

# **INTRODUCTION TO THE LAW OF TORTS**

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*Instructor Manual*



Dear Instructor:

Welcome to the Wild World of Torts! You may be using this textbook to educate a business law class of students totally unfamiliar with the concept of “a civil wrong” Or, you may be facing a classroom filled with aspiring paralegals who received a smattering of torts in their introduction course.

Whatever the case, we hope you and your students will enjoy – yes, actually *enjoy!* – using this book. (Is this possible? We think so!)

Since you have adopted this textbook in the first place, we assume you have a sense of humor and are willing to descend from your lofty perch as The Teacher to interact with your students. (What’s that? Your department head chose the book and handed it to you to use? Well . . . go with the flow, folks, because you’re going to find some irreverent takes on torts.)

For those of you who think a day without case law is a day without sunshine, we hope you will revel in Tom’s selection of cases. (Frances freely admits Tom gets most of the credit for this book.) Because of space, we had to excerpt the cases. If you find them overly shortened, and the appropriate Reporter is available, send your students out to access The Whole Thing. (A legal term of art, a/k/a “the whole enchilada.”) But we think you’ll find the excerpts herein go to the heart of the cases.

We hope you won’t stop with what’s in the book. Your local newspaper is a rich source of information on torts. Tell the students to find an example on the local scene of the tort you’re studying. Odds on, it will be there in agonizing detail.

Utilize the Internet. We trust the school at which you teach provides students free access to the Internet. (If it doesn’t, of course, adjust our suggestions accordingly.)

Here are some general, constantly updated sites that will help you and your students.

- Findlaw, at <http://guide.lp.findlaw.com/01topics/22tort/index.html>. For the recent decisions in tort cases, see <http://legalnews.findlaw.com/legalnews/us/tort>.
- At [www.looksmart.com](http://www.looksmart.com), click on Library/Society/Law/Branches of Law/Torts. (The URL is very long and full of symbols, so we’re giving you the “click on” path.)
- [www.paralegals.org/legalresources](http://www.paralegals.org/legalresources), furnished by the National Federation of Paralegal Associations
- At [www.megalaw.com](http://www.megalaw.com), click on law topics index and then choose from assorted torts topic: breast implants, privacy, tobacco, torts, toxic torts — whatever specific chapter you’re on
- Hieros Gamos at [www.hg.org/torts.html](http://www.hg.org/torts.html)
- Emory University’s resources at [www.law.emory.edu/LAW/refdesk/subject/tort.html](http://www.law.emory.edu/LAW/refdesk/subject/tort.html)
- the Legal Information Institute from Cornell University at [www.law.cornell.edu/topics/torts.html](http://www.law.cornell.edu/topics/torts.html)
- the Law Library at Georgetown University at [www.ll.georgetown.edu/lr/rs/torts.html](http://www.ll.georgetown.edu/lr/rs/torts.html)
- for assorted caselaw, try <http://members.tripod.com/~quidproquo/torts.html>

- for a list of civil liability cases related to law enforcement, see the “Law Library of Case Summaries” at <http://aele.org/Civilcase.html>.
- the legal research guide at LexisOne will lead you to an wealth of tort-related practice areas. In the legal guide, click on practice areas, then personal injury and tort law. The full URL is [www.lexisone.com/legalresearch/legalguide/practice\\_areas/personal\\_injury\\_tort\\_law.htm](http://www.lexisone.com/legalresearch/legalguide/practice_areas/personal_injury_tort_law.htm).

It goes without saying (“So,” you wonder, “Why are they saying it?”) that you and your students must be guided by your own state’s laws. Either use them in the written form, or seek them out electronically by searching within your state. Most of the search engines listed above also classify information by state as well as by area of the law.

Guest instructors can be a source of current information and fresh delivery (to the infinite relief of both you and your students). Bring in a local businessperson, attorney, or paralegal. Be a wild and crazy guy or gal: if you live in an area where there is tort reform activity, invite someone from a tort reform association. If you have a True Believer, of course, balance with a True Believer from the other point of view.

Don’t be shy about using television shows, even the fictional ones. Some plot lines of the law-office-setting series on the air can provide a basis for stimulating discussion. If you should be so fortunate as to know ahead of time that *The Practice* or *Law and Order* is dramatizing a tort-related case, let your students know about it. (This will entail your admitting that you read your local television guide.) Whether you require them to watch is up to you, but don’t ignore the potential in this medium.

If you have comments, please send them to our publisher, [Pearsonpub@aol.com](mailto:Pearsonpub@aol.com), or call (972) 661-8800. Enika Schulze and her staff will be glad to help you. Pearson is a small, excellent, caring company. You will not be lost in a corporate maze dealing with Pearson, and we’re delighted to be published by this fine house. They will forward the compliments and weed out the harsh criticisms. . . no, they’ll send it all. We want the textbook to help your students be successful in dealing with torts. Let us hear from you!

Tom Alleman and Frances Whiteside

**TORTS, CONTRACTS, AND  
CRIMES: WHAT THEY ARE  
AND WHAT THEY AREN'T**

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**Pages 9-26**

You can guess what the students will want to do with this chapter: go directly to the handy-dandy chart on pages 19 and 20.

Try to haul them back and make them pass go. This is the basic stuff (another highly technical term to which we often resort) they will need to identify a tort when they see it.

If you are teaching this course as part of business law, as opposed to a paralegal course, emphasize the difference in civil law and criminal law. Unless they've totally suppressed the O. J. saga from their minds, they'll remember that after the criminal trial (was *that* a trial? another issue entirely . . . !) that a civil trial for wrongful death took place.

A tort is a *civil* wrong, and the case is brought by a plaintiff against a defendant, not by the state. Depending on the sophistication of your students, you may have to pound that at the beginning.

But it *is* a helpful chart, isn't it?

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**THE FIRST TORTS:  
TRESPASS, ASSAULT,  
BATTERY, AND CONVERSION**

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**Pages 27-48**

In which we first meet Professor Shlabotnik.

Your students have probably heard of the first three. The term “conversion” is not as common in nonlawyer conversation.

The cause of action information starting on page 28 is tremendously important. Unless the plaintiff can prove a cause of action based upon the factual evidence, there is no case.

Notice the distinction made on page 29 between the cause of action leading to the right for a case to be heard, not to a favorable verdict. Proving the cause of action entitles the plaintiff to have the matter heard by a jury. Or, in a performance analogy, it gets you into the foyer, but not into the auditorium. It gets you the interview, but not the job. It gets you to try-out camp, but not on to the team. (All right, we’ll stop – you understand. Just make sure your students understand.)

The concept of nominal damages, starting on page 41, is an interesting one because, on occasion, all the plaintiff may want is for the defendant to admit, “I was wrong.” We admit that may occur in the 100th case out of 100, because in the first 99 the plaintiffs are going for the gold

If you are in an urban setting, we think you can get a lively discussion from question #3 on page 46. Is there anyone using public transportation who has not, technically, experienced “unwanted touching”? (Did I ever tell you about this time I was on a train in downtown Tokyo, and . . . )

Throughout this book, each time the students encounter the elements to a complaint, be sure to present the defenses to that complaint.

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**SEEMS REASONABLE TO ME:  
THE IDEA OF ORDINARY  
CARE AND NEGLIGENCE**

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Pages 50-74

Ask your students what the term “ordinary prudence” means to them. Unless they were of age in the first Bush administration, they may not have heard the term “prudent.” Ask them if “prudence” is the same as “care.” (Generally, “prudence” is considered more conservative.)

Has a *Palsgraf*-style event occurred in your area? Can your students produce, from personal experience or by searching the media, a 21st century example in which someone was blamed for something that was not foreseeable and “really wasn’t his [or her] fault”? In such modern example, have the students identify the elements of

- foreseeable risk
- zone of danger
- what a reasonable person would do

(Clearly, the students may disagree about these elements.)

Before you launch the section beginning on page 60, have the students ascertain who is a “child” in your jurisdiction. At what age does “infancy” conclude? It may be different in civil and criminal matters. Depending on the level of school-age crime in your area, your students may find instances in the news of children — probably teenagers — being tried in criminal court as adults.

Ask your students why this “child or adult” factor is not as significant in civil cases. Usually a child does not have sufficient assets to merit a civil case; it is the parents or guardians, who presumably have assets, who are the targets of civil suits, when damages are the object. When punishment or deterrence is the object, as in a criminal case, the parent, or guardian is not an acceptable substitute for the child.

Be sure to point out the section quoted on page 65, concerning the fact that an adult standard of care applies to the child engaged in activities normally done only by adults.

When discussing *King v. Williams*, ask your students if they believe information available on the Internet has changed the standard of reasonable care. If they agree it has, raise the “digital divide” issue. What if people have no access to the Internet? (Unless they live in the poorest of towns, they do, through a public library.)

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**REALITY CHECK: ESTABLISHING THE  
STANDARD OF CARE IN THE COURTROOM**

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**Pages 75-100**

We first meet Dr. Shlabotnik, learned cousin of Professor Shlabotnik.

In Chapter 3, your students discussed an abstract standard of care. In Chapter 4, they meet the reality of establishing that standard in a court of law. While this chapter may not seem as relevant to business students as to paralegal students, who may be involved in building the blocks that will establish (or refute) a standard, business students are surely going to encounter torts litigation as a client.

If your students are not familiar with the term “Rambo lawyers” and “zealous advocacy,” this would be a good chapter to introduce the ideas. How far should a legal team go in its representation? Point out to students the ending paragraph on page 75. Do they agree with the authors’ statement?

Notice the qualifier: “or otherwise violate the principles of ethics.” What are these principles of ethics? Your local or state bar associations and paralegal associations probably have their codes of ethics posted on their websites. If you cannot find close-to-home ethics resources, use the American Bar Association Center for Professional Responsibility resources at [www.abanet.org/cpr](http://www.abanet.org/cpr) and the National Federation of Paralegal Associations resources at [www.paralegals.org/Development/home.html](http://www.paralegals.org/Development/home.html).

The list of four sources of evidence at the bottom of page 76 is crucial to the study of torts.

Emphasize to your students that, while lay witnesses may provide valuable facts and draw conclusions based on those facts, they are not qualified to give opinions in court on a standard of reasonable care. This statement may annoy some students and generate an interesting discussion!

If you are teaching paralegal students, you will want to dwell a bit more on expert witnesses. If these students work in litigation, they are going to find themselves locating experts, interviewing experts, evaluating the competence and reputation of experts, engaging (when they are senior and have that authority) the services of experts, and (count on it!) baby-sitting experts.

Assuming all have equal access to the Internet, send your students on a web search of legal experts in a variety of fields. Here are some ideas, or you may choose your own:

General: aviation. Specific: materials in an aircraft

General: birds. Specific: whether a certain species carries a disease

General: construction. Specific: load-bearing capability.

You can go from “D” through “Z” with amazing results. Your students may be surprised how many people are out there claiming expertise, or how often this esoteric expertise is utilized in litigation. (“My expert can beat your expert!”)

(If the Internet is not equally available to all, does your school’s library or the public library have a legal newspaper? Send your students to the advertising pages, which are generally thick with experts.)

When many consumer products are labeled with warnings and caveats, can your students name some 21st century examples of avoiding, or preventing, negligence *per se*? The best examples are so basic your students may not think of them: purity in grocery products or restaurant fare; safety in transportation vehicles; prominent and repeated warnings on consumer products with dangerous elements such as rat poison or insect spray.

For at least two reasons, your students should memorize the elements of *res ipsa loquitur* on pages 96-97. Immediately, such instant recall will help them succeed in this course. Longer range, paralegal students should know the elements (and probably the literal meaning of the Latin, since they're going to be dealing with people who drop Latin phrases).

Random thought: *Res Ipsa Loquitur* is not a bad name for a newsletter.

**NO CAUSE FOR ALARM: THE  
CONCEPT OF CAUSATION  
IN THE LAW OF TORTS**

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**Pages 101-122**

In recent years, lawyers have been encouraged to use plain English. Indeed, the Securities and Exchange Commission now requires that prospectuses filed with it be written in plain, simple English. The rationale behind this rule is that prospective investors should be able to understand the prospectus. (What a concept!)

Point out one sentence to your students that Justice Andrews' dissent in *Palsgraf*. The sentence is toward the middle of page 103 and reads: "The proximate cause, involved as it may be with other causes, must be, at the least, something without which the event would not happen."

If the cause were not present, the event would not have happened

What refreshing clarity!

Before they become involved in cause and effect, substantial factors, and the ever-popular "but for" speculation, emphasize to your students: the proximate cause is that cause without which the event would not have happened. (And sometimes, the proximate cause is called the "cause-in-fact.")

Students often can identify with the *Callahan* case because a similar situation to what befell Danny may have happened to a relative or a friend. . . that dreadful "combination of circumstances" factor that results in grief for all concerned. If you permit these anecdotes to be told in class, then force the students to examine them to identify proximate cause and concurrent causation (or lack thereof).

This is a good chapter to consult the web and look for current matters illustrating causation. You can personalize [www.findlaw.com](http://www.findlaw.com), for example, to have it report new tort decisions to you or new decisions in your state to you.

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**“DEE-FENSE, DEE-FENSE”:  
DEFENSES TO CLAIMS  
OF NEGLIGENCE**

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**Pages 123-150**

To introduce this chapter, we suggest a bit of cheerleading. (Hey, it’s up to you, but it gets their attention. By this point in the semester or quarter, your students’ eyes are beginning to glaze over.)

(No? Well, *ours* always were.)

Even if you’re more interesting an instructor than the authors, invite a guest lecturer to present this chapter . . . a trial attorney or paralegal from the trenches of the local defense bar.

Whoever presents the material, on page 125; there are two concepts your students should note:

The person with the burden of proof (usually, the plaintiff, who has made the allegation and brought the matter to the attention of the court) has to put on evidence to win.

The person who does not have the burden of proof (usually the defendant against whom the allegation has been made) has no obligation to put on evidence.

The defendant can instead show that the evidence of the plaintiff is insufficient or irrelevant. The trial could be “all about” the evidence introduced by the plaintiff.

But! If the defense team asserts affirmative defenses, those defenses must be proven by evidence introduced by the defense team.

At the time this manual was written, there were 37 examples of jury instructions available through Findlaw, chiefly for civil cases but some for criminal matters. The full URL is <http://guide.findlaw.com/FindLawSearch/sSEARCH?entry=jury+instructions>.

Some of the states publish a *Manual of Model Civil Jury Instructions* that can be download in Adobe® format. If your state is among them, you may want to have the students find and browse through these models.

You might want to track a case that was underway when this manual was written: *Ruffing v. Union Carbide*, 4049/97, in the Supreme Court of Westchester County, New York, alleging that corporate defendants were responsible for birth defects in the children of workers. According to a news story in the January 2, 2001, issue of the *New York Law Journal* ([www.nylj.com/stories/01/01/010200a1.htm](http://www.nylj.com/stories/01/01/010200a1.htm)), the court “rejected the defendant’s request for the court to weigh the contributory negligence, or comparative fault, of parents in causing the plaintiff child’s birth defects.”

(And you’d better have them memorize the main affirmative defenses on pages 123-124. Rote learning is not always bad.)

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**THE SPECIAL DUTIES OF  
LANDOWNERS**

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**Pages 151-172**

Or, as the greeting card never said, “Don’t be outstanding in *my* field, Buddy!”

This chapter may move some students to bring up anecdotes about the burglar who successfully sued the homeowner when the burglar hurt himself tripping over the homeowner’s chair during the course of a burglary. Refer these students to the urban legend pages on the web or tell them to put a lid on it until criminal law class. (The latter, of course, is not useful if you also teach the criminal law course.)

There are enough premise liability matters to concern either business law or paralegal students without having to delve into myth. Indeed, a careful study of the trespasser/licensee/invitee standard is enough to convince one to be a hermit or never let the public into one’s business premises. Your business students should be aware that the private nuisance and attractive nuisance concepts can include sound, light, and odors carried in the air.

If you live in an area where horses are not uncommon (or hey, even if you never see a horse -- your students understand “horse,” right?), your students may find it interesting to review the landowners’ liability cases found at [www.law.utexas.edu/dawson/cases/land/land.htm](http://www.law.utexas.edu/dawson/cases/land/land.htm). You can find the text of two Year 2000 cases with opposing holdings and ask the students to compare them.

In *Brumfield v. Gafford* (768 So2d233), the Louisiana Court of Appeals held on September 22, 2000, that a landowner was not liable for injury by a horse stabled on the landowner’s property. In *Bove v. Schlosstein* (unpublished, 2000 WL 15679), the Washington Court of Appeals held on November 16, 2000, that a landowner was liable for injury by a horse stabled on the landowner’s property. Note that in *Bove* it was disputed whether the injured party was a trespasser, a licensee, or an invitee.

The last sentence on page 169 sums it up: “. . . understanding a landowner’s duties is an essential part of understanding the law of torts.” You may or may not be the landowner, but you could well be the landowner’s realtor, attorney, paralegal, accountant, or employee.

**WHAT'S IT WORTH TO YOU?  
COMPENSATORY DAMAGES  
IN TORT CASES**

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**Pages 173 - 200**

The thorniest of problems: how does one determine recompense for damages done — past, current, and present; abstract or concrete; physical or emotional?

What would a person have earned, had he or she not been irreparably injured?

What abstract contributions to society would he or she have made, had he or she lived?

The three basics listed at the top of page 188 are just those basics. (But your students should know them!)

Has tort reform arisen, or been proposed or adopted, in your state? Is there a legislative cap on damages?

Be sure your students realize there is a group of professionals called forensic economists and forensic accountants who specialize in calculating lost earnings. There is a bibliography of forensic economics resources at [www.willyancey.com/damages.htm](http://www.willyancey.com/damages.htm). True, it is dated 1996, but it's a good jumping-off place if you have students who want to know more about this subject. (Might help them locate an expert witness some day, too!)

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**“OOOOH . . . GROSS!”  
AGGRAVATED NEGLIGENCE,  
FAULT AND PUNITIVE DAMAGES**

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**Pages 201 - 216**

Or, when the jury is really ticked!  
The jurors don't like the defendant, or the defendant's attorney, or the defendant's attorney's tie!!  
Or all three!!!  
And they plan to sock it to the defendant!!!!

(Or sock it to the plaintiff for the same deep and logical reasons, if they find the lawsuit frivolous, and they're missing work, and they may be fired and . . . you understand . . . )

You know somebody is going to bring up the hot-coffee-at-McDonald's matter, so you may as well have this URL on hand: [www.atlanet.org/CJFacts/other/mcdonald.ht](http://www.atlanet.org/CJFacts/other/mcdonald.ht). Then you all can work, literally, from the same page when discussing the case. Adjacent to it is another kind of fun page called “The Other Side of the Story” with the lurid subtitle of “What They Don't Want You to Know.”

(We don't know who “they” is, but ATLA is certainly warning “us” against “them.” Both pages are from the American Trial Lawyers Association, which fact will be noticed, we hope, by some students.)

Laymen tend to toss the allegation of “gross negligence” around with abandon — just run a search on the Internet with these two words, and you'll find many allegations. Better than your students absorb the parallel with recklessness, and the definition at the top of page 202. To be termed “gross,” the negligence must be a conscious, not accidental or unconscious, act or failure to act. A legal duty must be involved, as in employer to employee, or employee to employer. And, as stated on page 208, there is a combination of heightened degree of risk and awareness of that risk.

Gross negligence does not require an intent to harm — that carries into malice, “ a wrongful act done intentionally without just cause or excuse.”

Just in case you don't know the Constitution for memory, the Eighth Amendment reads:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

And the relevant section of the Fourteenth Amendment reads:

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Your students should be able to locate the text through any search engine.

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**TORT LIABILITY FOR  
DEFECTIVE PRODUCTS**

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**Pages 217 - 248**

From a practical, career-enhancing point of view, this chapter should be important to your students, whether business or paralegal. Their goal, we hope, will be to support the manufacture of nondefective products, whether they work in corporate headquarters or in the legal department of the corporation. If they end up on the plaintiff/consumer side, they'll still be developing a career out of products liability.

The winter 1999 issue of the *National Paralegal Reporter* has a practice theme of products liability. For an interesting take on both sides, direct your students to an article jointly written by Lorraine Wong and Barbara Ritchie, two paralegals in Hawaii who work for plaintiff and defense, respectively. They're also friends and, out of the courtroom, professional colleagues. The article's specific URL is [www.paralegals.org/Reporter/winter99/pdl.htm](http://www.paralegals.org/Reporter/winter99/pdl.htm).

If your students haven't had contract law, you might quickly review the implied warranties of merchantability, fitness for intended use, and title. As listed in the Model Uniform Commercial Code, Section 2-314(2), the specifics of merchantability are:

- the product will pass without objection under the contract description;
- in the case of fungible products, the products are of fair and average quality within their description;
- the product is fit for the ordinary purpose for which such product is used;
- the product is of even kind, quality, and quantity as promised by the seller;
- the product is adequately contained, packaged, or labeled as required by the contract; and
- the product conforms to the promise or affirmation, if any, made on the container or label.

(Should the word "fungible" mean nothing to your students, suggest grains of salt, rice, or sugar. One looks much like the next . . . and the next . . . and the next . . . .)

A ladder is a good illustration, for almost every household has a small ladder designed to hold very little weight. Compare it with the painter's ladder designed to support painters and equipment. If a ladder designed for ordinary household use collapses under commercial use, there would be clear obstacles to alleging it was a defective product.

Unless you're using this book years after it was written, have your students check on the status of the Firestone/Bridgestone tire litigation. (It should still be going on . . . .) On the day we wrote this page, there were dozens of web pages of lawyers offering representation on the matter. If that's old hat (What happened? Did the company settle?), pick another product liability biggie in your current news. Shouldn't be a problem.

**STICKS AND STONES:  
THE LAW OF DEFAMATION,  
LIBEL, AND SLANDER**

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**Pages 249 - 284**

(Who are we kidding? Of course, words hurt! Just because this is changed on the playground doesn't make it true! Do you *believe* everything kids say on the playground?!?)

This web page may be gone by the time you're teaching the course, but we have to mention it 'cause it's got (or, it had, as the case may be) such a great name: [dancingwithlawyers.com](http://dancingwithlawyers.com). We found it at [www.dancingwithlawyers.com/freeinfo/libel.shtml](http://www.dancingwithlawyers.com/freeinfo/libel.shtml). The page doesn't have a thing to tell the students that they can't learn from this textbook, but . . . it's a great name for a web page!

In addition to being defamed, libeled, or slandered in hard copy print and verbally (both face-to-face and on international television!), thanks to modern technology, you can be *dissed* (a highly technical term) on the Internet (and perhaps never even know it, unless a buddy stumbles across the page someday).

Your students should also beware of making remarks that can harm the professional careers of others.

In fact, we think this chapter provides a fertile opportunity to speak a word for civility and civil discourse.

(We hope you're in favor of these.)

**I WANT TO BE ALONE?:  
TORTS INVOLVING  
PRIVACY AND SECLUSION**

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**Pages 285 - 310**

An ever-timely illustration you can use with students is the rights of privacy they have as students. While these may vary from program to program, they probably include

- the right to have grades delivered by mail, not posted by the school
- the right to have his or her information kept private and not discussed by you with another student
- the right to have private conferences with you without other students listening.

If you did not use a tabloid to illustrate slander in Chapter 11, you can still waste money at your supermarket and find some current examples of invasion of privacy.

At <http://pgfm.com/publications/context.html> (provided it's still posted), there is an interesting commentary by a law firm on the matter of Richard Jewell, the Atlanta, Georgia, security guard plucked out of obscurity in 1996 and, for a period, made a public figure as a suspect in the bombing at the Olympics. It mentions the element of defamation.

Another Jewell cite is at [www.lawnewsnetwork.com/stories/A9841-1999Nov17.html](http://www.lawnewsnetwork.com/stories/A9841-1999Nov17.html), focusing on whether Jewell was a public figure and whether malice was involved. This newspaper article also gives the case cite: *Jewell vs. Cox Enterprises*, No. 97-VS0122804-G (Fult. St. filed Jan. 28, 1997).

**COURT TORTS: MALICIOUS  
PROSECUTION, ABUSE OF  
PROCESS, AND FALSE ARREST**

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**Pages 311 - 328**

The Americans for Effective Law Enforcement home page maintains a list of “hot cases” on law enforcement issues at <http://aele.org/Hot.html>. Check there for recent cases involving false arrest or abuse of process.

**RISKY BUSINESS:  
FRAUD, MISREPRESENTATION, AND  
TORTIOUS INTERFERENCE  
WITH CONTRACTS**

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Pages 329 - 350

The National Fraud Information Center, maintained by the National Consumers League, is a good resource for this chapter. It's found at (what else?) [www.fraud.org](http://www.fraud.org).

Briefly, review the elements of fraud to be sure your students understand what constitutes fraud. It's an intentional misrepresentation of a material fact, a fact that — had it been known — might have caused a person to withdraw from the transaction. The person intentionally perpetrating the fraud had “scienter,” or guilty knowledge of what he or she was doing. The innocent party relied on the defrauding party, and the innocent party suffered damages as a result of the deal. In short:

- misrepresentation of a material fact
- scienter
- intent
- reliance, and
- damages

must be proven for fraud to be present.

Misrepresentation is similar but lacks the elements of scienter and intent.

At the home page of the Association of Certified Fraud Examiners, save a lot of clicking by entering: [www.cfenet.com/fraudnews/fraudnews.shtml](http://www.cfenet.com/fraudnews/fraudnews.shtml). This URL will take you straight to recent news stories involving fraud.

Visit the federal Internet Fraud Complaint Center at [www.ifccfbi.gov](http://www.ifccfbi.gov).

[Fraudreport.com](http://Fraudreport.com) is an on-line newsletter from the Fraud Defense Network.

**WEIRD SCIENCE?  
THE DEVELOPING LAW  
OF TOXIC TORTS**

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**Pages 351 - 370**

To get the recent scoop here, try your local newspaper.

Or, go to [ToxLaw.com](http://ToxLaw.com).

To help you find *Kumho Tire*, one URL you can use is <http://laws.findlaw.com/us/000/97-1709.html>. The case docket number was No. 97-1709, argued December 7, 1998, and decided March 23, 1999. The Supreme Court upheld the decision of the district court not to admit the expert opinion of the tire failure analyst, writing that the district court has latitude in deciding what evidence it will and will not admit.

**THEROLE OF INSURANCE  
IN THE LAW OF TORTS**

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**Pages 371 - 396**

This is a great chapter to turn over to a guest lecturer. We recommended an attorney/paralegal team from a firm specializing in insurance defense. If you're teaching paralegal students, ask the guest paralegal to include trial notebook preparation in his or her remarks.

Probably the best online resource for this chapter is TIPS, the Tort and Insurance Practice Section of the American Bar Association at [abanet.org/tips/home.html](http://abanet.org/tips/home.html). The section offers a fast-developing issues page at [www.abanet.org/tips/emerging/EICAagenda.html#anchor137433](http://www.abanet.org/tips/emerging/EICAagenda.html#anchor137433).

The home page of the International Association of Insurance Fraud Agencies is found at [www.iaifa.org](http://www.iaifa.org).