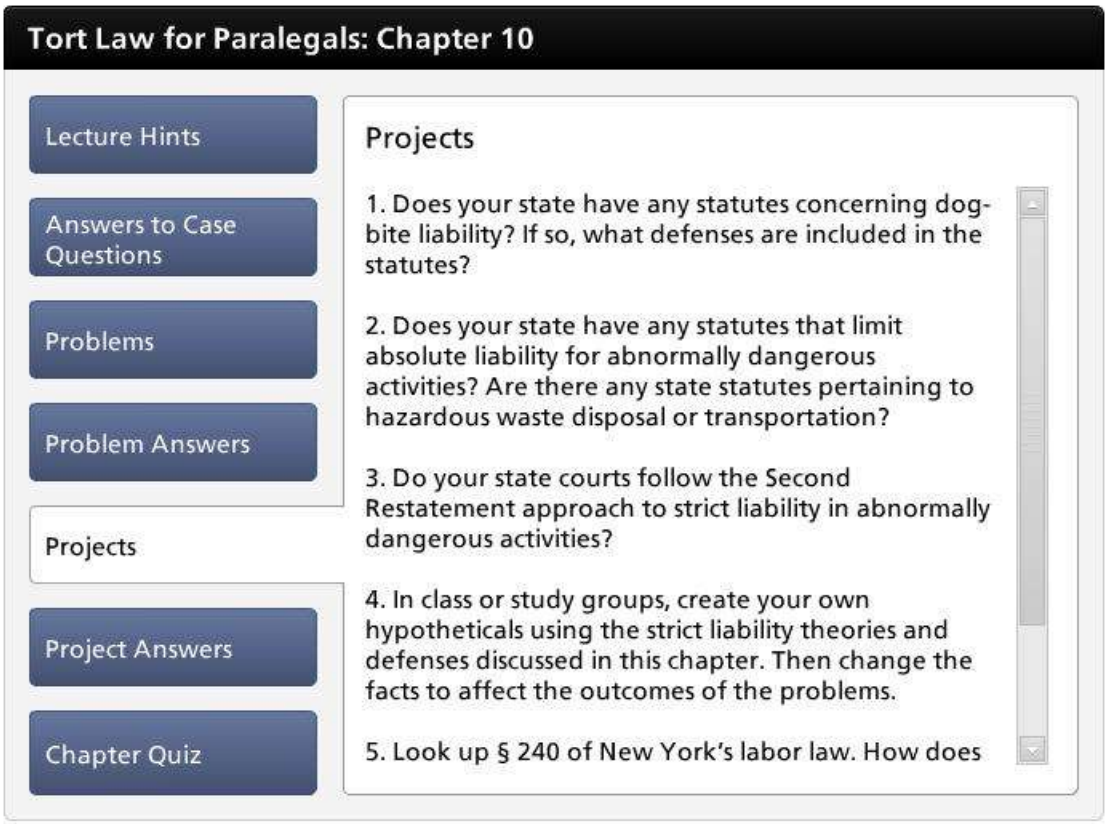

Step Text

1. Does your state have any statutes concerning dog-bite liability? If so, what defenses are included in the statutes?

2. Does your state have any statutes that limit absolute liability for abnormally dangerous activities? Are there any state statutes pertaining to hazardous waste disposal or transportation?

3. Do your state courts follow the Second Restatement approach to strict liability in abnormally dangerous activities?

4. In class or study groups, create your own hypotheticals using the strict liability theories and defenses discussed in this chapter. Then change the facts to affect the outcomes of the problems.

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5. Look up § 240 of New York's labor law. How does this relate to the topic of absolute liability?

6. See Hogan v. Maryland State Dental Association in Appendix C at the student companion website. Explain why this class action was not successful.

Project Answers

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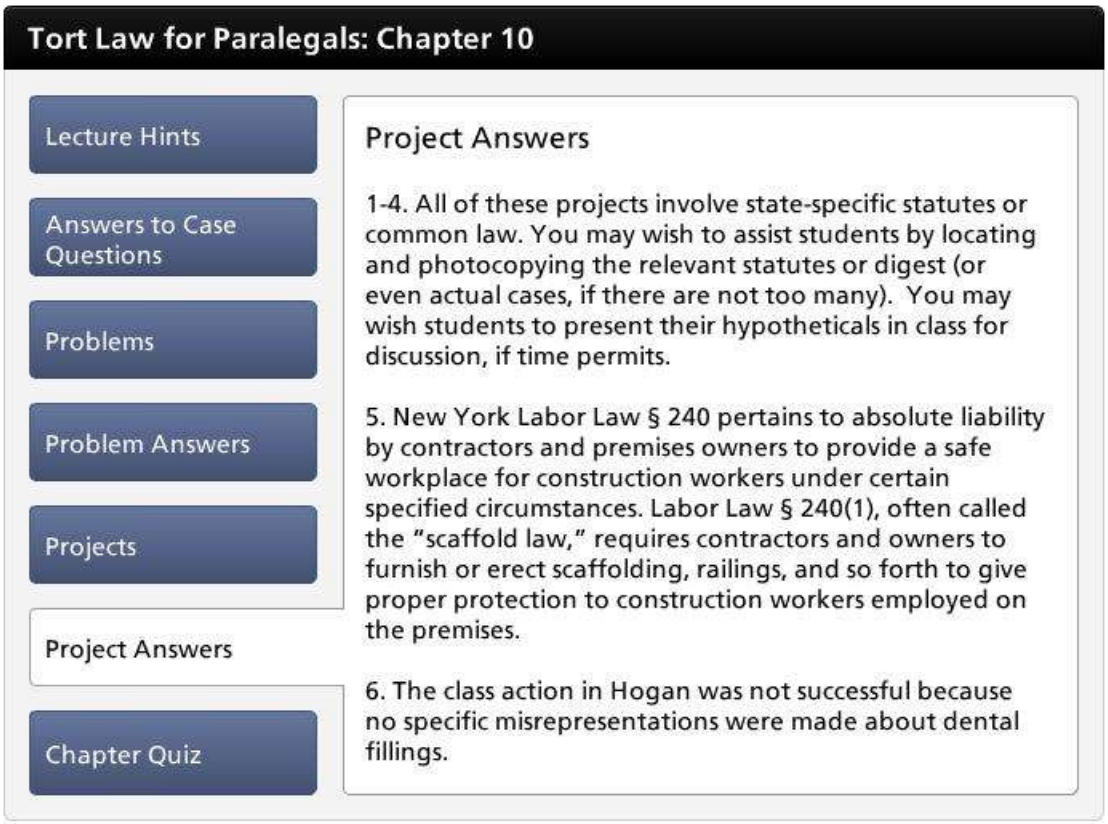

Step Text

1-4. All of these projects involve state-specific statutes or common law. You may wish to assist students by locating and photocopying the relevant statutes or digest (or even actual cases, if there are not too many). You may wish students to present their hypotheticals in class for discussion, if time permits.

5. New York Labor Law § 240 pertains to absolute liability by contractors and premises owners to provide a safe workplace for construction workers under certain specified circumstances. Labor Law § 240(1), often called the "scaffold law," requires contractors and owners to furnish or erect scaffolding, railings, and so forth to give proper protection to construction workers employed on the premises.

6. The class action in Hogan was not successful because no specific misrepresentations were made about dental fillings.

Chapter Quiz

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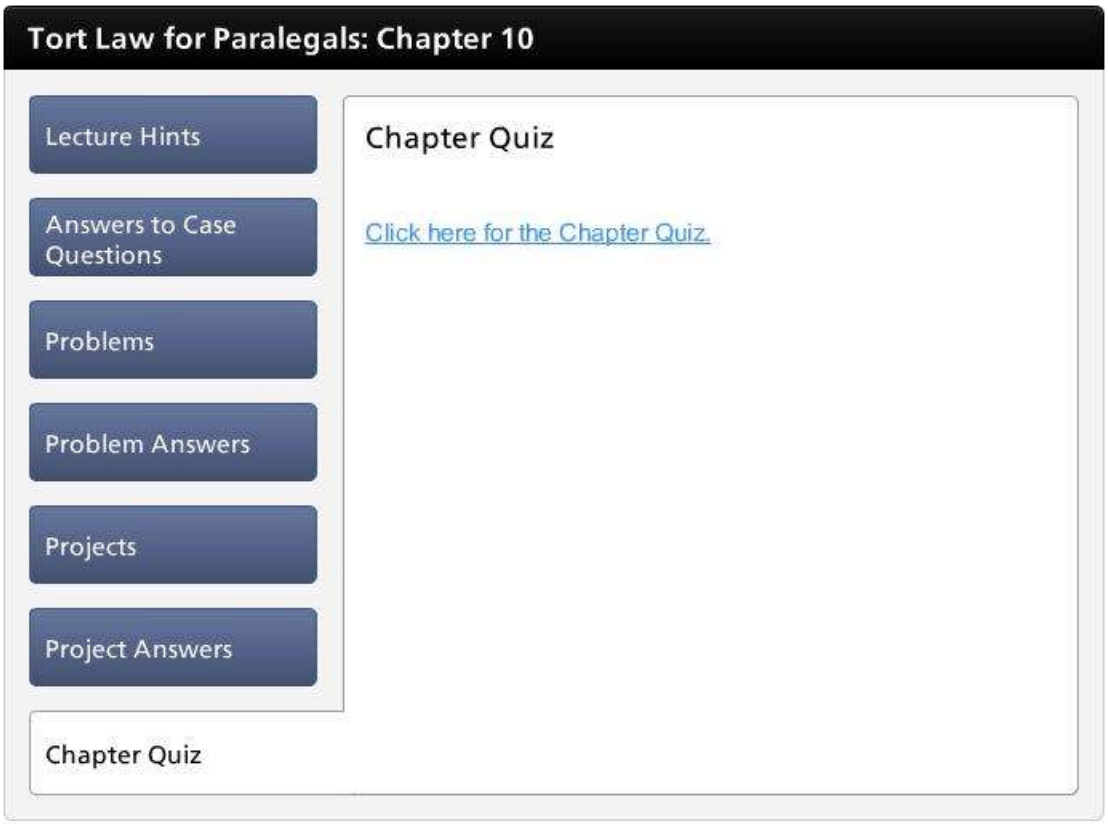

Step Text

Click here for the Chapter Quiz.