

Tort Law for Paralegals: Chapter 7

Chapter Outline

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Chapter Outline

Chapter 7

Intentional Torts: More Injuries to Persons

Summary: This chapter introduces students to additional intentional torts involving injuries to persons: infliction of emotional distress, fraud and misrepresentation, malicious prosecution and abuse of process, invasion of privacy, and defamation (libel and slander).

CHAPTER OUTLINE

I. INTENTIONAL TORTS: GENERAL CONCEPTS

A. Definition: Conduct that is fashioned to harm

Step Text

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CHAPTER OUTLINE

I. INTENTIONAL TORTS: GENERAL CONCEPTS

A. Definition: Conduct that is fashioned to harm another person or his or her property.

B. All intentional torts contain two elements.

1. Intent: Desire to accomplish harmful consequences of tortfeasor's actions. Not malice or ill will; simply intent to produce harmful results.

2. Injurious behavior: Conduct that causes the intended harm.

C. Special case of reckless infliction of emotional distress: Tortfeasor need only know (or reasonably should know) that behavior will cause severe mental anguish. For this tort, knowledge element = intent.

D. Intent and injurious behavior: Must occur simultaneously (or very close together) in sequence of events; that is, "I thought it, then I did it."

II. BRIEF DEFINITIONS OF INTENTIONAL TORTS

A. Infliction of emotional distress: When tortfeasor's outrageous conduct, which is designed to cause another to suffer mental anguish, actually causes such emotional distress (anxiety, fright, etc.).

B. Fraud: When tortfeasor intentionally makes false statements to entice someone to give up something of value to the tortfeasor.

C. Misrepresentation: When a person makes false statements or behaves so as to deceive another individual.

D. Malicious prosecution: When a prosecutor maliciously files groundless criminal charges against an innocent person.

E. Abuse of process: When a plaintiff maliciously uses the court system against a defendant to achieve some unlawful objective.

F. Invasion of privacy: When a tortfeasor publicly exploits another's private affairs in an unreasonably intrusive manner.

G. Defamation (libel and slander): When a tortfeasor communicates false information that hurts another's reputation in the community.

1. Libel: Written defamation.

2. Slander: Oral defamation.

H. Slander of title: When a tortfeasor falsely and maliciously disparages ownership rights that a legal owner has in property.

I. Trespass: Unlawful interference with use of another person's property.

1. Trespass to land: Unlawful interference with a landowner's use of his or her real estate.

2. Trespass to chattel: Unlawful interference with an owner's use of his or her personal property.

J. Conversion: Wrongfully taking personal property from its rightful owner, either permanently or for an indefinite time period.

III. INFLICTION OF EMOTIONAL DISTRESS

A. Emotional distress: Mental anguish caused by tortfeasor. Synonyms: fright, anxiety, shock, grief, mental suffering, emotional disturbance, shame, embarrassment.

B. The victim suffers emotional, rather than physical, injury as a result of the tortfeasor's misconduct.

C. The tortfeasor's conduct must be outrageous.

D. Intentional infliction of emotional distress

1. Elements:

a. Tortfeasor's outrageous conduct: Behavior that would cause a reasonable person to suffer substantial emotional distress.

(1) Use the reasonable person standard.

(2) Courts often ask whether the tortfeasor's actions would shock the conscience of reasonable persons or produce mental pain in persons of ordinary sensibilities.

b. The conduct is intended to cause severe mental anguish in the victim.

c. The victim in fact suffers severe mental anguish as consequence of the tortfeasor's behavior.

2. Intent: Tortfeasor must intend to produce significant mental anguish in victim.

3. Actual emotional distress:

a. The victim must suffer real mental injury as a result of the tortfeasor's actions.

b. Often difficult to prove without accompanying physical symptoms

E. Reckless infliction of emotional distress

1. Tortfeasor's actions, which tortfeasor knew, or reasonably should have known, would produce severe mental anguish in victims

2. Outrageous behavior that tortfeasor wantonly or carelessly engaged in, with disregard for harm caused to victim

3. Elements

a. Tortfeasor's outrageous conduct

b. Conduct known (or reasonably should have been known) to cause severe mental anguish (knowledge element substitutes for intent)

c. Victim suffers severe mental anguish as result of tortfeasor's action

IV. FRAUD AND MISREPRESENTATION

A. Fraud: When tortfeasor makes false statements to entice victim to give up something of value to tortfeasor.

B. Misrepresentation: When tortfeasor knowingly makes false statements, or purposefully behaves in a way so as to deceive victim.

C. Similarities:

1. Both include false statements or actions.

2. Both include deception as the tortfeasor's objective.

D. Differences: Fraud includes element of underhanded economic gain.

E. Elements of fraud

1. Defrauder's (tortfeasor's) intent to deceive victim by making false statements
2. The defrauder (tortfeasor) must know that the statements made are false.
3. The purpose of the false statements must be to entice the victim into giving the tortfeasor something of value.

F. Elements of misrepresentation

1. Same as first element of fraud
2. Same as second element of fraud
3. Some courts include the third element of fraud, making misrepresentation identical to fraud. Query: Why the redundancy?

V. MALICIOUS PROSECUTION AND ABUSE OF PROCESS

A. Malicious prosecution: When private citizen files with prosecutor groundless criminal complaint against another person (named as defendant in subsequent criminal proceedings).

B. Elements of malicious prosecution

1. Groundless criminal prosecution against accused
2. Complainant's malice in filing spurious charges
3. Accused's acquittal from, or dismissal of, criminal charges
4. Injury to accused as result of prosecution

C. Definitions of participants

1. Complainant = private citizen registering criminal complaint with prosecutor or police.
 2. Accused = defendant in criminal lawsuit; person against whom false criminal complaint is filed.
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3. Groundless criminal prosecution = complaint filed without probable cause to believe that accused was guilty of crime.

4. Probable cause = reasonable belief that accused is guilty of alleged crime.

a. Probable cause need exist only at the time criminal charges were filed to justify the initiation of criminal proceedings.

b. If subsequent facts show that the accused probably did not commit the crime, and the complainant insists on continuing prosecution, this equals malicious prosecution.

5. Malice = complainant's knowledge that accused did not commit alleged crime (implied malice), or filing criminal charges to achieve an improper objective, such as intimidating the accused into settling a separate civil lawsuit.

D. Abuse of process: When tortfeasor misuses legal proceeding against another person to achieve an unlawful objective. Involves frivolous civil litigation.

1. Civil equivalent of malicious prosecution

2. Elements of abuse of process a. Tortfeasor's misuse of legal proceeding, or threat of misuse b. Misuse to achieve unlawful objectives (1) Unlawful objectives = benefits to which tortfeasor is not legally entitled (e.g., plaintiff's filing frivolous lawsuit against defendant that plaintiff knows did not commit any civil wrong against plaintiff-plaintiff's purpose is "to scare up some money" in quick settlement). c. Injury to victim as result of misuse

VI. INVASION OF PRIVACY

A. Originated in late nineteenth century, primarily through efforts of Judge Cooley (Michigan Supreme Court) and Brandeis and Warren's Harvard Law Review article coining the phrase "right to privacy"

B. Definition: When tortfeasor publicly exploits another person's private affairs in an unreasonably intrusive manner.

C. Four types of invasion of privacy:

1. Appropriation

2. Unreasonable intrusion
3. Public disclosure of private facts
4. False light in the public eye

D. The U.S. Supreme Court has created constitutional right to privacy (not part of tort law and conveniently overlooked by this text).

E. Appropriation: When tortfeasor uses person's name or likeness without permission, in order to gain some benefit. Example: If an advertising agency uses someone's photograph without permission to sell products for clients.

F. Unreasonable intrusion: Excessive or highly offensive assault upon one's seclusion or solitude. Example: Some courts have held that employers' compulsory blood tests for prospective employees constitute unreasonable intrusion.

G. Public disclosure of private facts: When tortfeasor communicates purely private information about an individual to public without permission, and a reasonable person would find such disclosure extremely objectionable.

1. Truth is not a defense to this tort.

2. Example: Tabloids that discuss ordinary, anonymous persons' personal lives in detail ("80-year-old man has harem of 27 wives!"; "Lottery winner buys yacht while children starve!").

3. It is difficult for public figures to win lawsuits featuring this type of invasion of privacy, because they are presumed to have submitted their private lives to public scrutiny simply by becoming public figures. However, in recent years, many famous personalities have successfully sued periodicals (such as the tabloids mentioned earlier) under this tort.

H. False light in the public eye: When tortfeasor publicly attributes to another person spurious opinions, statements, or actions. Example: Newspaper placing victim's photograph adjacent to a news story about criminal or deviant conduct, although the picture is unrelated to the story.

VII. DEFAMATION (LIBEL AND SLANDER)

A. Libel: Tortfeasor's written, false, and disparaging statement about victim that is communicated to third person.

B. Slander: Tortfeasor's oral, false, and disparaging statement about victim that is communicated to third person.

C. Elements

1. Written (libel) or oral (slander) statement
2. False and defamatory statement about victim
3. Tortfeasor's communication of statement to third person(s) (publication)
4. Harm to victim's reputation in community

D. Publication: Tortfeasor's communication of false statement to third person(s).

E. Injury to reputation: "Community" is narrowly defined as significant number of persons acquainted or familiar with victim. One person could be sufficient, although most courts require larger numbers.

F. Public figures: To be successful in claiming defamation, a public figure must show that a statement was made with actual malice.

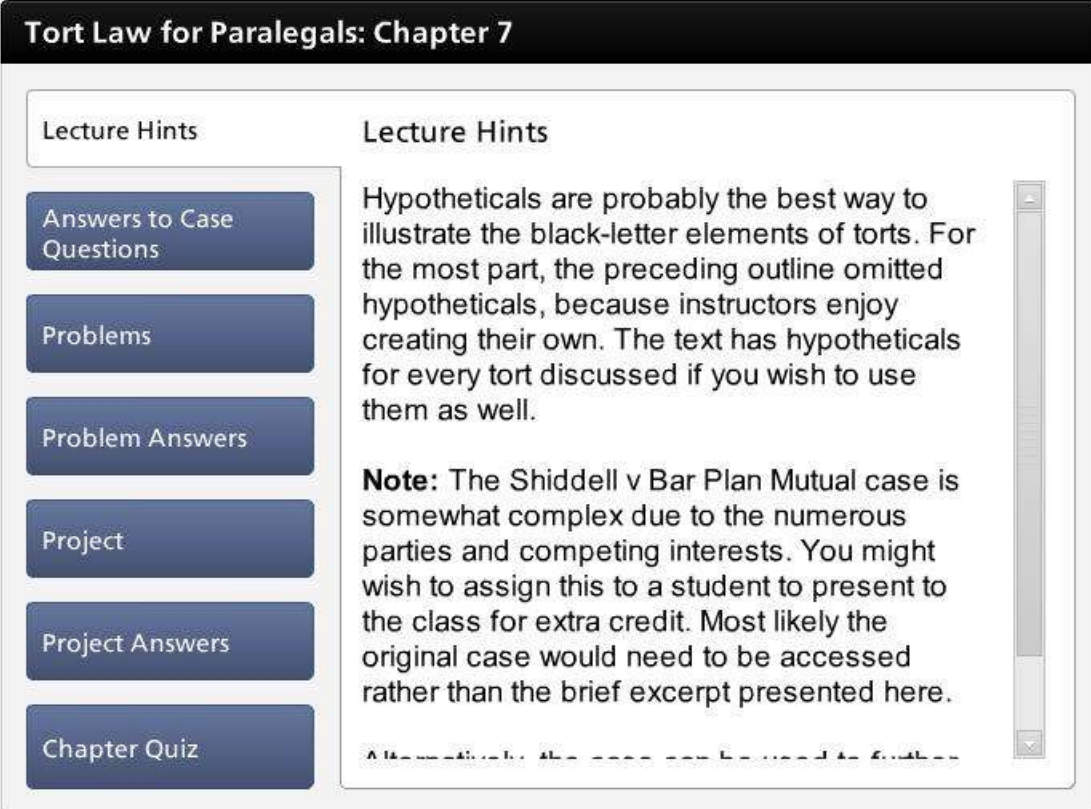
G. Slander per se: Some words are so defamatory that damages need not be proven (e.g., allegations of sexually transmitted disease).

H. Defenses

1. Truth of the statement is an absolute defense to defamation.
 2. Literal truth is not required; if the statement is substantially true, then it is considered a successful defense.
 3. Privilege is an absolute defense in defamation cases (e.g., a judge speaking in court).
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Lecture Hints

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Lecture Hints

Hypotheticals are probably the best way to illustrate the black-letter elements of torts. For the most part, the preceding outline omitted hypotheticals, because instructors enjoy creating their own. The text has hypotheticals for every tort discussed if you wish to use them as well.

Note: The Shiddell v Bar Plan Mutual case is somewhat complex due to the numerous parties and competing interests. You might wish to assign this to a student to present to the class for extra credit. Most likely the original case would need to be accessed rather than the brief excerpt presented here.

Alternatively, the case can be used to further...

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Alternatively, the case can be used to further demonstrate the importance of drawing a diagram for difficult fact patterns.



Answers to Case Questions

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Answers to Case Questions

Deuschle v. Jobe

1. Negligent infliction involves the failure to use reasonable care, whereas intentional infliction involves knowledge that you are infected, knowledge that you are likely to infect someone if you do not take precautions, and the failure to disclose this or to take precautionary measures.
2. There is a cause of action for negligent transmission of a venereal disease. The court did not specify what specific intentional tort might apply to the facts of this case.

Law v. Harris

1. Opinion: The law does not provide a remedy for rude or insulting comments. It would be very hard to set a standard as to what is considered rude or insulting to most people. Also, so many statements can be considered either rude or insulting that the

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Law v. Harris

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rude or insulting to most people. Also, so many statements can be considered either rude or insulting that the courts would be overloaded with these claims. Last, rude and insulting comments generally result in only very minor harm, if any.

2. Opinion: The court found the defendant's conduct to be rude or insulting, but far from an action for intentional infliction of emotional distress. It was neither atrocious nor intolerable conduct. It was embarrassing at most. Most likely Ms. Law brought the action to vindicate herself, but in the end it brought more attention to a matter that might have been quickly forgotten.

Akers v. Prime Succession

1. Opinion: It is hard to say why the defendant was so reckless in his job.

2. Opinion: The acts of the defendant and the Georgia Bureau of Investigation were both very disturbing. Both failed to give the plaintiffs any closure after their son's death.

Doe v. Presiding Bishop

1. Yes, both an omission and a misstatement can be the basis for a fraud action. Either can be equally misleading. Doe had a relationship with the church members and depended on them, and trusted them for guidance.

2. Opinion: Yes the existence of the "Ineligible Volunteer File" with the "perversion category" would greatly hurt the Boy Scouts of America. It is evidence of longstanding knowledge of a very serious problem.

Shiddell v. The Bar Plan Mutual

1. Bevan should have thoroughly investigated the facts himself, and dropped the claim as soon as he saw it was baseless. Also, he should have tried to encourage Cameron Mutual to settle the case.

2. The appellate court disagreed with appellants' argument because it did not believe that the "deliberately wrong" clause is ambiguous. According to the court, no ordinary person of reasonable intelligence would interpret "deliberately" to mean "criminally."

Lowe v. Hearst Communications, Inc.

1. Opinion. The public has a right to know about the scheme by the lawyers, as it goes to their very integrity and ability to practice law.

2. The court would not grant the claim for intentional infliction of emotional distress as it stated the basis of plaintiff's claim was really another tort (Invasion of Privacy).

Linberry v. State Farm Fire & Casualty Co.

1. The court found the insurance illusory, and the policy to be ambiguous. Therefore, the policy was interpreted against the insurer and in favor of the insured.

2. Generally, insurance is intended to cover accidents or unintended activities. It would be very expensive and unreasonable to expect insurance to cover deliberate acts of insureds.

Amrak Productions, Inc. v. Morton

1. No, it does not appear that Albright was harmed.

2. One might think that the negative publicity surrounding the lawsuit would be worse than any negative inferences some people might have drawn from seeing a photograph in a publication.

Evans v. Evans

1. Thomas needed to request an order specifically preventing his identifying information, such as telephone number, address, and Social Security number, from being placed on the Internet.

2. No. Having to wait for harm to occur before you can seek relief is asking a lot in some cases.

Decker v. Princeton Packet, Inc.

1. According to the text, intentional infliction of emotional distress is outrageous conduct intended to cause, and actually causing, severe mental anguish in the victim. Reckless infliction of emotional distress is outrageous conduct that the tortfeasor knew or reasonably should have known would cause severe mental anguish. This court rejected the plaintiff's emotional distress claims. Intentional infliction would not apply, because the defendant did not intend to publish a false obituary to cause the plaintiff mental anguish. Nor would reckless infliction apply; the defendant's actions were not sufficiently outrageous. Simply publishing an incorrect obituary, subsequently followed by a retraction, does not shock the conscience of the reasonable person. Such mistakes occasionally occur, and the plaintiff's extreme reaction, as the court noted, was atypical of persons with ordinary sensibilities. Thus, no emotional distress claims would be compensable. Invasion of privacy, in this case, could only involve false light in the public eye. None of the other varieties of this tort apply to these facts. Even false light would fail. The defendant's incorrect obituary did not publicly attribute spurious opinions, statements, or actions to the plaintiff. It simply said that the plaintiff was deceased when, actually, the plaintiff was not. This type of error does not falsely suggest that the plaintiff said or did anything. Thus, there was no invasion of privacy.

2. Clearly, the unknown person who planted the false obituary either intended or knew that the plaintiff would suffer some emotional distress as a result of the false obituary. Courts would consider the unknown person's action to be sufficiently outrageous behavior to satisfy the elements of either infliction tort. Courts would even be likely to accept the plaintiff's reactions as reasonable, at least against the unknown perpetrator.

Brown v. Hearst Corp.

1. Under Massachusetts law, a privilege exists for media coverage of official proceedings.

2. Channel 5's coverage of Regina's disappearance and the divorce trial was not negligent.

Problems

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Problems

In the following hypotheticals, identify the intentional tort(s) committed, if any, and support your answer.

1. Eugene Bagley III was an aspiring literature student at the state university. He had submitted several short stories and poems to Rhapsody, a college literary magazine. Steve lived in Eugene's dormitory and had a reputation for playing pranks on fellow dorm residents. Irving wrote a fake letter of rejection on Rhapsody letterhead, which a friend had taken from the magazine's office supplies. The letter was a scathing indictment of Eugene's work as plagiarism and amateurish. The letter threatened to notify the English department and academic dean about the alleged plagiarism. Irving signed the editor of the magazine's name. When Eugene received the letter, he became physically ill and had to visit the university hospital for medication to sleep

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he became physically ill and had to visit the university hospital for medication to sleep and concentrate.

2. Mike was a salesperson at a local hardware store. Samuel was a customer looking to buy exterior paint for his storage shed. When Samuel told Mike he needed paint that could be used on metal siding, Mike indicated a wood paint. Samuel inquired about this, but Mike said that it was not just for wood but for any surface. In fact, the paint would not adhere to any surface other than wood. Mike had worked in the store for only a few days and knew nothing about any of the paint supplies. Samuel bought the paint and applied it. Within two weeks, the paint peeled off.

3. Maria is an honor student at a small college. She is worried that another student, Alex, will take her place as number one in the class and apply for the same scholarship she desperately needs to continue her schooling. Maria calls Alex and pretends that she is a nurse calling from the emergency room of Alex's hometown local hospital. Maria tells Alex that his mother was in an accident and was gravely injured, and that he needs to come there right away. Alex is distraught and returns home immediately. He is so upset he totally forgets about the scholarship deadline and fails to apply.

4. Celeste and David are involved in a bitter custody dispute over their children. After losing the marital home, Celeste decides that she is not going to let her husband get one more thing from her. Celeste calls the police after carefully coaching her children and complains that her children have been repeatedly sexually abused by David. David is immediately arrested at work. Celeste is granted temporary custody over the children. David is later cleared of the false charges of sexual abuse. 5. Newspaper sales have been declining for weeks for the Gazette Herald. The owner of the paper knows that people are curious and would like to know more about the personal lives of the residents in town. A reporter is sent to attend meetings of Alcoholics Anonymous and plastic surgeon Dr. John Glassgow's seminars on facial rejuvenation. A new feature is included in the paper, "What You Don't Know About Your Neighbors." A list of those attending Alcoholics Anonymous and those attending the doctor's seminars who are considering plastic surgery is published. As expected, sales of the newspaper increase immediately.

Problem Answers

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Problem Answers

1. Eugene's situation involves intentional infliction of emotional distress. By writing the fake rejection letter to Eugene on Rhapsody letterhead, and including particularly harsh criticisms, allegations of plagiarism, and threats of exposure to the English department, Steve engaged in outrageous behavior intended to cause severe mental anguish. Eugene became physically ill and required medical treatment. This satisfied the definition of severe mental anguish. Accordingly, Steve is liable to Eugene for intentional infliction of emotional distress. Steve is also liable to Eugene for reckless infliction of emotional distress, if one decides that Steve's actions were wanton and reckless instead of intentional.
2. The problem involves issues of fraud and misrepresentation. Mike made false statements regarding the suitability of wood paint for metal surfaces. Because Mike knew nothing about any of the paint supplies, his comments to Samuel that wood paint could be applied to any surface were implicitly intended to

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Mike knew nothing about any of the paint supplies, his comments to Samuel that wood paint could be applied to any surface were implicitly intended to deceive. Further, Mike knew these statements were false, as he knew nothing about the paint's qualities. The statements were designed to entice Samuel into surrendering something of value, namely, payment for the wood paint. All of the elements for both intentional torts were satisfied. Therefore, Mike committed misrepresentation and fraud against Samuel.

3. Maria deliberately misrepresented the facts to Alex about his mother with the intent that he would be distracted and forget about the deadline for applying for the scholarship. Maria stated that Alex's mother was injured and being treated in a hospital when this was not true. Obviously, this would cause great anguish to most people upon being informed that a family member was hurt. Alex was understandably distracted and missed the scholarship deadline as was intended by Maria. Maria's acts can be construed as possibly the torts of misrepresentation as well as intentional infliction of emotional distress. Maria deliberately stated facts to Alex that she knew were false, and she expected him to be deceived by these facts. Consequently, Alex was hurt by Maria's actions. Maria also intentionally inflicted emotional distress upon Alex. Her deliberate outrageous conduct caused Alex severe mental anguish.

4. Celeste intentionally lied in her statement to the police about her husband, so that she could obtain sole custody of her children. Celeste's acts constitute the tort of groundless malicious prosecution. Celeste lied in order to have criminal charges pursued against her husband with full knowledge that this was false and would harm her husband. Celeste's acts enabled her to gain full custody of her children when there were no true grounds for her full custody. Celeste's acts can also be construed to be the abuse of process. Celeste misused court proceedings to achieve an unlawful objective and hurt her husband in the process.

5. The Gazette Herald has committed the tort of public disclosure of private facts. Intimate details about people were communicated to the public, invading the subjects' right to privacy without the subjects' consent. The Gazette deliberately took this action in order to increase newspaper sales, with full knowledge that people who were not celebrities or public figures would find the publication objectionable and be hurt.

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Project

1. Read the case of *Cinel v. Connick* in Appendix C at the student companion website. Brief the case using the IRAC method. Was plaintiff Cinel successful in pursuing his right to privacy claim? Do you agree with the appellate court's reasoning in its decision? Explain.
2. Read the *PepsiCo, Inc. v. Redmond* case in Appendix C at the student companion website. Do you think the Quaker Oats company wanted to hire Redmond solely for the trade secrets and confidential information he had access to, or could there have been another reason for the job offer? Is it possible, when starting a new job, to totally disregard any information or secrets learned in a prior position?
3. Read the *Roach v. Stern* case in Appendix C at the student companion website. What elements were needed to successfully plead intentional infliction of emotional distress?

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1. No, the plaintiff was not successful in *Cinel v. Connick*. Often you will feel sympathy for an injured party, but the facts of his or her case may not be sufficient to state a cause of action upon which relief may be granted.
2. Probably, Redmond's knowledge gave him an edge over other candidates. It would be very hard to totally disregard all information learned at a prior job when starting a new job.
3. To successfully plead intentional infliction of emotional distress, the conduct complained of must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community.

Step Text

1. No, the plaintiff was not successful in *Cinel v. Connick*. Often you will feel sympathy for an injured party, but the facts of his or her case may not be sufficient to state a cause of action upon which relief may be granted.

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