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**TORTS FOR
PARALEGALS**



McGraw-Hill's Torts for Paralegals

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Preface

Tort law is an exciting legal subject to study and become familiar with, particularly in our world today. Tort law has been on the forefront of legal news for the past 25 to 30 years with the number of lawsuits filed skyrocketing each year, along with possible enormous monetary judgments at stake. The issue of lawsuits and the massive damage awards, and whether or not there should be caps placed on those awards, has even been debated recently in the U.S. Congress.

This text helps to prepare students for the practical world of tort law. It contains a variety of subject areas introducing the student to a useful array of topics necessary to be successful in the real-world practice of tort law while not overwhelming the student with dry, textual, dull material.

McGraw-Hill's Torts for Paralegals examines the basics of tort law, ranging from topics on intentional torts against person and property, followed by defenses to those torts, continuing with negligence and its elements, and finishing off with chapters on product and strict liability. Additional chapters also address subjects such as vicarious liability, nuisances, immunities, and other torts like malpractice and an assortment of business-related torts. However, the most exciting aspect of this textbook will be the myriad of learning resources to aid students in their torts journey.

McGraw-Hill's Torts for Paralegals contains 14 chapters and an appendix. By providing a hands-on approach to learning, each chapter has a recent, applicable case opinion, along with many ancillaries—including charts, tables, figures, and exercises—placed throughout each chapter to aid in the student's development.

TEXT DESIGN

Pedagogy

This text has numerous features that capitalize on the various learning styles that students use to gain knowledge. Based on the notion that students who use their newly acquired knowledge often retain it much better than those who do not, this text requires students to apply the knowledge they have acquired. Chapters are designed in a manner that assures students will have the opportunity to learn the appropriate legal concepts, the necessary vocabulary, develop their legal reasoning skills, and demonstrate their knowledge of the material. Each chapter contains the following features:

- **Spot the Issue**—Student is presented with a fact pattern and asked to “spot” the issue(s) present.
- **A Day in the Life of a Real Paralegal**—Practical application designed to help students build a specific skill set.
- **Legal Research Maxim**—General statement of a principle in law.
- **Case Fact Pattern**—Simple fact pattern with story and outcome.
- **Research This**—Hands-on assignment designed to develop students' research skills.
- **Eye on Ethics**—Students are presented with ethical issue(s) related to the subject in the chapter.

- **You Be the Judge**—Students are presented with a fact pattern and issue and asked to be the “judge” and decide on the issue set forth.
- **Surf’s Up**—Hands-on research presents students with numerous websites where they can *surf* and gather material.
- **Case in Point**—A significant case designed to expand on the topics discussed in chapter.
- **Portfolio Assignment**—Students are given an assignment by which to begin, creates, and add to a portfolio.
- **Vocabulary Builders**—Crossword puzzle for the students to complete using vocabulary words found in the chapter.

The text is written in clearly presented language that engages the student, keeps the reader’s interest and presents information in a variety of styles.

OTHER LEARNING AND TEACHING RESOURCES

Supplements

The **Online Learning Center (OLC)** is a Web site that follows the text chapter by chapter. OLC content is ancillary and supplementary germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the instructor’s manual, and PowerPoint presentations, and Test Bank. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

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A Guided Tour

McGraw-Hill's Torts for Paralegals explores the wide variety of civil wrongs that can harm an individual and the remedies available to that injured party. Utilizing many practical learning tools, the text takes a step-by-step approach in understanding private harms and proving their prima facie elements. The text is written in a very concise and sequential manner, beginning with intentional torts, continuing through the steps of negligence, and finishing with the different liabilities and agency law. The many practical assignments allow students to enjoy the study of torts and apply it to their work as practicing paralegals. The pedagogy of the book applies three main goals:

- Learning outcomes (critical thinking, vocabulary building, skill development, issues analysis, writing practice).
- Relevance of topics without sacrificing theory (ethical challenges, current law practices, technology application).
- Practical application (real-world exercises, practical advice, portfolio creation).

CHAPTER OBJECTIVES

Upon completion of this chapter, you will be able to:

- Understand and define a tort.
- Identify what constitutes reasonable conduct.
- Explain the difference between a tort and a crime or a contract.
- Identify the elements of a tort.
- Discuss the major categories of torts.

Chapter Objectives

Introduce the concepts students should understand after reading each chapter as well as provide brief summaries describing the material to be covered.

Case Fact Pattern

Describes simple fact patterns and asks students to apply concepts learned from the chapter to understand the legal issues at hand.

CASE FACT PATTERN



Harry owns a seven-acre property in a remote area outside of Omaha. An avid admirer of lions and tigers, Harry has built a small sanctuary for his six lions and tigers on his property. Harry is very conscious of the potential damage and harm these animals could possibly inflict if they were to get out of the sanctuary. Therefore, Harry has built

an enclosure on his property to keep the animals from running loose. Harry has taken every possible measure to ensure the animals do not get out. Harry has invested in the best cages and fences he could buy. An animal gets out of Harry's sanctuary. It kills two people. Harry will be held strictly liable.

A Day in the Life of a Real Paralegal

Presents scenarios depicting what a usual day is like for practicing paralegals and provides practical application designed to help students build a skill set to prepare for a career as a paralegal.



A DAY IN THE LIFE OF A REAL PARALEGAL

Most jurisdictions do not allow "mistake" as a defense against trespass to land, as duly noted. However many people, and sometimes jurisdictions, mistakenly believe that a "proper notice" must be given to potential trespassers alerting them of private property. Many times you will see NOTRESPASS signs on property to alert bystanders, with many having the local, jurisdictional code against trespass listed as well. On numerous occasions, trespassers believe they are within the bounds of law because they failed to see—or there failed to be—a NOTRESPASS sign. The reality is, in most cases, that mistake will not work as a defense. It's important to know your local ordinances regarding trespass to land.

Spot the Issue

Is a hands-on exercise that presents students with a fact pattern and asks them to apply concepts learned in the chapter to "spot" the issues present.



SPOT THE ISSUE

Patrick loves baseball. He and his friends know all the members of their local minor league baseball team, and they love to go to games. Patrick likes to sit as close to the action as possible. When Patrick's team makes the finals, he buys tickets to go to the game. Patrick wants to view the game from a clear vantage point, so he purchases tickets that are in the front row right beside third base.

Patrick and his friends go to the game. They are having a great time. The count is 3-2 for Patrick's favorite player, and the game is tied at 2-2 in the top of the eighth inning. Patrick is standing up yelling at the batter. The batter swings a line drive foul ball right up the third field line, and it hits Patrick in the head. Patrick sustains a severe concussion and is taken to the hospital.

Patrick sues the ball park for negligence.

What issue may be present on behalf of the defendant, the baseball park?



LEGAL RESEARCH MAXIM

Many times culture, environment, and daily routine play a part in how law and society can indirectly be affected by these subtle, yet powerful, underlying forces. Would it be reasonable, as an example, to file a lawsuit against a person for the tort of battery in New York City for bumping into you on a crowded subway? No, it wouldn't be, as the subway is part of a daily routine that many millions follow each day and bumps and knocks here and there are part of the norm.

Legal Research Maxim

Highlights some of the major principles in law covered in each chapter.



SURF'S UP

When the *Exxon Valdez* dumped millions of barrels of oil into the ocean off the coast of Alaska, the oil spill created a public nuisance because it damaged wildlife and destroyed protected habitat. In addition, fishermen in the area were subjected to a special damage as it destroyed their ability to fish in the area. Exxon was fined for the incident. To learn more about this public nuisance, research the following sites:

- www.uga.edu
- www.evostc.state.ak.us
- www.wikipedia.org
- www.epa.gov/oilspill/exxon
- www.fakr.noaa.gov

Surf's Up

Presents students with numerous and varied websites to “surf” and gather additional information on the important legal concepts and issues discussed in each chapter.



LEGAL RESEARCH MAXIM

Remember, the basis for this defense is that the plaintiff must not take unreasonable risks of injuring himself. The plaintiff will be contributorily negligent only if the risk that he created to his own safety was unreasonable and was the same risk that led to his injury.

Research This

Gives students the opportunity to investigate issues more thoroughly through hands-on assignments designed to develop critical research skills.

You Be the Judge

Places students in the judge's seat. Students are presented with facts from a fictitious case and they use concepts learned from the chapter to make a legal determination.

YOU BE THE JUDGE



Jared was walking toward his car after work on a late night at the shopping mall on a very cold night. As he left the building he heard what he thought were screams coming from a woman in a parked automobile. He walked over to where the car was parked and had trouble seeing anything, as the windows were steamed up and foggy. The screams continued. Not knowing what to expect, Jared picked up a piece of wood lying on the ground and began to move closer to the car. As he made his way closer, he yelled out to see if anyone could hear him or if the occupant screaming in the car could

hear him. As the screams continued, Jared, fearing the worst, began beating the wood on the car and demanding the door be opened. Just as Jared began to take a big swing to try and smash the window in, the door flew open, and Jared, not able to stop himself, slammed the wood onto the head of the male who was exiting the car, killing him with one blow. It all ended up as a very bad mistake. The man Jared killed was with his girlfriend in the car that night celebrating their anniversary. Can a claim of action be brought against Jared and does he have any defenses to his actions, if sued?

Eye on Ethics

Recognizes the importance of bringing ethics to the forefront of paralegal education. It raises ethical issues facing paralegals and attorneys in today's legal environment.



EYE ON ETHICS

The law of negligence has not been established on a federal level. Most negligence laws are established at the state level. While some are based on common law, some are based on statutes. However, negligence can be found on a local or community level and can be enacted by an ordinance or regulation

as well. Findings of negligence can vary from city to city, community to community, and state to state. It is important to recognize the jurisdiction that will govern the incident that you are examining and to determine what the rules, regulations, and laws of negligence are in that region.

Chapter Summary

Provides a comprehensive review of the key concepts presented in the chapter.

Damages are an essential element of most torts. Without damages, the plaintiff does not have a tort action. Damages are compensation in the form of a money award to the plaintiff for a civil wrong. Damages are considered a legal remedy.

Compensatory damages are the most common type of damages awarded in a tort action. Compensatory damages are awarded in an effort to make a plaintiff whole, to compensate her for her loss or injury. In a negligence action, the plaintiff must show actual injury in order to bring a cause of action. The court's motive for awarding monetary damages is that through a money payment, an effort is made to place the plaintiff in the position that she was in before the injury. An attempt is also made to provide a money payment for non-economic losses, such as pain and suffering.

A defendant will be liable to the plaintiff for all the natural and direct consequences that result from the defendant's action, and compensatory damages will be awarded for the injuries and harm sustained by the plaintiff from that act. However, if the consequences from the defendant's actions are considered remotely caused by the wrong, the remote consequences will not be considered in determining compensatory damages as they do not naturally flow from the wrongdoing.

Compensatory damages are typically classified into two categories: special damages and general damages. General damages are those compensatory damages that gener-

Summary

Abatement	Natural condition	Key Terms
Artificial condition	Nuisance	
Attractive nuisance doctrine	Premises	
Caveat emptor	Premises liability	
Injunction	Private nuisance	
Invitees	Public nuisance	
Landholder	Trespassers	
Lessee	Vendee	
Lessor	Vendor	
Licensee		

Key Terms

Used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

- | | |
|---|-------------------------|
| <ol style="list-style-type: none"> 1. What is proximate cause? 2. What is an eggshell skull plaintiff? 3. List five acts of God? 4. Why is the "but for" test important? 5. Why is the substantial factor test important? 6. What is the difference between the but for and substantial factor tests? 7. What is an intervening cause? 8. What is the difference between an intervening act of a third person and the intervening criminal act of a third person? Give examples of how each is different. 9. What is the burden of proof in a proximate cause matter? 10. What is actual cause? 11. What is cause in fact? | Review Questions |
|---|-------------------------|

Review Questions and Exercises

Emphasize critical thinking and problem-solving skills as they relate to tort law. The Review Questions focus on more specific legal concepts learned in each chapter. The Exercises introduce hypothetical situations and ask students to determine the correct answers using knowledge gained from studying topics in each chapter.

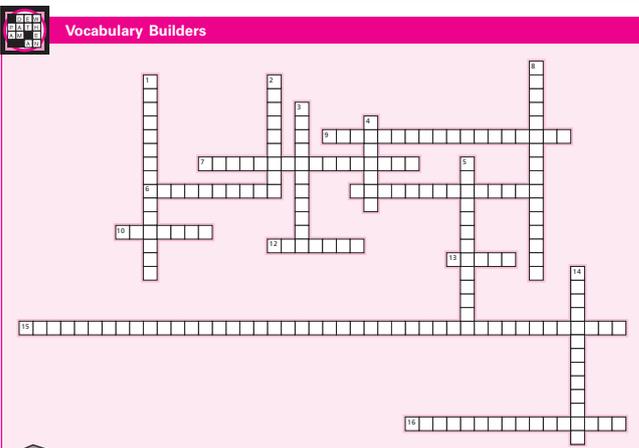
	PORTFOLIO ASSIGNMENT	Portfolio Assignments
<p>Make a list of possible attractive nuisances that may be found on someone's property. Then, observe your own property, home, or apartment complex and list any possible attractive nuisances that you think are present on the property. If none, ask your neighbor if you could walk the area of his or her property to see if you think any attractive nuisances are present there. Compare your first possible list of attractive nuisances with the list for your property or your neighbor's property.</p>		

Portfolio Assignments

Ask students to use the skills mastered in each chapter to reflect on major legal issues and create documents that become part of the paralegal's portfolio of legal research. The Portfolio Assignments are useful as both reference tools and as samples of work product.

Vocabulary Builders

Provides a crossword puzzle in each chapter that uses the key terms and definitions from that chapter to help students become more proficient with the legal terminology.



Vocabulary Builders

A crossword puzzle grid with 16 numbered starting points for words. The grid is composed of white squares for letters and black squares for empty space. The numbers are: 1 (vertical), 2 (vertical), 3 (vertical), 4 (horizontal), 5 (horizontal), 6 (horizontal), 7 (horizontal), 8 (vertical), 9 (horizontal), 10 (horizontal), 11 (horizontal), 12 (horizontal), 13 (horizontal), 14 (vertical), 15 (horizontal), and 16 (horizontal).

Case in Point

At the end of each chapter exposes students to real-world examples and issues through a case chosen to expand on key topics discussed in the chapter.



CASE IN POINT

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT
2002 N.Y. App. Div. LEXIS 4903
April 25, 2002, Argued
May 13, 2002, Decided

PRIOR HISTORY: In an action to recover damages for personal injuries, etc., the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Ort, J.), dated April 4, 2001, as granted that branch of the motion of the defendant Baldwin Union Free School District which was for summary judgment dismissing the complaint insofar as asserted against it, and the defendant David Schneider separately appeals, as limited by his brief, from so much of the same order as granted that branch of the motion of the defendant Baldwin Union Free School District which was for summary judgment dismissing all cross claims insofar as asserted against it.

District (hereinafter the District) and David Schneider, alleging that the District was negligent in its supervision of the infant plaintiff, that the District negligently maintained the gym and its sports equipment, and that Schneider negligently and recklessly caused the infant plaintiff's injuries. The Supreme Court granted the District's motion for summary judgment dismissing the complaint and all cross claims insofar as against it, finding that Schneider's act was impulsive and unanticipated, and that the plaintiffs' claim that the District failed to adequately maintain the gym and its sports equipment was without merit.

We affirm.

We order a judgment of affirmance to be entered in the above captioned matter.

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Chapter 1

Tort Law: An Introduction

CHAPTER OBJECTIVES

Upon completion of this chapter, you will be able to:

- Understand and define a tort.
- Identify what constitutes reasonable conduct.
- Explain the difference between a tort and a crime or a contract.
- Identify the elements of a tort.
- Discuss the major categories of torts.

Tort law can be overwhelming. Numerous situations and injuries can be categorized as torts, and the court system is constantly changing its view of what constitutes a tort. Who is responsible for damages caused to a piece of property by a trespasser? Who is responsible for the dog bite suffered by a little girl? Who is responsible for the damages that a celebrity suffers for untrue remarks made about his or her character? All of these situations, as well as many others, fall into various areas of tort law. This chapter gives an introduction to and an overview of the major aspects of tort law and provides a foundation on which to build discussions on specific areas of tort law in later chapters.

tort

A civil wrongful act, committed against a person or property, either intentional or negligent.

WHAT IS A TORT?

One of the most frequently asked questions when beginning the study of tort law is: What is a tort? It is not a dessert or a breakfast Danish. Nor is it a sour taste. So what is a tort? A **tort** is defined as a private or **civil** wrong or injury for which the

civil

Relating to private rights and remedies sought in an action brought to enforce, redress, or protect private rights.

CASE FACT PATTERN



A man was using a public telephone booth to make a telephone call. While he was in the booth, an alleged drunk driver sped down the street, lost control of his vehicle, and crashed into the man in the telephone booth, severing his leg. The door to the telephone booth had jammed and the man could not open it in time to retreat once he noticed the speeding car careening out of control. The accident left the injured man unable to walk or work. The injured man sued the telephone company for placing the booth near a

known hazardous intersection and because the door to the booth had jammed, trapping the man inside the booth.

- Who should the man sue and why? Is the telephone company the right party to sue or the drunk driver? Why?
- Are there public policy issues present?
- If so, might the public policy issues have an impact on the trial? Why or why not?

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