

# Summary of Contents

*Contents xi*

*Foreword xxi*

*Preface xxiii*

*Acknowledgments xxvii*

<b>Chapter 1</b>	Introduction to Torts and Negligence 1
<b>Chapter 2</b>	First Element of Negligence: Duty 15
<b>Chapter 3</b>	Second Element of Negligence: Breach of Duty 35
<b>Chapter 4</b>	Third Element of Negligence: Causation of Injury 53
<b>Chapter 5</b>	Fourth Element of Negligence: Damages 73
<b>Chapter 6</b>	Special Issues Related to Negligence 103
<b>Chapter 7</b>	The Defenses to Negligence 127
<b>Chapter 8</b>	Medical Malpractice 145
<b>Chapter 9</b>	Intentional Torts to Persons 171
<b>Chapter 10</b>	Intentional Torts to Property 209
<b>Chapter 11</b>	The Defenses to Intentional Torts and Immunities 227
<b>Chapter 12</b>	Strict Liability and Products Liability 247
<b>Chapter 13</b>	Nuisance 279
<b>Chapter 14</b>	Workers' Compensation 293

**Chapter 15** Discovery and Review of Medical Records 309

**Chapter 16** The Tort Litigation Process Before Trial 331

**Chapter 17** The Tort Litigation Process During Trial 383

**Appendix A** An Introduction to Medicine 399

**Appendix B** Initial Client Meeting Form 425

*Glossary 433*

*Index 451*

# Contents

*Foreword xxi*

*Preface xxiii*

*Acknowledgments xxvii*

## **Chapter 1**

## **Introduction to Torts and Negligence 1**

---

	Chapter Outline	1
	Chapter Objectives	1
<b>1.1</b>	Introduction	2
<b>1.2</b>	Definition of a Tort	2
<b>1.3</b>	Sources of Tort Law	4
<b>1.4</b>	The Public Policy Objectives Behind the Law of Torts	7
<b>1.5</b>	Categories of Torts	7
<b>1.6</b>	How Does Tort Law Relate to Other Areas of Law?	9
<b>1.7</b>	Prima Facie Case of Negligence	9
<b>1.8</b>	Unavoidable Accidents	10
<b>1.9</b>	Gross Negligence	10
	Student Contributor: Working in Criminal Law	11
	Ethics: On Responsibilities of Paralegals	11
	Chapter Summary	12
	Key Terms	12
	Review Questions	13
	Web Links	13
	Exercises	14

## Chapter 2

### First Element of Negligence: Duty 15

---

	Chapter Outline	15
	Chapter Objectives	15
<b>2.1</b>	Introduction to Duty	16
<b>2.2</b>	The First Element of Negligence: Duty	16
<b>2.3</b>	Scope of Duty	17
<b>2.4</b>	Duty to Act or Failure to Act	19
<b>2.5</b>	Negligence Per Se	25
	Student Contributor: Studying Torts	30
	Ethics: On Communication with the Client	30
	Chapter Summary	31
	Key Terms	31
	Review Questions	31
	Web Links	32
	Exercises	32

## Chapter 3

### Second Element of Negligence: Breach of Duty 35

---

	Chapter Outline	35
	Chapter Objectives	35
<b>3.1</b>	Introduction to Breach of Duty	35
<b>3.2</b>	Reasonableness	36
<b>3.3</b>	Learned Hand Formula	38
<b>3.4</b>	The Restatement (Second) of Torts' Risk-Utility Test	45
<b>3.5</b>	Good Samaritan Law	46
	Student Contributor: Becoming a Paralegal as a Second Career	48
	Ethics: On Fees	48
	Chapter Summary	49
	Key Terms	49
	Review Questions	49
	Web Links	50
	Exercises	50

## Chapter 4

### Third Element of Negligence: Causation of Injury 53

---

	Chapter Outline	53
	Chapter Objectives	53

- 4.1 Introduction to Causation 54
- 4.2 Cause-in-Fact 54
- 4.3 Proximate Cause 61
- 4.4 Res Ipsa Loquitur 65
  - Student Contributor: Becoming a Paralegal as a Retiree 68
  - Ethics: On Education Regarding Paralegal’s Job Responsibilities 68
  - Chapter Summary 68
  - Key Terms 69
  - Review Questions 69
  - Web Links 70
  - Exercises 70

---

**Chapter 5 Fourth Element of Negligence: Damages 73**

- Chapter Outline 73
- Chapter Objectives 73
- 5.1 Introduction to Damages 74
- 5.2 Compensatory Damages 75
- 5.3 Punitive Damages 82
- 5.4 Nominal Damages 89
- 5.5 Mitigation of Damages 89
- 5.6 Collateral Source Rule 89
- 5.7 Wrongful Death 91
- 5.8 Survival Actions 92
- 5.9 Wrongful Birth 92
  - Student Contributor: Legal Networking 101 99
  - Ethics: On Damages 99
  - Chapter Summary 99
  - Key Terms 100
  - Review Questions 100
  - Web Links 101
  - Exercises 101

---

**Chapter 6 Special Issues Related to Negligence 103**

- Chapter Outline 103
- Chapter Objectives 104
- 6.1 Introduction to Special Issues Related to Negligence 104

- 6.2** Premises Liability 104
- 6.3** Vicarious Liability 112
- 6.4** Negligent Infliction of Emotional Distress (NIED) 117
  - Student Contributor: Being a Legal Secretary Versus a Paralegal 121
  - Ethics: On Identification as a Paralegal 122
  - Chapter Summary 122
  - Key Terms 123
  - Review Questions 123
  - Web Links 124
  - Exercises 124

## **Chapter 7                    The Defenses to Negligence 127**

---

- Chapter Outline 127
- Chapter Objectives 127
- 7.1** Introduction to Defenses to Negligence 128
- 7.2** Contributory Negligence 128
- 7.3** Comparative Negligence 130
- 7.4** Assumption of the Risk 136
- 7.5** Statutes of Limitations 137
  - Student Contributor: Life as a New Paralegal 140
  - Ethics: On Confidentiality 140
  - Chapter Summary 140
  - Key Terms 141
  - Review Questions 141
  - Web Links 142
  - Exercises 142

## **Chapter 8                    Medical Malpractice 145**

---

- Chapter Outline 145
- Chapter Objectives 146
- 8.1** Introduction to Medical Malpractice 146
- 8.2** Types of Medical Malpractice 146
- 8.3** Cases Against Different Types of Medical Professionals/Groups 153
- 8.4** Cases Against Health Care Facilities 154
- 8.5** Medical Malpractice Statutes 155

- 8.6** Elements of Medical Malpractice 155
- 8.7** Arbitration 162
- 8.8** Informed Consent 163
- 8.9** Defenses to Medical Malpractice 165
  - Student Contributor: Paralegal Program Proves Helpful for Getting into Law School 166
  - Ethics: On Information About Legal Services 166
  - Chapter Summary 166
  - Key Terms 167
  - Review Questions 167
  - Web Links 167
  - Exercises 168

## Chapter 9

## Intentional Torts to Persons 171

---

- Chapter Outline 171
- Chapter Objectives 173
- 9.1** Introduction to Intentional Torts to Persons 173
- 9.2** Elements of All of the Intentional Torts to Persons 174
- 9.3** Assault 176
- 9.4** Battery 179
- 9.5** False Imprisonment and False Arrest 182
- 9.6** Intentional Infliction of Emotional Distress (IIED) 184
- 9.7** Fraud 186
- 9.8** Misrepresentation 189
- 9.9** Invasion of Privacy 190
- 9.10** Defamation 192
- 9.11** Malicious Prosecution 199
  - Student Contributor: The Temporary Restraining Order Process 201
  - Ethics: Charging for Paralegal Services 202
  - Chapter Summary 203
  - Key Terms 204
  - Review Questions 205
  - Web Links 205
  - Exercises 205

**Chapter 10 Intentional Torts to Property 209**

---

- Chapter Outline 209
- Chapter Objectives 210
- 10.1** Introduction to Intentional Torts to Property 210
- 10.2** Trespass to Land 210
- 10.3** Trespass to Chattels 214
- 10.4** Conversion 220
- Student Contributor: Paralegal Experience Before Law School 222
- Ethics: On Sharing Legal Fees 223
- Chapter Summary 223
- Key Terms 224
- Review Questions 224
- Web Links 224
- Exercises 225

**Chapter 11 The Defenses to Intentional Torts and Immunities 227**

---

- Chapter Outline 227
- Chapter Objectives 228
- 11.1** Introduction to Defenses to Intentional Torts 228
- 11.2** Consent 229
- 11.3** Privilege 232
- 11.4** Duress 237
- 11.5** Statute of Limitations 237
- 11.6** Immunities 237
- Student Contributor: Taming the Bar 241
- Ethics: On Competence 242
- Chapter Summary 243
- Key Terms 244
- Review Questions 244
- Web Links 245
- Exercises 245

**Chapter 12 Strict Liability and Products Liability 247**

---

- Chapter Outline 247
- Chapter Objectives 248



- 12.1** Introduction to Strict Liability and Products Liability 249
- 12.2** Strict Liability Caused by Abnormally Dangerous Activities 249
- 12.3** The Rule of Strict Liability for Abnormally Dangerous Activities 252
- 12.4** Strict Liability Applied to Owners of Animals 254
- 12.5** Defenses to Strict Liability 255
- 12.6** Origin of Products Liability 256
- 12.7** The Parties in Products Liability 256
- 12.8** Theories of Recovery 257
- 12.9** Restatement (Third) of Torts Approach to Products Liability 267
- 12.10** Consumer Product Safety Act 268
- 12.11** The U.S. Food and Drug Administration 269
- 12.12** Defenses to Products Liability 269
  - Student Contributor: Construction Defect 270
  - Ethics: On Unfair Discovery Practices 271
  - Chapter Summary 271
  - Key Terms 272
  - Review Questions 272
  - Web Links 273
  - Exercises 273

## Chapter 13

### Nuisance 279

---

- Chapter Outline 279
- Chapter Objectives 279
- 13.1** Introduction to and the Elements of Private Nuisance 279
- 13.2** Public Nuisance 285
- 13.3** Remedies to Nuisance 289
  - Student Contributor: Court Personnel 290
  - Ethics: On Pro Bono Legal Service 291
  - Chapter Summary 291
  - Key Terms 291
  - Review Questions 291
  - Web Links 292
  - Exercises 292

## Chapter 14

### Workers' Compensation 293

---

- Chapter Outline 293
- Chapter Objectives 293

- 14.1** Introduction to Workers' Compensation 294
- 14.2** Whether an Injury Is Covered by Workers' Compensation 295
- 14.3** Exclusions to Workers' Compensation 297
- 14.4** The Specific Benefits Provided Under Workers' Compensation 298
- 14.5** Exclusive Remedy 301
- 14.6** How to File a Workers' Compensation Claim 301
- 14.7** When a Third Party Causes the Worker's Injury 304
  - Student Contributor: Court Clerks 305
  - Ethics: On Unauthorized Practice of Law 305
  - Chapter Summary 306
  - Key Terms 307
  - Review Questions 307
  - Web Links 307
  - Exercises 308

**Chapter 15****Discovery and Review of Medical Records 309**

---

- Chapter Outline 309
- Chapter Objectives 310
- 15.1** Introduction to Discovery and Review of Medical Records 310
- 15.2** Discovery of Medical Records 310
- 15.3** Access to Medical Records by the Patient 311
- 15.4** Access by Third Parties in Light of the Health Insurance Portability and Accountability Act 311
- 15.5** Obtaining Medical Records 313
- 15.6** Dealing with Confidentiality of Medical Records 314
- 15.7** Why Review Medical Records 315
- 15.8** Tips for Reviewing the Different Components of Medical Records 316
- 15.9** Analyzing Medical Records by Chronology or Topic 324
- 15.10** Medical Records at Trial 325
  - Chapter Summary 326
  - Key Terms 326
  - Review Questions 326
  - Web Links 327
  - Exercises 327

**Chapter 16                    The Tort Litigation Process Before Trial 331**

---

- Chapter Outline 331
- Chapter Objectives 331
- 16.1** Introduction to Tort Litigation Before Trial 332
- 16.2** Insurance 332
- 16.3** Complaints 336
- 16.4** Answers 341
- 16.5** Discovery 346
  - Student Contributor: The Judicial Road to Recovery: Steps to a Lawsuit 378
  - Ethics: On Electronic Discovery 379
- Chapter Summary 379
- Key Terms 380
- Review Questions 381
- Web Links 381
- Exercises 382

**Chapter 17                    The Tort Litigation Process During Trial 383**

---

- Chapter Outline 383
- Chapter Objectives 383
- 17.1** Introduction to Tort Litigation During Trial 384
- 17.2** Evidence 384
- 17.3** Witness Preparation 385
- 17.4** Other Pre-Trial Matters 385
- 17.5** Trial 386
- 17.6** Trial Notebooks 387
  - Student Contributor: Snapshot of Being a Paralegal 396
  - Ethics: On Properly Preparing a Witness to Testify 396
- Chapter Summary 396
- Key Terms 397
- Review Questions 397
- Web Links 397
- Exercises 398

**Appendix A            An Introduction to Medicine 399**

---

**Appendix B            Initial Client Meeting Form 425**

---

*Glossary 433*

*Index 451*