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Instrumental and Noninstrumental Theories of Tort Law

RICHARD A. POSNER*

There is the idea that law is an instrument of social policy, and the idea that instead law is an expression of rights and duties regardless of the instrumental value of those rights and duties. The first idea is illustrated by Holmes's option theory of contract: to make a contract to provide some product or service is to make a commitment either to perform, or to pay the cost to the other party if you don't perform; damages for breach of contract are just the price of exercising the option of nonperformance.¹ The second idea is illustrated by the European legal slogan *pacta sunt servanda*—contracts should be performed; to break your contractual promise is to commit a wrongful act and the other party to the contract is prima facie entitled to specific performance—that is, to a judicial decree commanding you to perform on pain of sanctions for contempt of court if you refuse. In tort law the first idea, the instrumental theory of law, is illustrated by Judge Learned Hand's negligence formula, which essentially penalizes economically wasteful activity (the burden of taking a precaution that would have prevented the accidental injury to the victim, if the burden—that is, the cost—was less than the harm to the victim discounted—that is, multiplied—by the probability that such an accident would occur in the absence of the precaution²), and, by thus making it more costly, tends to reduce, by deterrence, the amount of wasteful behavior in the future. The second idea, the moral or deontological, is illustrated by imposing, without regard to consequences, a duty on a person who injures another through failing to exercise the care expected of a person, to compensate the victim of his want of care.

A version of the second idea goes by the name (in academic circles) of corrective justice. A variant is “civil recourse theory,” the brainchild of law professors John Goldberg and Benjamin Zipursky, expounded by them in a series of law review articles.³ The use of the term “corrective justice” to describe a duty to compensate must make Aristotle, the inventor of the term, writhe in his grave. For he meant by it something quite different: that your injuring someone is not excused by the fact that you're a higher-status person than he. Status allocation belongs to what Aristotle called distributive justice, corrective justice being the domain of law,

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1. O.W. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 462 (1897).

2. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947). The “Hand Formula” is restated in formal economic terms in RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 214 n.2 (8th ed. 2011). On the economic approach to tort law generally, see WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF TORT LAW* (1987).

3. Listed in Christopher J. Robinette, *Why Civil Recourse Theory Is Incomplete*, 78 TENN. L. REV. 431, 432 n.3 (2011). Probably the place to start is with John C.P. Goldberg & Benjamin C. Zipursky, *Torts as Wrongs*, 88 TEX. L. REV. 917 (2010). Other articles by them (separately or together) are cited in Table 1 *infra*. And soon there will be a book by them explaining their approach at greater length: *RECOGNIZING RESPONSIBILITIES: DUTY AND CIVIL RECOURSE IN THE LAW OF TORTS* (forthcoming 2013, Harvard University Press).

which, as the modern judicial oaths have it, is administered “without respect to persons.” It is the concept of law that was symbolized by a blindfolded goddess, and it is the core of what today we call the “rule of law.”⁴

“Civil recourse theory” is not the most perspicuous term but at least it jettisons the historical baggage that makes “corrective justice” a source of confusion. Professor Zipursky has summarized it with commendable brevity: “The core idea of civil recourse theory is that tort law is about empowering people who have been wrongly injured to obtain some sort of redress against the injurers.”⁵ “Tort law functions best as a means of reinforcing social norms.”⁶ Whereas the legal realists argued that modern tort law was about shifting the costs of accidents to producers (as in products liability law) and insurers (and hence to insurance pools), the economic analysts of law argued and argue that tort law is about minimizing the sum of accident and accident-avoidance costs (but also deterring intentional and reckless loss-inflicting acts), and modern corrective justice analysts argue that it is about implementing a moral duty to redress an imbalance created by an injury, civil recourse theorists argue that tort law is about implementing a more complex set of moral notions—a set that includes limitations on redress for injuries (on punitive damages, for example).

One thinks of moralists as normative rather than positive analysts; that is certainly true of the corrective justice theorists, like Jules Coleman of the Yale Law School, a philosopher rather than a lawyer, and Guido Calabresi, who advocates a mixed economic-efficiency-distributive-justice approach rather than arguing that it describes the existing tort system. But surprisingly Goldberg and Zipursky argue that civil resource theory describes the existing tort system better than any other positive theory. This is demonstrably mistaken, as shown in two recent articles.⁷ I will add my two cents’ worth by noting, as one example of erroneous analysis by

4. RICHARD A. POSNER, *LAW, PRAGMATISM, AND DEMOCRACY* 284–86 (2003).

5. Larry Reibstein, *Rethinking Tort Law: Professor Benjamin Zipursky’s Civil Recourse Theory Moves to a Leading Position in American Tort Theory*, *FORDHAM LAW.*, Spring 2012, at 12–14.

6. *Id.*

7. See Robinette, *supra* note 3; Michael L. Rustad, *Torts as Public Wrongs*, 38 *PEPP. L. REV.* 433 (2011). See also an earlier, also highly critical, article, Jane Stapleton, *Evaluating Goldberg and Zipursky’s Civil Recourse Theory*, 75 *FORDHAM L. REV.* 1529 (2006), and the critical remarks in Professor Rustad’s introduction to this symposium, Michael L. Rustad, *Twenty-First-Century Tort Theories: The Internalist/Externalist Debate*, 88 *IND. L.J.* 419 (2013).

Strangely though, at the start of an analysis that eventuates in her conclusion that Goldberg and Zipursky’s “project was unnecessary and has resulted in a civil recourse theory that is overblown in its claims, awkward and inconvenient in application, and internally incoherent,” Stapleton, *supra*, at 1562. Stapleton says: “the civil recourse model of tort law is definitely an improvement on efficiency and corrective justice models” because “it seeks to address and accept tort law as it exists” and “does not fall into the trap of depending on the assertion of some ‘goal’ of tort law such as ‘compensation’ or ‘deterrence’ or ‘loss-spreading.’ These may be the effects of the imposition of tort liability, but none could be the goal of tort; otherwise, no injured plaintiff suing an insured wrongdoer would ever lose!” *Id.* at 1538 (footnote omitted). I don’t know what she could mean by these statements (which she doesn’t explain) or how they connect to her analysis.

civil resource theorists, Goldberg's and Zipursky's use of an opinion of mine⁸ to argue that the principles governing awards of punitive damages cannot be explained by utilitarian concerns such as deterrence.⁹ They say that the opinion "suggest[s] that punitive damages are awarded to induce plaintiffs with modest compensatory claims to sue, and to encourage litigants to uncover hidden wrongs, thereby promoting the private prosecution of conduct that would otherwise go unsanctioned," and that "[o]n this theory, one should never see an award of punitive damages in cases of tortious conduct causing substantial harms, nor should courts permit punitive damages in cases of open and obvious misconduct. The law allows punitive awards in both kinds of cases."¹⁰

The decision in question, *Mathias v. Accor Economy Lodging*, upheld an award of \$186,000 in punitive damages to each of two guests of a motel who had been bitten by bedbugs.¹¹ Under the applicable law, that of Illinois, an award of punitive damages was permissible because the jury had found that the failure of the hotel to warn the plaintiffs of the infestation was not simply negligent, but "willful and wanton."¹² The jury awarded each plaintiff only \$5000 in compensatory damages, however, and this raised the question whether the punitive damages awards were excessive in light of the very high ratio between them and the compensatory damages awards.¹³

So here is what the opinion says at the page cited by Goldberg and Zipursky:

[O]ne function of punitive-damages awards is to relieve the pressures on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. An example is deliberately spitting in a person's face, a criminal assault but because minor readily deterrable by the levying of what amounts to a civil fine through a suit for damages for the tort of battery. Compensatory damages would not do the trick in such a case, and this for three reasons: because they are difficult to determine in the case of acts that inflict largely dignitary harms; because in the spitting case they would be too slight to give the victim an incentive to sue, and he might decide instead to respond with violence—and an age-old purpose of the law of torts is to provide a substitute for violent retaliation against wrongful injury—and because to limit the plaintiff to compensatory damages would enable the defendant to commit the offensive act with impunity provided that he was willing to pay, and again there would be a danger that his act would incite a breach of the peace by his victim.

When punitive damages are sought for billion-dollar oil spills and other huge economic injuries, the considerations that we have just canvassed fade. As the [Supreme] Court emphasized in [*State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003)], the fact that the plaintiffs in that case had been awarded very substantial

8. *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003).

9. Goldberg & Zipursky, *supra* note 3, at 961.

10. *Id.* at 961 n.220.

11. *Mathias*, 347 F.3d at 678.

12. *Id.* at 675.

13. *Id.* at 674.

compensatory damages—\$1 million for a dispute over insurance coverage—greatly reduced the need for giving them a huge award of punitive damages (\$145 million) as well in order to provide an effective remedy. Our case is closer to the spitting case. The defendant's behavior was outrageous but the compensable harm done was slight and at the same time difficult to quantify because a large element of it was emotional. And the defendant may well have profited from its misconduct because by concealing the infestation it was able to keep renting rooms. Refunds were frequent but may have cost less than the cost of closing the hotel for a thorough fumigation. The hotel's attempt to pass off the bedbugs as ticks, which some guests might ignorantly have thought less unhealthful, may have postponed the instituting of litigation to rectify the hotel's misconduct. The award of punitive damages in this case thus serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and (private) prosecution. If a tortfeasor is "caught" only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away.

Finally, if the total stakes in the case were capped at \$50,000 (2 x [\$5,000 + \$20,000]), the plaintiffs might well have had difficulty financing this lawsuit. It is here that the defendant's aggregate net worth of \$1.6 billion becomes relevant. A defendant's wealth is not a sufficient basis for awarding punitive damages. That would be discriminatory and would violate the rule of law, as we explained earlier, by making punishment depend on status rather than conduct. Where wealth in the sense of resources enters is in enabling the defendant to mount an extremely aggressive defense against suits such as this and by doing so to make litigating against it very costly, which in turn may make it difficult for the plaintiffs to find a lawyer willing to handle their case, involving as it does only modest stakes, for the usual 33–40 percent contingent fee.

In other words, the defendant is investing in developing a reputation intended to deter plaintiffs. It is difficult otherwise to explain the great stubbornness [sic] with which it has defended this case, making a host of frivolous evidentiary arguments despite the very modest stakes even when the punitive damages awarded by the jury are included.¹⁴

Notice that, contrary to Goldberg and Zipursky's summary, the opinion does not say or imply that punitive damages are awarded *only* in order to induce suits to enforce modest claims or to encourage plaintiffs "to uncover hidden wrongs," and therefore that punitive damages should never be awarded in cases of tortious conduct that cause substantial harm or in cases of "open and obvious misconduct." The summary is not only inaccurate, but internally inconsistent. If it were true that awards of punitive damages had only two possible aims, that of inducing suits to enforce modest claims and that of encouraging plaintiffs to uncover hidden wrongs, then such awards would be proper in cases of substantial harm caused by hidden

14. *Mathias*, 347 F.3d at 676–77 (some citations omitted). Although Goldberg and Zipursky cite only to page 677 of the opinion in their article, to make the discussion on that page intelligible I have begun the quotation shortly before the end of the preceding page.

wrongs and of modest claims even if they were the result of open and obvious misconduct. Punitive damages can be excessive, as the Supreme Court had held in *Campbell* and other cases, but the main point in the *Mathias* opinion is that the smaller the award of compensatory damages, the higher the ratio of punitive to compensatory damages needs to be to provide an adequate remedy. For example, if the compensatory damages for the bedbug bites had been only \$100, even a 145-to-1 ratio of punitive to compensatory damages (the ratio in the *Campbell* case) would be insufficient to motivate the plaintiffs to sue, because the punitive-damages award would be only \$14,500.¹⁵

There is a further problem with civil recourse theory, and that is the assumption that a single theory could explain all of tort law. American tort law is the joint product of the judges of the courts of fifty different states, of federal judges, of state legislatures, and of Congress, and it is a product that has been created over a period of hundreds of years (initially with a dominant English influence), with many of its doctrines preserved into modernity by reason of *stare decisis* even if they are not perfectly adapted to modern conditions. It would be surprising if the rise of the regulatory state, social insurance, and economic analysis has left tort law untouched (we'll see that civil recourse theory is actually ambivalent on this point).

I have another question to put to civil recourse theorists: supposing that tort law is dedicated to providing "some sort of redress" for people injured by "wrongful" conduct, where do we go to find out what is a "wrong"? Without an answer to that question, the theory is at risk of collapsing into a tautology: tort law provides redress for wrongful injury; injury is wrongful if tort law provides redress for it.

No answer having been given, I conclude that the theory does collapse into tautology. But surprisingly its application does not, and this creates the ambivalence that I noted. Remember that all that the theorists insist upon is "some sort" of redress. They realize that tort law does not provide complete remedies for a number of losses inflicted by wrongful acts, and they explain these remedial limitations in instrumental terms, much as an economist would do. But if they are to go beyond economics, as they want to do, they have to explain how one determines whether an act is wrongful, or wrongful in a sense that requires "some sort" of redress even if not complete. I don't see that in their work. They seem to think that everyone knows right from wrong, but if this is so then what is there to civil resource theory except instrumental limitations on tort remedies for wrongs?

And as the critics of civil resource theory have pointed out, a great deal of tort law is about those limitations: think of contributory and comparative negligence, assumption of risk, causation and foreseeability, the economic loss rule, contribution and indemnity, *res ipsa loquitur*, punitive damages, limitations on duties to avoid injuries to trespassers and licensees, general damages, the choice between negligence and strict liability, the distinction between independent-contractor liability and *respondeat superior*, sovereign immunity, official immunity, contractual waivers of liability, loss of a chance (latent or probabilistic injury), mass torts, and constitutional limitations on defamation and on the tort right of privacy. Tort remedies are an issue about which economic analysis of law has had a

15. It is not to the credit of the *Texas Law Review's* citecheckers that the *Review* allowed such a garbled summary of the *Mathias* opinion to be published.

lot to say,¹⁶ and I don't see anything in civil recourse theory to challenge what economic analysis has had to say about them. Civil recourse theory has nothing to say about limitations on redress except that since all that the theory requires is "some sort of redress" for wrongful injury, all the traditional limitations are in principle acceptable; whether particular limitations are is a pragmatic issue outside the scope of the theory.

The civil recourse theorists' failure to explain how one identifies a "wrong" leaves them with nothing distinctive to say about tort law, because once the wrong is specified the focus of tort law switches to the question how much redress to provide for it, and that is the pragmatic question about which civil recourse theory seems to offer nothing distinctive to say.

I don't think it's enough to say that we all know a wrong when we see it and so we don't have to get analytical about it—that won't do even apart from the fact that such a throwing up of hands leaves the civil recourse theorist with nothing interesting to say about any aspect of tort law. Often there is no agreement about what is wrongful conduct. Is it wrong to defame a person by accident? (Maybe you innocently and indeed nonnegligently mixed him up with someone else.) Or to defame a dead person? Is it wrong for a pharmaceutical manager to fail to disclose on the label of a drug that it can cause serious injury to one out of a million users of it? Is it wrong for a doctor or a hospital to disclaim liability for an injury caused by the doctor's or the hospital's negligence? To fail (if a railroad) to install flashing signals at all rail crossings, and instead to rely at the less busy crossings on just crossbuck signs? These are analyzable issues, rather than issues that can be shrugged off by saying that "everyone in our society, in our culture, knows that . . ." I don't think civil recourse theory can have much impact if it doesn't address such questions. So I'll address them.

To begin with, much can be referred to conditions of survival in what scientists refer to as the "ancestral environment," the environment of primitive man in which human beings evolved to approximately their current biological state. It is easy to see that early man would not have thrived without a lively sense of "rights," not in a modern sense but in the sense of being quick to resist aggressions threatening his survival. One is put in mind of Holmes's aphorism that even a dog knows the difference between being kicked and tripped over; so we respond more quickly and emphatically to what we perceive as deliberate invasions of our property and bodily integrity and reputation than to accidental ones. That is instinctual but in a primitive culture it is often difficult to distinguish between the instinctual and the instrumental, and so we find strict liability a more pervasive standard of liability than in modern law. Only in a much more advanced stage of human social development do we recognize that some injuries are unavoidable, or if not strictly unavoidable then unavoidable at a cost less than the risk-adjusted cost of the injury—where P in the Hand Formula (injury is negligent if $B < PL$) is risk, L is the magnitude of the loss (injury) if the risk materializes and so PL is the expected loss, and B is the burden (cost) of precautions. Instinct gives way to cost-benefit analysis, and more broadly to instrumental or pragmatic considerations designed to make tort law, along with other social responses to injury, a sensible regulatory and

16. See, e.g., POSNER, *supra* note 2, at 167–213.

compensatory regime, as well as a means for deflecting vengeful acts—which play a critical regulatory role in deterring aggression in pre-legal cultures—into socially less costly systems of redress.

So some principles of tort law rest on primitive, though not irrational, reactions to invasions of rights—the torts of assault and of battery are examples—and others on sophisticated notions of optimal social ordering, which give rise to new rights and to elaborate systems of remedy and procedure. The list of rights and wrongs evolves, and lawyers and economists and psychologists and sociologists can identify and evaluate the new rights and wrongs that emerge in the evolutionary process. So far civil recourse theory has played no role in this process.

Goldberg and Zipursky began expounding civil recourse theory in articles published in 1998. In the almost fourteen years since, these and their subsequent articles have been cited in twenty-one judicial opinions, an average of less than two a year. Seven of the opinions are by Judge Jack Weinstein, the well-known federal district judge, for whom Goldberg clerked. Apart from the Weinstein opinions, one other citation by a federal district judge, and one opinion by a federal court of appeals, all the opinions are by state appellate courts.

The citing cases are listed in Table 1 along with the cited articles by Goldberg and Zipursky or by either one writing separately and the passages in the opinion in which the citations appear:

TABLE 1
JUDICIAL CITATIONS TO GOLDBERG AND ZIPURSKY ON
CIVIL RECOURSE THEORY

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
Amy Unknown v. Wright, 701 F.3d 749, 769–70 (5th Cir. 2012)	Where “the court finds more than 1 defendant has contributed to the loss of a victim,” § 3664(h) instructs that “the court may make each defendant liable for the payment of the full amount of restitution.” The joint and several liability mechanism applies well in these circumstances, where victims like Amy are harmed by defendants acting separately who have caused her a single harm. <i>See Burgess</i> , 684 F.3d at 461 (Gregory, J., concurring in part, dissenting in part, and concurring in judgment) (explaining that the joint and several liability described in § 3664 “has long been available . . . in which two negligent actors, acting independently of one another, caused by a single indivisible harm to the plaintiff.” (quoting TORT LAW: RESPONSIBILITIES AND REDRESS 517 (John C.P. Goldberg et al. eds., 2008))).	TORT LAW: RESPONSIBILITIES AND REDRESS (John C.P. Goldberg, Anthony J. Sebok & Benjamin C. Zipursky eds., 2008).

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
Gill v. Arab Bank, PLC, No. 11-CV-3706, 2012 WL 4960358, at *7 (E.D.N.Y. Oct. 17, 2012)	The confluence of complicated governing legal doctrines affecting this country's antiterrorism policy requires courts to tread carefully in making both procedural and substantive determinations in civil cases such as the instant one. The statutory and common-law right of the individual to recovery in tort must not be underestimated. <i>See, e.g.</i> , John C.P. Goldberg & Benjamin C. Zipursky, <i>Rights and Responsibility in the Law of Torts, in Rights and Private Law</i> 251, 262 (Donal Nolan & Andrew Robertson eds., 2012). It is necessary, under the statute, to shape individual tort rights to fit into the comprehensive existing legal framework governing this country's struggle against terrorism, particularly when recovery is sought as a result of terrorist violence affecting American nationals who are abroad.	John C.P. Goldberg and Benjamin C. Zipursky, <i>Rights and Responsibility in the Law of Torts, in RIGHTS AND PRIVATE LAW</i> 251 (Donal Nolan and Andrew Robertson eds., 2012).
B.R. <i>ex rel.</i> Jeffs v. West, 2012 UT 11, ¶¶ 24–25, 275 P.3d 228.	Defendants challenge the imposition of a duty here on the basis of a lack of foreseeability of injury. But their arguments conflate the kind of foreseeability relevant to the duty analysis with the foreseeability inquiries significant to matters of breach and proximate cause. . . . This conflation is perhaps understandable. Some variation of the notion of foreseeability is a factor in three of four elements of a tort: duty, breach, and proximate cause.	Benjamin C. Zipursky, <i>Foreseeability in Breach, Duty, and Proximate Cause</i> , 44 WAKE FOREST L. REV. 1247 (2009).
Tesar v. Anderson, 2010 WI App 116, ¶ 11 n.13, 329 Wis. 2d 240, 789 N.W.2d 351.	Despite the RESTATEMENT (THIRD) OF TORTS' attempt to change negligence analysis by excising duty and adding complexity, forty-seven states including Wisconsin use foreseeability as an integral part of their duty analysis. The Restatement wants "to eliminate foreseeability in duty so that judges do not invade the province of the jury." By using WIS. JI—CIVIL 1005 and only finding lack of duty where no reasonable jury could find foreseeability, Wisconsin has been avoiding this problem for seventy-five years. The Restatement's excision of foreseeability is nothing less than eliminating duty in Wisconsin's negligence methodology.	Benjamin C. Zipursky, <i>Foreseeability in Breach, Duty, and Proximate Cause</i> , 44 WAKE FOREST L. REV. 1247 (2009). John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i> , 54 VAND. L. REV. 657 (2001).

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
<p>Behrendt v. Gulf Underwriters Ins. Co., 2009 WI 71, ¶ 51 n.5, 318 Wis. 2d 622, 768 N.W.2d 568 (citations omitted).</p>	<p>The concept of duty in tort law is in “turmoil.” Courts and academics have offered varying accounts of the proper role for duty in contemporary tort law. . . . [See] John C.P. Goldberg & Benjamin C. Zipursky, <i>The Moral of MacPherson</i>, 146 U. Pa. L.Rev. 1733, 1744 ([1998]) (concluding that a proper account of the concept of duty in the law of negligence “must conceive of duty as <i>relational</i>, that is, as owed by specific defendants or classes of defendants to specific plaintiffs or classes of plaintiffs, rather than by each individual to the word at large[.] . . . must conceive of duty as <i>relationship-sensitive</i>, . . . [and] must conceive of duty as a <i>non-instrumental</i> (or deontological) concept by taking serious the idea that ‘duty’ carries with it a notion of obligatory force”).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Moral of MacPherson</i>, 146 U. PA. L. REV. 1733 (1998).</p>
<p>Hagen v. U-Haul Co. of Tennessee, 613 F. Supp. 2d 986, 992 & n.4 (W.D. Tenn. 2009).</p>	<p>The Tennessee Supreme Court has been clear that an affirmative duty to prevent others from harm is limited to situations where “certain socially recognized relations exist which constitute the basis for such legal duty.” <i>Turner v. Jordan</i>, 957 S.W.2d 815, 818 (Tenn.1997).</p> <p>[A footnote states:] To aid in the understanding of this distinction, the Tennessee Supreme Court offered the example of a motorist who fails to break and, as a result, strikes a pedestrian crossing the road. “Even though the driver’s negligent act—failing to apply the brakes—is an omission, the ‘driver’s careless failure to apply the brakes is negligent driving, not negligent failure to rescue.’” <i>Satterfield</i>, 266 S.W.3d at 357. (quoting John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 Vand. L.Rev. 657, 691 (2001)).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p>

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
<p>Satterfield v. Breeding Insulation Co., 266 S.W.3d 347, 357, 365–67 (Tenn. 2008) (footnote omitted).</p>	<p>A classic illustration of this point is the example of a driver who fails to apply his or her brakes to avoid hitting a pedestrian walking in a crosswalk. Even though the driver’s negligent act—failing to apply the brakes—is an omission, the “driver’s careless failure to apply the brakes is negligent driving, not negligent failure to rescue.”</p> <p>The role that the concept of foreseeability plays in the context of a court’s determination of the existence and scope of a duty differs from the role the concept plays when the fact-finder is addressing proximate causation. . . . In this context, the courts are not concerned with the ultimate reasonableness, or lack of reasonableness, of the defendant’s conduct. Rather, the courts are simply ascertaining “whether [the] defendant was obligated to be vigilant of a certain sort of harm to the plaintiff.”</p> <p>It would be erroneous, however, to assume that the concept of duty is a freefloating application of public policy, drifting on the prevailing winds like the seeds of a dandelion. Like the courts in our sister states, Tennessee’s courts have not become so intoxicated on the liquor of public policy analysis that we have lost our appreciation for the moderating and sobering influences of the well-tested principles regarding the imposition of duty.</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p> <p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Moral of MacPherson</i>, 146 U. PA. L. REV. 1733 (1998).</p>
<p>Iseberg v. Gross, 879 N.E.2d 278, 284 (Ill. 2007).</p>	<p>This case presents a question of “duty” in its most basic or “primary” sense, <i>i.e.</i>, duty as obligation. See <i>Marshall</i>, 222 Ill.2d at 436, 305 Ill.Dec. 897, 856 N.E.2d 1048, citing J. Goldberg & B. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 Vand. L.Rev. 657 (2001). What we must decide is whether Iseberg and defendants stood in such a relationship to one another that the law imposed on defendants an obligation of reasonable conduct for the benefit of Iseberg.</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p>

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
<p><i>In re Zyprexa Prods. Liab. Litig.</i>, 489 F. Supp. 2d 230, 240, 242 (E.D.N.Y. 2007) (citation partially omitted).</p>	<p>Here the law on preemption is ambiguous. Under such circumstances, a federal court should take the law's default position, honoring the traditional state control of tort law. <i>See generally</i> John C.P. Goldberg & Benjamin C. Zipursky, <i>Accidents of the Great Society</i>, 64 Md. L.Rev. 364 (2005).</p> <p>Developing tort law is based on consideration of economic theory, such as who can best bear the cost of harms, <i>see e.g.</i>, Guido Calabresi, <i>The Costs of Accidents: A Legal and Economic Analysis</i> (1970); English development of the writ system and American legal history, <i>see e.g.</i>, 1 Fowler Harper and Fleming James, Jr., <i>The Law of Torts</i> xxvii-xliv (1956); Julius Goebel, Jr., <i>Cases and Materials on the Development of Legal Institutions</i> 139ff. (1946); Oliver Wendell Holmes, Jr., <i>The Common Law</i> (1881); and classical theory, <i>see, e.g.</i>, John C.P. Goldberg & Benjamin C. Zipursky, <i>Accidents of the Great Society</i>, 64 Md. L.Rev. 364 (2005). But it also incorporates considerations of fairness as among the injured and others as well as an understanding of the myriad causes of harm to individuals in a complex modern society that has had to development of rules of proportionality. <i>See Customs & Excise v. Barclays Bank</i>, 4 All E.R. 256, ¶ 82 (House of Lords 2006).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>Accidents of the Great Society</i>, 64 MD. L. REV. 364 (2005).</p>

Full Case Citation	Propositions in Case Citing Article	Cited Articles
<p>Marshall v. Burger King Corp., 856 N.E.2d 1048, 1056–57 (Ill. 2006) (some citations omitted).</p>	<p>This court has recognized that “the concept of duty in negligence cases is very involved, complex and indeed nebulous.” <i>Mieher v. Brown</i>, 54 Ill.2d 539, 545, 301 N.E.2d 307 (1973). Legal scholars have long debated the nature of duty and its proper role in negligence law (see, e.g., W. Powers, <i>Judge and Jury in the Texas Supreme Court</i>, 75 Tex. L.Rev. 1699, 1701–04 (1997)), and the debate has become a subject of renewed interest in recent years (see, e.g., J. Goldberg, <i>Introduction to the Restatement (Third) of Torts: General Principles and the John W. Wade Conference</i>, 54 Vand. L.Rev. 639, 639–40 (2001).</p> <p>Much confusion over duty stems from courts’ tendency to attribute a variety of different meanings to the term. See, e.g., J. Goldberg & B. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 Vand. L.Rev. 657, 698–723 (2001) (distinguishing between four different “senses” in which duty is used in negligence law, including duty as obligation, duty as nexus between breach and duty, duty as breach as a matter of law, and duty as exemption from the operation of negligence law).</p>	<p>John C.P. Goldberg, <i>Introduction: The Restatement (Third) of Torts: General Principles and the John W. Wade Conference</i>, 54 VAND. L. REV. 639 (2001).</p> <p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p>
<p>Herrera v. Quality Pontiac, 2003-NMSC-018, ¶ 20 n.2, 134 N.M. 43, 73 P.3d 181.</p>	<p>We note that some legal scholars continue the longstanding debate over the role of foreseeability in a duty analysis. Compare Restatement (Third) of Torts: Liability for Physical Harm, § 6 cmt. f (Tentative Draft No. 2, 2002) (“Modern scholars tend to classify the issue of the foreseeable plaintiff under the general heading of proximate cause, as does this Restatement in Chapter 6.”), with John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 Vand. L.Rev. 657, 727 (2001) (“Sometimes foreseeability is treated as an issue of law, sometimes as an issue of fact. . . . Foreseeability is in the language of duty, the language of breach, and the language of proximate cause. . . . [F]oreseeability plays a special role in the context of questions about obligation, but it is not the only question relating to duty in that sense.”).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p>

Full Case Citation	Propositions in Case Citing Article	Cited Articles
<p><i>In re Simon II Litig.</i>, 211 F.R.D. 86, 109, 161–63 (E.D.N.Y. 2002).</p>	<p>One alternative considered at various stages of the litigation was a class action for “free floating” punitive damages. This route is available because punitive damages, unlike compensatory damages, need not in theory be tied to any specific monetary harm; rather, their purpose is primarily deterrence and compensation to society for uncompensated external costs of defendants’ delicts. See section VI, <i>infra</i> (punitive damages); John C.P. Goldberg, <i>Twentieth Century Tort Theory</i>, [91] <i>Geo. L.J.</i> ([2003]) (harm of allowing antisocial behavior to go uncompensated); <i>cf.</i> John C.P. Goldberg, & Benjamin Zipursky, <i>Unrealized Torts</i>, 88 <i>Va. L.Rev.</i> n. 62 (2002) (noting the regulatory effect of punitive damages).</p> <p>Permitting plaintiffs to proceed with a punitive damages claim is consistent with the basic societal purposes of tort awards. <i>Cf.</i> John C.P. Goldberg, <i>Twentieth Century Tort Theory</i>, [91] <i>Geo. L.J.</i> ([2003]) (in conventional model of tort theory “judges and jurors were bringing to bear social norms of responsibility” and forcing miscreant parties to adhere to socially approved “behavior in its customary forms”).</p> <p>Tort law provides a chance “for judges and juries to regulate behavior on a forward-looking basis.” John C.P. Goldberg, <i>Twentieth Century Tort Law</i>, [91] <i>Geo. L.J.</i> ([2003]).</p> <p>Scholars have suggested that punitive damages might be most appropriate in cases where the harmful conduct is hard to detect or trace to injured individuals. <i>See</i> A. Mitchell Polinsky & Steven Shavell, <i>Punitive Damages: An Economic Analysis</i>, 111 <i>Harv. L.Rev.</i> 869 (1998); John C.P. Goldberg, <i>Twentieth Century Tort Law</i>, [91] <i>Geo. L.J.</i> ([2003]). This is the situation prevalent in tobacco litigation.</p>	<p>John C.P. Goldberg, <i>Twentieth-Century Tort Theory</i>, 91 <i>GEO. L.J.</i> 513 (2003).</p> <p>John C.P. Goldberg & Benjamin C. Zipursky, <i>Unrealized Torts</i>, 88 <i>V.A. L. REV.</i> 1625 (2002).</p>

<i>Full Case Citation</i>	<i>Propositions in Case Citing Article</i>	<i>Cited Articles</i>
<p>Monsanto Co. v. Mycogen Plant Sci., Inc., 261 F.3d 1356, 1367 (Fed. Cir. 2001) (some citations omitted).</p>	<p>We acknowledge that determining whether a party was diligent during a critical period can, in certain cases, be complex. But it is not fraught with the same problems as a function-way-result inquiry. That is, the Supreme Court has not identified separate elements that must be addressed in a diligence inquiry, and there is no risk analogous to the concern that the jury will merely look to overall similarity and bypass the analysis of these separate elements. Further, the diligence inquiry is concerned with whether a party exercised reasonable diligence. 35 U.S.C. § 102(g) (“there shall be considered . . . the reasonable diligence of one who was first to conceive and last to reduce to practice”); <i>California</i>, 2001 WL 641778 (discussing the requirement to prove reasonable diligence). Such reasonableness determinations are a standard task for juries and do not justify, without more, the imposition of an additional requirement for linking argument. John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 Vand. L.Rev. 657, 681 (2001) (noting that “[r]easonable care is normally a jury issue”) (emphasis added).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Restatement (Third) and the Place of Duty in Negligence Law</i>, 54 VAND. L. REV. 657 (2001).</p>

Full Case Citation	Propositions in Case Citing Article	Cited Articles
<p>Mellon Mortg. Co. v. Holder, 5 S.W.3d 654, 655–56, 662–63 (Tex. 1999) (some citations omitted).</p>	<p>This duty analysis has been widely embraced since Chief Judge Cardozo penned the seminal <i>Palsgraf</i> opinion. . . . The <i>Palsgraf</i> dissent, however, illustrates the counter view that duty is owed generally and any limitations on liability should be through “proximate cause,” in which “foreseeability” must necessarily play a greater role than in the duty analysis. . . .</p> <p>Although judges and scholars have long debated the relative merits of the two views, the gist of Chief Judge Cardozo’s duty analysis has been widely embraced. Compare 3 HARPER ET AL., THE LAW OF TORTS § 18.2, at 654–55 (2d ed.1986); RESTATEMENT (SECOND) OF TORTS § 281 cmt. c (1965); Zipursky, <i>Rights, Wrongs, and Recourse in the Law of Torts</i>, 51 VAND. L. REV. 1, 3–5 (1998).</p> <p>The result of this analysis is that “[a] plaintiff has no right of action unless there was a wrong relative to her or a violation of her right, and there is no such relational wrong or personal-rights violation in a negligence case where the duty to avoid foreseeable risk to the plaintiff has not been breached.” Zipursky, <i>supra</i>, at 15; see also <i>Nixon</i>, 690 S.W.2d at 551. A wrong in general is not enough; the plaintiff herself must be wronged. See Zipursky, <i>supra</i>, at 12.</p> <p>The plurality relies on <i>Palsgraf v. Long Island Railroad</i>, for its two-prong foreseeability test for duty. But even the plurality’s cited authorities recognize that, contrary to the opinion’s claim, <i>Palsgraf</i>’s two-prong duty analysis has not been “widely embraced.” 5 S.W.3d 654, 655; see RESTATEMENT (SECOND) OF TORTS § 281 Reporter’s Notes (1966) (noting that <i>Palsgraf</i> is “controversial” and that, as late as 1966, the decisions on facts that are at all analogous to <i>Palsgraf</i>’s facts are “few and divided.”); Zipursky, <i>Rights, Wrongs, and Recourse in the Law of Torts</i>, 51 VAND. L. REV. 1, 3 (1998)(“Leading scholars treat <i>Palsgraf</i> as a proximate cause case. . . . Cordozo’s own reasoning in <i>Palsgraf</i> is typically ignored or derided.”).</p>	<p>Benjamin C. Zipursky, <i>Rights, Wrongs, and Recourse in the Law of Torts</i>, 51 VAND. L. REV. 1 (1998).</p>

Full Case Citation	Propositions in Case Citing Article	Cited Articles
<p>Hamilton v. Accu-Tek, 62 F. Supp. 2d 802, 821 (E.D.N.Y. 1999) (some citations omitted).</p>	<p>First, the special ability to detect and guard against the risks associated with their products warrants placing all manufacturers, including these defendants, in a protective relationship with those foreseeably and potentially put in harm's way by their products. <i>See, e.g., Moning v. Alfano</i>, 400 Mich. 425, 254 N.W.2d 759, 765 (1977) . . . ; <i>cf.</i> John C.P. Goldberg and Benjamin C. Zipursky, <i>The Moral of MacPherson</i>, 146 U. Pa. L.Rev. 1733, 1823 (1998) (“The logic of <i>MacPherson</i> might well imply the existence of a duty to . . . bystander[s]” foreseeably injured by a manufacturer’s negligence, “[b]ut this would be because certain bystanders fall within a class of persons to whom vigilance of life and limb is a duty, which duty was breached”).</p>	<p>John C.P. Goldberg & Benjamin C. Zipursky, <i>The Moral of MacPherson</i>, 146 U. PA. L. REV. 1733 (1998).</p>
<p>United States v. Burgess, 684 F.3d 445, 461 (4th Cir. 2012).</p>	<p>The common law holds joint tortfeasors jointly and severally liable for indivisible damages. <i>E.g.</i>, TORT LAW: RESPONSIBILITIES AND REDRESS 517 (John C.P. Goldberg et al., eds. 2008) (“[J]oint and several liability has long been available . . . in which two negligent actors, acting independently of one another, caused a single <i>indivisible</i> harm to the plaintiff. . . .”).</p>	<p>TORT LAW: RESPONSIBILITIES AND REDRESS (John C.P. Goldberg, Anthony J. Sebok & Benjamin C. Zipursky eds., 2008).</p>
<p>Drollinger v. Mallon, 260 P.3d 482, 491 n.11 (Or. 2011).</p>	<p>Applied to a medical malpractice suit in such circumstances, the loss-of-chance doctrine permits the survivors to sue the doctor for causing a <i>reduced</i> chance of living. <i>See</i> John C.P. Goldberg, <i>What Clients are Owed: Cautionary Observations on Lawyers and Loss of a Chance</i>, 52 Emory L.J. 1201, 1204–05 (2003) (describing typical medical malpractice scenario).</p>	<p>John C.P. Goldberg, <i>What Clients Are Owed: Cautionary Observations on Lawyers and Loss of a Chance</i>, 52 EMORY L.J. 1201 (2003).</p>
<p>Rivers v. Moore, Myers & Garland, LLC, 2010 WY 102, ¶ 29, 236 P.3d 284 (Wyo. 2010).</p>	<p>We do not with this decision declare that there can never be a circumstance under which the loss-of-chance doctrine may apply to a legal malpractice claim. This case does, however, fit squarely within the parameters of the type of case in which the doctrine should have no application.</p>	<p>John C.P. Goldberg, <i>What Clients Are Owed: Cautionary Observations on Lawyers and Loss of a Chance</i>, 52 EMORY L.J. 1201 (2003).</p>

Full Case Citation	Propositions in Case Citing Article	Cited Articles
McMillan v. City of New York, 253 F.R.D. 247, 255 (E.D.N.Y. 2008) (citation omitted).	There is a right—in effect a property right—to compensation in cases of negligently caused damage to the person under state and federal law. <i>See Martinez v. State of California</i> , 444 U.S. 277, 282, 100 S.Ct. 553, 62 L.Ed.2d 481 (1980) . . . ; <i>see also</i> John C.P. Goldberg, <i>The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs</i> , 115 Yale L.J. 524 (2005) (constitutional right to a body of tort law for the purpose of redressing private wrongs).	John C.P. Goldberg, <i>The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs</i> , 115 YALE L.J. 524 (2005).
City of New York v. Beretta U.S.A. Corp., 401 F. Supp. 2d 244, 276 (E.D.N.Y. 2005).	Modern tort law (defined by common law, statutes, and judicial decisions) is one of the great developments of individual state and national laboratories. Historically, the states have taken different approaches to questions arising under the broader law of torts. <i>See</i> John C.P. Goldberg, <i>The Constitutional Status of Tort Law</i> , 115 Yale L.J. 526 (2005).	John C.P. Goldberg, <i>The Constitutional Status of Tort Law: Due Process and the Right to a Law for the Redress of Wrongs</i> , 115 YALE L.J. 524 (2005).
NAACP v. Acusport Corp., 210 F.R.D. 446, 459 (E.D.N.Y. 2002).	It is in the nature of our federal system that a tort or other action in one state, based on the law of that state, may cause manufacturers or distributors to change their national practice; deterrence is argued by some to be of the essence in tort law. <i>See, e.g.</i> , John C.P. Goldberg, <i>Introduction to John W. Wade Conference on Third Restatement of Torts</i> , 54 Vand.L.Rev. 639, 650–51 (2001).	John C.P. Goldberg, <i>Introduction: The Restatement (Third) of Torts: General Principles and the John W. Wade Conference</i> , 54 VAND. L. REV. 639 (2001).
<i>In re</i> DES Cases, 789 F.Supp. 552, 571 (E.D.N.Y. 1992).	Existing case law on section 302(a)(3)(ii) thus offers no direct guidance on the application of the “reasonable expectation” element to mass DES torts; precedent is here only a slight inhibitor against rational decisionmaking. <i>See</i> E. Hanks & S. Nemerson, <i>The Legal Process: Cases and Materials</i> Ch. 3, at 1–2 (temporary ed. 1992); <i>cf.</i> Goldberg, Note: <i>Community and the Common Law Judge: Reconstructing Cardozo’s Theoretical Writings</i> , 65 N.Y.U.L.Rev. 1324, 1352 (1990) (describing Cardozo’s concern that <i>stare decisis</i> not degenerate into “the tyranny of concepts”).	John C.P. Goldberg, Note, <i>Community and the Common Law Judge: Reconstructing Cardozo’s Theoretical Writings</i> , 65 N.Y.U. L. REV. 1324 (1990).

I have boldfaced the opinions in which the judge is citing the article or articles by Goldberg or Zipursky or both for propositions related to civil recourse theory—eleven of the nineteen opinions. Only six of the eleven are appellate-court opinions, however. Civil resource theory has failed as yet to catch on.

I was invited to write about civil recourse theory by Professor Rustad,¹⁷ the chairman of the Torts and Compensation Systems committee of the Association of American Law Schools, who announced that I was the recipient of the William L. Prosser Award for 2012, and this was followed by an enormously generous presentation statement by Professor Zipursky, putting me in his debt and making me embarrassed to be criticizing his work with Professor Goldberg. (Does that mean he “wronged” me by praising me?)

In acknowledging the award I explained that after being hired by the University of Chicago Law School in 1969 I had begun teaching and writing about torts, always with a strong focus on the application of economics. But I differed from Calabresi (who along with Ronald Coase had pioneered the application of economics to tort law) in wanting to use economics to help in understanding and clarifying tort doctrines, rather than to change them. I thought and still think that most tort rules make economic sense, but that they can be better understood both individually and in relation to each other if modeled as efforts to achieve an efficient allocation of resources to the avoidance of accidental and intended injuries, rather than to redistribute wealth or promote “fairness.”

When I became a federal judge in 1981, the focus of my interest in torts shifted from academic analysis (though I have continued to do academic writing on tort law) to the adjudication of appeals in tort cases, some arising under the diversity jurisdiction and governed by state law, others arising under federal law (under the admiralty jurisdiction, for example). I have written opinions in a large variety of tort cases, including railroad crossing accidents, invasions of privacy, medical malpractice, the economic loss doctrine (and the borderland between contract and tort generally), calculation of damages, causation, accidents on navigable waters, fraud, comparative and contributory negligence, the Hand Formula, nuisance, and I am sure others that I have forgotten.

I am not being hyperbolic when I say I love tort law! Not just the doctrines, the historical resonance, the ubiquity of Holmes and Cardozo, the economics, but also the facts—their variety, their unexpectedness, their implausibility; for it was Aristotle who distinguished history from literature on the basis that literature was about what was probable, but history was about what had actually happened, and what had actually happened was often so improbable, so strange (“truth is stranger than fiction”), that if presented as fiction it would be considered a ridiculous straining aftereffect. Who would have guessed that you must never hold a Mister Coffee carafe above your lap, because the bottom may fall out and cause a terrible scalding of your groin?¹⁸ That firemen enter a burning house on their hands and knees, so they can tell whether the floor is so hot that it may collapse under them?¹⁹ That (maybe) if you take a child’s tablet of Motrin you may develop a very rare

17. *See supra* note 7.

18. *Rizzo v. Corning, Inc.*, 105 F.3d 338 (7th Cir. 1997).

19. *Edwards v. Honeywell, Inc.*, 50 F.3d 484 (7th Cir. 1995).

disease that will literally burn your insides to a crisp?²⁰ That Federal Express does occasionally lose packages en route, with potentially disastrous results?²¹ And it is good to be reminded of how vulnerable obese people are to injury,²² how easy it is to fall off a stool and be hurt, while pulling the lever on a one-armed bandit in a riverboat casino,²³ and that one must never dive into a lake or river,²⁴ leave the sliding glass door to a hotel room balcony unlocked if the balcony has stairs to the ground,²⁵ or let a stranger who says he wants a glass of water into your motel room.²⁶

For this Article, I've decided to look a little more systematically at my tort opinions. I began with a word search ("torts," "negligence," etc.) of my published (i.e., citable as precedents) opinions on Westlaw. This yielded the surprising total of 906 opinions—almost a third of the 2800 or so of the judicial opinions that I have published since my appointment as a court of appeals judge more than 30 years ago (December 4, 1981, to be exact). I have not in fact written 906 opinions in tort cases; when I subtract opinions that mention words indicative of tort but are not tort opinions, I am left with only 575. The fact that such words appear in half as many of my non-tort cases as my tort cases shows how fundamental tort law is; its concepts permeate law, public as well as private.

Table 2 lists my 575 tort opinions, in order of number of total citations (from largest number to smallest), including both judicial and nonjudicial (law review and book) citations.

TABLE 2
POSNER TORT OPINIONS, ORDERED BY NUMBER OF CITATIONS
(FROM HIGHEST TO LOWEST NUMBER)²⁷

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
<i>In re Rhone-Poulenc Rorer, Inc.</i>	51 F.3d 1293	1995	17	284	614	305	1203	Products Liability	Class Action
<i>Jones v. City of Chicago</i>	856 F.2d 985	1988	24	845	80	153	1078	Section 1983	Criminal

20. *Robinson v. McNeil Consumer Healthcare*, 615 F.3d 861 (7th Cir. 2010).

21. *Kuehn v. Childrens Hospital*, 119 F.3d 1296 (7th Cir. 1997).

22. *Richman v. Sheahan*, 512 F.3d 876 (7th Cir. 2008); *Fagocki v. Algonquin/Lake-In-The-Hills Fire Prot. Dist.*, 496 F.3d 623 (7th Cir. 2007).

23. *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006).

24. *Davis v. United States*, 716 F.2d 418 (7th Cir. 1983); *Orthmann v. Apple River Campground*, 757 F.2d 909 (7th Cir. 1985).

25. *McCarty v. Pheasant Run, Inc.*, 826 F.2d 1554 (7th Cir. 1987).

26. *Wassell v. Adams*, 865 F.2d 849 (7th Cir. 1989).

27. Citation numbers are as of August 1, 2012.

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Duckworth v. Franzen	780 F.2d 645	1985	27	836	106	65	1007	Section 1983	Criminal
Lewis v. Faulkner	689 F.2d 100	1982	30	933	9	6	948	Section 1983	Criminal
Walker v. Thompson	288 F.3d 1005	2002	10	783	10	44	837	Section 1983	Criminal
Bastian v. Petren Res. Corp.	892 F.2d 680	1990	22	252	88	228	568	Section 1983	Criminal
Jackson v. Marion Cnty.	66 F.3d 151	1995	17	480	9	49	538	Fraud	Commercial
Moore v. Marketplace Rest., Inc.	754 F.2d 1336	1985	27	430	18	60	508	Infliction of Emotional Distress	Employment
Reed v. Vill. of Shorewood	704 F.2d 943	1983	29	339	55	91	485	Section 1983	Criminal
Avitia v. Metro. Club of Chi., Inc.	49 F.3d 1219	1995	17	327	29	114	470	Section 1983	Miscellaneous
Coniston Corp. v. Vill. of Hoffman Estates	844 F.2d 461	1988	24	237	129	75	441	Section 1983	Miscellaneous
Limestone Dev. Corp. v. Vill. of Lemont, Ill.	520 F.3d 797	2008	4	359	35	44	438	Section 1983	Miscellaneous
Murphy <i>ex rel.</i> K.H. v. Morgan	914 F.2d 846	1990	22	215	126	90	431	Products Liability	Personal Injury
Rosen v. Ciba-Geigy Corp.	78 F.3d 316	1996	16	226	98	103	427	Section 1983	Personal Injury
Zerand-Bernal Grp., Inc. v. Cox	23 F.3d 159	1994	18	193	57	169	419	Invasion of Privacy	Miscellaneous
Jackson v. City of Joliet	715 F.2d 1200	1983	29	145	232	38	415	Section 1983	Miscellaneous
Desnick v. Am. Broad. Cos.	44 F.3d 1345	1995	17	154	135	108	397	Products Liability	Personal Injury
Brazinski v. Amoco Petroleum Additives Co.	6 F.3d 1176	1993	19	297	39	57	393	Defamation	Miscellaneous
Douglass v. Hustler Magazine, Inc.	769 F.2d 1128	1985	27	90	112	191	393	Defamation	Employment
Baravati v. Josephthal, Lyon & Ross, Inc.	28 F.3d 704	1994	18	109	139	133	381	Invasion of Privacy	Miscellaneous

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Esmail v. Macrane	53 F.3d 176	1995	17	258	58	63	379	Section 1983	Commercial
Sellers v. Henman	41 F.3d 1100	1994	18	371	5	1	377	Bivens	Criminal
Bart v. Telford	677 F.2d 622	1982	30	315	29	29	373	Section 1983	Employment
Cooper v. Casey	97 F.3d 914	1996	16	288	27	50	365	Section 1983	Criminal
Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.	925 F.2d 174	1991	21	75	146	138	359	Theft of Trade Secrets	Commercial
Anderson v. Romero	72 F.3d 518	1995	17	214	69	61	344	Invasion of Privacy	Criminal
Hughes v. Joliet Corr. Ctr.	931 F.2d 425	1991	21	307	24	11	342	Section 1983	Criminal
Jackson v. Duckworth	955 F.2d 21	1992	20	302	10	20	332	Section 1983	Criminal
Haynes v. Alfred A. Knopf, Inc.	8 F.3d 1222	1993	19	143	107	78	328	Invasion of Privacy	Miscellaneous
Llaguno v. Mingey	763 F.2d 1560	1985	27	185	77	64	326	Section 1983	Criminal
Coté v. Wadel	796 F.2d 981	1986	26	270	16	36	322	Malpractice	Personal Injury
Mason v. Cont'l Ill. Nat. Bank	704 F.2d 361	1983	29	299	11	12	322	Section 1983	Employment
<i>In re</i> Met-L-Wood Corp.	861 F.2d 1012	1988	24	175	33	113	321	Fraud	Commercial
Flaminio v. Honda Motor Co.	733 F.2d 463	1984	28	97	106	117	320	Products Liability	Personal Injury
Greycas, Inc. v. Proud	826 F.2d 1560	1987	25	72	122	124	318	Malpractice	Commercial
McCall-Bey v. Franzen	777 F.2d 1178	1985	27	223	32	61	316	Section 1983	Criminal
McClellan v. Cantrell	217 F.3d 890	2000	12	250	10	55	315	Fraud	Commercial
Donovan v. Robbins	752 F.2d 1170	1985	27	151	49	113	313	Breach of Fiduciary Duty	Employment
Riordan v. Kempiners	831 F.2d 690	1987	25	209	56	41	306	Section 1983	Employment
Crawford v. United States	796 F.2d 924	1986	26	274	10	16	300	Federal Tort Claims Act	Personal Injury
Wilson v. City of Chicago	6 F.3d 1233	1993	19	129	61	110	300	Section 1983	Criminal
<i>In re</i> Marchiando	13 F.3d 1111	1994	18	226	10	63	299	Fraud	Miscellaneous
Patton v. Przybylski	822 F.2d 697	1987	25	282	10	4	296	Section 1983	Criminal

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Thomson v. Washington	362 F.3d 969	2004	8	271	8	13	292	Section 1983	Criminal
Ackerman v. Nw. Mut. Life Ins. Co.	172 F.3d 467	1999	13	263	8	16	287	Fraud	Class Action
Cameron v. IRS	773 F.2d 126	1985	27	181	15	91	287	Infliction of Emotional Distress	Miscellaneous
Billman v. Ind. Dept. of Corr.	56 F.3d 785	1995	17	248	21	17	286	Invasion of Privacy	Criminal
Wilkins v. May	872 F.2d 190	1989	23	171	61	52	284	Bivens	Criminal
McKinnon v. City of Berwyn	750 F.2d 1383	1984	28	176	35	72	283	Section 1983	Criminal
Aiello v. Providian Fin. Corp.	239 F.3d 876	2001	11	109	30	142	281	Infliction of Emotional Distress	Miscellaneous
Fed. Deposit Ins. Corp. v. W.R. Grace & Co.	877 F.2d 614	1989	23	156	50	66	272	Fraud	Commercial
Reynolds v. Beneficial Nat'l Bank	288 F.3d 277	2002	10	118	69	83	270	Breach of Fiduciary Duty	Class Action
Soderbeck v. Burnett Cnty.	752 F.2d 285	1984	28	162	24	83	269	Section 1983	Employment
Beanstalk Group, Inc. v. AM Gen. Corp.	283 F.3d 856	2002	10	193	41	35	269	Tortious Interference	Commercial
Van Harken v. City of Chicago	103 F.3d 1346	1997	15	207	34	26	267	Section 1983	Miscellaneous
Grip-Pak, Inc. v. Ill. Tool Works, Inc.	694 F.2d 466	1982	30	115	75	75	265	Malicious Prosecution	Commercial
Tierney v. Vahle	304 F.3d 734	2002	10	241	2	21	264	Section 1983	Miscellaneous
Hunt v. City of Markham	219 F.3d 649	2000	12	181	16	65	262	Section 1981	Employment
Lancaster v. Norfolk & W. Ry. Co.	773 F.2d 807	1985	27	192	34	32	258	FELA	Employment
Burdett v. Miller	957 F.2d 1375	1992	20	158	48	51	257	Breach of Fiduciary Duty	Securities
Coyne-Delany Co. v. Capital Dev. Bd.	717 F.2d 385	1983	29	161	17	78	256	Section 1983	Commercial
Parrett v. City of Connersville	737 F.2d 690	1984	28	171	22	32	255	Section 1983	Employment

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Brown v. Brienen	722 F.2d 360	1983	29	192	21	42	255	Section 1983	Employment
Matter of UNR Industries, Inc.	725 F.2d 1111	1984	28	92	84	75	251	Bankruptcy Code	Miscellaneous
Muick v. Glenayre Elecs.	280 F.3d 741	2002	10	67	60	122	249	Bivens	Criminal
Mathias v. Accor Econ. Lodging, Inc.	347 F.3d 672	2003	9	76	92	78	246	Negligence	Personal Injury
Campbell v. Greer	831 F.2d 700	1987	25	155	44	47	246	Section 1983	Criminal
Thomas v. Shelton	740 F.2d 478	1984	28	171	27	44	242	Negligence	Personal Injury
Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co. of Chi.	834 F.2d 677	1987	25	142	54	45	241	Fraud	Commercial
Swank v. Smart	898 F.2d 1247	1990	22	113	52	75	240	Section 1983	Employment
Kirksey v. R.J. Reynolds Tobacco Co.	168 F.3d 1039	1999	13	210	16	13	239	Products Liability	Class Action
Asahi Glass Co. v. Pentech Pharms., Inc.	289 F. Supp.2d 986	2003	9	97	95	46	238	Tortious Interference	Commercial
Auriemma v. Rice	910 F.2d 1449	1990	22	157	14	66	237	Section 1983	Employment
Asset Allocation & Mgmt. Co. v. W. Emp'rs Ins. Co.	892 F.2d 566	1989	23	177	12	45	234	Fraud	Commercial
Chaveriat v. Williams Pipe Line Co.	11 F.3d 1420	1993	19	156	30	45	231	Nuisance	Commercial
Goerdt <i>ex rel.</i> Howell v. Tribune Entm't Co.	106 F.3d 215	1997	15	158	18	52	228	Invasion of Privacy	Miscellaneous
Winskunas v. Birnbaum	23 F.3d 1264	1994	18	203	7	18	228	Malpractice	Miscellaneous
Mahoney v. Kesery	976 F.2d 1054	1992	20	156	19	52	227	Section 1983	Criminal
Pohl v. Nat'l Benefits Consultants, Inc.	956 F.2d 126	1992	20	189	36	101	226	Fraud	Commercial

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
G.J. Leasing Co., Inc. v. Union Elec. Co.	54 F.3d 379	1995	17	63	24	138	225	Strict Liability	Commercial
Rice v. Nova Biomedical Corp.	38 F.3d 909	1994	18	185	12	27	224	Defamation	Employment
Fogel v. Zell	221 F.3d 955	2000	12	90	32	101	223	Bankruptcy Code	Commercial
Evra Corp. v. Swiss Bank Corp.	673 F.2d 951	1982	30	75	146	102	223	Negligence	Commercial
FutureSource LLC v. Reuters Ltd.	312 F.3d 281	2002	10	84	23	116	223	Tortious Interference	Commercial
Fujisawa Pharm. Co. v. Kapoor	115 F.3d 1332	1997	15	124	15	80	219	Fraud	Commercial
Ball v. City of Chicago	2 F.3d 752	1993	19	195	8	15	218	Section 1983	Criminal
Brown & Williamson Tobacco Corp. v. Jacobson	713 F.2d 262	1983	29	110	24	83	217	Libel	Miscellaneous
Graf v. Elgin, Joliet & E. Ry. Co.	790 F.2d 1341	1986	26	151	26	27	214	FELA	Employment
<i>In re</i> Hendrix	986 F.2d 195	1993	19	110	33	71	214	Negligence	Personal Injury
Scruggs v. Moellering	870 F.2d 376	1989	23	190	17	4	211	Section 1983	Criminal
Hilton v. City of Wheeling	209 F.3d 1005	2000	12	153	17	38	208	Section 1983	Miscellaneous
Colaizzi v. Walker	812 F.2d 304	1987	25	179	15	13	207	Section 1983	Employment
Harzewski v. Guidant Corp.	489 F.3d 799	2007	5	70	21	114	205	Breach of Fiduciary Duty	Employment
Fidelity Nat'l Title Ins. Co. of N.Y. v. Intercounty Nat'l Title Ins. Co.	412 F.3d 745	2005	7	114	6	85	205	Fraud	Commercial
Azeez v. Fairman	795 F.2d 1296	1986	26	180	14	7	201	Section 1983	Criminal
AMPAT/Midwest, Inc. v. Ill. Tool Works Inc.	896 F.2d 1035	1990	22	141	20	39	200	Fraud	Commercial

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First <i>ex rel.</i> DeShaney v. Winnebago Cnty. Dept. of Soc. Servs.	812 F.2d 298	1987	25	55	117	25	197	Section 1983	Miscellaneous
McCullough v. Suter	757 F.2d 142	1985	27	118	48	30	196	Fraud	Commercial
Ustrak v. Fairman	781 F.2d 573	1986	26	154	13	29	196	Section 1983	Criminal
Del Raine v. Carlson	826 F.2d 698	1987	25	163	17	14	194	Bivens	Criminal
Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co.	916 F.2d 1174	1990	22	54	118	22	194	Negligence	Commercial
Micro Data Base Sys. v. Dharma Sys.	148 F.3d 649	1998	14	37	49	106	192	Theft of Trade Secrets	Commercial
Sullivan v. Conway	157 F.3d 1092	1998	14	111	18	60	189	Defamation	Miscellaneous
Am. Civil Liberties Union v. City of St. Charles	794 F.2d 265	1986	26	107	64	18	189	Section 1983	Miscellaneous
Walters v. Edgar	163 F.3d 430	1998	14	159	14	15	188	Section 1983	Criminal
McKinney v. George	726 F.2d 1183	1984	28	150	8	29	187	Section 1983	Criminal
Power v. Summers	226 F.3d 815	2000	12	128	20	37	185	Section 1983	Employment
Barron v. Ford Motor Co. of Canada	965 F.2d 195	1992	20	122	25	37	184	Negligence	Personal Injury
Finley v. Marathon Oil Co.	75 F.3d 1225	1996	16	143	11	28	182	Breach of Fiduciary Duty	Commercial
Braun v. Lorillard Inc.	84 F.3d 230	1996	16	61	52	69	182	Products Liability	Class Action
Piarowski v. Ill. Cmty. Coll. Dist. 515	759 F.2d 625	1985	27	45	90	47	182	Section 1983	Miscellaneous
Slater v. Optical Radiation Corp.	961 F.2d 1330	1992	20	93	24	64	181	Negligence	Personal Injury
IDS Life Ins. Co. v. SunAmerica Life Ins. Co.	136 F.3d 537	1998	14	101	29	50	180	Tortious Interference	Commercial

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Singletary v. Cont'l Ill. Nat. Bank & Trust Co. of Chi.	9 F.3d 1236	1993	19	156	8	15	179	Fraud	Commercial
Cooney v. Rossiter	583 F.3d 967	2009	3	143	18	18	179	Section 1983	Miscellaneous
Niehus v. Liberio	973 F.2d 526	1992	20	127	12	40	179	Section 1983	Criminal
Ellis v. Hamilton	669 F.2d 510	1982	30	103	40	35	178	Section 1983	Miscellaneous
Ford v. Wilson	90 F.3d 245	1996	16	162	7	6	175	Section 1983	Criminal
Abernathy v. Superior Hardwoods, Inc.	704 F.2d 963	1983	29	77	29	67	173	Negligence	Personal Injury
McNamara v. City of Chicago	138 F.3d 1219	1998	14	88	45	39	172	Section 1983	Employment
Lenard v. Argento	808 F.2d 1242	1987	25	118	5	48	171	Section 1983	Criminal
Thomas v. Farley	31 F.3d 557	1994	18	154	11	6	171	Section 1983	Criminal
Kemezy v. Peters	79 F.3d 33	1996	16	75	45	49	169	Section 1983	Criminal
Bush v. Commonwealth Edison Co.	990 F.2d 928	1993	19	128	17	23	168	Section 1983	Employment
Norris <i>ex rel.</i> West v. Waymire	114 F.3d 646	1997	15	131	28	28	167	Section 1983	Miscellaneous
Olech v. Vill. of Willowbrook	160 F.3d 386	1998	14	76	57	31	164	Section 1981	Miscellaneous
Lawson v. Sheriff of Tippecanoe Cnty.	725 F.2d 1136	1984	28	136	3	25	162	Section 1983	Employment
Lloyd v. Loeffler	694 F.2d 489	1982	30	77	51	34	162	Tortious Interference	Miscellaneous
<i>In re</i> Chavin	150 F.3d 726	1998	14	132	5	21	158	Fraud	Miscellaneous
Free v. United States	879 F.2d 1535	1989	23	144	8	4	156	Federal Tort Claims Act	Criminal
Eberhardt v. O'Malley	17 F.3d 1023	1994	18	78	17	61	156	Section 1983	Employment
Albright v. Oliver	975 F.2d 343	1992	20	100	24	32	156	Section 1983	Criminal
Sutton v. City of Milwaukee	672 F.2d 644	1982	30	102	18	35	155	Section 1983	Miscellaneous

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IDS Life Ins. Co. v. Royal Alliance Assocs., Inc.	266 F.3d 645	2001	11	74	25	55	154	Tortious Interference	Commercial
Emery v. Am. Gen. Fin., Inc.	71 F.3d 1343	1995	17	88	35	30	153	Fraud	Commercial
Jessup v. Luther	277 F.3d 926	2002	10	84	36	31	151	Section 1983	Employment
Heard v. Sheahan	253 F.3d 316	2001	11	130	5	13	148	Section 1983	Criminal
Shondel v. McDermott	775 F.2d 859	1985	27	94	12	42	148	Section 1983	Employment
Steinman v. Hicks	352 F.3d 1101	2003	9	40	9	97	146	Breach of Fiduciary Duty	Employment
All-Tech Telecom, Inc. v. Amway Corp.	174 F.3d 862	1999	13	87	30	29	146	Fraud	Commercial
May v. Evansville-Vanderburgh Sch. Corp.	787 F.2d 1105	1986	26	74	47	25	146	Section 1983	Miscellaneous
Murrey v. United States	73 F.3d 1448	1996	16	110	7	28	145	Federal Tort Claims Act	Personal Injury
Bane v. Ferguson	890 F.2d 11	1989	23	96	31	18	145	Negligence	Commercial
<i>In re</i> Catt	368 F.3d 789	2004	8	119	4	19	142	Bankruptcy Code	Commercial
Graf v. Elgin, Joliet & E. Ry. Co.	697 F.2d 771	1983	29	91	20	31	142	FELA	Employment
<i>In re</i> Linton	136 F.3d 544	1998	14	79	9	54	142	Malicious Prosecution	Miscellaneous
Greene v. Meese	875 F.2d 639	1989	23	134	4	4	142	Section 1983	Criminal
Summers v. State St. Bank & Trust Co.	453 F.3d 404	2006	6	39	5	97	141	Breach of Fiduciary Duty	Class Action
Hessel v. O'Hearn	977 F.2d 299	1992	20	92	11	38	141	Section 1983	Criminal
Villanova v. Abrams	972 F.2d 792	1992	20	106	15	20	141	Section 1983	Criminal
Hershinow v. Bonamarte	735 F.2d 264	1984	28	84	5	52	141	Section 1983	Employment
Drazan v. United States	762 F.2d 56	1985	27	123	4	13	140	Federal Tort Claims Act	Personal Injury
Gernetzke v. Kenosha Unified Sch. Dist. No. 1	274 F.3d 464	2001	11	83	26	31	140	Section 1983	Miscellaneous

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Jungels v. Pierce	825 F.2d 1127	1987	25	128	6	6	140	Section 1983	Employment
Curtis 1000, Inc. v. Suess	24 F.3d 941	1994	18	65	32	42	139	Tortious Interference	Commercial
Schroeder v. City of Chicago	927 F.2d 957	1991	21	91	22	25	138	Section 1983	Miscellaneous
Gauger v. Hendle	349 F.3d 354	2003	9	109	11	17	137	Section 1983	Criminal
Loubser v. Thacker	440 F.3d 439	2006	6	122	4	11	137	Section 1983	Miscellaneous
Spencer v. Lee	864 F.2d 1376	1989	23	80	17	39	136	Section 1983	Miscellaneous
Latigo Ventures v. Laventhol & Horwath	876 F.2d 1322	1989	23	36	24	75	135	Fraud	Securities
Hameetman v. City of Chicago	776 F.2d 636	1985	27	80	19	36	135	Section 1983	Employment
W.C.M. Window Co. v. Bernardi	730 F.2d 486	1984	28	57	54	24	135	Section 1983	Miscellaneous
Faheem-El v. Klincar	841 F.2d 712	1988	24	107	14	13	134	Section 1983	Criminal
Orthmann v. Apple River Campground, Inc.	757 F.2d 909	1985	27	103	8	22	133	Negligence	Personal Injury
LaFalce v. Houston	712 F.2d 292	1983	29	47	41	45	133	Section 1983	Commercial
Fitzgerald v. Chrysler Corp.	116 F.3d 225	1997	15	86	28	18	132	Fraud	Class Action
Pieczynski v. Duffy	875 F.2d 1331	1989	23	75	8	48	131	Section 1983	Miscellaneous
Hunafa v. Murphy	907 F.2d 46	1990	22	96	27	8	131	Section 1983	Criminal
Dragan v. Miller	679 F.2d 712	1982	30	80	36	15	131	Tortious Interference	Miscellaneous
Bontkowski v. Smith	305 F.3d 757	2002	10	107	2	21	130	Bivens	Miscellaneous
Smoot v. Mazda Motors of Am., Inc.	469 F.3d 675	2006	6	104	1	25	130	Products Liability	Personal Injury
Ryan v. County of DuPage	45 F.3d 1090	1995	17	99	6	25	130	Section 1983	Criminal
Santamarina v. Sears, Roebuck & Co.	466 F.3d 570	2006	6	101	2	26	129	Fraud	Class Action
Pearson v. Ramos	237 F.3d 881	2001	11	80	18	31	129	Section 1983	Criminal

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Harris v. Greer	750 F.2d 617	1984	28	116	6	7	129	Section 1983	Criminal
Emery v. Am. Gen. Fin., Inc.	134 F.3d 1321	1998	14	87	15	25	127	Fraud	Class Action
Howard v. Wal-Mart Stores, Inc.	160 F.3d 358	1998	14	106	14	7	127	Negligence	Personal Injury
Curtis-Universal, Inc. v. Sheboygan Emergency Medical Servs., Inc.	43 F.3d 1119	1994	18	74	16	37	127	Tortious Interference	Commercial
Navarro v. Fuji Heavy Indus., Ltd.	117 F.3d 1027	1997	15	77	20	28	125	Products Liability	Personal Injury
Miller v. U.S. Steel Corp.	902 F.2d 573	1990	22	69	37	17	123	Negligence	Commercial
<i>In re</i> Oil Spill by Amoco Cadiz off Coast of Fr. on Mar. 16, 1978	699 F.2d 909	1983	29	88	32	33	123	Negligence	Miscellaneous
Miller v. Ind. Dept. of Corr.	75 F.3d 330	1996	16	106	2	15	123	Section 1983	Criminal
Smith v. Shettle	946 F.2d 1250	1991	21	112	10	1	123	Section 1983	Criminal
Minority Police Officers Ass'n v. City of S. Bend	721 F.2d 197	1983	29	75	12	36	123	Section 1983	Employment
Wolin v. Smith Barney Inc.	83 F.3d 847	1996	16	68	15	39	122	Breach of Fiduciary Duty	Commercial
Wilson v. City of Chicago	120 F.3d 681	1997	15	91	10	21	122	Section 1983	Criminal
Lossman v. Pekarske	707 F.2d 288	1983	29	103	16	3	122	Section 1983	Miscellaneous
Antonelli v. Foster	104 F.3d 899	1997	15	73	25	26	120	Section 1983	Criminal
Smart v. Bd. of Trs. of Univ. of Ill.	34 F.3d 432	1994	18	95	16	8	119	Section 1983	Employment
Lauth v. McCollum	424 F.3d 631	2005	7	105	6	8	119	Section 1983	Employment
Lynk v. LaPorte Super. Ct. No. 2	789 F.2d 554	1986	26	90	15	14	119	Section 1983	Criminal

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Refrigeration Sales Co. v. Mitchell-Jackson, Inc.	770 F.2d 98	1985	27	91	3	24	118	Conversion	Commercial
Trevino v. Union Pac. R.R. Co.	916 F.2d 1230	1990	22	107	1	10	118	Negligence	Personal Injury
McCarty v. Pheasant Run, Inc.	826 F.2d 1554	1987	25	47	49	22	118	Negligence	Personal Injury
Arsberry v. Illinois	244 F.3d 558	2001	11	84	17	17	118	Section 1983	Criminal
Kaczmarek v. Allied Chemical Corp.	836 F.2d 1055	1987	25	40	37	30	117	Products Liability	Personal Injury
Shropshear v. Corp. Counsel of Chi.	275 F.3d 593	2001	11	103	3	11	117	Section 1983	Miscellaneous
Ryan v. Mary Immaculate Queen Ctr.	188 F.3d 857	1999	13	105	1	11	117	Section 1983	Miscellaneous
Okoro v. Callaghan	324 F.3d 488	2003	9	102	3	11	116	Bivens	Criminal
Evans Transp. Co. v. Scullin Steel Co.	693 F.2d 715	1982	30	99	8	9	116	Fraud	Commercial
Dishnow v. Sch. Dist. of Rib Lake	77 F.3d 194	1996	16	67	11	38	116	Section 1983	Employment
Patterson v. Portch	853 F.2d 1399	1988	24	61	12	43	116	Section 1983	Employment
Johnson v. Burken	930 F.2d 1202	1991	21	94	3	18	115	Negligence	Miscellaneous
Tarkowski v. Lake Cnty.	775 F.2d 173	1985	27	63	12	40	115	Section 1983	Miscellaneous
Speakers of Sport, Inc. v. ProServ, Inc.	178 F.3d 862	1999	13	77	19	19	115	Tortious Interference	Commercial
Hoagland <i>ex rel.</i> Midwest Transit, Inc. v. Sandberg, Phoenix & von Gontard, P.C.	385 F.3d 737	2004	8	66	19	29	114	Malpractice	Securities
Williams Elecs. Games, Inc. v. Garrity	479 F.3d 904	2007	5	108	1	4	113	Fraud	Commercial
Glatt v. Chi. Park Dist.	87 F.3d 190	1996	16	96	1	16	113	Section 1983	Miscellaneous

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Ill. Psychological Ass'n v. Falk	818 F.2d 1337	1987	25	81	12	20	113	Section 1983	Miscellaneous
Proffitt v. Ridgway	279 F.3d 503	2002	10	88	3	21	112	Section 1983	Criminal
Soldal v. Cnty. of Cook	942 F.2d 1073	1991	21	41	23	48	112	Section 1983	Miscellaneous
<i>In re</i> Allstate Ins. Co.	400 F.3d 505	2005	7	44	11	56	111	Breach of Fiduciary Duty	Class Action
Midwest Commerce Banking Co. v. Elkhart City Ctr.	4 F.3d 521	1993	19	88	4	19	111	Fraud	Commercial
Newman v. Metro. Pier & Exposition Auth.	962 F.2d 589	1992	20	96	3	12	111	Negligence	Personal Injury
Spinozzi v. ITT Sheraton Corp.	174 F.3d 842	1999	13	67	25	26	108	Negligence	Personal Injury
Nesses v. Shepard	68 F.3d 1003	1995	17	98	3	7	108	Section 1983	Miscellaneous
Hudson v. Chi. Teachers Union Local No. 1	743 F.2d 1187	1984	28	61	25	22	108	Section 1983	Employment
Hammond v. Terminal R.R. Ass'n of St. Louis	848 F.2d 95	1988	24	76	13	18	107	FELA	Employment
Button v. Harden	814 F.2d 382	1987	25	86	2	19	107	Section 1983	Employment
Wilbur v. Mahan	3 F.3d 214	1993	19	71	8	28	107	Section 1983	Criminal
Vigortone AG Prods., Inc. v. PM AG Prods., Inc.	316 F.3d 641	2002	10	62	12	31	105	Fraud	Commercial
Cahnmann v. Sprint Corp.	133 F.3d 484	1998	14	92	5	7	104	Fraud	Class Action
Williams Elecs. Games, Inc. v. Garrity	366 F.3d 569	2004	8	60	12	31	103	Fraud	Commercial
Sullivan v. Freeman	944 F.2d 334	1991	21	79	8	16	103	Malpractice	Criminal
Hartmann v. Prudential Ins. Co. of Am.	9 F.3d 1207	1993	19	84	10	8	102	Fraud	Miscellaneous
Cunningham Charter Corp. v. Learjet, Inc.	592 F.3d 805	2010	2	47	11	44	102	Products Liability	Class Action

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Olivieri v. Rodriguez	122 F.3d 406	1997	15	64	6	31	101	Section 1983	Employment
Johnson v. Miller	680 F.2d 39	1982	30	86	8	7	101	Section 1983	Criminal
Leister v. Dovetail, Inc.	546 F.3d 875	2008	4	64	3	32	99	Breach of Fiduciary Duty	Employment
Dakuras v. Edwards	312 F.3d 256	2002	10	87	3	9	99	Fraud	Miscellaneous
Hemmings v. Barian	822 F.2d 688	1987	25	59	14	25	98	Fraud	Commercial
Anderson v. Marathon Petroleum Co.	801 F.2d 936	1986	26	54	19	25	98	Negligence	Personal Injury
Pena v. Leombruni	200 F.3d 1031	1999	13	42	9	47	98	Section 1983	Criminal
Metzl v. Leininger	57 F.3d 618	1995	17	42	36	20	98	Section 1983	Miscellaneous
Chesny v. Marek	720 F.2d 474	1983	29	32	55	11	98	Section 1983	Criminal
Hoover v. Wagner	47 F.3d 845	1995	17	74	10	13	97	Section 1983	Miscellaneous
Philly's v. Byrne	732 F.2d 87	1984	28	49	15	33	97	Section 1983	Miscellaneous
Lefkowitz v. Wagner	395 F.3d 773	2005	7	37	5	54	96	Breach of Fiduciary Duty	Commercial
Hartford Accident & Indem. Co. v. Sullivan	846 F.2d 377	1988	24	63	9	24	96	Fraud	Commercial
Phillips v. Ford Motor Co.	435 F.3d 785	2006	6	51	10	35	96	Fraud	Class Action
Baer v. City of Wauwatosa	716 F.2d 1117	1983	29	54	8	34	96	Section 1983	Miscellaneous
Higgins v. Mississippi	217 F.3d 951	2000	12	69	5	21	95	Section 1983	Criminal
Nelson v. Streeter	16 F.3d 145	1994	18	16	14	65	95	Section 1983	Miscellaneous
Boim v. Holy Land Found. for Relief & Dev.	549 F.3d 685	2008	4	31	32	32	95	Wrongful Death	Personal Injury
<i>In re</i> EDC, Inc.	930 F.2d 1275	1991	21	50	16	27	93	Fraud	Commercial
Johnson-Bey v. Lane	863 F.2d 1308	1988	24	74	10	9	93	Section 1983	Criminal

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Salton, Inc. v. Philips Domestic Appliances & Pers. Care B.V.	391 F.3d 871	2004	8	49	4	40	93	Theft of Trade Secrets	Commercial
U.S. Fid. & Guar. Co. v. Plovridba	683 F.2d 1022	1982	30	24	50	18	92	Negligence	Personal Injury
Saenz v. Young	811 F.2d 1172	1987	25	87	4	1	92	Section 1983	Criminal
<i>In re</i> Woldman	92 F.3d 546	1996	16	75	1	15	91	Breach of Fiduciary Duty	Commercial
Davis v. United States	716 F.2d 418	1983	29	61	13	17	91	Federal Tort Claims Act	Personal Injury
Carr v. O'Leary	167 F.3d 1124	1999	13	68	9	14	91	Section 1983	Criminal
Agfa-Gevaert, A.G. v. A.B. Dick Co.	879 F.2d 1518	1989	23	55	14	21	90	Fraud	Commercial
Wild v. Subscription Plus, Inc.	292 F.3d 526	2002	10	78	0	12	90	Negligence	Personal Injury
O'Shea v. Riverway Towing Co.	677 F.2d 1194	1982	30	49	29	11	90	Negligence	Personal Injury
Stoleson v. United States	708 F.2d 1217	1983	29	35	31	22	88	Federal Tort Claims Act	Personal Injury
Clark v. Maurer	824 F.2d 565	1987	25	40	6	42	88	Section 1983	Employment
Jones v. Franzen	697 F.2d 801	1983	29	82	3	3	88	Section 1983	Criminal
King v. Fed. Bureau of Prisons	415 F.3d 634	2005	7	55	8	24	87	Bivens	Criminal
Helms v. Certified Packaging Corp.	551 F.3d 675	2008	4	14	2	70	86	Bankruptcy Code	Commercial
Jones v. Brennan	465 F.3d 304	2006	6	51	9	26	86	Section 1983	Miscellaneous
BondPro Corp. v. Siemens Power Generation, Inc.	463 F.3d 702	2006	6	24	8	54	86	Theft of Trade Secrets	Commercial
Hixon v. Sherwin-Williams Co.	671 F.2d 1005	1982	30	64	13	8	85	Negligence	Miscellaneous
Delgado v. Stegall	367 F.3d 668	2004	8	54	12	19	85	Section 1983	Miscellaneous

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Boyce v. Fernandes	77 F.3d 946	1996	16	50	7	28	85	Section 1983	Criminal
People Organized for Welfare & Emp't Rights (P.O.W.E.R.) v. Thompson	727 F.2d 167	1984	28	49	11	25	85	Section 1983	Miscellaneous
Atkins v. City of Chicago	631 F.3d 823	2011	1	66	3	16	85	Section 1983	Criminal
Campbell v. City of Champaign	940 F.2d 1111	1991	21	77	2	6	85	Section 1983	Employment
FDIC v. Braemoor Assocs.	686 F.2d 550	1982	30	47	12	25	84	Breach of Fiduciary Duty	Commercial
Elmore v. Chi. & Ill. Midland Ry. Co.	782 F.2d 94	1986	26	30	28	25	83	Railway Labor Act	Employment
Tamari v. Bache & Co. (Lebanon) S.A.L.	838 F.2d 904	1988	24	81	2	9	83	Fraud	Commercial
Bailey v. Faulkner	765 F.2d 102	1985	27	65	6	11	82	Section 1983	Criminal
Muscare v. Quinn	680 F.2d 42	1982	30	47	5	30	82	Section 1983	Criminal
Doe v. City of Chicago	360 F.3d 667	2004	8	63	10	8	81	Section 1983	Criminal
Krist v. Eli Lilly & Co.	897 F.2d 293	1990	22	44	12	24	80	Products Liability	Personal Injury
Burgess v. Lowery	201 F.3d 942	2000	12	30	12	38	80	Section 1983	Criminal
Heck v. Humphrey	997 F.2d 355	1993	19	51	14	15	80	Section 1983	Criminal
Alonzi v. Budget Constr. Co.	55 F.3d 331	1995	17	70	0	9	79	Fraud	Commercial
Old Republic Ins. Co. v. Chuhak & Tecson, P.C.	84 F.3d 998	1996	16	48	8	23	79	Malpractice	Insurance
<i>In re</i> Chi., Rock Island & Pac. R.R. Co.	788 F.2d 1280	1986	26	55	13	11	79	Negligence	Personal Injury
<i>In re</i> African-Am. Slave Descendants Litig.	471 F.3d 754	2006	6	24	17	38	79	Section 1982	Miscellaneous
Remus v. Amoco Oil Co.	794 F.2d 1238	1986	26	43	15	20	78	Fraud	Commercial

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Herzog v. Vill. of Winnetka	309 F.3d 1041	2002	10	65	2	11	78	Section 1983	Criminal
Amati v. City of Woodstock	176 F.3d 952	1999	13	45	16	16	77	Section 1983	Miscellaneous
Joseph v. Brierton	739 F.2d 1244	1984	28	57	5	14	76	Section 1983	Criminal
Moore v. Thieret	862 F.2d 148	1988	24	68	0	8	76	Section 1983	Criminal
Waldron v. McAtee	723 F.2d 1348	1983	29	55	6	14	75	Section 1983	Criminal
Frandsen v. Jensen-Sundquist Agency, Inc.	802 F.2d 941	1986	26	33	22	20	75	Tortious Interference	Commercial
Backes v. Valspar Corp.	783 F.2d 77	1986	26	43	9	22	74	Negligence	Personal Injury
Wassell v. Adams	865 F.2d 849	1989	23	37	37	9	73	Negligence	Personal Injury
Traylor v. Husqvarna Motor	988 F.2d 729	1993	19	14	19	40	73	Products Liability	Personal Injury
Crowley v. McKinney	400 F.3d 965	2005	7	36	15	22	73	Section 1983	Miscellaneous
Soldal v. Cnty. of Cook	923 F.2d 1241	1991	21	38	4	31	73	Section 1983	Miscellaneous
Pratt v. Tarr	464 F.3d 730	2006	6	61	4	8	73	Section 1983	Criminal
Hoard v. Reddy	175 F.3d 531	1999	13	48	11	14	73	Section 1983	Criminal
Goodhand v. United States	40 F.3d 209	1994	18	59	5	8	72	Federal Tort Claims Act	Personal Injury
E. Trading Co. v. Refco, Inc.	229 F.3d 617	2000	12	39	7	26	72	Fraud	Commercial
Nat'l Ass'n of Realtors v. Nat'l Real Estate Ass'n, Inc.	894 F.2d 937	1990	22	38	6	28	72	Fraud	Commercial
Levine v. Kling	123 F.3d 580	1997	15	31	14	27	72	Malpractice	Criminal
Lim v. Cent. DuPage Hosp.	871 F.2d 644	1989	23	39	6	27	72	Section 1981	Employment
Taliferro v. Aogle	757 F.2d 157	1985	27	43	6	23	72	Section 1983	Criminal
Bolt v. Loy	227 F.3d 854	2000	12	62	2	8	72	Section 1983	Miscellaneous
Peña v. Mattox	84 F.3d 894	1996	16	38	20	14	72	Section 1983	Miscellaneous
Carr v. Tillery	591 F.3d 909	2010	2	50	2	19	71	Fraud	Miscellaneous

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Kuehn v. Childrens Hosp.	119 F.3d 1296	1997	15	36	12	23	71	Infliction of Emotional Distress	Miscellaneous
Rardin v. T & D Mach. Handling, Inc.	890 F.2d 24	1989	23	41	24	6	71	Negligence	Commercial
Reynolds v. City of Chicago	296 F.3d 524	2002	10	20	32	19	71	Section 1981	Class Action
Webb v. Ind. Nat'l Bank	931 F.2d 434	1991	21	57	2	12	71	Section 1981	Employment
Muhammad v. Oliver	547 F.3d 874	2008	4	56	0	14	70	Section 1981	Employment
King v. Goldsmith	897 F.2d 885	1990	22	35	2	33	70	Section 1983	Criminal
Davis v. Consol. Rail Corp.	788 F.2d 1260	1986	26	36	22	11	69	Negligence	Personal Injury
Coe v. Cnty. of Cook	162 F.3d 491	1998	14	36	9	24	69	Section 1983	Miscellaneous
Bueth v. Britt Airlines, Inc.	787 F.2d 1194	1986	26	28	15	26	69	Wrongful Termination	Employment
Armstrong v. LaSalle Bank Nat'l Ass'n	446 F.3d 728	2006	6	24	1	43	68	Breach of Fiduciary Duty	Employment
Jutzi-Johnson v. United States	263 F.3d 753	2001	11	42	11	15	68	Federal Tort Claims Act	Personal Injury
Bethesda Lutheran Homes & Servs., Inc. v. Born	238 F.3d 853	2001	11	45	5	18	68	Section 1983	Miscellaneous
Smith v. Duffey	576 F.3d 336	2009	3	26	37	4	67	Fraud	Employment
Carroll v. DeTella	255 F.3d 470	2001	11	56	7	4	67	Section 1983	Criminal
Carter v. United States	333 F.3d 791	2003	9	34	8	24	66	Federal Tort Claims Act	Personal Injury
Haugh v. Jones & Laughlin Steel Corp.	949 F.2d 914	1991	21	34	8	24	66	Negligence	Personal Injury
Welge v. Planters Lifesavers Co.	17 F.3d 209	1994	18	28	15	23	66	Products Liability	Personal Injury
Atwell v. Lisle Park Dist.	286 F.3d 987	2002	10	29	7	30	66	Section 1983	Employment
Brown v. Patterson	823 F.2d 167	1987	25	59	2	5	66	Section 1983	Criminal

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Okaw Drainage Dist. v. Nat'l Distillers & Chem. Corp.	882 F.2d 1241	1989	23	29	11	25	65	Riparian Rights	Commercial
Greenawalt v. Ind. Dep't of Corr.	397 F.3d 587	2005	7	26	6	33	65	Section 1983	Employment
Riley v. Blagojevich	425 F.3d 357	2005	7	53	1	11	65	Section 1983	Employment
Robinson v. Doe	272 F.3d 921	2001	11	45	5	15	65	Section 1983	Criminal
White v. Roughton	689 F.2d 118	1982	30	50	7	8	65	Section 1983	Miscellaneous
Konradi v. United States	919 F.2d 1207	1990	22	41	15	8	64	Federal Tort Claims Act	Personal Injury
Abbott Labs. v. Takeda Pharm. Co.	476 F.3d 421	2007	5	41	6	16	63	Breach of Fiduciary Duty	Corp. Management
Greenwell v. Aztar Ind. Gaming Corp.	268 F.3d 486	2001	11	27	7	29	63	Malpractice	Personal Injury
Hyde v. Small	123 F.3d 583	1997	15	44	3	16	63	Section 1983	Criminal
PrimeCo Pers. Commc'ns, Ltd. P'ship v. City of Mequon	352 F.3d 1147	2003	9	29	8	26	63	Section 1983	Miscellaneous
Del's Big Saver Foods, Inc. v. Carpenter Cook, Inc.	795 F.2d 1344	1986	26	29	7	27	63	Section 1983	Commercial
Chi. Coll. of Osteopathic Med. v. George A. Fuller Co.	801 F.2d 908	1986	26	43	5	14	62	Negligence	Commercial
Bethesda Lutheran Homes & Servs., Inc. v. LEEAN	154 F.3d 716	1998	14	26	9	27	62	Section 1983	Miscellaneous
Anderson v. Griffin	397 F.3d 515	2005	7	45	7	9	61	Negligence	Personal Injury
Bhd. Shipping Co. v. St. Paul Fire & Marine Ins. Co.	985 F.2d 323	1993	19	31	22	8	61	Negligence	Commercial

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<i>In re</i> Factor VIII	159 F.3d 1016	1998	14	19	17	25	61	Products Liability	Class Action
Brandt v. Bd. of Educ.	480 F.3d 460	2007	5	33	15	13	61	Section 1983	Miscellaneous
Apampa v. Layng	157 F.3d 1103	1998	14	27	11	22	60	Federal Tort Claims Act	Criminal
<i>In re</i> Reese	91 F.3d 37	1996	16	35	4	20	59	Bankruptcy Code	Criminal
Movitz v. First Nat'l Bank of Chi.	148 F.3d 760	1998	14	42	6	11	59	Negligence	Commercial
Case v. Ahitow	301 F.3d 605	2002	10	54	2	3	59	Section 1983	Criminal
Chang v. Baxter Healthcare Corp.	599 F.3d 728	2010	2	28	3	27	58	Products Liability	Class Action
Grimes v. E. Ill. Univ.	710 F.2d 386	1983	29	12	5	41	58	Section 1983	Employment
Tippecanoe Beverages, Inc. v. S.A. El Aguila Brewing Co.	833 F.2d 633	1987	25	39	3	15	57	Conversion	Commercial
Tavarez v. O'Malley	826 F.2d 671	1987	25	31	3	23	57	Section 1983	Miscellaneous
Byron v. Clay	867 F.2d 1049	1989	23	30	14	13	57	Section 1983	Employment
Brandon v. Anesthesia & Pain Mgmt. Assocs., Ltd.	419 F.3d 594	2005	7	22	7	28	57	State Statute	Employment
Hamilton v. Nielsen	678 F.2d 709	1982	30	30	5	21	56	Breach of Fiduciary Duty	Miscellaneous
Rodi Yachts, Inc. v. Nat'l Marine, Inc.	984 F.2d 880	1993	19	28	17	11	56	Negligence	Commercial
Fehribach v. Ernst & Young LLP	493 F.3d 905	2007	5	13	5	38	56	Negligence	Commercial
Travelers Cas. & Sur. Co. of Am. v. Nw. Mut. Life Ins. Co.	480 F.3d 499	2007	5	11	6	38	55	Negligence	Insurance
Walton v. Bayer Corp.	643 F.3d 994	2011	1	26	0	29	55	Products Liability	Class Action
Holly v. Woolfolk	415 F.3d 678	2005	7	48	2	5	55	Section 1983	Criminal

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Boncher <i>ex rel.</i> Estate of Boncher v. Brown Cnty.	272 F.3d 484	2001	11	26	7	22	55	Section 1983	Criminal
Lyznicki v. Bd. of Educ.	707 F.2d 949	1983	29	49	4	2	55	Section 1983	Employment
Dilworth v. Dudley	75 F.3d 307	1996	16	22	11	21	54	Defamation	Miscellaneous
Bethesda Lutheran Homes & Servs., Inc. v. Llean	122 F.3d 443	1997	15	15	14	25	54	Section 1983	Miscellaneous
Anderson v. Romero	42 F.3d 1121	1994	18	19	0	34	53	Section 1983	Criminal
Sarlund v. Anderson	205 F.3d 973	2000	12	30	1	22	53	Section 1983	Criminal
Britton v. S. Bend Cmty. Sch. Corp.	819 F.2d 766	1987	25	15	22	16	53	Section 1983	Employment
Am. Family Mut. Ins. Co. v. Roth	485 F.3d 930	2007	5	11	5	37	53	Theft of Trade Secrets	Commercial
Abad v. Bayer Corp.	563 F.3d 663	2009	3	24	9	19	52	Products Liability	Class Action
Guzell v. Hiller	223 F.3d 518	2000	12	38	2	12	52	Section 1983	Criminal
Schmude v. Tricam Indus., Inc.	556 F.3d 624	2009	3	20	2	29	51	Products Liability	Personal Injury
Richman v. Sheahan	512 F.3d 876	2008	4	32	2	17	51	Section 1983	Criminal
Wiesmueller v. Kosobucki	513 F.3d 784	2008	4	38	6	7	51	Section 1983	Miscellaneous
Northen v. City of Chicago	126 F.3d 1024	1997	15	25	3	23	51	Section 1983	Criminal
Extra Equipamentos e Exportação Ltda. v. Case Corp.	361 F.3d 359	2004	8	33	3	14	50	Fraud	Commercial
Pizzo v. Bekin Van Lines Co.	258 F.3d 629	2001	11	41	0	9	50	Fraud	Miscellaneous
Warner/Elektra /Atl. Corp. v. Cnty. of DuPage	991 F.2d 1280	1993	19	26	11	13	50	Negligence	Commercial
<i>In re</i> Chi., Rock Island & Pac. R.R. Co.	756 F.2d 517	1985	27	17	12	20	49	Bankruptcy Code	Commercial

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Orth v. Wis. State Emps. Union, Council 24	546 F.3d 868	2008	4	13	1	35	49	Breach of Fiduciary Duty	Employment
Fraternal Order of Police Hobart Lodge No. 121, Inc. v. City of Hobart	864 F.2d 551	1988	24	35	5	8	48	Section 1983	Employment
Cuyler v. United States	362 F.3d 949	2004	8	26	5	16	47	Federal Tort Claims Act	Miscellaneous
Amoco Oil Co. v. Ashcraft	791 F.2d 519	1986	26	26	14	7	47	Fraud	Commercial
Kijonka v. Seitzinger	363 F.3d 645	2004	8	37	3	7	47	Section 1983	Criminal
Ind. Land Co. v. City of Greenwood	378 F.3d 705	2004	8	34	2	11	47	Section 1983	Miscellaneous
McMunn v. Hertz Equip. Rental Corp.	791 F.2d 88	1986	26	23	8	15	46	Negligence	Personal Injury
Rodriguez v. Briley	403 F.3d 952	2005	7	42	2	2	46	Section 1983	Criminal
Collins v. United States	564 F.3d 833	2009	3	18	4	23	45	Federal Tort Claims Act	Personal Injury
Coffey v. Ne. Ill. Reg'l Commuter R.R. Corp. (METRA)	479 F.3d 472	2007	5	35	1	9	45	FELA	Personal Injury
Price v. Highland Cmty. Bank	722 F. Supp. 454	1989	23	32	5	8	45	Fraud	Employment
Conder v. Union Planters Bank, N.A.	384 F.3d 397	2004	8	14	5	26	45	Negligence	Miscellaneous
Atkins v. City of Chicago	547 F.3d 869	2008	4	25	2	18	45	Section 1983	Criminal
Larsen v. Sielaff	702 F.2d 116	1983	29	24	2	19	45	Section 1983	Criminal
Jones Motor Co. v. Holtkamp, Liese, Beckemeier & Childress, P.C.	197 F.3d 1190	1999	13	31	4	8	44	Malpractice	Personal Injury
Rozenfeld v. Med. Protective Co.	73 F.3d 154	1996	16	25	3	16	44	Malpractice	Personal Injury
Beul v. ASSE Int'l, Inc.	233 F.3d 441	2000	12	13	12	19	44	Negligence	Personal Injury

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Oxford Clothes XX, Inc. v. Expeditors Int'l of Wash., Inc.	127 F.3d 574	1997	15	35	2	7	44	Replevin	Commercial
Keeney v. Heath	57 F.3d 579	1995	17	16	10	18	44	Section 1983	Employment
Powers v. Snyder	484 F.3d 929	2007	5	35	3	6	44	Section 1983	Criminal
Scarver v. Litscher	434 F.3d 972	2006	6	30	5	9	44	Section 1983	Criminal
Flomo v. Firestone Natural Rubber Co.	643 F.3d 1013	2011	1	5	12	26	43	Alien Tort Statute	Employment
Nightingale Home Healthcare, Inc. v. Anodyne Therapy, LLC	626 F.3d 958	2010	2	13	4	26	43	Fraud	Commercial
Justice v. CSX Transp., Inc.	908 F.2d 119	1990	22	15	10	18	43	Negligence	Personal Injury
Needham v. White Labs., Inc.	847 F.2d 355	1988	24	27	4	12	43	Products Liability	Personal Injury
Tuffendsam v. Dearborn Cnty. Bd. of Health	385 F.3d 1124	2004	8	31	5	7	43	Section 1983	Miscellaneous
Hadley v. Williams	368 F.3d 747	2004	8	26	7	10	43	Section 1983	Criminal
Chan v. Wodnicki	67 F.3d 137	1995	17	12	2	29	43	Section 1983	Employment
S. Ill. Carpenters Welfare Fund v. Carpenters Welfare Fund of Ill.	326 F.3d 919	2003	9	21	1	20	42	Breach of Fiduciary Duty	Employment
Shots v. CSX Transp., Inc.	38 F.3d 304	1994	18	30	7	5	42	Negligence	Personal Injury
Mazanec v. N. Judson-San Pierre Sch. Corp.	763 F.2d 845	1985	27	23	2	17	42	Section 1983	Miscellaneous
Heil v. Morrison Knudsen Corp.	863 F.2d 546	1988	24	28	3	10	41	Breach of Fiduciary Duty	Corp. Management
Ash v. Wallenmeyer	879 F.2d 272	1989	23	22	3	16	41	Fraud	Commercial

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Midwest Title Loans, Inc. v. Mills	593 F.3d 660	2010	2	7	10	24	41	Section 1983	Commercial
Estrada v. Schmutz Mfg. Co.	734 F.2d 1218	1984	28	17	8	16	41	Products Liability	Personal Injury
Stromberger v. 3M Co.	990 F.2d 974	1993	19	26	7	7	40	Fraud	Employment
Saecker v. Thorie	234 F.3d 1010	2000	12	13	5	22	40	Malpractice	Criminal
Jones v. Griffith	870 F.2d 1363	1989	23	29	3	8	40	Malpractice	Personal Injury
Alexander v. DeAngelo	329 F.3d 912	2003	9	19	10	11	40	Section 1983	Criminal
Freeman v. Berge	441 F.3d 543	2006	6	35	3	2	40	Section 1983	Criminal
Wright v. Pappas	256 F.3d 635	2001	11	24	0	16	40	Section 1983	Miscellaneous
McCurdy v. Sheriff of Madison Cnty.	128 F.3d 1144	1997	15	19	1	20	40	Section 1983	Criminal
Beauchamp v. Sullivan	21 F.3d 789	1994	18	31	4	5	40	Section 1983	Criminal
Hillier v. S. Towing Co.	714 F.2d 714	1983	29	27	5	8	40	Wrongful Death	Personal Injury
Arpin v. United States	521 F.3d 769	2008	4	11	6	21	38	Federal Tort Claims Act	Personal Injury
Tagliere v. Harrah's Ill. Corp.	445 F.3d 1012	2006	6	12	17	19	38	Negligence	Personal Injury
Vodak v. City of Chicago	639 F.3d 738	2011	1	26	2	20	38	Section 1983	Miscellaneous
White v. Elrod	816 F.2d 1172	1987	25	23	1	14	38	Section 1983	Employment
Struck v. Cook Cnty. Pub. Guardian	508 F.3d 858	2007	5	21	2	15	38	Section 1983	Miscellaneous
Great Cent. Ins. Co. v. Ins. Servs. Office, Inc.	74 F.3d 778	1996	16	9	9	20	38	Tortious Interference	Commercial
United States v. Norwood	602 F.3d 830	2010	2	22	1	14	37	Federal Tort Claims Act	Criminal
Kwasny v. United States	823 F.2d 194	1987	25	14	12	11	37	Federal Tort Claims Act	Personal Injury
Friedlander v. Friedlander	149 F.3d 739	1998	14	24	5	8	37	Infliction of Emotional Distress	Miscellaneous

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Robinson v. McNeil Consumer Healthcare	615 F.3d 861	2010	2	17	1	19	37	Products Liability	Personal Injury
Williams v. Wendler	530 F.3d 584	2008	4	20	5	12	37	Section 1983	Miscellaneous
Athmer v. C.E.I. Equip. Co.	121 F.3d 294	1997	15	20	1	16	37	Products Liability	Personal Injury
Automatic Liquid Packaging, Inc. v. Dominik	852 F.2d 1036	1988	24	28	2	6	36	Fraud	Commercial
Richardson v. Gallo Equip. Co.	990 F.2d 330	1993	19	17	7	12	36	Products Liability	Personal Injury
Dupuy v. Samuels	465 F.3d 757	2006	6	20	4	12	36	Section 1983	Miscellaneous
Robinson v. Alter Barge Line, Inc.	513 F.3d 668	2008	4	14	4	18	36	State Statute	Employment
Heraeus Kulzer, GmbH v. Biomet, Inc.	633 F.3d 591	2011	1	6	3	27	36	Theft of Trade Secrets	Commercial
Williams v. Katz	23 F.3d 190	1994	18	16	6	13	35	Malpractice	Personal Injury
Diehl v. H.J. Heinz Co.	901 F.2d 73	1990	22	18	2	15	35	Negligence	Personal Injury
Pavey v. Conley	528 F.3d 494	2008	4	35	0	0	35	Section 1983	Criminal
Gacek v. Am. Airlines, Inc.	614 F.3d 298	2010	2	24	0	11	35	State Statute	Employment
Desnick v. Am. Broad. Cos.	233 F.3d 514	2000	12	7	7	20	34	Defamation	Miscellaneous
Springman v. AIG Mktg., Inc.	523 F.3d 685	2008	4	17	2	15	34	Fraud	Class Action
Mesman v. Crane Pro Servs.	409 F.3d 846	2005	7	6	10	18	34	Products Liability	Personal Injury
Griman v. Makousky	76 F.3d 151	1996	16	14	4	16	34	Section 1983	Criminal
Mann v. Hendrian	871 F.2d 51	1989	23	23	2	9	34	Section 1983	Criminal
Wsol v. Fiduciary Mgmt. Assocs., Inc.	266 F.3d 654	2001	11	7	5	21	33	Breach of Fiduciary Duty	Employment

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Thorogood v. Sears, Roebuck & Co.	624 F.3d 842	2010	2	8	8	17	33	Fraud	Class Action
Gilles v. Blanchard	477 F.3d 466	2007	5	19	11	3	33	Section 1983	Miscellaneous
Ellis v. Sheahan	412 F.3d 754	2005	7	21	2	10	33	Section 1983	Employment
Allen v. United Mine Workers of Am. 1979 Benefit Plan & Trust	726 F.2d 352	1984	28	19	8	5	32	Breach of Fiduciary Duty	Employment
A/S Apothekernes Laboratorium for Special-praeparater v. I.M.C. Chem. Grp., Inc.	725 F.2d 1140	1984	28	25	4	3	32	Fraud	Commercial
Nicolet Instrument Corp. v. Lindquist & Vennum	34 F.3d 453	1994	18	9	15	8	32	Malpractice	Commercial
Pomer v. Schoolman	875 F.2d 1262	1989	23	15	6	11	32	Negligence	Personal Injury
Wooten v. Loshbough	951 F.2d 768	1991	21	20	3	9	32	RICO	Personal Injury
Braun v. Baldwin	346 F.3d 761	2003	9	23	2	7	32	Section 1983	Criminal
Gjertsen v. Bd. of Election Comm'rs	751 F.2d 199	1984	28	25	2	5	32	Section 1983	Miscellaneous
Stockberger v. United States	332 F.3d 479	2003	9	11	11	9	31	Federal Tort Claims Act	Personal Injury
Smith v. City of Hammond	388 F.3d 304	2004	8	21	1	9	31	Section 1983	Miscellaneous
Shelton v. Trs. of Ind. Univ.	891 F.2d 165	1989	23	18	11	2	31	Section 1983	Employment
Sequoia Books, Inc. v. McDonald	725 F.2d 1091	1984	28	27	3	1	31	Section 1983	Criminal
J.D. Edwards & Co. v. Podany	168 F.3d 1020	1999	13	13	3	15	31	Tortious Interference	Commercial
Praxair, Inc. v. Hinshaw & Culbertson	235 F.3d 1028	2000	12	19	3	8	30	Malpractice	Commercial
Edwards v. Honeywell, Inc.	50 F.3d 484	1995	17	11	2	17	30	Negligence	Miscellaneous

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Manicki v. Zeilmann	443 F.3d 922	2006	6	20	1	9	30	Section 1983	Employment
Haywood v. City of Chicago	378 F.3d 714	2004	8	20	1	9	30	Section 1983	Criminal
Hale v. Scott	371 F.3d 917	2004	8	23	0	7	30	Section 1983	Criminal
Bank of Ill. v. Over	65 F.3d 76	1995	17	13	5	12	30	Section 1983	Miscellaneous
Goss Graphics Sys. v. DEV Indus., Inc.	267 F.3d 624	2001	11	11	7	12	30	Theft of Trade Secrets	Commercial
Centurion Reinsurance Co. v. Singer	810 F.2d 140	1987	25	23	3	3	29	Conversion	Securities
Cont'l Ins. Co. v. Ill. Dep't of Transp.	709 F.2d 471	1983	29	7	3	19	29	Section 1983	Insurance
Lawson v. Hill	368 F.3d 955	2004	8	19	1	9	29	Section 1983	Miscellaneous
Georges v. Carney	691 F.2d 297	1982	30	12	9	8	29	Section 1983	Miscellaneous
Matheny v. United States	469 F.3d 1093	2006	6	11	2	15	28	Federal Tort Claims Act	Personal Injury
Torco Oil Co. v. Innovative Thermal Corp.	763 F. Supp. 1445	1991	21	9	9	10	28	Fraud	Commercial
Albers <i>ex rel.</i> Albers v. Church of the Nazarene	698 F.2d 852	1983	29	11	9	8	28	Negligence	Personal Injury
Halek v. United States	178 F.3d 481	1999	13	7	8	12	27	Federal Tort Claims Act	Personal Injury
Milwaukee Auction Galleries, Ltd. v. Chalk	13 F.3d 1107	1994	18	12	3	12	27	Fraud	Commercial
Maxwell v. KPMG LLP	520 F.3d 713	2008	4	13	5	19	27	Malpractice	Commercial
Hays v. Bryan Cave LLP	446 F.3d 712	2006	6	14	3	10	27	Malpractice	Criminal
Greene v. Doruff	660 F.3d 975	2011	1	23	2	2	27	Section 1983	Criminal
Tolefree v. Cudahy	49 F.3d 1243	1995	17	23	1	3	27	Section 1983	Miscellaneous
Estate of Drayton v. Nelson	53 F.3d 165	1994	18	20	0	7	27	Section 1983	Criminal
Clark Equip. Co. v. Dial Corp.	25 F.3d 1384	1994	18	6	9	11	26	Products Liability	Personal Injury

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Ill. Dunesland Pres. Soc'y v. Ill. Dep't of Natural Res.	584 F.3d 719	2009	3	17	2	7	26	Section 1983	Miscellaneous
Gipson v. United States	631 F.3d 448	2011	1	3	1	21	25	Federal Tort Claims Act	Personal Injury
Nightingale Home Healthcare, Inc. v. Anodyne Therapy, LLC	589 F.3d 881	2009	3	17	0	8	25	Fraud	Commercial
Egebergh v. Nicholson	272 F.3d 925	2001	11	15	3	7	25	Section 1983	Criminal
Cronson v. Clark	810 F.2d 662	1987	25	16	1	8	25	Section 1983	Miscellaneous
Rizzo v. Corning Inc.	105 F.3d 338	1997	15	8	4	13	25	Products Liability	Personal Injury
McKnight v. Dean	270 F.3d 513	2001	11	8	2	14	24	Malpractice	Employment
Carris v. Marriott Int'l, Inc.	466 F.3d 558	2006	6	23	3	8	24	Negligence	Personal Injury
Schluga v. City of Milwaukee	101 F.3d 60	1996	16	14	0	10	24	Section 1983	Miscellaneous
Paige v. Hudson	341 F.3d 642	2003	9	15	3	6	24	Section 1983	Criminal
Koral v. Boeing Co.	628 F.3d 945	2011	1	9	2	13	24	Products Liability	Class Action
Winniczek v. Nagelberg	394 F.3d 505	2005	7	10	3	10	23	Malpractice	Criminal
State Farm Mut. Auto. Ins. Co. v. W.R. Grace & Co.	24 F.3d 955	1994	18	10	5	8	23	Products Liability	Commercial
Sandage v. Bd. of Comm'rs	548 F.3d 595	2008	4	16	3	4	23	Section 1983	Criminal
Wrightsell v. Cook Cnty.	599 F.3d 781	2010	2	12	0	11	23	Section 1983	Criminal
Carroll v. Yates	362 F.3d 984	2004	8	16	1	6	23	Section 1983	Criminal
Kamelgard v. Macura	585 F.3d 334	2009	3	14	2	7	22	Defamation	Miscellaneous
Tinker-Bey v. Meyers	800 F.2d 710	1986	26	17	3	2	22	Federal Tort Claims Act	Criminal
Marshall v. H & R Block Tax Servs., Inc.	564 F.3d 826	2009	3	7	0	15	22	Fraud	Class Action
Spearing v. Nat'l Iron Co.	770 F.2d 87	1985	27	14	3	5	22	Products Liability	Personal Injury

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Willan v. Columbia Cnty.	280 F.3d 1160	2002	10	8	6	8	22	Section 1983	Miscellaneous
Stive v. United States	366 F.3d 520	2004	8	11	1	9	21	Federal Tort Claims Act	Criminal
Dexter Corp. v. Whittaker Corp.	926 F.2d 617	1991	21	16	2	3	21	Fraud	Commercial
Fogel v. Gordon & Glickson, P.C.	393 F.3d 727	2004	8	5	4	12	21	Fraud	Commercial
Aguirre v. Turner Constr. Co.	582 F.3d 808	2009	3	13	0	8	21	Negligence	Employment
Korzak v. Sedeman	427 F.3d 419	2005	7	11	2	8	21	Negligence	Personal Injury
Rockford Bd. of Educ., Sch. Dist. No. 205 v. Ill. State Bd. of Educ.	150 F.3d 686	1998	14	9	4	8	21	Section 1983	Miscellaneous
Sufrin v. Hosier	128 F.3d 594	1997	15	10	3	8	21	Tortious Interference	Commercial
Johnson Bank v. George Korbakes & Co., LLP	472 F.3d 439	2006	6	7	1	13	20	Negligence	Commercial
Paul v. Marberry	658 F.3d 702	2011	1	12	0	8	20	Section 1983	Criminal
Brown v. Calamos	664 F.3d 123	2011	1	5	1	13	19	Breach of Fiduciary Duty	Securities
Brazell v. First Nat'l Bank & Trust Co. of Rockford	982 F.2d 206	1992	20	8	4	7	19	Fraud	Commercial
Deering v. Nat'l Maint. & Repair, Inc.	627 F.3d 1039	2010	2	4	2	13	19	Jones Act	Personal Injury
<i>In re Res. Tech. Corp.</i>	662 F.3d 472	2011	1	1	2	16	19	Nuisance	Commercial
Lucien v. Johnson	61 F.3d 573	1995	17	12	6	1	19	Section 1983	Criminal
Wiesmueller v. Kosobucki	571 F.3d 699	2009	3	4	4	10	18	Section 1983	Miscellaneous
Sanders v. Hayden	544 F.3d 812	2008	4	7	3	8	18	Section 1983	Criminal
Shadday v. Omni Hotels Mgmt. Corp.	477 F.3d 511	2007	5	7	3	7	17	Negligence	Personal Injury

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
<i>In re</i> Complaint of Holly Marine Towing, Inc.	270 F.3d 1086	2001	11	6	3	8	17	Negligence	Personal Injury
Grayson v. Schuler	666 F.3d 450	2012	0	12	1	4	17	Section 1983	Criminal
CDX Liquidating Trust v. Venrock Assocs.	640 F.3d 209	2011	1	5	3	8	16	Breach of Fiduciary Duty	Corp. Management
Wall v. City of Brookfield	406 F.3d 458	2005	7	7	1	8	16	Section 1983	Miscellaneous
Nowicki v. Cooper	56 F.3d 782	1995	17	11	2	3	16	Section 1983	Miscellaneous
BCS Servs., Inc. v. Heartwood 88, LLC	637 F.3d 750	2011	1	10	2	3	15	Fraud	Commercial
Peterson v. Wal-Mart Stores, Inc.	241 F.3d 603	2001	11	14	0	1	15	Negligence	Personal Injury
Miller v. Dobier	634 F.3d 412	2011	1	11	1	3	15	Section 1983	Criminal
Protect Marriage III. v. Orr	463 F.3d 604	2006	6	6	3	6	15	Section 1983	Miscellaneous
Grimes v. Smith	585 F. Supp. 1084	1984	28	8	3	3	14	Section 1983	Miscellaneous
MacGregor v. Rutberg	478 F.3d 790	2007	5	7	1	5	13	Defamation	Miscellaneous
Krejci v. U.S. Army Material Dev. Readiness Command	733 F.2d 1278	1984	28	3	6	4	13	Federal Tort Claims Act	Employment
Jendus-Nicolai v. Larsen	677 F.3d 320	2012	0	7	1	4	12	Bankruptcy Code	Miscellaneous
First Nat'l Bank of Chi. v. A.M. Castle & Co. Emp. Trust	180 F.3d 814	1999	13	3	0	9	12	Breach of Fiduciary Duty	Securities
Miller v. Ill. Cent. R.R. Co.	474 F.3d 951	2007	5	10	0	2	12	Negligence	Personal Injury
Brown v. Cnty. of Cook	661 F.3d 333	2011	1	2	1	9	12	Section 1983	Employment
Hall v. Bates	508 F.3d 854	2007	5	9	1	2	12	Section 1983	Criminal
Atkins v. Hancock Cnty. Sheriff's Merit Bd.	910 F.2d 403	1990	22	9	0	3	12	Section 1983	Employment

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
CSY Liquidating Corp. v. Harris Trust & Sav. Bank	162 F.3d 929	1998	14	4	1	6	11	Breach of Fiduciary Duty	Commercial
Miller v. Int'l Harvester Co.	811 F.2d 1150	1987	25	9	0	2	11	Fraud	Employment
BPI Energy Holdings, Inc. v. IEC (Montgomery), LLC	664 F.3d 131	2011	1	2	0	0	10	Fraud	Commercial
Midland Mgmt. Corp. v. Computer Consoles Inc.	837 F. Supp. 886	1993	19	7	0	3	10	Fraud	Commercial
Torrez v. TGI Friday's, Inc.	509 F.3d 808	2007	5	6	0	4	10	Negligence	Personal Injury
Heritage Commons Partners v. Vill. of Summit	730 F. Supp. 821	1990	22	8	0	2	10	Section 1983	Commercial
Hurst v. Hantke	634 F.3d 409	2011	1	7	0	3	10	Section 1983	Criminal
Orlando Residence, Ltd. v. GP Credit Co.	553 F.3d 550	2009	3	7	0	3	10	Tortious Interference	Commercial
Mars v. United States	25 F.3d 1383	1994	18	6	3	5	9	Federal Tort Claims Act	Personal Injury
Wolfe v. Schaefer	619 F.3d 782	2010	2	6	1	2	9	Section 1983	Miscellaneous
Williams v. City of Champaign	524 F.3d 826	2008	4	7	0	2	9	Section 1983	Criminal
Williams v. Adams	660 F.3d 263	2011	1	3	0	6	9	Section 1983	Criminal
Muhammad v. DeRobertis	788 F.2d 1268	1986	26	5	1	3	9	Section 1983	Criminal
Gonzalez-Servin v. Ford Motor Co.	662 F.3d 931	2011	1	4	1	7	9	Products Liability	Class Action
Wood v. Jack Carl Assocs., Inc.	782 F.2d 83	1986	26	4	1	3	8	Conversion	Securities
Sutton v. A.O. Smith Co.	165 F.3d 561	1999	13	5	1	2	8	Negligence	Personal Injury
Wiesmueller v. Kosobucki	547 F.3d 740	2008	4	5	1	2	8	Section 1983	Miscellaneous
Lax v. City of S. Bend	449 F.3d 773	2006	6	8	0	0	8	Fraud	Class Action

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Ward v. Edgeton	59 F.3d 652	1995	17	4	0	4	8	Products Liability	Personal Injury
Dakota, Minn. & E. R.R. Corp. v. Wis. & S. R.R. Corp.	657 F.3d 615	2011	1	0	1	8	8	Section 1983	Class Action
Abner v. Scott Mem'l Hosp.	634 F.3d 962	2011	1	2	0	5	7	Trespass	Commercial
Merk v. Jewel Food Stores, Div. of Jewel Cos.	734 F. Supp. 330	1990	22	4	3	0	7	Qui Tam	Commercial
Fagocki v. Algonquin/Lake-in-the-Hills Fire Prot. Dist.	496 F.3d 623	2007	5	6	0	1	7	Section 1983	Criminal
Johnson v. Deltadynamics, Inc.	813 F.2d 944	1987	25	6	1	0	7	Section 1983	Criminal
Waller v. S. Ill. Univ.	125 F.3d 541	1997	15	3	3	1	7	Breach of Fiduciary Duty	Class Action
Duvall v. Miller	122 F.3d 489	1997	15	3	2	2	7	Malpractice	Personal Injury
Penny v. Shansky	884 F.2d 329	1989	23	6	0	1	7	Section 1983	Miscellaneous
Dominion Nutrition, Inc. v. Cesca	467 F. Supp. 2d 870	2006	6	1	2	3	6	Breach of Fiduciary Duty	Corp. Management
Turek v. Gen. Mills, Inc.	662 F.3d 423	2011	1	3	0	3	6	Loss of Consortium	Personal Injury
Kentuckiana Healthcare, Inc. v. Fourth St. Solutions, LLC	517 F.3d 446	2008	4	3	0	2	5	Section 1983	Criminal
Vickery v. Westinghouse-Haztech, Inc.	956 F.2d 161	1992	20	2	1	2	5	Section 1983	Criminal
Schreiber Foods, Inc. v. Lei Wang	651 F.3d 678	2011	1	1	1	1	3	Conversion	Commercial
Paschal v. United States	302 F.3d 768	2002	10	2	0	0	2	Section 1983	Criminal
Fletcher v. Chi. Rail Link, LLC	568 F.3d 638	2009	3	1	0	1	2	Fraud	Commercial
Johnson v. Evinger	517 F.3d 921	2008	4	0	1	1	2	Federal Tort Claims Act	Personal Injury

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>	<i>Dispute Context</i>
Smentek v. Dart	683 F.3d 373	2012	0	1	0	0	1	FELA	Personal Injury
Prude v. Clarke	675 F.3d 732	2012	0	1	0	0	1	Section 1983	Criminal

Notice in the table the tendency of older cases to dominate the high-citation entries. The reason is that the older the case, the more decisions have been rendered since that might cite them, though tugging in the opposite direction is the fact that older cases are less likely to be relevant to current issues. Nevertheless, as shown in the next table, age does on average increase the frequency of citation.

TABLE 3
CITATIONS IN RELATION TO AGE OF CITED CASE

<i>Number of Citations per Case</i>	<i>Number of Cases Decided in 2000 or Later</i>	<i>Total Number of Cases Decided</i>	<i>Percent 2000 or Later</i>
300 or more	3	41	0.07
200 to 299	14	55	0.25
100 to 199	26	132	0.20
0 to 99	173	347	0.50
Total	216	575	0.38

I am particularly interested in the degree to which heavily cited cases involve the question that civil recourse theorists might be expected to be most interested in—was there a wrong for which redress of some sort should be provided?—as distinct from questions relating to the administration of and limitations on tort liability. Let me begin with my ten most-cited cases, starting with the most cited—*Rhone-Poulenc*. That was a “mass tort” products liability class action on behalf of hemophiliacs; the defendants were manufacturers of blood solids alleged to have been contaminated with the AIDS virus. The decision dealt with problems in the administration of a vast multistate products liability case; it did not address substantive issues of liability.²⁸

Jones was a suit charging police officers with false arrest, malicious prosecution, and related torts involving abuse of police authority. The issues presented to us and discussed in the opinion involved primarily immunities, causation, criminal procedure, and proof of conspiracy.²⁹

28. *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293 (7th Cir. 1995).

29. *Jones v. City of Chicago*, 856 F.2d 985 (7th Cir. 1988).

Duckworth was a suit against prison employees for a fire that injured a number of prisoners. The principal issues discussed were Eleventh Amendment and other immunities, the meaning of “cruel and unusual punishments,” and whether a finding that the fire had constituted cruel and unusual punishment could be based on a finding of “recklessness” on the part of the defendants in either its tort law or its criminal law sense.³⁰

Lewis was another prisoner’s tort case; the only issue discussed was whether the judge should have warned the prisoner of the procedural consequences of failing to meet the defendant’s summary judgment motion with admissible evidence rather than merely a denial.³¹

Walker—still another prisoner’s tort suit—discusses only procedural issues.³²

Bastian was a case of securities fraud. The only issue considered was whether the plaintiffs had proved causation, and specifically whether it was enough to prove that they would not have made the investment that turned sour had it not been for the defendants’ misrepresentations, or whether (as the court held) they must prove that the defendants were responsible for the loss in value of the investment.³³

Jackson was a case involving a suit against police for using excessive force in arresting the plaintiff. The opinion deals solely with the question of the amount of detail required in a pleading.³⁴

Moore was another arrest case. The three opinions in the case discuss a wide variety of issues, including immunities, probable cause, consent, infliction of emotional distress, and false arrest and imprisonment.³⁵

In *Reed* the plaintiffs alleged that local officials had through harassment destroyed the plaintiffs’ liquor business. The suit charged a violation of their Fourteenth Amendment property rights. The main issue discussed in the opinion, besides (as so often in cases against public employees) immunities, was whether a liquor license is a form of property within the meaning of the amendment’s due process clause; we held, on the basis of the Illinois law governing such licenses, that it was.³⁶

Finally, *Avitia* was a suit against the plaintiff’s employer for firing him in retaliation for his having claimed overtime pay under the Fair Labor Standards Act. The only nonprocedural issue we considered was whether the award of damages for emotional distress caused by the discharge was excessive (we held that it was).³⁷

What is surprising is how little there is in these opinions about the entitlement to redress for conduct made wrongful by tort law. Other tort issues are discussed, but it is hard to see what civil recourse theory could have contributed to their resolution.

These ten cases are of course not representative of tort litigation. Most of them are suits against public officers. But maybe times have changed. Let me skip down

30. *Duckworth v. Franzen*, 780 F.2d 645 (7th Cir. 1985).

31. *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982).

32. *Walker v. Thompson*, 288 F.3d 1005 (7th Cir. 2002).

33. *Bastian v. Petren Res. Corp.*, 892 F.2d 680 (7th Cir. 1990).

34. *Jackson v. Marion Cnty.*, 66 F.3d 151 (7th Cir. 1995).

35. *Moore v. Marketplace Rest., Inc.*, 754 F.2d 1336 (7th Cir. 1985).

36. *Reed v. Vill. of Shorewood*, 704 F.2d 943 (7th Cir. 1983).

37. *Avitia v. Metro. Club of Chi., Inc.*, 49 F.3d 1219 (7th Cir. 1995).

to my ten least-cited tort opinions; unsurprisingly, in light of the correlation between the age of and the number of citations to judicial opinions, nine of the ten cases were decided in the 2000s (the other was decided in 1992).

In *Dominion*, a diversity case that I tried as a volunteer in the federal district court in Chicago, the plaintiff, a corporation, charged the defendant, its former CEO, with breach of fiduciary duty and intentional interference with advantageous business relations (also with breach of contract). Essentially the charge was theft of a trade secret consisting of a formula for making a protein-enriched milk. I found against the plaintiff on the facts. I also ruled that even if there was a tort (or breach of contract), the plaintiff had failed to prove any damages. The facts were interesting and the application of the law to them not entirely free from doubt, but there was no doubt about the governing principles.³⁸

Turek, another diversity suit, charged a manufacturer of “chewy bars” with deceptive advertising. We held the suit preempted by the federal Food, Drug, and Cosmetic Act.³⁹

Kentuckiana was a suit for conversion. The plaintiff had managed a health care facility owned by the defendant. The defendant received Medicare and Medicaid reimbursements for services performed by the plaintiff, and failed to forward them to the plaintiff. One issue was whether those reimbursements were the plaintiff’s property, or merely a debt owed by the defendant; only if they were the plaintiff’s property would the failure to render them to the plaintiff on demand constitute the tort of conversion. We held that the money was the plaintiff’s property, and the defendant had converted it. But the defendant had gone into bankruptcy, and, unable to obtain the money from the bankrupt estate, the plaintiff had proceeded against two other companies, to which the owner of the health care facility (the primary defendant) had turned for help in managing the business. They might have been able to take steps to transmit the reimbursements to the plaintiff, but we held that this did not make them guilty of conversion, as they did not control the money.⁴⁰

In *Vickery*, the wife of a worker whose liver was impaired by exposure to hazardous chemicals at the waste processing plant where he worked brought a diversity tort suit against his successive employers seeking damages for loss of consortium. We held that her claim was barred by an Illinois law, related to workers’ compensation law, that extinguished claims for consortium by spouses of workers suffering occupational injury.⁴¹

Schreiber was a suit (again a diversity suit) for fraudulent misrepresentation in a commercial setting. We held the suit barred by the economic loss doctrine, which bars tort liability when the plaintiff has a contract with the defendant and contract law provides an adequate remedy for the type of injury alleged. Courts prefer parties to govern their relations through privately negotiated contracts when that is feasible, provided there are no third-party effects.⁴²

38. *Dominion Nutrition, Inc. v. Cesca*, 467 F. Supp. 2d 870 (N.D. Ill. 2006).

39. *Turek v. Gen. Mills, Inc.*, 662 F.3d 423 (7th Cir. 2011).

40. *Kentuckiana Healthcare, Inc. v. Fourth St. Solutions, LLC*, 517 F.3d 446 (7th Cir. 2008).

41. *Vickery v. Westinghouse-Haztech, Inc.*, 956 F.2d 161 (7th Cir. 1992).

42. *Schreiber Foods, Inc. v. Lei Wang*, 651 F.3d 678 (7th Cir. 2011).

In *Paschal*, a pretrial detainee in federal jail, who slipped and fell on a wet floor while working in the jail's kitchen, sued the federal government under Federal Tort Claims Act. We held that another statute, which provided an exclusive remedy for federal prison inmates injured while working in the prison, was applicable to pretrial detainees and so barred Paschal's suit.⁴³

In *Fletcher*, a railroad worker injured in a collision sued his employer under the Federal Employers Liability Act. As in *Paschal*, the issue was statutory interpretation. The jury found that the plaintiff had been fifty percent responsible for the accident, and we held that he did not come within a provision of the Act that would have entitled him nevertheless to receive one hundred percent of the damages that he sustained as a result of the accident.⁴⁴

Johnson was a suit by a prison inmate against prison officials. The district court interpreted the suit as charging retaliation for exercise of the plaintiff's First Amendment right to complain about prison conditions. We recharacterized the suit as a quest for evidence that the plaintiff could have obtained by invoking an administrative procedure.⁴⁵

Smentek was a class action by jail inmates, complaining of denial of dental care. The only issue discussed in the opinion is class action procedure.⁴⁶

Finally, *Prude* was a damages suit by a prisoner, charging that his exclusive prison diet of "nutriloaf," a bad-tasting food given to prisoners as a form of punishment, was a cruel and unusual punishment.⁴⁷

Four of the tort suits were brought by prisoners, and they were the only suits against public officers; in contrast, seven of the ten most-cited cases involved suits by prisoners or otherwise against public officers. But again, most of the issues in the least-cited cases seem remote from civil recourse theory, and indeed in none of the twenty cases that I have summarized can I see what light that theory might shed on the case.

Of course twenty out of 575 cases is a small sample and not even randomly selected. So I have done one more thing: I have glanced through the entire list of my tort opinions and picked out from the other 555 those I recall as involving typical tort issues—that is, not opinions in constitutional tort cases, or in cases in which the principal issues were procedural or evidentiary rather than substantive. They are listed in the next table. I am sure I have forgotten some opinions that fall in the class that I am calling "typical"—and I have not had time to remedy my defects of memory by rereading all 555 opinions.

43. *Paschal v. United States*, 302 F.3d 768 (7th Cir. 2002).

44. *Fletcher v. Chicago Rail Link, LLC*, 568 F.3d 638 (7th Cir. 2009).

45. *Johnson v. Evinger*, 517 F.3d 921 (7th Cir. 2008).

46. *Smentek v. Dart*, 683 F.3d 373 (7th Cir. 2012).

47. *Prude v. Clarke*, 675 F.3d 732 (7th Cir. 2012).

TABLE 4
 POSNER TORT OPINIONS II,
 ORDERED BY NUMBER OF CITATIONS
 (FROM HIGHEST TO LOWEST NUMBER)

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>
Desnick v. Am. Broad. Cos.	44 F.3d 1345	1995	17	154	135	108	397	Defamation
Douglass v. Hustler Magazine, Inc.	769 F.2d 1128	1985	27	90	112	191	393	Invasion of Privacy
Rockwell Graphic Sys. v. DEV Indus., Inc.	925 F.2d 174	1991	21	75	146	138	359	Theft of Trade Secrets
Haynes v. Alfred A. Knopf, Inc.	8 F.3d 1222	1993	19	143	107	78	328	Invasion of Privacy
Greycas, Inc. v. Proud	826 F.2d 1560	1987	25	72	122	124	318	Malpractice
Beanstalk Grp., Inc. v. AM Gen. Corp.	283 F.3d 856	2002	10	193	41	35	269	Tortious Interference
Lancaster v. Norfolk & W. Ry. Co.	773 F.2d 807	1985	27	192	34	32	258	FELA
Mathias v. Accor Econ. Lodging, Inc.	347 F.3d 672	2003	9	76	92	78	246	Negligence
Chaveriat v. Williams Pipe Line Co.	11 F.3d 1420	1993	19	156	30	45	231	Nuisance
Rice v. Nova Biomedical Corp.	38 F.3d 909	1994	18	185	12	27	224	Defamation
Evra Corp. v. Swiss Bank Corp.	673 F.2d 951	1982	30	75	146	102	223	Negligence
Brown & Williamson Tobacco Corp. v. Jacobson	713 F.2d 262	1983	29	110	24	83	217	Libel
Graf v. Elgin, Joliet & E. Ry. Co.	790 F.2d 1341	1986	26	151	26	27	214	FELA
Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co.	916 F.2d 1174	1990	22	54	118	22	194	Negligence
Barron v. Ford Motor Co. of Can.	965 F.2d 195	1992	20	122	25	37	184	Negligence
Graf v. Elgin, Joliet & E. Ry. Co.	697 F.2d 771	1983	29	91	20	31	142	FELA
Orthmann v. Apple River Campground, Inc.	757 F.2d 909	1985	27	103	8	22	133	Negligence
Navarro v. Fuji Heavy Indus., Ltd.	117 F.3d 1027	1997	15	77	20	28	125	Products Liability
Trevino v. Union Pac. R.R. Co.	916 F.2d 1230	1990	22	107	1	10	118	Negligence
McCarty v. Pheasant Run, Inc.	826 F.2d 1554	1987	25	47	49	22	118	Negligence

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>
Kaczmarek v. Allied Chem. Corp.	836 F.2d 1055	1987	25	40	37	30	117	Products Liability
Spinozzi v. ITT Sheraton Corp.	174 F.3d 842	1999	13	67	25	26	108	Negligence
Anderson v. Marathon Petroleum Co.	801 F.2d 936	1986	26	54	19	25	98	Negligence
U.S. Fid. & Guar. Co. v. Plovdba	683 F.2d 1022	1982	30	24	50	18	92	Negligence
Davis v. United States	716 F.2d 418	1983	29	61	13	17	91	Federal Tort Claims Act
O'Shea v. Riverway Towing Co.	677 F.2d 1194	1982	30	49	29	11	90	Negligence
Stoleson v. United States	708 F.2d 1217	1983	29	35	31	22	88	Federal Tort Claims Act
Elmore v. Chi. & Ill. Midland Ry. Co.	782 F.2d 94	1986	26	30	28	25	83	Railway Labor Act
Wassell v. Adams	865 F.2d 849	1989	23	37	37	9	73	Negligence
Goodhand v. United States	40 F.3d 209	1994	18	59	5	8	72	Federal Tort Claims Act
Rardin v. T & D Mach. Handling, Inc.	890 F.2d 24	1989	23	41	24	6	71	Negligence
Davis v. Consol. Rail Corp.	788 F.2d 1260	1986	26	36	22	11	69	Negligence
Konradi v. United States	919 F.2d 1207	1990	22	41	15	8	64	Federal Tort Claims Act
Greenwell v. Aztar Ind. Gaming Corp.	268 F.3d 486	2001	11	27	7	29	63	Malpractice
Justice v. CSX Transp., Inc.	908 F.2d 119	1990	22	15	10	18	43	Negligence
Needham v. White Labs., Inc.	847 F.2d 355	1988	24	27	4	12	43	Products Liability
Hillier v. S. Towing Co.	714 F.2d 714	1983	29	27	5	8	40	Wrongful Death
Robinson v. McNeil Consumer Healthcare	615 F.3d 861	2010	2	17	1	19	37	Products Liability
Desnick v. Am. Broad. Cos.	233 F.3d 514	2000	12	7	7	20	34	Defamation
Mesman v. Crane Pro Servs.	409 F.3d 846	2005	7	6	10	18	34	Products Liability
Pomer v. Schoolman	875 F.2d 1262	1989	23	15	6	11	32	Negligence
Stockberger v. United States	332 F.3d 479	2003	9	11	11	9	31	Federal Tort Claims Act
Smith v. City of Hammond	388 F.3d 304	2004	8	21	1	9	31	Section 1983
Edwards v. Honeywell, Inc.	50 F.3d 484	1995	17	11	2	17	30	Negligence
Kamelgard v. Macura	585 F.3d 334	2009	3	14	2	7	22	Defamation

<i>Case</i>	<i>Citation</i>	<i>Year</i>	<i>Age</i>	<i>Case Citations</i>	<i>Law Review Citations</i>	<i>Other Secondary Citations</i>	<i>Total Citations</i>	<i>Cause of Action</i>
Deering v. Nat'l Maint. & Repair, Inc.	627 F.3d 1039	2010	2	4	2	13	19	Jones Act
Shadday v. Omni Hotels Mgmt. Corp.	477 F.3d 511	2007	5	7	3	7	17	Negligence
<i>In re</i> Complaint of Holly Marine Towing, Inc.	270 F.3d 1086	2001	11	6	3	8	17	Negligence
Krejci v. U.S. Army Material Dev. Readiness Command	733 F.2d 1278	1984	28	3	6	4	13	Federal Tort Claims Act
Miller v. Ill. Cent. R.R. Co.	474 F.3d 951	2007	5	10	0	2	12	Negligence
Fagocki v. Algonquin/Lake-in-the-Hills Fire Prot. Dist.	496 F.3d 623	2007	5	6	0	1	7	Malpractice

In this list of fifty-one cases, almost half—twenty-two—have been cited more than 100 times; of the other twenty-nine, twelve were decided in the 2000s. The cases cover the spectrum of what might be considered conventional torts—negligence resulting in personal injury, strict liability for dangerous activities, products liability, defamation, invasion of the right of privacy, nuisance, medical and legal malpractice, and theft of trade secrets—and the range of issues that arise in such cases, such as remedies (including punitive damages), causation and foreseeability, the Learned Hand negligence test, the economic-loss rule, contributory and comparative negligence, the duty of care to invitees, the “eggshell skull” rule, and others. I have reread these cases, and I simply do not see where attention to civil recourse theory (unknown to me and unmentioned by the lawyers) would have altered the outcome or enriched the analysis. I invite Goldberg and Zipursky to show me.