

# ANSWER KEY TO QUESTIONS FOR DISCUSSION\*

## *Bosley v. Andrews* (page 18)

Answers to Questions for Discussion (page 20)

1. Since the case is in Pennsylvania's highest court, the supreme court, it is likely that the plaintiff requested leave to appeal.
  2. The case was first heard in trial court and then appealed to the mid-level superior court. The name should be a clue. The verb *sustained* is another clue. It is used here to mean *upheld* or *affirmed* (the decision of the lower court). The citation for the superior court's decision is *Bosley v. Andrews*, 184 Pa. Super. 396, 135 A.2d 101 (1957).
  3. Mrs. Bosley is the plaintiff. A bull from the defendant's neighboring farm strayed onto Mrs. Bosley's property. The bull chased Mrs. Bosley and, as a result of fright, she suffered an attack of coronary insufficiency. The bull didn't touch Mrs. Bosley, so there was no resulting physical injury. The plaintiff seeks damages (compensation) for the physical injuries she claims to have suffered as a result of her mental distress.
  4. This torts case is governed by Pennsylvania common law. No Pennsylvania statute governs this case.
  5. The two cases are similar to this case in that both plaintiffs claimed to have suffered mental distress and resulting physical injuries. Because the common law impact rule allows a plaintiff to seek damages for mental distress
- only if the plaintiff suffers physical impact or injury, only the plaintiff in *Potere* states a claim and can therefore seek damages. The plaintiff in the *Koplin* case did not state a claim, and therefore the case was dismissed. Note that if the plaintiff were allowed to go to court, she would still have to prove negligence and show that the defendant's negligence was the cause of her mental distress and resulting physical injuries.
6. The court rules for the defendant. The majority thinks that a change in the rule would cause people to bring lawsuits in the belief that their emotional distress and resulting physical injuries were caused by the defendant's negligent act. Medical science would not be able to show a relationship between these injuries and the defendant's negligent act. In addition, there might be faked claims.
  7. The plaintiff is trying to convince the Supreme Court of Pennsylvania to abandon the impact rule. In other words, she is asking the court to overrule or overturn precedent. (Because the impact rule is a common law rule, the court can decide to abandon it.)
  8. There are two dissents. Justice Musmanno strongly disagrees with the majority opinion. He argues that the plaintiff should have the opportunity to present her case to the jury so that she can provide evidence to show that the defendant's negligence was the cause of her emotional distress and resulting physical injuries. He thinks that the courts

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\* Citations are not included in this answer key. To locate the citations, please refer to the text.

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are capable of weighing the worthiness or her claim. He does not agree that the courts will be inundated with frivolous claims. He points out that this has not happened in other states that have abandoned the impact rule. He also points out that it is illogical that, under the impact rule, someone who suffers only a minor physical injury can seek damages for mental distress. He also seems to imply that the minor injury and mental distress in these cases may have a somewhat tenuous relationship.

9. Courts, for the sake of predictability and fairness, do not like to overturn rules that have been long established. In *Bosley*, this is what the plaintiff is asking the court to do.
10. Because this is the decision of the highest court in Pennsylvania, all other courts in the state are bound by it. Michigan courts are not bound by decisions made by other state courts but may look to other states for guidance.
11. A jury was not involved in the case because the court in *Bosley* does not allow the case to proceed to trial for lack of a legal claim. In other words, there is no applicable law in Pennsylvania, given the facts that Mrs. Bosley has presented. This is why the court sustains the lower court judge's entry of a nonsuit. A judge, not the jury, rules on matters of law.
12. Hypotheticals
  - Since Mrs. Bosley was touched by the bull, it is likely that the court will allow her to proceed with her lawsuit.
  - The impact rule states that the plaintiff may seek legal redress if there is physical injury or physical impact. Since Mrs. Bosley suffered a physical injury (a broken leg), it might depend on how the court interprets "physical injury." Students may argue that there was no impact or injury in this hypothetical since the bull didn't directly touch Mrs. Bosley.
  - Since the centipede touched the woman (impact), she would likely be able to proceed with her suit. She would have to show that the restaurant was negligent and that the incident was the cause of her illness.

### *Eckenrode v. Life of America Insurance Company* (page 32)

Answers to Questions for Discussion (page 36)

1. The case is in federal court. It is a diversity case. In other words, the plaintiff and defendant are from two different states and the amount in controversy falls within the federal rules.
2. The court looks at both the plaintiff's situation after the death of her husband (children, no property, no money for funeral expenses, and her worsening financial situation, which caused her to have to become financially dependant on her family) and the defendant's tactics, which were used to pressure the vulnerable beneficiary (the defendant's refusal to hand over to her the proceeds from the life insurance policy when her husband died and the defendant's use of economic coercion to try to convince the plaintiff to settle).
3. Given the facts the plaintiff alleges, can she recover damages for intentional infliction of emotional distress?
4. The federal court is obligated to apply Illinois law since Illinois law governs in this case. It looks to the Illinois Supreme Court for guidance.
5. Here the court separately lists each objection to the tort of intentional infliction of emotional distress and then follows it with a counter-argument. Each objection is introduced with *as to* and then followed by the counter-argument.
6. See the objections and response in Paragraph 8.
7. In *Knierim*, the Illinois Supreme Court recognized for the first time the tort of intentional infliction of emotional distress. Thus, *Knierim* serves as precedent for the *Eckenrode* case.
8. *Siliznoff* established the tort of intentional infliction of emotional distress for the first time in the United States. The Illinois court was not bound by the decision in this case but looked to this case as persuasive authority in deciding *Knierim*. *Fletcher* sets out the elements of intentional infliction of

emotional distress, and both *Crisci* and *Fletcher* concern insurance companies who dealt in bad faith with an insurance policy beneficiary. The facts in these cases are directly relevant to the plaintiff's situation.

9. The elements for intentional infliction of emotional distress are listed in Paragraph 10 of the case. Notice that even though this is an intentional tort, the plaintiff does not have to show intention but instead can show "reckless disregard of the probability of causing emotional distress." (See Paragraph 10.)
10. The purpose of the insurance is to provide financial protection for the beneficiary. The court's concern is that the insurer, by taking advantage of the vulnerable beneficiary and using high pressure tactics, will do just the opposite. It points out that the insurance business is regulated for this reason. The insurer, as a party to a contract, is expected to deal in good faith.
11. The plaintiff has sufficiently alleged a cause of action and now will have the opportunity to come forth with evidence to prove the four elements of the prima facie case of intentional infliction of emotional distress.
12. The Illinois courts are not bound by the decision of the federal court, but it is likely that they will consider this case as persuasive authority.
13. Hypothetical:

The plaintiff would have to prove all the elements of the tort of intentional infliction of emotional distress. Depending on her circumstances, the plaintiff may have difficulty providing proof of severe or extreme emotional distress if she has not been placed in a position of dire need. But the court has indicated that she might be able to sue under another legal theory. (See footnote 2 of the case.)

### ***Niederman v. Brodsky* (page 52)**

Answers to Questions for Discussion (page 56)

1. *Niederman* is in the Supreme Court of Pennsylvania, the same court as *Bosley v. Andrews*. *Bosley* was still good law when the trial court heard this case.
2. Mr. Niederman, the appellant, was walking with his son on the sidewalk when a reckless

driver drove up on the sidewalk and ran into a fire hydrant, a litter basket, a newsstand, and Mr. Niederman's son. Mr. Niederman was not hit by the car but claims that he suffered acute coronary insufficiency, coronary failure, angina pectoris, and a possible myocardial infarction (heart attack) as a result of the "fright and shock" he suffered. He spent five weeks in the hospital. He is seeking damages for these injuries as well as for shock and mental pain.

3. The lower court dismissed the case because the plaintiff did not state a claim under the impact rule. The impact rule does not allow the plaintiff to recover for consequences of emotional distress unless there is "contemporaneous impact."
4. The lower court judge thinks that the impact rule should be abandoned. However, the judge is bound by precedent to abide by it in this case and must do so until the Supreme Court of Pennsylvania decides to discard it.
5. The trend across the United States is to abandon the rule or refuse to adopt it. It is likely that eventually the impact rule will be a thing of the past. Currently, a minority of states still have the impact rule. It also appears that in England the impact rule was announced and then abandoned some thirteen years later, but by then it had been adopted by states in the United States.
6. The plaintiff asks the court to allow him to prove his case in court. He will still have to provide sufficient evidence to be able to support his claim of negligence, specifically that the defendant's reckless behavior was the cause of the mental distress that led to his physical injuries. Twelve years after *Bosley*, the court decides to abandon the impact rule. In *Bosley* the dissent states that he will dissent "until the cows come home." In other words, he will continue to press the supreme court to abandon the rule. The statement "Today the cows come home" (the rule is being abandoned) is in response to the dissent's statement in *Bosley*.
7. The structure of the court's argument is somewhat similar to that in *Eckenrode* (Paragraph 8). The court first lists the major objections against abandoning the impact

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rule and then refutes each argument. The three objections are listed in Paragraph 7 of the case. Responses to each argument are in Paragraphs 8, 12, and 15. Notice the connecting words “the first objection,” “[t]he second major objection,” and “[t]he last argument.”

8. Mr. Niederman still has to prove the elements of negligence—duty, breach of duty, cause, and damages. While somewhat uncertain, it appears from the facts that he claims he suffered injuries as a result of his fear that he, himself, was going to be struck by the negligent motorist.
9. Justice Bell wrote the majority opinion twelve years earlier. Now, as chief justice, he writes the dissent. He believes that the impact rule is being abandoned because of sympathy toward the plaintiff based on the painful facts of the case (“an emotionally appealing or heart-rending claim often produces bad law”).
10. The five reasons are found in Paragraph 22. Many students feel that the rule closest to justifying the abandonment of the impact rule is the fifth reason, except for the clause “no one’s present personal rights or vested property interests will be injured by the change.”

### *Livingstone v. Evans* (page 61)

Answers to Questions for Discussion (page 62)

1. This is a well-known Canadian case from the province of Alberta.
2. The defendant, Evans, first offers to sell land to the plaintiff for \$1,800. The plaintiff rejects the offer by making a counter-offer of \$1,600. The defendant rejects the counter-offer, saying that he cannot reduce the price. The plaintiff then contacts the defendant to accept the original offer of \$1,800. In the meantime, the defendant agrees to sell the land to someone else.
3. The issue is basically, “When the plaintiff accepted the original offer of \$1,800, was a binding contract formed that would entitle the plaintiff to specific performance?”
4. The principle expressed in *Hyde* is that a counter-offer is a rejection of the original offer, thus putting an end to any obligation

on the part of the offeror. The principle expressed in *Stevenson* is that a “mere inquiry” on the part of the offeree as to whether the offeror would entertain a different proposal from the offeree is an inquiry, not a counter-offer. The original offer, therefore, remains on the table.

5. For there to be a contract, the specific offer made by the offeror must be that accepted by the offeree. The acceptance mirrors the original offer.
6. The judge decides that the defendant’s response to the plaintiff “Cannot reduce price” is a renewal of the original offer. The defendant, in the judge’s opinion, stands by his original offer of \$1,800, which the plaintiff accepts.
7. *Competent* in this context means *legally possible*. In general English, it often means *showing expertise* or *capable*.
8. The defendant must hand over the land to the plaintiff rather than pay monetary damages. The reason is that property is generally considered unique and thus a monetary reward is not considered an adequate substitute for the property.
9. *Quite clear* could be replaced by *obvious*, *without doubt*, or *certain*, among others. *Undoubtedly* and *unquestionably* have the same meaning in this case. They could be replaced by *without a doubt*, *clearly*, or *definitely*, among others.

### Hypotheticals

- Since the offeree rejected the offeror’s offer when he made the counter-offer, the offeror is released from any obligation, including the obligation to respond to the offeree. There was no contract.
- In this case, the original offer is still open because the offeree does not reject it or make a counter-offer (also a rejection of the original offer), but instead makes an inquiry. However, the question now becomes whether the offeree has actually made an offer of \$1,600. If he has, it is a counter-offer. If he hasn’t, it doesn’t appear that the original offeror’s response creates a contract. The offeror’s wire reply, “I accept the deal at \$1,600,” appears to be a new offer.

**McAfee v. Brewer (page 68)**

## Answers to Questions for Discussion (page 70)

1. The plaintiff was the owner of a house that the defendants agreed to buy. The defendants also negotiated with the plaintiff to buy some of the furniture in the house. The plaintiff sent the defendants a letter with a list of furniture that the defendants were to buy. The letter stated the price of each piece, outlined a payment, and provided a place for the defendants' signatures. The place for the signatures contained a clause that read, "If the above is satisfactory please sign and return one copy with the first payment." The defendants didn't sign the copy but did send a letter with a check for \$3,000, which was the first payment due. They also asked that a red secretary be included. About six weeks later, the plaintiff sent the defendants another letter with a list of furniture. It was essentially the same list with a few additions. The plaintiff then bought new furniture for himself. After the defendants moved into the house, they tried to contact the plaintiff to tell him that there had been a "misunderstanding" about what they had agreed to purchase and refused to send the plaintiff more money.
2. The defendants claim that the parties had never agreed on what furniture they would buy and that the \$3,000 they sent was for the purchase of several items, not all the items listed in the plaintiff's letter. The plaintiff claims that the defendants accepted his offer to buy the items on the list when they sent him \$3,000 and their letter asking for the red secretary.
3. The trial judge ruled for the defendants, saying that there was no meeting of the minds. He appears to have applied the common law rule rather than the UCC rule. The UCC rule covers the sale of goods and would therefore control in this case.
4. At common law, the mirror-image rule would apply. That is, because the defendants included additional terms in their letter, the letter would not have served as an acceptance to the plaintiff's offer (no meeting of the minds). The UCC, however, states that even though an acceptance "states terms additional to or different from those offered

or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms," it still operates as an acceptance. The additional items would be considered as "proposals for addition to the contract."

## 5. Hypothetical

If the UCC controlled in the hypothetical, Evans's check for \$3,000 would be considered an acceptance even though he indicated that he wanted an additional acre. Since it doesn't appear that he made his acceptance conditional on receiving the additional acre, a contract would have been formed.

6. If the plaintiff and defendant had been merchants, the items the defendants had added to the list would have been considered "proposals for addition to the contract" and would become part of the contract except for the three listed exceptions. It appears that the red secretary would become part of the agreement unless the plaintiff could claim one of the exceptions. Could, for example, the plaintiff argue that the terms materially alter the contract?
7. The UCC may appear a more liberal position on the means and manner of acceptance ("in any manner and by any medium reasonable in the circumstances"). Paragraph 1 of the Restatement allows the offeror to require that acceptance be made in a specific manner. If the offeror does not indicate the manner of acceptance, Paragraph 2, which is essentially the same as the UCC, would apply.

**Cases on Consideration: *Harrington v. Taylor*, *Rose v. Elias*, *Pick Kwik Food Stores, Inc. v. Tenser* (pages 85–88)**

## Answers to Questions for Discussion (page 89)

1. In *Harrington*, the court has no choice but to grant the defendant's motion to dismiss the case because the plaintiff does not have a legal claim. The plaintiff voluntarily acted on the defendant's behalf to save his life. There was no consideration because the defendant didn't make a promise followed by a return promise or performance by the plaintiff. If the defendant had had time to say to the plaintiff, "Save my life; I'll give you \$10,000" before the plaintiff acted, there

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would likely have been consideration. The court's opinion that the defendant should help the plaintiff pay her damages because of the plaintiff's humanitarian act is not a legal opinion.

2. Since the defendant promises to purchase an apartment for the plaintiff in return for a promise by the plaintiff to turn down a job offer in another city (forbearance), it appears that there is consideration. In Paragraph 3 of *Rose*, the court does not find consideration because the plaintiff's decision to reject the job was not tied to the defendant's written promise to give the plaintiff an apartment. Students might argue that in this hypothetical, the contract is "void as against public policy." (See Paragraph 4 of *Rose*.)
3. It still doesn't appear to be consideration because only Tenser is obligated to give one-year notice to Pick Kwik. Pick Kwik has not made a return promise. If both parties agreed to a one-year notice, there would likely be sufficient consideration and either party would have to wait a year before terminating the agreement.
4. *Forbearance* means that the party agrees to refrain from doing something, such as moving to take a better-paying job. (See Answer 2 above.)
5. Hypotheticals
  - There appears to be consideration because Meg has refrained from getting married in return for her father's promise to buy her a new Mustang convertible.
  - Amy appears to have been a volunteer for seven years, helping her grandmother out of kindness. However, a contract seems to have been formed after the first seven years when Amy's grandmother offered Amy \$5,000 a year in exchange for her continued help. If an agreement was formed at that time and Amy's grandmother dies this year, Amy should receive \$10,000 for her services.
  - There appears to be consideration. Under the Restatement (second) of Contracts § 7 "(4) The performance or return promise may be given to the promisor or to another person. It may be given by the

promisee or by some other person." The girlfriend refrains from moving in exchange for a condo for her mother. The same would be true if Joe were married, unless students could argue that the contract was "void as against public policy." (See *Rose*.)

- This hypothetical brings up the issue of what services the student can expect from her professor without having to contract for additional services.

### *Armory v. Delamirie* (page 104)

Answers to Questions for Discussion (page 105)

1. Under the common law, does the finder of the jewel, the chimney sweeper's boy, have a right to it against all persons except the true owner? Under the common law, can the chimney sweeper's boy maintain trover against all persons except the true owner?
2. The true owner has the absolute right to the property. The rule the court applies is that the finder of lost property maintains trover (has a right to the property) against all persons except the true owner.
3. The owner is also generally the one with the deep pockets. Since it is unlikely that the apprentice can pay the damages, the owner, as the apprentice's supervisor, is held liable.
4. It refers to the most expensive of all jewels, most likely a diamond.
5. If the master does not produce the jewel, he will have to pay damages amounting to the value of a jewel of the finest water.

### *Benjamin v. Lindner* (page 106)

Answers to Questions for Discussion (page 107)

1. In all cases, except for abandoned property, found property belongs to the owner against all others. The Iowa rule does not allow the owner to recover if the property has been abandoned, as long as the finder provides proof of the owner's intent. Abandoned property belongs to the finder.

Hypotheticals

- Since you are the finder of what appears to be a treasure trove, you would get the money. However, if in the very unlikely

event the owner claimed it, it would belong to the owner.

- The television would likely be considered abandoned property under Iowa rules since it was in the Dumpster. Because you found it, you would become the owner of the property. (Some states have Dumpster diving laws.)
- Since the bracelet was in the street, it would likely be considered lost property. It appears that you followed proper procedure for reporting valuable found property. Since the twelve months have gone by, you are now the owner.
- Even though you found the property, under Iowa law Dan would become the owner if the owner doesn't claim the digital camera. The camera would be considered mislaid; therefore, the owner of the premises, rather than the finder, would have the right to possession. See the discussion in *Hurley* about this *legal fiction*.

### *Hurley v. City of Niagara Falls* (page 108)

Answers to Questions for Discussion (page 110)

1. The plaintiff, a contractor, was building a recreation room for the defendants in their home when he found \$4,990 hidden in a cabinet-type sink. The money was in a bank wrapper and seemed to have suffered water damage. The defendants, owners of the house, did not know anything about the money at that point.
2. This case falls under New York statutory law, specifically New York's Personal Property Law, Article 7-B.
3. After reviewing the recommendations of the Law Revision Commission and the statute itself, the court concludes that the statute abolished the distinction between lost and mislaid property. Iowa still makes this distinction. The New York law states, with minor exceptions, that all found property is presumed to be lost property and ownership lies in the finder, "the person who first takes possession of lost property" unless the true owner claims it. The true owner is given time to claim property of \$10 or more. There isn't enough information in the case to determine whether abandoned property in

New York belongs to the finder as against all others, even the original owner.

New York law reflects the rule expressed in *Armory* that the finder is the owner of the property against all but the true owner. However, if the chimney sweeper's boy was employed by his father or someone else at the time, he may have been obligated to give it to his employer.

4. The law assumes, without proof, that the owner has voluntarily left the property in the care of the owner of the premises.
5. Under the New York statute, treasure trove is considered lost property. Since under modern common law, treasure trove does not have to be buried under ground, the court seems to imply that the money is not mislaid property but treasure trove. Therefore, even under modern common law, the money would likely go to the finder, not the owners of the house. Are there any other interpretations?

### *In re Marriage of Graham* (page 114)

Answers to Questions for Discussion (page 119)

1. The plaintiff and her husband were married for six years. The plaintiff's husband worked part-time during most of the marriage but spent more than three years studying for both an undergraduate and a master's degree. When he graduated, he got a position in a corporation that paid \$14,000 per year. The couple has agreed to dissolve the marriage. There are no material assets to divide and no children. The plaintiff continues to work full-time and is not seeking alimony (maintenance) as part of the divorce settlement. Instead, she is requesting property rights to her husband's education. The trial court determined that the plaintiff had provided approximately 70 percent of the household earnings over the six years of the marriage.
2. Under the Uniform Dissolution of Marriage Act, is an educational degree marital property and thus are both the plaintiff and her husband jointly entitled to rights in the property?
3. The trial court found the husband's education was jointly owned property and awarded

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the plaintiff a portion (\$33,134) of the value of her husband's degree (\$82,836). The court of appeals held that the degree was not property but did say that it could be used as a factor in deciding maintenance and the division of property.

4. The supreme court turns to the legislature to interpret the section of the Uniform Dissolution of Marriage Act that defines property. While the court believes that the legislative intent was to define property broadly by its use of the word *all* in the act, it sees nothing in the act that could give the impression that the legislature went beyond the generally understood meaning of the term to include an educational degree. It turns to the definition of property in *Black's Law Dictionary*: "everything that has an exchangeable value or which goes to make up wealth or estate." The court holds that a degree isn't property because it can't be "assigned, sold, transferred, conveyed or pledged."
5. In *Greer* the couple had marital assets. Since the wife worked while her husband got his medical degree, she could receive property rights in the form of a maintenance award or for her financial contribution to the marriage. In *Graham*, the plaintiff did not ask for either property rights (because there weren't any) or maintenance.
6. Maintenance is alimony. In divorce cases, it is generally awarded to a wife who does not earn enough money to support herself. Marital property is the wealth that the spouses have accumulated during their marriage. Since the plaintiff in *Graham* worked full-time and was considered the principle breadwinner, it appears that she cannot demonstrate a need for maintenance. Nor can she ask for a division of property because there isn't any to divide.
7. The dissent refers to the "not-unfamiliar pattern" of the wife putting her husband through school. After graduation the husband, who now has higher earning power, divorces his wife. The dissent views the wife's financial contribution to the marriage as an "investment" in her husband's education from which she should benefit. He argues for a broader interpretation of the term

*property* to remedy the inequity in this case. He sees no reason why the court cannot put a value on a degree based on the husband's future earnings capacity can be calculated. The dissent cites numerous cases to prove his point. He chastises the majority for saying that the wife has not requested maintenance when it seems likely, under the state law of Colorado, that she would not qualify for maintenance.

8. The dissent suggests that the wife may have a remedy under other theories, but he expresses doubt about her chance of success, indicating that these theories were not raised in the present suit.

### *McBoyle v. United States* (page 131)

Answers to Question for Discussion (page 132)

The court uses the following principles of statutory construction, most of which are included in the reading or are similar to principles listed in the reading:

1. Popular meaning of the word

The court points to the popular meaning of *vehicle*, which is "a thing moving on land." In other words, in everyday speech an airplane is not commonly referred to as a "vehicle."

2. Other statutes that define *vehicle* using its popular meaning

The court looks to other statutes that have defined vehicle as a "means of transportation on land."

3. *Ejusdem generis*

The court examines the list of examples of motor vehicles included in the National Motor Vehicle Theft Act. The list includes only vehicles that travel on land. Thus, the court concludes that *vehicle* is still being used in this popular sense to refer to a different class of transportation. In this context, the court also considers the verb *run*, which follows these listed vehicles. While it is possible to say that automobiles, trucks, and motorcycles *run on the ground*, it is not possible in English to say *an airplane runs in the air*.

## 4. Legislative history

The court points out that airplanes weren't mentioned in the Congressional debates or reports.

5. Doctrine of lenity; *expressio unius est exclusio alterius*

The court agrees that *vehicle* can include a conveyance that flies in the air and points to statutes in which it has been defined as such. However, the court rejects the broader interpretation because it would not give fair warning to someone who has a popular picture or understanding of a vehicle as a means of transportation on land. Also, if the legislature had wanted a broader interpretation, it would have been stated in the act.

***D'Allessandro v. P.F.L. Life Insurance Company*** (page 133)

Answers to Questions for Discussion (page 135)

1. The court specifically focuses on the words *operator* and *on* in the phrase "operator on any public or private conveyance."
2. The defendant argues that the deceased (Gregory) was a pedestrian under the policy because Gregory was not inside his tow truck. This interpretation would free the insurer from paying a death benefit "arising out of the operation on a conveyance." The plaintiff disagrees, saying that the definitions of *on* include *nearby* or *alongside of*. Both the plaintiff and defendant use a Webster's dictionary to support their argument.
3. The court states that there can be two interpretations of the policy. In these cases, the policy should favor the insured.

The court, citing a Wisconsin case, *Merklein v. Indemnity Insurance Co. of North America*, concludes that *operator* has a broader meaning than *driver*. In *Merklein*, the court used the dictionary definition to determine that *operator* includes a person who was pushing his car. The court uses similar logic in deciding that Gregory was *operating* his tow truck when he was killed, since the operation includes connecting a car to the tow truck.

4. In these cases, more specific terms are used. The policy in *Batchelor* used the term *riding* and the First Continental Life policy used the terms *driving* or *riding*. *Hammer* used the term *inside of which* and *driver*. In the court's opinion, these require a narrower reading than *operator on*.

***Dykes v. Scotts Bluff County Agricultural Society*** (page 136)

Answers to Questions for Discussion (page 141)

1. The court states that the purpose of the act is to encourage landowners to allow the public on their land by limiting their liability. It also appears that, since the act specifically targets recreational activities, the legislature has concluded that injuries occur more frequently when people are using land for recreational purposes, especially for more dangerous activities, such as some winter sports. In these cases, the legislature is shifting the duty of care away from the landowner.
2. A somewhat simplified explanation is that the owner likely had a duty of care at common law and could be found liable for damages if his negligence was the cause of the recreational user's injuries.
3. The lower court determined that the plaintiff was engaged in a recreational activity and granted the defendant's motion for summary judgment.
4. The court uses the canon of *ejusdem generis* to decide if visiting livestock exhibits at a fair falls under the definition of recreational activity. A fair is not, in the court's opinion, "substantially similar" to the other activities listed in the statute. The court adds that the sports listed are not spectator sports but were generally done outdoors and involve the physical participation of the individual.
5. *Hall* contrasts with *Matthews*. In *Hall*, the statute specifically states the legislation should be construed broadly, i.e., in favor of the landowner, where the activities are substantially similar. In *Matthews*, the court declined to include attendance at a festival as an outdoor recreational activity. It narrowly construed the statute, using the principle of statutory construction that states that statutes in derogation of the common

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law are to be strictly construed. The Nebraska court has previously used this same principle of statutory construction and applies it again in this case.

6. The court views *nature study* and *viewing a scientific site* as not including viewing fair exhibits under its more narrow interpretation. See the answer to Questions 4 and 5. The dissent, on the other hand, points out that the plain language of the statute includes more passive activities such as *enjoying. . . . scientific sites*. Both the court and the dissent depend on a dictionary to find the meaning of such terms as *nature*, *science*, and *husbandry*. The basic difference in their approaches is that the majority sees viewing livestock as substantially different from the activities listed in the statute and the dissent sees them as substantially similar. Neither rely on legislative intent.
7. In both cases, they could protect themselves by buying insurance. The recreational use statute shifts the financial burden from the landowner to those involved in recreational activities. The landowner is generally freed of liability in these cases.

### Hypotheticals

- The recreational statute appears to be applicable in your case because the statute specifically mentions hiking. The statute states that the landowner does not have to “give any warning of a dangerous condition” to those who are using the land for recreational purposes. It looks like you won’t succeed.
- You do not appear to be using the land for recreational purposes, but to get to school. Therefore, the statute may not apply to you. You may be able to sue under negligence or perhaps another theory since the owner didn’t warn against a dangerous condition. It is possible that you have often used the land in the past to get to school and with the owner’s knowledge.
- Since you were charged admission, the section of the act that would apply in your case is that “[e]xceptions are provided for willful or malicious failure to

guard or warn against a dangerous condition.” You would have to show that the foundation’s failure to warn was “willful or malicious,” which might be hard to prove.

### *In re Griffiths* (page 151)

#### Answers to Questions for Discussion (page 158)

1. The vote was seven to two. All the justices voted on this issue.
2. The plaintiff is a resident alien from the Netherlands who has been in the United States for eight years. She graduated from law school but was not allowed to take the Connecticut bar exam. She must pass the exam to work as an attorney in the state of Connecticut. She challenges Rule 8(1) of the Connecticut Practice Book (1963), which requires that she be a citizen of the United States to take the exam. She does not want to give up her citizenship. She claims that the equal protection clause of the Fourteenth Amendment bars Connecticut from making citizenship a pre-requisite for taking the bar exam. She is seeking to protect her right to work in her chosen profession.
3. The plaintiff falls within a suspect class because aliens are a “discrete and insular minority.” Thus, the Court uses a higher level of scrutiny to decide whether the Connecticut law is unconstitutional. This puts a heavier burden on the state to show that it has a *substantial* interest in deciding who can become licensed to practice law in Connecticut and that its disqualification of resident aliens as a category is necessary to accomplish this interest.
4. In footnote 3, the court indicates that *overriding*, *compelling*, *important*, and *substantial* are used interchangeably.
5. The Court agrees that Connecticut has a substantial interest in deciding what qualifications are required to become a lawyer in that state. However, this does not justify the exclusion of all resident aliens based on their status.
6. The court distinguishes private attorneys from officers of the court, such as judges and bailiffs, who are employed in the state

courts. If the plaintiff were challenging a law that prohibited her from becoming an officer of the court, the Court might use a lower level of scrutiny in deciding the case, i.e., the state would not have to show a substantial interest.

7. While the Court expresses the view that any honorable attorney would decline to represent another country against the United States, the Court is not asked to consider this question.
8. Yes, resident aliens may bring a case before the U.S. Supreme Court. Restrictions are listed in footnote 5.
9. The dissent argues that alien classifications based on alienage are not inherently suspect. He reads the Fourteenth Amendment as including suspect classifications as applicable only to race. He also argues that the Constitution distinguishes between citizens and aliens as a distinct class or person. He thinks that the burden of proof that the Court should use in this case is if there is a reasonable or rational justification for the law. He argues that in Connecticut a lawyer is an officer of the court and that Connecticut has the right to require lawyers to have “an understanding of the American political and social experience,” either by birth or through a naturalization process. He argues that Connecticut has met its burden of proof.
3. This case concerns resident aliens who seek public employment. The Court especially relies on *Foley*, which allowed New York to prohibit aliens from being on the police force.
4. If the Court does not use a high level of scrutiny but instead applies the rational-basis standard (states must show that there is a rational relationship between limiting the classification and protecting the state’s interest), there is less of a chance that it will be found unconstitutional.
5. Public educators serve as influential role models; they have a crucial role in preparing students for their responsibilities as citizens and preserving the society’s values.
6. The Court’s rationale is clearly summarized in Paragraph 20.
7. The dissent argues that (1) the Court’s interpretation of the constitution is illogical, pointing out that there is no basis on which to decide that the appellees are not qualified, (2) the statutory structure in New York allows for exceptions that refute the majority’s position, e.g., an alien teacher who is waiting to get citizenship is allowed to teach, (3) the statute is not narrow enough, (4) New York’s classification is irrational because, using its logic, it prohibits an excellent resident alien from teaching rather than setting up an intelligent selection process, (5) “it is logically impossible to differentiate between this case” and *Griffiths*, and (6) if a resident alien is competent, he or she should not be barred from teaching in public school.

### *Ambach v. Norwick* (page 159)

Answers to Questions for Discussion (page 165)

1. In *Griffiths* Rehnquist and Burger dissented, but in this case they were in the majority. This might have indicated that Justice Rehnquist’s dissenting opinion in *Griffiths* was influential in deciding *Ambach*.
2. The case concerns a New York law that, with some exceptions, prohibits aliens from teaching in public schools. The three-judge district court held that the law violated the Equal Protection Clause. It applied close judicial scrutiny and concluded that the law was overbroad because it didn’t consider various differences among resident aliens but excluded them as a group.
8. The dissent seems to be advocating for a higher level of scrutiny when it writes that the New York statute is not “limited to the accomplishment of substantial state interests.” (See Paragraph 23.)
9. The dissent appears to be arguing that the statute would be unconstitutional even if the *rational-basis* standard were used. While the dissenters advocate for a higher standard, they also claim that if the lower standard is used, the law would still be found to be *irrational*.
10. The plaintiffs could move to another state or become citizens.

## 12 ANSWER KEY TO QUESTIONS FOR DISCUSSION

### *LaMunion v. State* (page 168)

#### Answers to Questions for Discussion (page 173)

1. The case was heard at a high school rather than in the courthouse, possibly as part of an American law class. High school students also have the opportunity to participate in a mock trial program in which students take roles in a simulated trial.
  2. Motion to suppress is a request made to the court to have evidence excluded from the trial because it was gotten by means of an illegal search.
  3. With some exceptions, the general rule is that incriminating evidence gathered as part of an illegal search is not admissible in court. The illegal evidence is referred to as *fruit of the poisonous tree*.
  4. Probable cause is defined in *Black's Law Dictionary, 6th edition*, as “[a] reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.”
  5. The state has used the wrong term to refer to an exception to the warrant requirement. Therefore, the court can find no legal authority to support the existence of this exception. Instead of rejecting the state’s argument out of hand, the court assumes that the state is referring to the exigent circumstances exception and rules on that exception instead.
  6. *The premises were secured* refers to the sweep that the police made of LaMunion’s home when they first arrived on the scene. They went over the house to make sure that it was safe and to check for further victims or any dangerous persons.
  7. The exceptions include the following.
    - a. *Voluntary consent*. The state argues that LaMunion gave his consent to the search when he called 911. The court disagrees, saying that neither LaMunion nor his girlfriend, by their words or their actions, gave their consent to search the premises.
  - b. *Exigent circumstances*. Even though police had the right to do a warrantless search of the defendant’s home to secure the premises and take evidence in plain view, after they finished the search and the home was secured, they did not have the right to re-enter without a warrant.
  - c. *Probable cause existed, and the judge intended to issue a warrant*. The court rejected this argument because the search was done before the warrant was issued, making the evidence inadmissible.
  - d. *Inevitable discovery*. The police argued that they would have found evidence of drugs by lawful means. The court rejects this argument, saying that the evidence must still be excluded because it was obtained through an illegal search.
  - e. *Good faith exception*. The state argued that the officer who found the evidence thought that the warrant had been obtained. The court rejects this argument because no warrant, not even a deficient one, had been issued.
8. In *Cutter and Smith*, even though there were administrative oversights, a valid warrant had been issued.
  9. The defendant could argue that the contents weren’t in plain view and that the box wasn’t relevant in the police’s search to secure the premises.
  10. Because the wife told the police that her husband had drugs inside the home, it appears there was probable cause and the police could have gotten a warrant.