

TORTS III

Letters of Advice

- **Content**

Outlining options - the client can choose
(out of court settlement x lawsuit)

- **Structure**

Paragraphs – introduction, conclusion (if you have any questions, do not hesitate to ...)

Linking words (therefore, however, clearly, in my view,...)

- **Style** – formal, polite

No contractions!!! (did not, was not, ...)

Letters of Advice

- **Vocabulary**

Nice use of collocations

Right x law – “the ~~right~~ is on your side“ **law**

Advice – uncountable

- **Grammar**

Should have **fore**seen/could not have foreseen

If you agree (if + present)

If they **had not allowed** that many people on the stairs, the stairs **would not have collapsed**.

To sue the building company, ~~who~~ renovated ... **that**

No comma before THAT!!! (I have come to the conclusion, ~~that~~ there is ...)

Compulsory assignment

- Instructions - Handout p.18
- Number of words 150-200
- To “odevzdávárna“
- **Deadline – 26 April**

Frivolous lawsuit p.19

Pre-listening vocab

What's the difference?

Punitive damages x Compensatory damages

Providing a plaintiff with the monetary amount necessary to replace what was lost.

Compensatory damages

Punishing a defendant for his or her conduct as a deterrent to the future.

("Quasi-criminal")

Punitive damages



What does Fabio mean by *frivolous lawsuit*?

The lawsuit is **not to be taken seriously**; the amount of **damages awarded** is far too high for the injury suffered.



What injury did the plaintiff suffer?

The plaintiff received **third-degree burns** from spilled coffee.

She had to undergo a medical treatment for 2 years.



Why did McDonald's refuse to settle out of court?

McDonald's refused to settle because they most likely thought **the plaintiff could not win** the case, as in other cases the courts had ruled that **coffee burns were an open and obvious danger.**

How much did the court award Liebeck in **compensatory** and **punitive** damages?

At first, Liebeck was awarded **\$200,000** in compensatory damages, which was reduced by 20% to **\$160,000**.



The judge also awarded her **2,7million** in punitive damages, which was then reduced to **\$480,000**.

What was the reasoning of the court?

Gross negligence – coffee was “defectively manufactured”

Evidence showed that MacDonald’s serve coffee much too hot (1982-1992 700+ people burned)



How much did Liebeck finally receive in damages?

We do not know, but it is thought that the amount was **under \$600.000**.



Mistakes

- 79-year-old
- Stella Liebeck
- Coffee
- McDonald's
- She wasn't driving

CASE: Liebeck v. McDonald's Restaurant

1. placed
2. spilled
3. determined
4. suffered
5. treated
6. settlement
7. defendant
8. found for
9. awarded
10. damages
11. punitive
12. appealed

True or made up?

- Case No. 1 Fabricated
- Case No. 2 True
- Case No. 3 Fabricated
- Case No. 4 Fabricated
- Case No. 5 True
- Case No. 6 Fabricated
- Case No. 7 Fabricated from a very old urban legend!

Lawyer-client interview

“In many ways for lawyers the initial client interview is like a first date. You do not know each other that well and hope to get better acquainted.”

Jim Calloway, Director of the Oklahoma Bar Association's Management Assistance Program

What are important **skills/qualities** for a lawyer when dealing with a client in an interview?
And what should s/he **avoid**?



A successful lawyer-client interview

+

- active listening
- effective questioning
- empathy
- giving feedback
- patience
- clear explaining
- knowledge of law
- correct application of law
- logical thinking
- timing

-

- judgemental
- impolite
- arrogant

Lawyer – Client interview p. 11

OPENING

- Greeting the client, preliminary small talk

1. O. I hope you had no trouble finding our office.

- getting an overview of the case, explaining circumstances and structure of the interview

2. E. Let me assure you that everything you tell me today **will be held in strict confidence.**

3. J. I understand that you would like some **advice on your employment situation.**

LISTENING AND QUESTIONING

- listening actively to establish facts of events, checking for understanding

4. I. Mmm...I see.

5. K. OK, **we've identified** three issues which we need to **focus on**. These are...Is that how you see it?

- identifying aims of the client

6. H. What would be an ideal **outcome** for you?

7. L. Perhaps you could let me know what your **priorities are in this matter**.

SUMMARIZING

- summarizing the client's concerns and goals

8. G. If I understand you correctly, you're saying that ...

9. M. **Allow me to summarize** what you've said.

- seeking further information from the client

10. F. I need to know more about...

ADVISING

- giving a brief outline of the relevant law and applying the law to the client's problem

11. N. The legal position is as follows...

12. P. I am sorry to inform you that there is no legal ground for this claim.

- outlining available options, helping the client reach a decision if appropriate

13. D. I have to warn you that proving that ...will be extremely difficult.

14. A. You have two or three options here. The first... the second... and the third is to....

- CONCLUDING
- • describing the follow-up action to be taken by lawyer and by client
- 15. C. Let me go through the file and read through the contract. Then I'll prepare the complaint.
- • concluding the interview appropriately
- 16. B. Thanks for coming in to see us today. Don't hesitate to phone or send me an email if you have any questions.


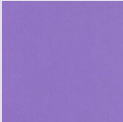

Case Study - Instructions

You work as a **novice lawyer** in a prominent law firm. You have your first **client** coming for an interview and your **supervisor** is going to assess your performance during the interview.

Do your best! Good luck!



Case study 1

- Theft In a Hotel Room p.13
- Groups of three
 - lawyer 
 - his/her supervisor 
 - client 



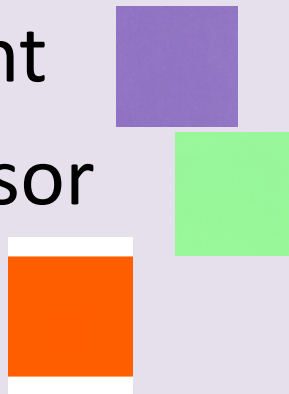
When you finish, the **supervisor** gives the lawyer **feedback**.

Be diplomatic and friendly!

Feedback is not only listing the mistakes.

Case study 2

- Missing Tablet in a Hotel Lobby p.14
- Supervisor -> Client
- Lawyer -> Supervisor
- Client -> Lawyer



A tort, in common law jurisdictions, is a civil wrong which

1. unfairly causes someone else to suffer 2. loss or harm resulting in legal liability for the person who commits the 3. tortious act, called a tortfeasor.

Tort is a 4. violation of some duty clearly set by law, not by a 5. specific agreement between two parties, as in breach of contract. When such a duty is breached, the injured party has the right to institute suit for 6. compensatory damages.

Torts may be 7. categorized in several ways, with a particularly common

8. division between negligent and intentional torts.

Intentional torts include, among others, certain torts 9. arising from the occupation or use of land. The tort of nuisance, for example, involves strict liability for a neighbor who interferes with another's 10. enjoyment of his real property. Trespass allows owners to sue for 11. entrances by a person on their land. Several intentional torts do not involve land. Examples include false imprisonment - the tort of 12. unlawfully arresting or detaining someone, and libel, where a 13. defamatory statement is published and damages the plaintiff's reputation.

1. FAIR

2. LOSE

3. TORT

4. VIOLATE

5. SPECIFY

6. COMPENSATE

7. CATEGORY

8. DIVIDE

9. ARISE

10. ENJOY

11. ENTER

12. LAW

13. DEFAME