

## Tort Law for Paralegals: Chapter 1

### Chapter Outline

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Chapter 1

### Introduction to Torts and Legal Analysis

**Introduction:**  
Chapter 1 introduces students to the three broad tort categories: negligence, intentional torts, and strict liability. It provides thumbnail definitions of specific intentional torts as well as of negligence and absolute liability. The history of tort law is briefly discussed. The public policy objectives of tort law are also summarized. Additional features in this edition are the overview of a tort case and alternate dispute resolution. This section is intended to emphasize that tort law, like other areas of law, is designed to balance a variety of social, economic, and political objectives. Hypothetical problem analysis is also discussed.

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#### Chapter 1

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## **CHAPTER OUTLINE**

### **I. DEFINITIONS/INTRODUCTION**

- A. Tort = Wrongful injury to a person or a person's property.
- B. Tortfeasor = Wrongdoer; person inflicting harm.
- C. Common law = The case law that is made by judges in the absence of relevant statutes.
- D. Tort law = The law that addresses the rights and remedies available to persons injured through tortfeasors' carelessness or intentional misconduct.

### **II. BROAD CATEGORIES OF TORTS**

- A. Negligence: Failure of the ordinary reasonably prudent person to exercise due care under the circumstances.
- B. Intentional torts: Injuries that the tortfeasor intentionally inflicts upon others or their property.
- C. Strict (absolute) liability: Tortfeasor's liability for injuring others, regardless of intent, negligence, or fault. III.

### **SOURCES OF TORT LAW**

- A. Common law (cases)
- B. Statutory law (statutes)

### **IV. NEGLIGENCE**

- A. Brief definition: Failure to exercise reasonable care to avoid injuring others or their property. B. Intent not required; negligent act itself sufficient, even if tortfeasor did not intend harm.

### **V. INTENTIONAL TORTS**

- A. Tortfeasors' actions designed to injure other persons or their property.

### **VI. STRICT (ABSOLUTE) LIABILITY**

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A. Brief definition: Tortfeasor's liability for actions that injure another, regardless of intent, negligence, or fault.

B. Examples include products liability, liability for wild animal or vicious-dog injuries, and certain statutory violations.

## VII. HISTORY OF TORT LAW

A. King's writs: In medieval England, in king's courts, certain causes of action and procedures were established to permit citizens to file lawsuits against those injuring them. These were called the king's writs.

B. Evolution of modern tort law: Old king's writs were too broad and general to handle the new conflicts in society. Specific modern torts, based on intent, fault, or absolute liability, gradually emerged to handle particular circumstances.

## VIII. PUBLIC POLICY OBJECTIVES IN TORT LAW

A. The objective is to protect persons and property from unjust injury by providing legally enforceable rights. Tort law enables private citizens to use the legal system to resolve disputes in which one party claims that other has acted improperly, resulting in harm.

B. Compensate victims by holding tortfeasors accountable for causing injuries; accountability (culpability) factor.

C. Encourage minimum standards of social conduct among members of society.

D. Deter violations of these standards of conduct.

E. Allocate losses among different individuals or groups; basis for products liability.

## IX. IRAC TECHNIQUE FOR ANALYZING HYPOTHETICAL PROBLEMS: Issue(s); Rule(s) of law, Application of rule(s) to facts, and Conclusion(s).

A. Issue(s): General areas of law involved in problem. Each problem often involves several issues.

B. Rule(s) of law: Legal answers, found in sources of law (common, statutory, administrative, constitutional), that explain legal concepts applicable to problem. Sometimes called black letter law.

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C. Application to facts: Rules of law must be applied to specific facts of each problem. Threshold facts are important because they determine if statutes or common law elements apply in a particular case.

D. Conclusion(s): Outcome of hypothetical. Did the tortfeasor commit a particular tort against the victim? Would plaintiff's lawsuit against defendant, based upon specific causes of action, be successful?

## X. SOLVING TORT PROBLEMS: FROM GENERAL TO SPECIFIC

A. General category of tort law (intentional tort, negligence, strict liability)

B. Select specific subtopic within broad tort area (conversion, medical malpractice, products liability)

## XI. OVERVIEW OF A CIVIL CASE

A. Several basic steps occur in a civil case.

1. Retainer: The attorney will have the client sign a retainer, a written agreement authorizing the attorney to represent the client.
  2. Complaint: The first pleading filed in a civil lawsuit. A statement of the wrong or harm one to plaintiff by defendant, along with a request for specific help from the court.
  3. Service of process: The delivery (or its legal equivalent, such as publication in a newspaper in some cases) of a legal paper (by an authorized person). Notifies a person of a lawsuit against him or her.
  4. Answer: The first pleading by the defendant in a lawsuit. Responds to the charges and demands of plaintiff's complaint.
  5. Discovery: The formal and informal exchange of information between sides in a lawsuit. Two types of discovery are interrogatories and depositions.
  6. Pretrial procedures: Any procedures that immediately precede trial, such as the settlement conference.
  7. Trial: The process of deciding a case (giving evidence, making arguments, deciding by a judge or a jury, etc.). Takes place if a case is not decided by pleadings, pretrial motions, or settlement.
  8. Post-trial procedures: Procedures that occur after trial, such as an appeal or steps that are necessary to collect an award.
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9. Release-settlement agreement: If the case should settle, the client will need to sign a settlement agreement that specifies the terms of the settlement, and a stipulation discontinuing action.

## XII. CASE RESOLUTION

A. Alternative dispute resolution (ADR): A way to resolve legal problems without a court decision.

1. Arbitration: Resolution of a dispute by a person whose decision is binding. This person is called an arbitrator. Submission of the dispute for decision is often the result of an agreement (an arbitration clause) in a contract.

2. Mediation: In mediation the parties use outside help in settling disputes. Mediation differs from arbitration in that the mediator can only persuade the parties to reach a settlement. The mediator does not make the actual decision. Mediation is less formal than arbitration, but like arbitration, is not a matter of public record.

3. Minitrial: ADR by a panel of executives from two companies engaged in a complex dispute. A neutral moderator helps the two sides sort out factual and legal issues to reach a voluntary settlement.

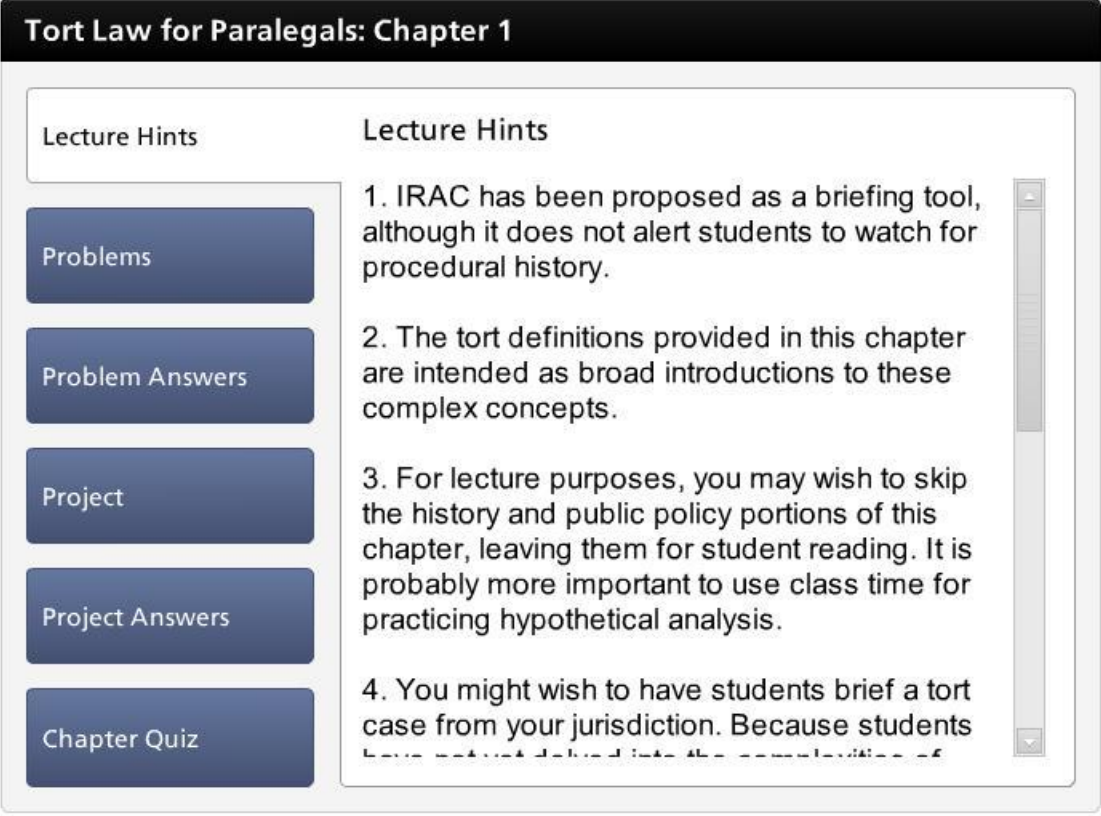
4. Rent-a-judge: ADR in which the judge orders the two sides in a complex case to present their most important facts to a small jury. The parties may agree in advance to be bound by the verdict.

5. Summary jury trial: ADR in which both parties to the dispute present their case to a small jury.

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## Lecture Hints

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Lecture Hints

1. IRAC has been proposed as a briefing tool, although it does not alert students to watch for procedural history.
2. The tort definitions provided in this chapter are intended as broad introductions to these complex concepts.
3. For lecture purposes, you may wish to skip the history and public policy portions of this chapter, leaving them for student reading. It is probably more important to use class time for practicing hypothetical analysis.
4. You might wish to have students brief a tort case from your jurisdiction. Because students have not yet delved into the complexities of

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4. You might wish to have students brief a tort case from your jurisdiction. Because students have not yet delved into the complexities of specific torts, it may be most effective to use cases involving relatively simple intentional torts, such as assault, battery, or trespass to land.

5. Students often defer to the rulings and rationales of appellate courts simply because the opinions were written by appellate judges or Supreme Court justices. As attorneys, we know jurists are sometimes incorrect. Paralegal students are surprised that their own analyses can be as logical, sensible, and, most important, as defensible, as those of a Supreme Court justice.

6. Paralegal students are sometimes overly impressed by what they read in textbooks. Students should be encouraged to develop personalized analytical techniques that help them, as individuals, learn to analyze tort problems.

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## Problems

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#### Problems

Using the definitions of specific torts discussed in this chapter, answer the following hypotheticals, using the analytical approaches discussed earlier.

1. Tom Caster is a 12-year-old boy who enjoys climbing trees. The Caster family just moved into a new house. The electrical wires to Tom's house run from an electric pole through the high branches of an oak tree in his backyard. While the rest of the family was moving into the home, Tom ran to the backyard to climb the tree. As he neared the top, he grabbed the electrical wires with his right hand. The wires were not insulated and Tom was severely burned from the resulting electrical shock. He also broke both his legs when he fell, unconscious, from the tree. Tom's father wishes to know if he might successfully sue the utility company for negligence.
2. Shady Acres is a subdivision being developed by

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2. Shady Acres is a subdivision being developed by Bartholomew Real Estate Management, Inc. (BREM). While bulldozing the lots and streets, BREM's crews created huge piles of dirt. BREM did not erect any barriers to keep these dirt piles in place. Pamela Jovanco owns a house at the bottom of a hill upon which BREM placed several earth piles. During heavy rains, mud would slide down the hill and cover Pamela's entire yard. Some mud even seeped through her basement windows, damaging her basement carpet and furniture. Pamela wonders if trespass has occurred.

3. Samantha Billingsly stood outside her downtown hotel hailing a cab. The driver screeched to a halt alongside the curb. Samantha opened the rear door of the automobile and began to climb inside. In doing so, she placed her right hand on the roof of the car where the top of the door would close. Suddenly, the cab driver accelerated the automobile, causing the rear door to slam shut on Samantha's hand. Samantha suffered lacerations and several broken bones in her right hand and wrist. She also suffered a neck injury as she was thrown against the back seat as the taxi lurched forward. The cab driver later explained that he had accelerated suddenly to avoid being struck by a shuttle bus, which he thought was about to collide with his taxi when he saw it approaching very rapidly in his rearview mirror. Using negligence theory, Samantha would like to sue the cab driver who owns the taxi.

Ed Peterson owned a coyote, which he captured while hunting last summer in the mountains. The coyote had become quite tame, and at parties, to entertain guests, Ed would routinely allow the animal to eat out of his hand. One day, Ed's next door neighbor, Angela Starlight, a seven-year-old girl, visited Ed's backyard to play with the coyote. Angela's parents had warned her several times to avoid approaching the coyote, although neither they nor Angela had ever seen the animal bite or growl at anyone. When Angela reached out to pet the coyote, it bared its teeth and snapped at her hand, biting and cutting her severely. Angela's parents sued Ed under a theory of absolute liability. Under most states' common law, owners are strictly liable for injuries caused by wild animals kept as pets.

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## Problem Answers

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#### Problem Answers

**Issue:** Was the utility company negligent in running uninsulated electrical wires through a tree, which injured Tom Caster while he was climbing the tree?

**Rule of law:** Negligence is the failure to exercise reasonable care to avoid injuring others.

**Application of rule to facts:** Uninsulated electrical wires are extremely dangerous to anyone who might come into contact with them. A utility company is expected to use reasonable care to protect bystanders from electrical shock from its wires. Insulating the wires would have prevented the injury to Tom. It was reasonably foreseeable that adventurous children like Tom would climb trees and come into contact with electrical wires. The utility company violated its duty of care to protect against injuries to children who climb trees, such as Tom Caster.

**Conclusion:** The utility is liable to the Casters for

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duty of care to protect against injuries to children who climb trees, such as Tom Caster.

**Conclusion:** The utility is liable to the Casters for causing Tom's injuries.

2. **Issue:** Did BREM commit trespass against Pamela Jovanco?

**Rule of law:** Trespass is unlawful or unreasonable interference with the use of someone's property.

**Application of rule to facts:** By allowing piles of dirt and mud, carried by rainfall, to flow down a hill onto Pamela's property, damaging her land and house, BREM's actions would be considered an unreasonable use that injured another's land. **Conclusion:** BREM has committed trespass against Pamela.

3. **Issue:** Is the cab company liable for negligence when one of its drivers, through sudden and unexpected acceleration, injures a passenger who is attempting to enter the vehicle?

**Rule of law:** Negligence is the failure to exercise reasonable care to avoid injuring others.

**Application of rule to facts:** The cab driver failed to exercise reasonable care in safeguarding Samantha Billingsly. The driver should have anticipated that his sudden, unexpected acceleration would cause the door to slam shut on Samantha's hand and force her into the back seat.

**Conclusion:** Because the cab driver failed to use reasonable care in safeguarding Samantha, the driver was negligent in causing her injuries and would be liable.

4. **Issue:** Is a coyote owner absolutely liable for injuries caused by the animal if it bites a seven-year-old girl?

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**Rule of law:** Strict (or absolute) liability is the tortfeasor's responsibility for injuring another, regardless of intent, negligence, or fault. As noted in the facts, most states' common law applies strict liability to wild animal cases.

**Application of rule to facts:** By their very nature, wild animals are not tame, like dogs or cats. Because the coyote is a wild animal, the owner would be absolutely liable for the injury it inflicts upon others.

**Conclusion:** Ed Peterson is strictly liable for Angela Starlight's injuries caused by his coyote.

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## Project

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#### Project

Read the case of Hogan v. Maryland State Dental Association in Appendix C on the Student Website. Why did this class action fail? Notwithstanding this case, do you still feel it is safe to get silver dental fillings? Explain.

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#### Project Answers

This chapter begins the independent study projects. The answers to many projects in subsequent chapters are dependent upon your state's common law or statutes. Accordingly, this manual omits summary answers for such state-specific projects.

1. ***Hogan v. Maryland***: The class action failed because the court ruled that an expression of an opinion does not give rise to a claim for fraudulent concealment. Because questions have been raised about the safety of mercury, and alternative filling materials are not significantly more expensive, it might be prudent to choose the alternative materials.

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