

Tort Law for Paralegals: Chapter 14

Chapter Outline

The screenshot shows a digital learning interface for Chapter 14. On the left, there is a vertical sidebar with six blue buttons: "Lecture Hints", "Problems", "Problem Answers", "Projects", "Project Answers", and "Chapter Quiz". The main content area on the right is titled "Chapter Outline" and "Chapter 14" above "Tort Investigation". Below this, a summary paragraph states: "Summary: Chapter 14 is intended to introduce students to tort case investigation. This is an area where the paralegal can take an active role in developing the tort case. This chapter is designed to promote students' enthusiasm for the study of tort law, and show them how important their efforts can be in this field of law. A lecture on this chapter helps ease students into the subject matter, and introduces them to the evaluation of tort cases." Below the summary, the text "CHAPTER OUTLINE" is followed by "I. PERSONAL INJURY PARALEGALS IN TORT LITIGATION". A vertical scrollbar is visible on the right side of the main content area.

Step Text

Chapter 14

Tort Investigation

Summary: Chapter 14 is intended to introduce students to tort case investigation. This is an area where the paralegal can take an active role in developing the tort case. This chapter is designed to promote students' enthusiasm for the study of tort law, and show them how important their efforts can be in this field of law. A lecture on this chapter helps ease

students into the subject matter, and introduces them to the evaluation of tort cases.

CHAPTER OUTLINE

I. PERSONAL INJURY PARALEGALS IN TORT LITIGATION

A. Investigation

B. Pleadings

1. Document preparation

C. Discovery

D. Trial

1. Alternative dispute resolution

E. Appeal

II. INTRODUCTION TO INVESTIGATION

A. Who?

B. What?

C. Where?

D. When?

E. Why?

F. How?

III. THE IMPORTANCE OF TORT CASE INVESTIGATION

A. Ascertaining the facts

B. Paralegals and investigators

1. In-house

2. Investigation services

3. Paralegals and other law office staff

C. Customizing the investigation

1. Severity of injury

2. Financial resources available to client to fund investigation

3. Attorney's ability to advance costs

4. Financial condition of prospective defendants

5. Existence of insurance coverage for defendants

D. Details, details, details

1. An overlooked detail can change the outcome of a case.

2. Customize the investigation.

E. Goals of tort case investigation

1. Liability

2. Damages

IV. WITNESS INTERVIEW TECHNIQUES AND QUESTIONS

A. Schedule the interview as soon as possible.

1. Note-taking 2. Recording the interview electronically

B. Witness questions

1. Narrative questions: The witness tells a story without interruption.

2. Closed-ended questions: Have a specific answer.

3. Leading questions: Tend to suggest the answer sought.

4. Pictures and diagrams: Sometimes having the witness draw a picture or diagram will make everything a lot clearer.

C. Client interview techniques

1. Have the client fill out a questionnaire.
2. Put the client at ease.
3. Begin with general questions.
 - a. Branch off when a client statement leads you to specifics.

V. DETERMINING AND LOCATING DEFENDANTS

A. Using discovery to locate defendants

1. Prelitigation
2. During lawsuit

B. Study all documents carefully.

1. Letters
2. Newspaper articles
3. Witness statements
4. Leases
5. Invoices

C. Use caution when naming defendants.

1. Avoid malpractice claims.

D. Using the telephone as a research tool

1. Obtain information; don't give away information.

E. Discovery methods

1. Examination before trial (EBT or deposition): Attorneys ask questions of the parties in the presence of a stenographer, who produces a written transcript of the hearing.
 2. Written interrogatories: Written questions are sent to the parties to be answered in writing under oath.
 3. Notice to admit: A party is asked to admit the truth or falsity of specific written statements.
 4. Request for documents: The production of copies of specific documents is sought.
 5. Physical or mental examinations: Physical or mental examinations of the parties may be sought in certain limited circumstances when their condition is at issue.
 6. Permission to enter on land: A request to go on privately owned land to inspect the scene of the accident or the instrumentality that caused the accident is sought.
- F. Internet resources: Much tort investigation can now be conducted over the Internet.
- G. Obtaining information about corporations
1. Registration with state where doing business
 2. Registration with state where incorporated
 - a. Secretaries of State offices
 - b. Business directories
 - c. Public business records
 - d. Internet
- H. Obtaining information about partnerships
1. Created with less formality than corporations, and thus harder to locate
- I. Obtaining the names of sole proprietors and partners
1. D/B/A certificates are filed in county or city offices.
- J. Ambulance services and fire departments as defendants
1. Possible defendant if involved in accident while transporting plaintiff
-

K. Investigating licenses or regulated businesses

1. Check state governmental listings in telephone directories.
2. Agencies provide state licensing requirements.

L. Sample defendant search

VI. DOCUMENTING THE SCENE

A. Obtaining visual documentation, measurements, and other details

1. Valuable evidence is often lost as conditions change.

B. Knowing the evidentiary rules for your jurisdiction

1. Evidence must be suitable to present at trial.

C. Using proper evidentiary form

1. Consult federal, state, and local procedural and evidentiary rules for proper form of evidence.
2. Use online resources.

D. Hearsay problems

1. At times, only portions of documents are admissible.

E. Video and computer technologies

1. Used in accident reconstruction, "day-in-the-life" documentaries, and settlement brochures.

VII. PUBLIC- AND PRIVATE-SECTOR RESOURCES

A. Local government agencies

1. Archives contain vital statistics.

B. Newspapers

1. Names of witnesses and photographs of the scene may appear in newspaper articles.

C. Television and radio news reports

1. Videotapes, audiotapes, and transcripts may be available.

D. Computerized databases

1. Computerized databases should be checked for driving records, licenses, credit histories, deeds, liens, business filings, prior lawsuits, and vehicle registration.

E. Additional information regarding criminal acts

1. Check for police reports, criminal records, and criminal trial transcripts.

VIII. ADDITIONAL AREAS TO INVESTIGATE A. Employment and lost wages

1. Lost earnings and future earnings may have to be calculated.

B. Expenses related to the injury

1. Obtain receipts and calculate costs of medical equipment and treatment.

C. Insurance coverage and other benefits

1. Depending on your jurisdiction, these third-party payments may or may not affect the defendant's responsibility to reimburse the plaintiff.

D. No-fault automobile insurance: Parties collect against their own policies of automobile insurance regardless of fault for medical bills and lost wages from personal injuries.

E. Police accident report: Always get a copy of this report before beginning your investigation.

F. Policy limits: Verify that there is insurance coverage before starting a lengthy investigation and then learning there are no assets to recover against.

G. Previous claims or lawsuits of plaintiff

H. Previous injuries to plaintiff

1. An injury to the same part of the body that was injured in the past is usually considered an aggravation of a preexisting injury.

I. The parties' criminal histories

1. Check if this information is admissible in a civil trial.

J. Driving records

1. Check if either party was ticketed or arrested as a result of the incident.

K. Health Insurance Portability and Accountability Act (HIPPA): The privacy rights of individuals regarding personal health information is now protected under this federal legislation. Get consents for release of information.

IX. INVESTIGATING DIFFERENT TYPES OF TORT CASES

A. Automobile accident cases

1. Mechanical malfunction a. A more extensive inquiry is usually needed for products liability cases.

2. Dangerous street conditions a. Additional defendants may exist if injury was due to or exacerbated by street conditions.

3. Construction sites

a. Debris on road may be traced to a construction site.

B. Medical negligence cases

1. Obtain information about doctors involved, including their qualifications and training.

2. Obtain information about hospitals, nursing homes, and rehabilitation centers through governmental licensing organizations.

a. If a health care facility receives government funds, inspection reports should be available.

3. HIPAA provisions a. Safeguards were put in place by this law to protect the privacy rights of individuals concerning their personal health information, and how that information is used or transmitted, with certain

exceptions. b. When obtaining medical records, HIPAA requirements must be carefully followed.

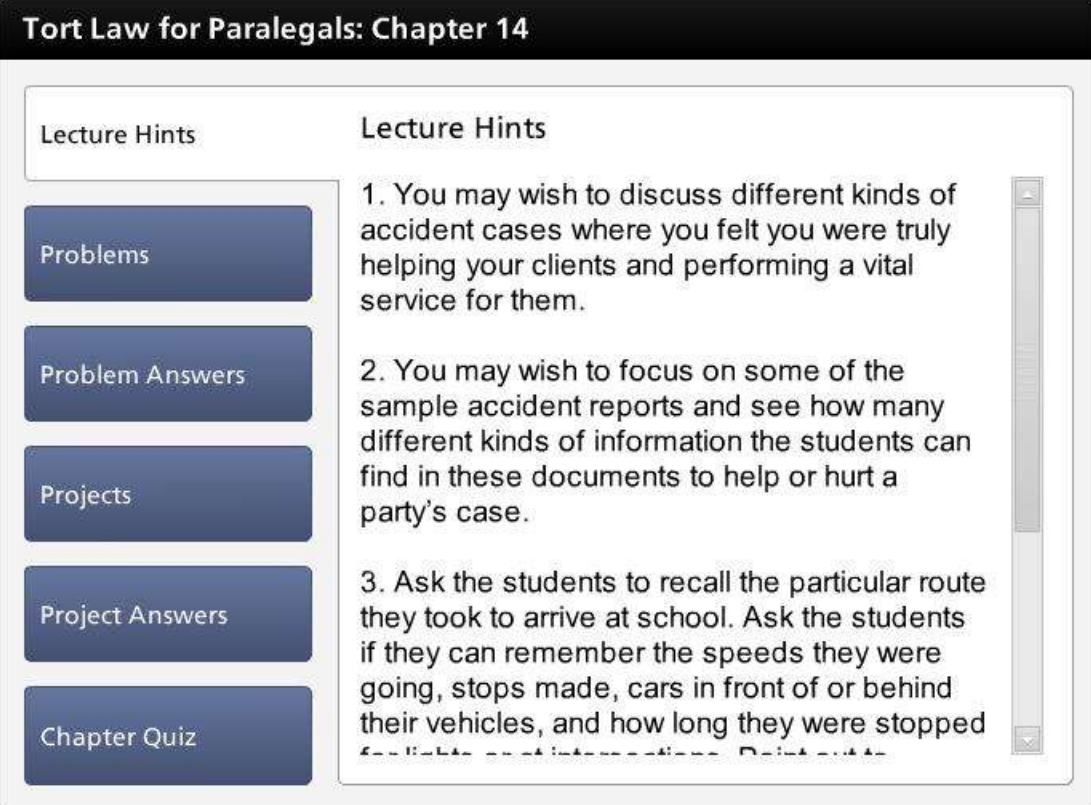
C. Freedom of Information Act (FOIA) requests: Federal agencies are required to disclose certain governmental information to the public upon request.

D. State public records laws: States are required to release certain agency information to the public upon request.



Lecture Hints

5 seconds



The screenshot shows a software interface titled "Tort Law for Paralegals: Chapter 14". On the left is a sidebar with five blue buttons: "Lecture Hints", "Problems", "Problem Answers", "Projects", "Project Answers", and "Chapter Quiz". The "Lecture Hints" button is selected. The main content area on the right is titled "Lecture Hints" and contains three numbered points. A vertical scrollbar is visible on the right side of the main content area.

Tort Law for Paralegals: Chapter 14

Lecture Hints

Lecture Hints

1. You may wish to discuss different kinds of accident cases where you felt you were truly helping your clients and performing a vital service for them.
2. You may wish to focus on some of the sample accident reports and see how many different kinds of information the students can find in these documents to help or hurt a party's case.
3. Ask the students to recall the particular route they took to arrive at school. Ask the students if they can remember the speeds they were going, stops made, cars in front of or behind their vehicles, and how long they were stopped

Step Text

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long they were stopped for lights or at intersections. Point out to students that they just arrived at school today and they are already having difficulty responding to such questions. Explain to students that attorneys, investigators, and paralegals will be asking people to recall incidents that happened days, weeks, or months ago and expecting far more detailed answers than you are getting from your students.

Problems

5 seconds

Tort Law for Paralegals: Chapter 14

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Problems

Assume the following actual cases were actually assigned to you for investigation. As the senior paralegal for the law firm, you performed the preliminary interview of each of the named plaintiffs. Identify what kind of investigation you would conduct and the different sources you would consult to further your investigation. Be sure to consider each of the facts of the case, as well as all potential defendants.

1. Ms. Santiago was admitted to the Glenwood hospital through the emergency room with severe pain in the abdomen. After an exploratory operation by Dr. Inexperienced, an infected appendix was discovered and removed. Ms. Santiago was released four days later. She continued to have increasingly severe pain and was readmitted to the hospital three weeks later. The same surgeon

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Assume the following actual cases were actually assigned to you for investigation. As the senior paralegal for the law firm, you performed the preliminary interview of each of the named plaintiffs. Identify what kind of investigation you would conduct and the different sources you would consult to further your investigation. Be sure to consider each of the facts of the case, as well as all potential defendants.

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later. The same surgeon performed another operative procedure, recovered a surgical sponge left in her during the initial operation, and removed it.

2. Suzie Woo is seven months pregnant. While crossing the grounds of the Gentle Breeze Country Club with her friend Dewanna Stevens, she stepped on a circular manhole cover, which unbeknownst to her was slightly ajar. The manhole tipped open and she fell in the hole, with her stomach preventing her from falling completely down the open pit. Just minutes before, a Quick Rooter Plumbing truck was spotted driving off the grounds of the club.

3. Josh Tyler is walking up the hill on State Street when a car without a driver comes rolling out of a private parking lot, down the street, and pins him against an office building, breaking four of his ribs and his left leg. A store employee sees the accident happen and calls an ambulance. Josh is taken to the nearest hospital. He later learns that the car had recently been serviced by Jenelle's Auto Repair.

4. Arnold Rubitkowitz is playing bingo at the local Grand Tigers Club fundraiser at the Hotel Luxe. Just when his cards are finally starting to look promising, the five-foot-long fluorescent light fixture drops from the ceiling above his head, rendering him momentarily unconscious. The bingo caller stops the game long enough to summon the local fire department, the police, and the town paramedics, who take Arnold to the local emergency room for treatment.

5. Trevor Vincent is taking a Sunday ride on his motorcycle through a new development by Sherman Oaks Builders in the town of Leewood, Texas. As he approaches a sharp curve in the road, he comes upon some construction debris, is unable to complete the sharp turn, is thrown 20 feet from his motorcycle, lands on his head, and dies. Trevor was not wearing a helmet at the time of the accident.

Problem Answers

5 seconds

Tort Law for Paralegals: Chapter 14

Lecture Hints

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Problem Answers

1. Dr. Inexperienced and the Glenwood hospital are both potential defendants, as are any staff who were present in the operating room. Ms. Santiago's complete medical records should be ordered. Ms. Santiago should be interviewed as to what she witnessed before and after she was placed under anesthesia. Locate and examine the doctor's credentials: It is possible that Dr. Inexperienced was not properly licensed or was practicing outside his area of expertise.
2. The Gentle Breeze Country Club, as owner of the premises, is one possible defendant. The presence of the Quick Rooter truck raises the possibility that a recent plumbing repair may have led to the improperly placed manhole cover. Both Suzie Woo and her friend Dewanna Stevens should be interviewed about what they observed and about any other possible witnesses. Order Ms. Woo's medical records to evaluate any resulting injuries.
3. Josh Tyler and the store employee should be

Step Text

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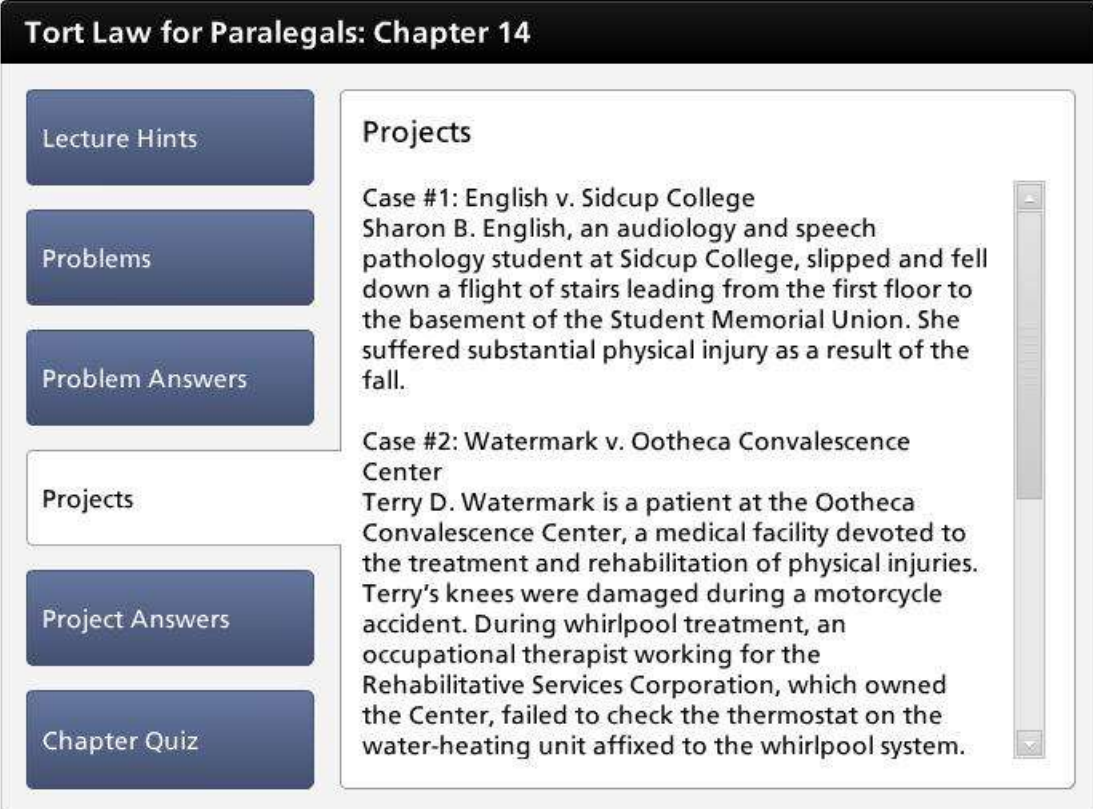
3. Josh Tyler and the store employee should be interviewed. The owner of the vehicle, as well as the parking lot owner, are possible defendants; determine whether the owner of the vehicle or a parking lot attendant parked the car. Both the ambulance and hospital records should be ordered. Jenelle's Auto Repair is also a possible defendant, if the company recently repaired the brakes of the vehicle in question. (In the actual case this problem was taken from, the security camera at the parking lot recorded the car being parked and then rolling out of the lot.)

4. Both the Grand Tigers Club and the Hotel Luxe are possible defendants. Interview Arnold Rubitkowitz and any of his fellow bingo players who witnessed the occurrence. Order the records from the local fire department, the police, the paramedics, and the hospital. Unbeknownst to plaintiffs, often their comments are taken down word for word and entered into hospital, ambulance, or police records. (In the actual case, when the fire department records were ordered, the fire department personnel advised that they had taken pictures of the scene. These pictures were particularly valuable, as the light fixture was repaired the day after the accident and these pictures were the only record of the scene.)

5. There are multiple possible defendants. This is a complex fact situation. First, determine who is the owner of the road and if it is publicly or privately maintained. Sherman Oaks Builders and any number of its contractors or subcontractors might have left the debris in the road. It is also possible that the road has a design defect that contributed to the accident. Any ambulance or hospital records should be ordered.

Projects

5 seconds



Tort Law for Paralegals: Chapter 14

Lecture Hints

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Chapter Quiz

Projects

Case #1: English v. Sidcup College
Sharon B. English, an audiology and speech pathology student at Sidcup College, slipped and fell down a flight of stairs leading from the first floor to the basement of the Student Memorial Union. She suffered substantial physical injury as a result of the fall.

Case #2: Watermark v. Ootheca Convalescence Center
Terry D. Watermark is a patient at the Ootheca Convalescence Center, a medical facility devoted to the treatment and rehabilitation of physical injuries. Terry's knees were damaged during a motorcycle accident. During whirlpool treatment, an occupational therapist working for the Rehabilitative Services Corporation, which owned the Center, failed to check the thermostat on the water-heating unit affixed to the whirlpool system.

Step Text

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Terry D. Watermark is a patient at the Ootheca Convalescence Center, a medical facility devoted to the treatment and rehabilitation of physical injuries. Terry's knees were damaged during a motorcycle accident. During whirlpool treatment, an occupational therapist working for the Rehabilitative Services Corporation, which owned the Center, failed to check

the thermostat on the water-heating unit affixed to the whirlpool system. Near-boiling water filled the whirlpool, severely scalding Terry's entire body.

Case #3: Joist v. Mason Dixon Poultry Company

Samantha K. Joist was driving her automobile along State Highway 144 when a truck, driven by Elliot R. Daniel, ran a stop sign and collided with Samantha's vehicle. Both Elliot and Samantha were injured in the crash. Elliot, who was conscious following the collision, told a paramedic that his brakes had failed suddenly. The truck had the name "Mason Dixon Poultry Company" painted on the sides, along with a telephone number.

Project Answers

5 seconds

Tort Law for Paralegals: Chapter 14

- Lecture Hints
- Problems
- Problem Answers
- Projects
- Project Answers**
- Chapter Quiz

Project Answers

- 1. English v. Sidcup College**
Who? Student. What? Fell. Where? School steps. When? Must investigate. Why? Must be investigated. How? Need statement from injured student and bystanders. The scope of the student's injuries must also be determined.
- 2. Watermark v. Ootheca Convalescence Center**
Who? Patient. What? Injured by scalding water in whirlpool. Where? At Ootheca Convalescence Center. When? During therapy. Why? Failure of therapist to check machine. How? Failure to follow standard of care. The possibility of machine malfunction or lack of safety devices must be investigated. The scope of the patient's injuries must also be determined.
- 3. Joist v. Mason Dixon Poultry Company**
Who? Driver (Samantha). What? Struck by a truck.

Step Text

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3. Joist v. Mason Dixon Poultry Company

Who? Driver (Samantha). What? Struck by a truck. Where? Highway 144. Why? Failure of brakes. When? Suddenly. How? Need each driver's and possible witnesses' statements. The statement by Daniel that his brakes failed may not be accurate. Daniel may have fallen asleep, or taken his attention away from the road for a few seconds. Independent mechanics need to evaluate the condition of the truck. Prior repair records and maintenance logs are needed. The owner of truck may be different than the driver of the truck. Further investigation is required. An engineer may be needed to study the general conditions of the roadway and its construction. The scope of Samantha's injuries must be determined.

Chapter Quiz

5 seconds

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Chapter Quiz

Chapter Quiz

[Click here for the Chapter Quiz.](#)

Step Text

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