

ASPEN COLLEGE SERIES

■ Emily Lynch Morissette

PERSONAL INJURY AND THE LAW OF TORTS FOR PARALEGALS

THIRD EDITION



Wolters Kluwer
Law & Business

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Personal Injury and the Law of Torts for Paralegals

Third Edition

Emily Lynch Morissette, Esq.



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*To my mom,
who supported and encouraged me in realizing this dream: without you,
this book would not have been possible*

Foreword

How to Be a Successful Paralegal Student By Michael Frazier, Paralegal

In order to be a successful paralegal student, there are a variety of factors that must be considered. While there is no single right way to approach an education, the factors that determine a student's level of success can generally be categorized as attendance, attention, participation, and studying. Every student has his own methods and learning curves, which makes determining the right formula for any one student quite difficult. The following are my suggestions on the aforementioned categories of success.

Attendance is the first and most obvious step toward being a successful student; in order to be successful you have to attend class. However, there is more to attendance than just showing up. A successful student will arrive early and be prepared for the day's lecture or activity. This not only shows a desire to learn but also allows time to get organized before the start of the lecture. Though it should go without saying, it is worth mentioning the importance of attending every class session, as there is vital information discussed in every lecture. Missing one class could make a noticeable difference. If it is necessary to miss a class, arrange to copy the notes of another success-oriented student.

Once class starts, pay attention. For many students, it has been quite some time since they were last in school. Remembering how to stay attentive for a long time can be a daunting task at first. The best way to maintain focus is through taking notes. Even if printed notes are provided by the instructor, taking down notes of what is discussed in the lecture may provide added information

that is not in the handouts or textbooks. Additionally, since learning is such an individualized process, taking down personally significant notes will increase the likelihood of being successful.

Another way to maintain focus, other than note taking, is to participate in class discussions and activities. Contributing to class discussions is a litmus test for both the student and professor to gauge whether the material is being absorbed and retained. Participation can also bolster confidence and help students to understand the material more thoroughly. Also, learn from other students' participation. Most of the time students will have the same questions and struggle in the same areas of the material. The instructor's interaction with each student then becomes quite valuable to the class as a whole, whether as a clarification for similar confusion or as a reinforcement of the fundamentals.

The most important tool for success is to study. There is much to be done outside of class in order to be a successful student. Assignments and required readings should be completed *before* the start of class. Being punctual with assignments is a fundamental aspect of being successful in school as well as in the workforce. Having required readings done is necessary in order to participate in class discussions, to take accurate and meaningful notes, and to stay current with lectures and activities. Most course material builds from beginning to end with the fundamentals being taught first, then more difficult concepts coming later. As the concepts become more complex, students who have

not kept up with the assignments and readings will find themselves slipping further behind. It is recommended to spend at least two hours studying and reviewing outside of class for every one hour spent in class. While this is not a hard and fast rule, it serves to show the dedication and commitment that is required to be a successful student.

There is no specific model for being a successful paralegal student. Nevertheless, all successful students share many of the same practices. They all attend class, take meaningful notes, participate in class discussions and activities, and spend a good amount of time outside of class studying and preparing. Using these fundamental categories will put any student on the path to success!

Preface

Focus

Personal Injury and the Law of Torts for Paralegals meets the growing need for a personal injury textbook with an emphasis on medical information useful in litigating all types of tort cases. Included in the book is a guide on how to obtain medical records and how to understand those records. Paralegals are provided with a sample medical authorization to assist them in obtaining medical records in compliance with HIPAA. The textbook gives tips on what to look for in the medical records and gives an example of a medical summary. Students are provided with medical records that they must review and summarize. An appendix with basic medical information is provided, including medical terms, basic anatomy, common prescription drug types, and medical tests that may be encountered when reviewing personal injury medical records.

This information is of benefit to many of the subjects included in the book, such as premises liability, medical malpractice, intentional torts to persons, strict liability, products liability, and workers' compensation. In addition, the book provides a comprehensive overview of the remaining torts outlined in the American Association for Paralegal Education's Model Tort Law Syllabus.

- Negligence
- Defenses to Negligence
- Defenses to Intentional Torts
- Immunities
- Vicarious Liability
- Nuisance

The final section of the book goes through the litigation process, beginning with complaints, then discovery, and ending with the trial itself. Insurance is discussed in detail due to the importance of insurance in tort litigation. Samples of the discussed pleadings and discovery are included, such as a complaint, affirmative defenses, an answer, interrogatories, requests for production of documents, and requests for admissions. A deposition of a plaintiff in a torts case is provided, and the students are given a sample summary of the deposition so they can learn how to

prepare deposition summaries. In addition, this chapter instructs the paralegal on how to produce a trial notebook, which is one of major functions of paralegals in the field of tort litigation.

Overview

The book starts by introducing the concept of torts and then moving into each element of negligence. Although intentional torts might be an easier concept to understand for paralegals, the majority of the paralegal's work experience will be negligence-related. Thus, negligence is placed in the beginning of the book to give it greater emphasis, and each element of negligence has its own separate chapter. After discussing each element of negligence, issues related to negligence, and the defenses to negligence, the book tackles medical malpractice as a type of negligence.

Next, intentional torts are covered. Intentional torts to persons and intentional torts to property are divided into two chapters for easier learning. Strict liability and products liability also receive separate chapters.

Workers' compensation is discussed close to the end of the book. While workers' compensation is an area of law many beginning paralegals go into, it does not fit nicely into the above categories and thus merits its own chapter.

Chapter 15 discusses how to discover medical records, especially with the issues raised by the Health Insurance Portability and Accountability Act (HIPAA). In addition, paralegal students will learn how to review and summarize medical records.

The last chapters address the litigation process from a torts standpoint. Chapter 16 starts with complaints, answers, and affirmative defenses. The chapter also covers discovery. Students learn how to summarize a deposition and examples of each type of discovery are provided. In Chapter 17, students learn how to prepare a trial notebook.

Appendix A, An Introduction to Medicine, presents a short introduction to medical terms, basic anatomy, common prescription drug types, and medical tests that may be encountered when reviewing personal injury medical records. This appendix is a jumping-off point for the paralegal, who will have to learn much more about medicine if he decides to work in personal injury.

Chapter Format and Features

- Chapter Outline
- Chapter Objectives: Every chapter begins with the objectives of the chapter, so a student will know precisely what he should be learning as he reads the chapter.
- Introduction
- Body of Chapter
 - Marginal definitions: Legal terminology is defined in the text and in the margins to assist with reading comprehension. Marginal definitions are included

even for the cases, as cases often have words a beginning paralegal would not know.

- Examples and answers within the text: Difficult concepts are discussed and then shown through examples. The examples within the text are substantial and often provide the answer with the example.
- Tables: The elements of several of the torts are placed into a table, at the beginning of the discussion for the tort, for easier reference.
- Plain English: The textbook uses plain English to describe complex legal terms and concepts.
- Case Summaries: Cases have been redacted for the key facts, discussion, and the holding so the paralegal student, who is very busy, does not have to wade through irrelevant material. Each case is directly on point and provides the paralegal student with a variety of old standards and new cases to give the student a well-rounded view of torts.
- Legal Documents: The textbook provides many of the forms, pleadings, and complaints a beginning paralegal will use in his employment.
- Professional Contributor Essay: Each chapter has a professional contributor who discusses various topics, such as how to study torts, a career as a paralegal, becoming a paralegal as a second career, networking, life as a new paralegal, document review, or the steps in a lawsuit.
- Ethics Section: Each chapter also has a section on ethics as it pertains specifically to paralegals.
- Chapter Summary: At the end of each chapter is a concise chapter summary, along with key words, so students will know the legal language they should be learning.
- Key Terms: Key words from the chapter are placed together at the end of the chapter.
- Review Questions: The review questions are basic questions to determine whether the student read the chapter, and the exercises are more in-depth applications of the concepts of the chapter, so the student can apply what he has learned.
- Web Links: Every chapter has web links related to the subject matter in the chapter or to tort law in general.
- Exercises: The exercises are in-depth fact scenarios where the student must apply what he has learned. Exercises also include the use of the Internet and whenever possible tie the concepts of torts law to real life. For instance, the Consumer Product Safety Commission is discussed in the context of products liability. The CPSC has regulations for pacifiers, which are included in this book, and which the student is required to read and apply.

Supplemental Teaching Material

- Sample Syllabus
- Additional Websites/Using the Internet for Legal Research
- Each Chapter:

- *Summary*
- *Outline*
- *Further Exercises*
- *Answers to Review Questions*
- *Answers to Exercises*

One of the best features of this book is the combination of so many examples, with answers, along with further, more-detailed exercises at the end of the chapter. The answers to these exercises are included in the Instructor's Manual.

- Using the Appendices
 - Additional Medical Information
- Test Bank with sample test questions for Chapters 1-17
- Sample Exams
 - Mid-Term: true-false, multiple choice, short answer, and essay questions
 - Answer Key to Mid-Term
 - Final: true-false, multiple choice, short answer, and essay questions
 - Answer Key to Final
- Further Reading List and Bibliography

Emily Lynch Morissette

November 1, 2013

Special Note on the Third Edition:

The third edition is especially exciting, as it keeps up with recent developments in tort law by giving up-to-date examples. As I have been both a paralegal and an attorney, I have made sure to help prepare the paralegal students for real workplace assignments, such as documenting damages and preparing trial exhibits. Former students have indicated this book is such a help to them that they have kept it and use it at their personal injury workplaces.

Acknowledgments

Betsy Kenny, thank you for continuing to assist me with the third edition; your help truly polishes the book up.

I greatly appreciate the efforts of the editorial advisors in editing this book, and would like to also thank Kenneth Chumbley for his excellent assistance.

Thank you to my husband for believing in my dream to be an author.

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