

TOP MBE RULES, TRAPS, TRICKS AND TRIPS

Short on Time? Here's What Actually Works:

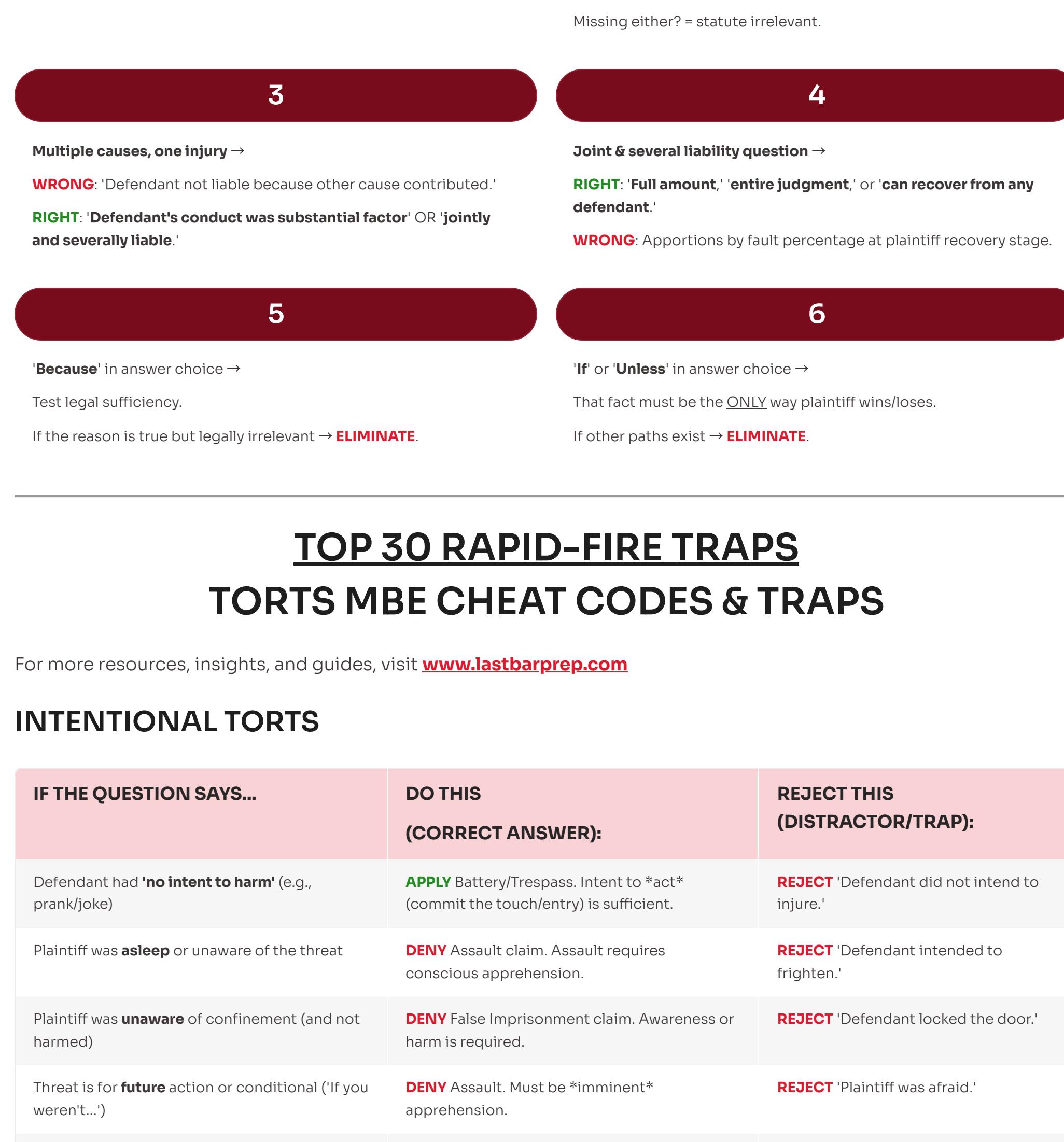
Days to the February 2026 bar exam and still freezing on fact patterns? You don't need dense outlines. You need instant issue recognition and battle-tested rules.

The Homestretch Package gives you the **highest-frequency triggers, exam-ready black letter rules, and plug-and-play templates** for the **highest-priority, most-tested, most-testable issues across all MEE and MBE subjects** – built from 10 years of top-scoring model answers, so you can spot faster, write faster, and score higher.

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TORTS MBE ANSWER SELECTION GUIDE

THE MASTER ROUTINE — DO THIS FOR EVERY QUESTION



GLOBAL ELIMINATION RULES

If you see this → Do this:

1

JMOL/SJ/Directed Verdict motion →

Pick **DENIED**: Case goes to jury. (Trap: 'No evidence of negligence' when plaintiff has *prima facie* case.)

2

Statute violation in negligence →

WRONG: 'Defendant violated statute = negligence per se.'

RIGHT: mentions 'class of person statute intended to protect' AND 'type of harm statute intended to prevent.'

Missing either? = statute irrelevant.

3

Multiple causes, one injury →

WRONG: 'Defendant not liable because other cause contributed.'

RIGHT: 'Defendant's conduct was substantial factor' OR 'jointly and severally liable.'

4

Joint & several liability question →

RIGHT: 'Full amount,' 'entire judgment,' or 'can recover from any defendant.'

WRONG: Apportion by fault percentage at plaintiff recovery stage.

5

'Because' in answer choice →

Test legal sufficiency.

If the reason is true but legally irrelevant → **ELIMINATE**.

'If' or 'Unless' in answer choice →

That fact must be the ONLY way plaintiff wins/loses.

If other paths exist → **ELIMINATE**.

6

TOP 30 RAPID-FIRE TRAPS

TORTS MBE CHEAT CODES & TRAPS

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INTENTIONAL TORTS

IF THE QUESTION SAYS...	DO THIS (CORRECT ANSWER):	REJECT THIS (DISTRACTOR/TRAP):
Defendant had 'no intent to harm' (e.g., prank/joke)	APPLY Battery/Trespass. Intent to *act* (commit the touch/entry) is sufficient.	REJECT 'Defendant did not intend to injure.'
Plaintiff was asleep or unaware of the threat	DENY Assault claim. Assault requires conscious apprehension.	REJECT 'Defendant intended to frighten.'
Plaintiff was unaware of confinement (and not harmed)	DENY False Imprisonment claim. Awareness or harm is required.	REJECT 'Defendant locked the door.'
Threat is for future action or conditional ('If you weren't...')	DENY Assault. Must be *imminent* apprehension.	REJECT 'Plaintiff was afraid.'
Defendant intentionally touched an object held by P (plate/cane)	APPLY Battery. 'Extended personality' rule applies.	REJECT 'No physical contact with Plaintiff's body.'
Defendant was mentally ill or a young child	APPLY Liability. Age/capacity are irrelevant for intentional torts if intent to act existed.	REJECT 'Defendant lacked capacity' or 'Defendant was too young to understand.'
Doctrine of Transferred Intent applied to Conversion or IIED	DENY . Intent transfers only between Assault, Battery, FI, and Trespass (Land/Chattels).	REJECT 'Defendant intended to commit Battery' (for IIED claim).
Defendant requests ' nominal damages ' for Trespass to Land	GRANT . No physical damage is required for Trespass to Land; intent to enter is enough.	REJECT 'Defendant caused no actual harm.'
' Mistake of fact ' regarding property line	APPLY Trespass. Intent to enter the land is all that matters; mistake is no defense.	REJECT 'Defendant thought it was his own land.'
Defendant used deadly force to protect property (e.g., spring gun)	APPLY Liability. Deadly force never allowed for property alone.	REJECT 'Defendant posted a warning sign.'
Defendant enters land due to Private Necessity (storm/emergency)	GRANT privilege to enter (cannot be expelled), but require payment for actual damages.	REJECT 'Defendant is a trespasser' OR 'Defendant pays no damages.'
Plaintiff sues for IIED based on insults alone	DENY . Mere insults are not 'extreme and outrageous.'	REJECT 'Plaintiff suffered severe distress.'

NEGLIGENCE: DUTY & BREACH

IF THE QUESTION SAYS...	DO THIS (CORRECT ANSWER):	REJECT THIS (DISTRACTOR/TRAP):
Defendant complied with custom or statute	WEIGH as evidence, but not conclusive. Reasonable care may require more.	REJECT 'Defendant is not liable because he followed the statute.'
Res Ipsa Loquitur applied to multiple contractors/manufacturers	DENY (usually). Requires *exclusive control*. (Exception: Medical team/Ybarra).	REJECT 'The accident implies negligence' (without linking to specific D).
Res Ipsa Loquitur applied to a product after it left factory	DENY . Hard to prove exclusive control once consumer handles it.	REJECT 'Manufacturer is liable because products don't usually fail.'
Child defendant engaged in adult activity (driving/boating)	APPLY Adult Standard of Care (Reasonable Person).	REJECT 'Standard of a child of like age/experience.'
Plaintiff is an undiscovered trespasser injured by natural condition	DENY liability. No duty owed.	REJECT 'Landowner failed to warn.'
Employee invited a guest into ' Employees Only ' area	APPLY Invitee status. Employee has authority; guest acts for business benefit/invitation.	REJECT 'Plaintiff was a trespasser.'
Landowner delegated maintenance (elevator/pool) to contractor	APPLY Non-Delegable Duty. Owner remains liable for safety of business premises/invitees.	REJECT 'Owner is not liable because Independent Contractor was negligent.'
Statute violated, but harm is different type than statute covers	DENY Negligence Per Se. (e.g., parking ban for traffic flow ≠ slip and fall protection).	REJECT 'Defendant violated the statute.'
' Good Samaritan ' or Volunteer made situation worse	APPLY Liability. Once aid begins, duty of reasonable care attaches.	REJECT 'Defendant had no duty to rescue initially.'
Mental disability of Defendant	APPLY Average Reasonable Person standard (ignore disability).	REJECT 'Standard of a person with like mental capacity.'
Physical disability of Defendant (e.g., blind)	APPLY Modified Standard. Judged against reasonable person with same disability.	REJECT 'Standard of an average person.'
Slip & Fall on 'Fresh/Clean' Peel	DENY Liability. No notice/constructive notice.	REJECT 'Res ipsa Loquitur.'

CAUSATION & DAMAGES

IF THE QUESTION SAYS...	DO THIS (CORRECT ANSWER):	REJECT THIS (DISTRACTOR/TRAP):
Multiple defendants, indivisible injury	APPLY Joint & Several Liability. P can recover 100% from any single D.	REJECT 'Defendant is only liable for his share.'
Multiple defendants, independent acts, one caused harm (unknow which)	APPLY Alternative Liability (Summers v. Tice). Burden shifts to Ds to prove innocence.	REJECT 'Plaintiff failed to prove which defendant caused harm.'
Harm is Pure Economic Loss (no injury/no property damage)	DENY Negligence/Strict Liability claim. Recovery allowed in Contract claim.	REJECT 'Plaintiff lost profits.'
Intervening criminal act or intentional tort	REJECT 'Criminal acts are always superseding causes.'	
Subsequent Medical Malpractice aggravated injury during and/or during rescue attempt	APPLY Liability to original tortfeasor. Med mal is considered foreseeable.	REJECT 'Doctor's negligence was a superseding cause.'
Res ipsa Loquitur Plaintiff (pre-existing condition)	APPLY Negligence/Strict Liability. D takes P as he finds him (mental or physical).	REJECT 'Extent of plaintiff's pre-existing condition was unforeseeable.'
Plaintiff suffered IIED but had no physical symptoms	DENY (General Rule). Need physical manifestation.	REJECT 'Plaintiff was in the zone of danger' (without symptoms).
Bystander IIED claim (outside zone of danger)	APPLY Only if 1) Close relative, 2) Present at scene, 3) Observed accident.	REJECT 'Plaintiff heard about it later.'
Loss of Chance (<50% survival chance)	APPLY Recovery for lost % (if law allows).	REJECT 'Plaintiff must have survived (>50%).'

STRICT LIABILITY & PRODUCTS

IF THE QUESTION SAYS...	DO THIS (CORRECT ANSWER):	REJECT THIS (DISTRACTOR/TRAP):
Domestic Animal (Dog) bite (first time)	DENY Strict Liability unless owner knew of vicious propensity.	REJECT 'Strict liability for animal owners.'
Wild Animal caused harm via fear (not bite)	APPLY Strict Liability. Liable for harm resulting from dangerous propensity (including panic).	REJECT 'Animal did not touch Plaintiff.'
Abnormally Dangerous Activity (Blasting/Chemicals)	APPLY Strict Liability even if D used 'utmost care.'	REJECT 'Defendant did not exercise reasonable care.'
Harm from Dangerous Activity was not the specific intention of the tortfeasor	DENY Strict Liability. Negligence only.	REJECT 'Strict liability for all harm on premises.'
Defendant is a Service Provider (Dentist) using defective product	APPLY Products Liability. They provide services, not goods.	REJECT 'Strict liability for defective product.'
Product modified substantially by 3rd party	DENY Liability. Cuts off manufacturer responsibility (unless foreseeable).	REJECT 'Original manufacturer is strictly liable for original defect.'
Product lacked feasible safety device	APPLY Design Defect. Warning is insufficient if design could be safer.	REJECT 'Manufacturer provided a warning.'
Plaintiff failed to discover defect (Contributory Negligence)	DENY as defense to Strict Liability.	REJECT 'Plaintiff was negligent.'
Retailer sold defective product in sealed container	APPLY Strict Liability. Retailers are liable for manufacturing defects even if they didn't inspect.	REJECT 'Retailer had no opportunity to inspect.'
Learned Intermediary (Rx Drugs)	DENY Failure to Warn claim if Manufacturer warned Doctor.	REJECT 'Manufacturer didn't warn Plaintiff.'

OTHER TORTS & DEFENSES

IF THE QUESTION SAYS...	DO THIS (CORRECT ANSWER):	REJECT THIS (DISTRACTOR/TRAP):
Nuisance claim: Plaintiff came to the nuisance	WEIGH as factor only. Not a complete defense.	REJECT 'Plaintiff bought property knowing of condition.'
Privacy claim: Plaintiff is hypersensitive (e.g., day/sleep)	DENY Standard is interference with *ordinary* person's use.	REJECT 'Substantial interference with Plaintiff's use.'
Defamation: Plaintiff is Public Figure/Official	APPLY Actual Malice (Knowledge of falsity or reckless disregard).	REJECT 'Defendant was negligent.'
Defamation: Defendant had Honest Belief in truth	APPLY as defense against Public Figure (negates Actual Malice).	REJECT 'Defendant failed to investigate.'
Privacy: Information was newsworthy	DENY Public Disclosure of Private Facts claim.	REJECT 'Facts were private.'
Privacy: Intrusion occurred in public place	DENY Intrusion upon Seclusion claim.	REJECT 'Plaintiff was embarrassed.'
Comparative Negligence (Modified)	DENY recovery if P is >50% at fault.	REJECT 'Plaintiff recovers 49%.'
Pure Comparative Negligence	APPLY recovery even if P is 99% at fault (P gets 1%).	REJECT 'Plaintiff's negligence bars recovery.'
Assumption of Risk	APPLY as defense to Negligence AND Strict Liability.	REJECT 'Strict liability has no defenses.'
Vicarious Liability: Intentional Tort (Bounce)	APPLY within scope if force is part of job.	REJECT 'Intentional torts are outside scope.'
Competitor causes breach of contract	DENY Tortious Interference if proper (competition privilege).	REJECT 'Intentional torts.'

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