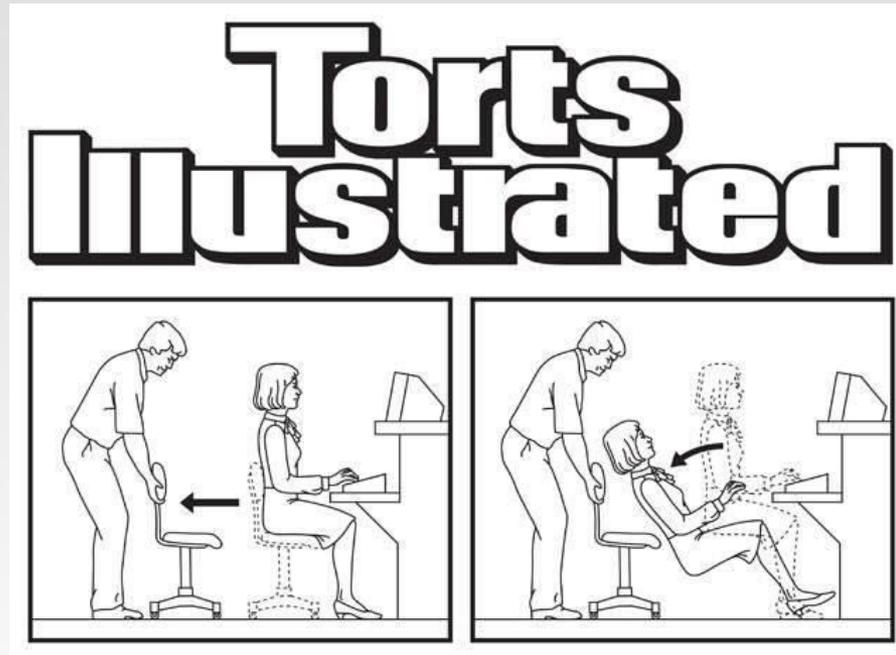


Negligent in Your Legal Knowledge?

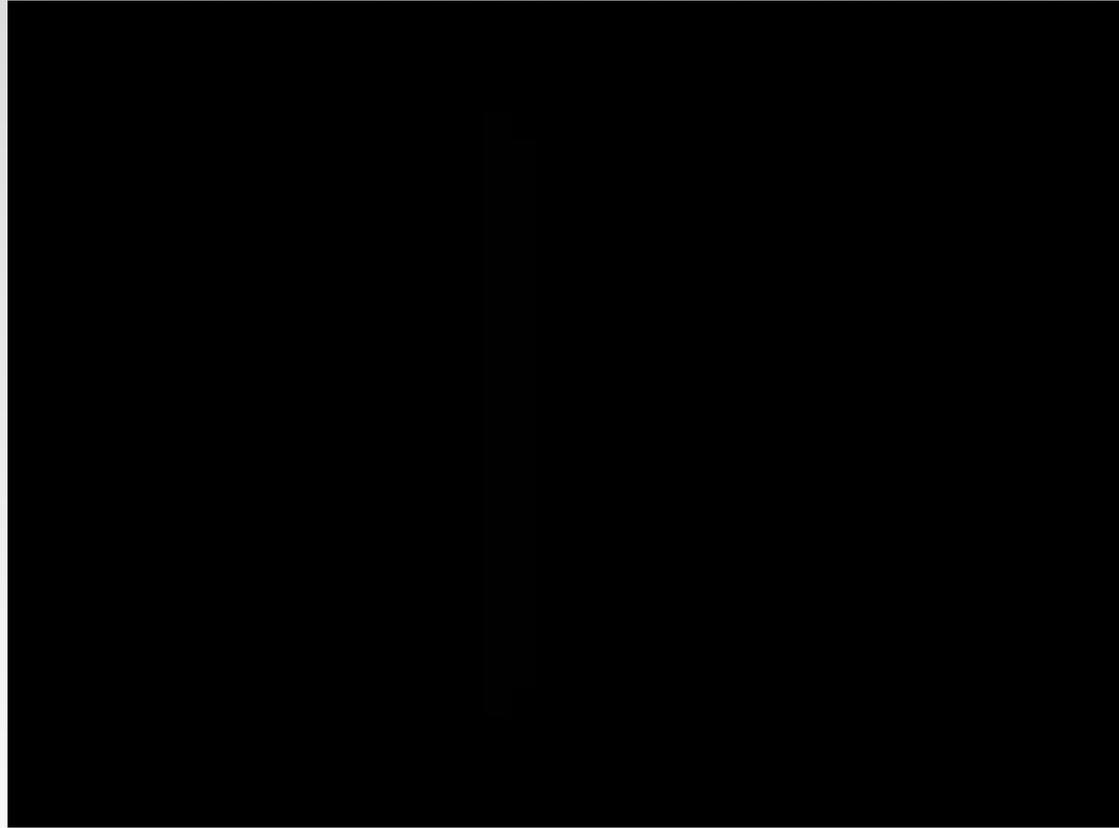
A Primer on Tort Law and Legal Analysis



A Presentation of the AP-LS Student Committee
(And Guests!)



Who can you sue?



Workshop Goals

- Brief overview of tort law (more detailed primer to be emailed out)
- Explore psychologists' role in the tort system
- Get into a lawyer's head (conduct a basic legal analysis)



What is a tort?

- Legal wrong or “injury”
- Handled in the civil system
- Main purpose of tort system:
 - Remedy violation of an interest
 - Apportion liability
 - Compensation
 - Deterrence



Key Concepts in Tort Law

- Liability: who is responsible for the injury?
 - Statues of limitations
- Elements: requirements for a cause of action, need to prove each element to prove a tort
 - Injury
 - Causation
 - Damages
- Subjectivity vs. objectivity



Types of Torts

- 3 main theories of liability
 - Strict
 - No need to demonstrate culpability
 - Intentional
 - Need to show that defendant intentionally caused legal injury
 - Unintentional
 - Need to show that defendant's was less careful than the law



Strict Liability

- Strict liability torts hold a party accountable for an injury regardless of culpability
- Example: Products liability
 - Hold manufacturers responsible for defective products even though they are not directly involved in the injury



Intentional Torts

- Intentional torts hold people liable for injuries they have intentionally inflicted.
- Example: Assault
 - intent to cause offensive contact
 - other person is put into imminent apprehension



Unintentional Torts

- Unintentional torts hold an individual liable for failing to exercise the caution the law requires
- Example: Negligence
 - Duty
 - Breach of duty
 - Causation
 - Damages/Harm



Negligence Broken Down

Duty

Reasonable person
standard
Professional
standard

Causation

Cause-in-fact
Proximate Cause

Breach

Via positive act
Via commission

Damages

Compensatory
Punitive
Nominal



Tort Law and Psychology: Where do we fit in?



Tort Contexts and Psychologists

- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Workplace discrimination/harassment
- Workplace disability
- Personal Injury
- Malpractice
- Informed consent

How might psychologists be used to either prove or negate an element for each of these contexts?



Negligence versus Malpractice

	Negligence	Malpractice
Duty owed	“reasonable person”	Standard of care Professional Status
Breach	Failure to act as a “reasonable person” would under the circumstances	Failure to act according to the standard of care set by the field (as a reasonable _____ would do)



Malpractice Vignettes

- A 36-year-old man was being treated by a psychologist for major depressive disorder. The patient owned several guns for hunting and target shooting and had a state-issued firearm owner's identification card. In October 2003, the patient presented to the emergency room and was examined by a mental health assessment staff. The psychologist recommended voluntary admission to the psychiatric unit for 23 hours. The patient's father discouraged the admission and stated that the patient could lose his gun owner's card as a result. The patient was subsequently discharged. Within 24 hours after discharge, the patient shot himself in the chest and died. The deceased's estate argued that the psychologist should have admitted the patient involuntarily. The psychologist claimed no obligation to involuntary admission and argued that the patient did not meet criteria typically used for such admission.

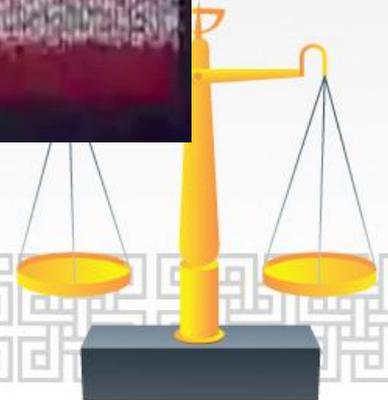
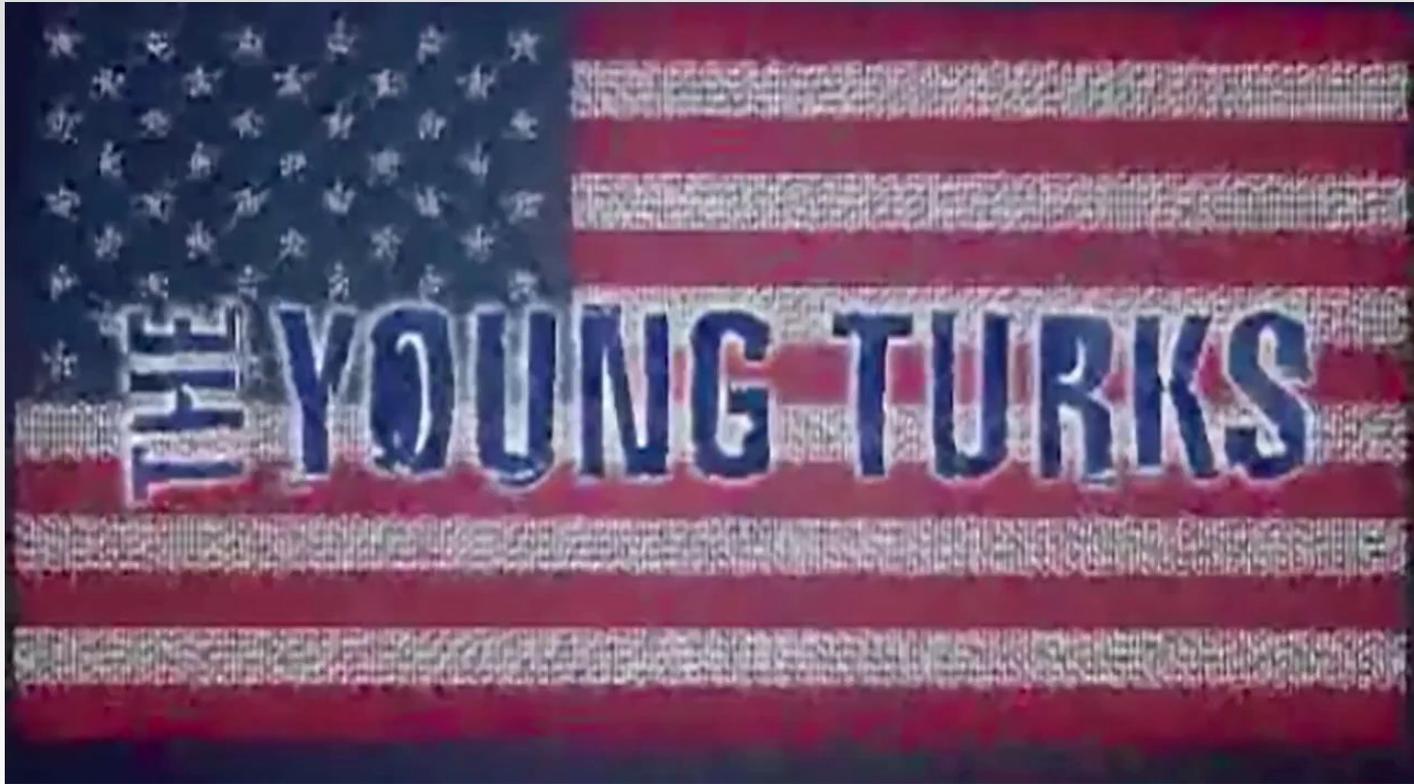


Malpractice Vignettes

- A 24-year-old man was hospitalized after attempting suicide by ingesting prescription pills and alcohol. He was admitted to the general medical floor with a 24-hour sitter to guard against additional suicide attempts. When the psychologist tried to evaluate him, he found the patient unresponsive because of the pills' effects. The next day, the psychologist evaluated the patient and recommended that the patient be transferred to the psychiatric unit and that the sitter be continued. Four hours later, without a further evaluation, the psychologist recommended moving the patient to another room and canceling the sitter. The next day, the patient jumped from his sixth-floor hospital room window. He sustained traumatic brain injury. The patient's guardian ad litem argued that discontinuing the sitter was negligent. The defendant argued that discontinuation was within the parameters of proper care.



Legal Analysis: Psychologist Malpractice



Legal Analysis: Psychologist Malpractice

- Remember:
 - Duty: What duty does the psychologist owe?
 - Breach: Did the psychologist act or fail to act in such a way as to breach that duty?
 - Causation: Was the psychologist the cause-in-fact of the harm? Were they sufficiently close to the harm to be held liable?
 - Harm: Was there a harm suffered? What was it?

