Deceiving Law Students: Employment Statistics & Tort Liability

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DECEIVING LAW STUDENTS:
EMPLOYMENT STATISTICS AND TORT LIABILITY

I. INTRODUCTION

Controversy is rampant in American legal education.¹ In less than a year, an unprecedented fourteen separate class action lawsuits have been filed against fourteen different law schools.² The lawsuits each allege that the schools have disseminated postgraduate employment statistics in ways that are fraudulent and misleading.³

Students’ primary goal, when applying to law school, is to become lawyers.⁴ Law school is not an institution students attend merely to satisfy intellectual curiosity.⁵ Law school is a grueling three-year endurance race challenging student’s intellectual reasoning, emotional rationale, and financial security.⁶ Therefore, it is critical for students to choose the right school.⁷ Law student’s choice in schools;⁸ however, may be distorted by fraudulent and misleading information about postgraduate employment statistics.

Prior to 2012, the American Bar Association (“ABA”) did not require ABA accredited law schools to “report their graduate employment and salary data directly to the ABA.”⁹ The ABA did not hold law schools accountable for the distribution of postgraduate employment statistics.¹⁰ There were no ABA requirements compelling law schools to clarify whether their postgraduate “jobs [were] funded by the schools, themselves, or if their graduates were working in jobs requiring bar passage,” or if graduates had permanent or part-time jobs.¹¹

A. PROBLEM ONE: NON-DISCLOSURE AND INFLATED EMPLOYMENT RATE

Law schools have been playing fast and loose with postgraduate employment data.¹² Law schools allegedly reported 80–90 percent postgraduate employment with median salaries in the six-figure range.¹³ The problem, however, is many schools are not informing students of critical information about how those figures are obtained.¹⁴ The employment data and six-figure salary
reports are allegedly based on only a small number of reporting students with no distinctions between: full-time and part-time employment, as contract or permanent employment, or employment requiring a J.D. and those that do not.\textsuperscript{15}

Law schools that have been sued are reporting 80–100 percent employment rates nine months after student’s graduation.\textsuperscript{16} Thomas M. Cooley School of Law, for example, has reported 80 percent of its’ graduates have employment after nine months of graduation.\textsuperscript{17} Thomas M. Cooley’s “seemingly robust numbers include \textit{any} type of employment, including jobs that have absolutely nothing to do with the legal industry, do not require a JD degree or are temporary or part-time in nature.”\textsuperscript{18} Thus, reported employment rates would drop if law schools like Cooley were “to disclose the more pertinent employment statistic.\textsuperscript{19}

Therefore, fraud allegations stem from the non-disclosure of pretention information and reports that the “legal sector los[es] 3,500 jobs since September of 2010.”\textsuperscript{20} These declining trends increased suspicions of fraud because they were not depicted in the postgraduate employment reports of many law schools.\textsuperscript{21} Law schools reporting 80 percent employment rates and over 51 percent employment in private sectors raised suspicions when national averages were well below these averages.\textsuperscript{22}

\textbf{B. Problem Two: Concealment and Inflated Salary}

Law Schools have also been accused of manipulating the salary range of the postgraduate students.\textsuperscript{23} Some of the lowest ranking law schools have disseminated information that their graduate’s salary ranges are equal to graduates from Ivy League law schools.\textsuperscript{24} The six-figure salary reports are allegedly based on only a small number of reporting students with no distinctions between: full-time or part-time employment; as contract or permanent employment;
and employment requiring a J.D. or employment not requiring a J.D. Similarly, schools are concealing information from students about critical information.

New York Law School, for example, alleges its postgraduate employment rates and salaries are equal to those of Harvard Law. New York Law School disseminated information on its’ website stipulating, “the median private-sector salary of alum[i] who graduated in 2009—was $160,000.” However, when confronted, the school admitted it “did not give a complete picture of the prospects for N.Y.L.S. grads.” The school claimed that they explicitly communicate to “students and applicants, [in materials and conversations] . . . that most graduates find work in small to medium firms at salaries between $35,000 and $75,000.”

Therefore, fraud allegations stem from the concealment of unrealistic salaries students anticipate after graduation with massive amounts of student loan debt. And that it is nearly impossible for students to find accurate postgraduate salary information. Lawyers earn vastly different incomes, however, the information is not readily available from any one source. Consider how the Bureau of Labor Statistic (“BLS”), which reports the wages for all employed practicing lawyers, does not include the income of sole practitioners and that sole practitioners make up nearly one-third of the legal profession. Additionally, consider how the ABA reports the median salary for first year associates in law firms of two-to-25 lawyers is $73,000, but students who graduate in the Houston, Texas area can make as little as $30,000 in their first year when the median salary for recent graduates in the area is $70,000.

C. Problem Three: Inflated Tuitions

Additionally, law schools face accusations of fraud pertaining to the correlation between the cost of a law school education and price of tuition to attend law school is disconnected. Law schools have been accused of giving as much as 30 percent of their revenues to
subsidize other fields of study at their universities. This problem is disturbing because in the past 25 years law school tuition rates have rapidly exceeded the “annual real growth of undergraduate tuition.” During this same period of time, however, law school graduates have seen their employment and earning potential opportunities decrease.

The University of Baltimore School of Law, for example, was publicly accused of “raiding [45 percent of] law school funds to subsidize other academic programs.” The Law school’s tuition rates for instate residence increased by 162 percent between 2000–2010. The former Dean indicated in 2011 another tuition increase established an extra $1.45 million to the law school’s revenues and only $80,000 was applied to the law schools fund and the rest went to the Universities general fund. The president of the school, however, denied the accusation and claimed that only 14 percent of law school funds were being transferred into the universities general fund. Nonetheless, when the State Department of Legislative Services investigated Baltimore University it was discovered that 31 percent of the law school’s revenue was funneled into the Universities general fund in 2010.

All ABA-approved law schools offer a similar quality of legal education. Students learn substantive law and how to think like a lawyer. At some law schools, however, law student’s tuition contributes to more than one-third of the universities costs, even though the law school enrollment accounts for just over 25 percent of the university.

Therefore, fraud allegations stem from the schools doing specific acts of tuition “price gouging”, and the New York Times reports that nationwide law students are left in the dark as to exactly how much their legal education is going to cost them until the end of their first year. The report explained that the traditional grading system based on a curve “carefully rations the number of A’s and B’s, as well as C’s and D’s, awarded each semester [and] all
but ensures that a certain number of students . . . lose their merit scholarships and wind up paying full tuition in their second and third years.” Therefore, it isn’t until after fall semester grades have been posted that “thousands of 1L’s [realize] that their financial future is about to change dramatically for the worse,” and they will be paying full tuition for the next two years.

Problems Combined: Existence of Tort Liability

The inflation of employment rates, salaries and tuition issues raise the question: Are law schools liable in tort for fraud and misrepresentation? In 2010, there is evidence of less than 51 percent of law school graduates finding employment in private law firms. Reports in early 2012 stated that the “legal sector lost 3,500 jobs since September of 2010. Nonetheless, these declining trends were not depicted in the postgraduate employment reports of many law schools. Law schools maintained the dissemination of postgraduate employment statistics illustrating postgraduate employment over 80 percent and more than 51 percent of those in private sectors.

Applicants and students are still applying and attending law schools. Specifically, more than 87,900 applicants applied for the 60,000 seats available at ABA-approved law schools in 2010. In spite of this, in 2010, it is reported that law students owed more on average than $98,000 upon graduation in student loan debt and less than 51 percent were finding employment in private law firms. These figures, by many critics, are consider the result of “false advertising” by law schools that graduate law students as if the schools were “J.D. factories.” Thus, this Comment will discuss the allegations that law schools are “false advertising . . . J.D. factories,” in a thorough discussion of law school liability for fraud and misrepresentation.
D. Preliminary Considerations

Dean Matasar said, “[i]f a law school can’t help its students achieve their goals, ‘we should shut the damn place down.’” Indeed, in American law schools, faculty and staff focus on molding law students into competent practicing attorneys. It is true that students get their initial information about a school from the school’s websites. Nevertheless, is the correlation between a law schools duty to students and disseminating accurate postgraduate employment enough to raise tort liability for fraud or misrepresentation?

This Comment will address the claims of fraud and misrepresentation made against law schools for allegedly disseminating false and misleading statements about their postgraduate employment statistics. First, the Comment will focus on fraudulent misrepresentation specifically addressing the elements of the tort, and the requirement of law students will need to establish to have a successful claim. Third, the Comment will focus on techniques that law students can use to establish damages. Then this Comment will address the key factors of tort law and why courts can find schools liable for fraudulent misrepresentation.

E. The Tort of Fraudulent Misrepresentation Defined

“Fraud is an ancient tort.” Decades of litigation have defined the terms of modern day fraud liability. The common law definition of “fraud” is “an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage.” On the other hand, the Restatement (Second) of Torts defines misrepresentation as “not only words spoken or written but also any other conduct that amounts to an assertion not in accordance with the truth.”

Generally, a fraud claim arises when one entity deceives another causing economic harm to the deceived party. For example, in the instant cases, law schools disseminated deceptive
information about their postgraduate employment figures. It is alleged that this deceptive information causes students to borrow about $357,229 in student loans, delay gainful employment for three years after finishing an undergraduate degree, and then receive a salary that is not in line with the information they received or the tuition they paid. Therefore, the plaintiffs are attempting to prove that they suffered economic harm from the schools deceptive postgraduate employment figures.

II. PROVING FRAUDULENT MISREPRESENTATION

Fraud allegations are serious and can be extremely harmful. Therefore to prove a fraudulent misrepresentation claim, which is an intentional tort, require exceptionally high standards. To begin with, the complaint is required to state the fraudulent circumstances with particularity. Beyond the heightened pleading requirement of a fraud claim, the burden of proof is also high. A plaintiff in a fraud claim has to prove the fraud by the standard of clear and convincing evidence.

The heightened standards are an attempt by the Courts to allocate the risk of error between the parties and point out the “relative importance of the ultimate decision.” Proving fraud often involves cases with circumstantial evidence, which are easily fabricated. Therefore, in addition to the high standards a plaintiff also has the burden of proving the five elements of fraud: “1) misrepresentation of a material fact; 2) Scienter, meaning that the individual stating the misrepresentation knew or should have known of the statement’s falsity; 3) intent by the individual that the representation would induce another to rely and act on it; and 4) resulting injury to the party acting in justifiable reliance on the representation; 5) damages, that the representation and the damages contained a nexus causally linking them together.”

A. MATERIAL MISREPRESENTATION
A misrepresentation of a material fact is essential for a successful fraud claim. The definition of material differs slightly from jurisdiction to jurisdiction. One way materiality is evaluated is by determining if the misrepresentation involved information that was important enough to influence the choice or conduct of the consumer in regards to the product. Alternatively, materiality is determined by an evaluation of a material representation as being “of such nature as to induce action on the part of the complaining party.” Similarly, a reasonable person standard is also used to evaluate materiality. Jurisdictions recognizing the reasonable person standard seek to determine if a reasonable person would act based on the link between the misrepresentation and the decision making process.

Law students are advised to “[p]ay the greatest attention to a school’s placement record” when choosing which law school to attend. Books like Law School Confidential, and other guides for applying to law school explain in detail that the percentage of graduates with gainful employment is a primary concern when choosing a law school. Thus, a school’s postgraduate employment records are important and influence the choice of the student making a determination of which law school to attend.

For example, in Dizick v. Umpqua Community College, a community college student brought an action for fraudulent representations regarding training the school said was available to him through their school to become an advanced welder. In Dizick, the jury found that the misrepresentations made to the student were false and “were material to the extent that the plaintiff would not have in fact enrolled or continued in school had the plaintiff known that such representations were false.” Therefore, if a law school’s postgraduate employment records are false they can be determined to be material if the plaintiff would not have in fact enrolled or continued in school had the plaintiff known that such representations were false.
i INFORMATION READILY AVAILABLE: NO DUTY TO DISCLOSE

Nonetheless, in the law suit brought against New York Law School the judge found that the postgraduate employment statistics were not misleading in a material way. The judge determined the misrepresentation was not material because students have “available to them any number of sources of information” regarding postgraduate employment when determining which school to attend. Indeed, “an action for fraud may not lie where the complaining party had access to the information at issue;” however, there may still be a duty to disclose information even when it is accessible.

On a case-by-case basis, courts weigh factors to determine whether there is a duty to disclose information. In this instance the court should consider—“the nature of the fact not disclosed, the materiality of the fact not disclosed, and the respective knowledge of the parties and their means of acquiring knowledge.” Therefore, because the means of acquiring information about postgraduate salary statistics is not accessible to students through diligent inquiry the schools could be found to owe a duty disclose and thus the information could be determined to be material.

ii INFORMATION NOT READILY AVAILABLE: DUTY TO DISCLOSE

The ABA, the National Association of Legal Placement (“NALP”), and the Bureau of Labor Statistic (“BLS”) are all sources for finding information about legal employment statistics, including postgraduate information. These sources, however, only provide a portion of the information essential to determining whether to attend law school. In addition, a law schools geographic location, and the fact that lawyers earn vastly different incomes contribute to postgraduate employment information not being readily available from any one
source. Thus, plaintiffs may “not have in fact enrolled or continued in [law] school had the plaintiff[s] known that such representations were false.”

The median salary for first year associates in law firms that consist two-to-25 lawyers is reported to be $73,000 by the ABA. This ABA employment data, however, fails to include solo practitioners and is a nationally based statistic. Conversely, the Houston Chronicle reported that students who graduate in the Houston, Texas area can make as little as $30,000 in their first year. Thus, the ABA statistics contribute to a pool of inconclusive data sources for students to use when determining whether to attend law school, whether to take out student loans, and whether to choose one law school over another.

The Bureau of Labor Statistic (“BLS”), which reports the wages for all employed practicing lawyers, does not include the income of sole practitioners. Sole practitioners, however, make up nearly one-third of the legal profession, and “the number of solo practitioners . . . represented more than 5% of law firm jobs reported [in 2009], compared with 3.3% for the class of 2008” according to NALP. Thus, information from the BLS is an inconclusive data source for students to use when determining whether to attend law school, whether to take out student loans, and whether to choose one law school over another.

Moreover, the fact that NALP, the ABA, and the BLS all provide information about national statistics does not consist of “access to the information at issue” even if some of the ABA breakdown statistics by geographic region. Thus, there is a duty to disclose information because “the nature of the fact not disclosed,” varies substantially by region and by school. “The bottom line is, . . . [a]fter Yale and Harvard . . . regional preference begins to play a role” and “the number students should be most concerned about is the school’s ‘placement record’—that is, what percentage of its graduates have gone to gainful employment, and where.”
Therefore, because the means of acquiring information about postgraduate salary statistics is not accessible to students through diligent inquiries, and because the school is in a superior place to receive the information the school disseminates. Law schools have a duty to accurately disclose their postgraduate employment statistics, because a student’s only way of accessing the information is through the school. Consequently, the postgraduate statistics of an individual school are material because a plaintiff may “not have in fact enrolled or continued in [a specific law] school had the plaintiff[s] known that [the specific law school’s] representations were false.”

**B. SCIENTER (knowledge of falsity or reckless disregard for the truth).**

*Scienter* is more than a mere promise, it is the combination of intent to deceive or mislead coupled with a promise. To be successful in a fraud claim the plaintiff must prove that the defendant had a particular state of mind, known as *scienter.* If a plaintiff cannot establish *scienter* the judgment will be in favor of the defendant.

*Scienter* is defined as “a person who has actual knowledge of information; or acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the truth or falsity of the information.” On the other hand, The *Restatement (Second) of Torts defines Scienter* as statements made if the speaker:

(a) knows or believes that the matter is not as he represents it to be,
(b) does not have the confidence in the accuracy of his representation that he states or implies, or
(c) knows that he does not have the basis for his representation that he states or implies.

Therefore, evidence proving that the defendant acted with “knowledge of falsity, or reckless disregard for the truth” establishes the element of *scienter.*

*Scienter* can be proven in situations where law schools had “knowledge of falsity, or reckless disregard for the truth.” For example, *scienter* may be established in the New York
Law School case due to the public admission of the school that it did not give prospective students a complete picture of postgraduate employment opportunities by posting only the median salary of graduates who attained jobs in the private-sector of $75,000 even though the school acknowledged that most students would begin at firms with salaries between $35,000 and $75,000.\textsuperscript{121} In this case, New York Law School either knowingly distributed false information or published it with a reckless disregard for the truth and they admitted the distribution technique.\textsuperscript{122}

Nonetheless, \textit{sceinter} is not generally admitted to. To establish \textit{scienter} several factors are involved in determining if a claim for fraudulent misrepresentation claim is actionable. Factors that \textit{must} be taken into consideration are the type of misrepresentation that was made and if the defendant owed the plaintiff any duty.

The reason plaintiffs are permitted to recover damages when the type of fraud is intentional or reckless is because the bargaining process is under minded.\textsuperscript{123} The law school misrepresentation is intentional when the school makes a misrepresentation with the knowledge and purpose of the falsity. On the other hand, the misrepresentation could be reckless if a “[law school] asserts a fact as his own knowledge without truly knowing whether it is true or false.”\textsuperscript{124}

The court in the New York Law School case determined that the alleged misrepresented statements were neither “half-truths” nor misleading.\textsuperscript{125} The court reasoned that “the student’s complaint clearly establishes that plaintiffs had access to publicly available information pertaining to the realities of the legal job market,” and the school “complied with the ABA standards.” Therefore, because the court did not find the statements to be “half-truths” or misleading the court did not examine the fact that the school owed students a duty if the “[school] ha[s] \textit{special or superior knowledge} of the facts not available to the other party, or
where the defendant has communicated half-truth or made some other misleading, partial disclosure.”

Consequently, *scienter* was never fully examined in the New York Law School case. The court overlooked the issue of students obtaining accurate information about a particular law school’s data. Therefore, an argument can be made that law schools with superior knowledge of employment data that disseminated only part of the data were committing fraud by concealing pertinent information, or recklessly disclosed information that was the school knew or should have known was only half true. A successful argument would prove that law schools have a duty to disclose the pertinent information because the students would not have been aware of danger signs and the represented reports would not have been considered to be a “falsity . . . patent to the senses.” Therefore, the affirmative statement that the school disseminated regarding only a small selection of data from graduating students without disclosing the limited pool from which the data was gathered could not be accepted at face value, causing an actionable tort to be considered *Scienter*.

C. **Intent or Expectation to Induce Reliance**

Liability for fraudulent misrepresentation arises when the material misrepresentation is knowingly made with either an intent or expectation that the target will act in reliance upon the misrepresentation. Cases, however, frequently overstate the requirements for misrepresentation implying that the defendant acting with an expectation of reliance will not meet the threshold for liability. Therefore, a misrepresentation made with the intent or expectation to induce reliance is actionable.

The difference in the standard of intent and expectation do not hinge on the defendant acting with the purpose of causing the victim to rely on the misrepresentation. The defendant
merely has to act with the desire of causing the victim to rely.\(^{135}\) “A result [from a misrepresentation is] intended if the actor either acts with the desire to cause it or acts believing that there is a substantial certainty that the result will follow from his conduct.”\(^{136}\) On the other hand, the defendant “has a reason to expect a result [from a misrepresentation] if he has information from which a reasonable man would conclude that the result will follow or would govern his conduct upon the assumption that it will do so.” In addition, the “reason-to-expect standard requires more than mere foreseeability; the claimant’s reliance must be ‘especially likely’ and justifiable, and the transaction sued upon must be the type the defendant contemplated.”\(^{137}\)

i. **DIFFICULTIES ESTABLISHING INTENT OR EXPECT RELIANCE:**

Law students suing their alma mater may have a difficult time establishing intent or expectation of reliance because this “element of fraud is a focused inquiry, more akin to a rifle shot than a shotgun blast.”\(^{138}\) Pure opinions, or mere puffery stated by the defendant is not actionable as a fraudulent misrepresentation.\(^{139}\) Therefore, students may have to overcome the notion that the employment and salary data reported were merely puffery, or opinions, which are not actionable as a fraudulent misrepresentation.\(^{140}\)

The notion that the employment and salary data could be considered “vague representations of mere opinions,”\(^{141}\) is potentially a huge burden for the law students to overcome. The issue arises as to whether the law schools are promising students employment and prospective salaries or whether these statements can be characterized as puffery, or opinions.\(^{142}\) Two key factors support the notion of the reports being mere opinions and not actionable. First, the fact that law schools do not specify the number of reporting students with no distinctions between: full-time and part-time employment, as contract or permanent employment, or
employment requiring a J.D. and those that do not, support the notion that the reports are merely vague representations of opinions. Second, based on the generality of NALPA’s data, which does not specify the employment or salary data for an area the schools representations, could be considered vague representations of mere opinion. Thus, the reports disseminated by the law schools could be viewed as trade talk, in which the law schools are sparring for an advantage, and be considered a general tenor of trade talk not rising to the level of fraud.

Indeed, quantity and value statements are merely the estimated opinion; or mere sales talk of a party and logically do not constitute fraud when both parties have equal access to information. Nonetheless, when a party has a special or superior knowledge of the value or quantity, especially if the other party has little knowledge of such value, the intent or expectation to induce reliance is found to be present. Therefore, if the employment data can be viewed as a quantitative figure or a value statement then the students may face issues over coming the intent to induce reliance.

Nevertheless, in Beckett v. Computer Career Institute, former students sued the institute alleging that when the school recruited the students the school represented that “placement rate for graduates was between 85% and 96%.” “At the same time, [the school] was reporting a placement rate of approximately 50% to its accrediting agency.” Thus, “when the students completed their education at CCI,” they were not able to obtain employment related to their education from the Computer Institute.

The school argued that, even if there was evidence of a misrepresentation concerning its placement rates, there was no evidence of any causal connection between the damages and the misrepresentations. The school argued that the students claim that they would not have enrolled in the institute if they had knowledge of the actual placement rate for all graduates.
Additionally, and similar to the law school arguments, the Institute argued that the students “received the education and training that defendant promised, that jobs were not promised, and that there was no evidence from which the jury could determine whether their failure to obtain training-related employment was because of the misrepresentations.”  

The court, however, disagreed. It reiterated “that causation of damages occurs in such situations only when the fact misstated ‘was of a nature calculated’ [or of an intent or expectation to cause reliance and] to bring about the result giving rise to the damages.” Specifically, in Beckett the court determined that the school “was aware that, in reliance on defendant’s representations, the students would terminate their employment, enroll in defendant’s courses and pay the assessed tuition.” In Beckett, “the court reasoned that “there was evidence from which the jury could determine that the training at CCI did not qualify plaintiffs to obtain the employment for which defendant had promised they would be qualified.”

Thus, like the Institute in Beckett law schools also do not train their students to qualify to obtain employment in the field of law. In January 2012, Legal On Ramp Chief Executive Officer Paul Lippe, warned, “that the divide between the legal academy and the profession is no longer tenable.” He explained that law schools handicap students “by sending them into the job market without practical skills or an understanding of how lawyers operate and what clients expect.” This lack of practical skill and understanding is contributing to the low job numbers because a high number of corporate clients refusing to pay for first or second-year associate work. Therefore, because lawyers earn vastly different incomes, and it is nearly impossible for prospective and current law students to find accurate information about what type postgraduate salary to expect from a specific school the students may be able to prove intent or expectation to induce reliance.
D. Justifiable Reliance

In addition, law students may have tremendous difficulties overcoming the element of justifiable reliance because they must also prove they had a right to rely on the data. As previously mentioned, law schools are not bound to the truth of a mere opinion, and law students have “no right to rely upon a representation which is expressly state[d] to be an opinion.” Moreover, students also would not have a right to rely upon statements, “which are palpably absurd.” Thus, if statements that the lowest ranking law schools graduate’s salary ranges are equal to graduates from Ivy League law schools, as suggested by the data disseminated the statements may be found to be “palpably absurd” and non-actionable.

The law expects law students be both prudent and diligent in their investigation of information prior to entering into a contract to attend a law school. “In general one must rely on his own judgment and investigate before entering into transactions with others.” The law schools are not liable for any fraudulent misrepresentations made to the students if their decisions to attend their school was caused based on the result of his independent investigation and based on the misrepresentation by the school.

Nonetheless, an argument could be successfully made that law schools could have been under a duty to exercise reasonable care to disclose the truth about prospective postgraduate employment and salaries to the law students. Thus, by not disclosing true postgraduate employment and salaries, this omission may qualify as the law schools intent or expectation to induce students to rely upon their misrepresented data. Therefore, law schools could have owed a duty to disclose. And the non-disclosure or concealment of information the school knew students did not have access to could case justifiable reliance, but only if the school owed the students a duty.
FIDUCIARY RELATIONSHIP

Law schools could owe its students a duty to disclose the truth about the postgraduate employment and salary data “because of a fiduciary or other similar relation of trust and confidence between them.” However, “courts and theorists alike have had a difficult time making fiduciary duty cover all the relationships it should cover while keeping it appropriately narrow.” “Much of the difficulty may lie in the terms courts have traditionally used to define fiduciary duties, such as “trust,” or from the focus on the “vulnerability” of the beneficiary.” “Courts are quick to define the relationship between students and the university as purely contractual.” “They do this to avoid having to determine the adequacy of education and to avoid impinging academic freedom.” However, courts risk leaving themselves “without an adequate role to hold schools accountable when they fail to meet the reasonable expectations of students.” “The lack of an adequate judicial role is troubling; as many scholars have noted, it leaves the institution without external accountability and students without judicial recourse.”

“In the last five years, courts have begun to find more legitimacy in fiduciary duty claims against universities and colleges.” Indeed, Law students and the law schools do not deal with each other at arm’s length. Law students are subservient to the will of faculty members and administrators; they have given up a degree of independence, placing trust and confidence in the law school. Professor Alvin Goldman has noted that the student-university relationship consists of all of the elements that are usually found in a fiduciary relationship. Therefore, a fiduciary relationship between a law student and a law school can exist.

The law students will have to establish the elements of a fiduciary relationship to use the duty of disclosure argument. Four elements that have been argued to establish a fiduciary relationship between a university and a student are dependency, value, surrendering
independence, and “an automatic or habitual manipulation of the actions of the subservient party by the dominant party.”

First, law students depend on the university to help them become educated, thus the element of dependency between the student and the school is fulfilled. Second, law students seek guidance from the law school to manage their student loan, and living expenses, thus the element of value is fulfilled. Third, as professional students, law students have surrendered their independence to the law school, agreeing to forgo a career and adulthood to undertake the mandatory stipulations of a law school. Finally, law students as the subservient party devote their trust and confidence to law school, which is the dominant party that students expect, through its’ faculty and administration, to direct them on their academic and career ambitions, thus establishing the fourth element.

E. DAMAGES

Damages caused by a misrepresentation are essential to a claim. Fraud that does not result in damages is not actionable. Therefore, the law students must prove the causal link between the defendant’s misrepresentation and damages to be successful.

Damages will be another difficult hurdle law students will have to over come due to the dynamics of tort law. Because tort law is not easily described, to succeed a plaintiff will have a better chance at succeeding if they establish: (1) the damages they received, (2) the principle of their tort cause of action and (3) the principle behind tort law that justify their line of reasoning.

The good news for the law students is that the plaintiff’s damages do not have to be established by a high burden of proof. Damages must merely be proven by a preponderance of evidence. Unlike proving that the actual fraud occurred, which requires a burden of clear
and convincing evidence, the plaintiff’s burden of proof for damages in fraud is similar to any other proof of “damages caused by any other tort.”

ESTABLISHING DAMAGES

The judge’s order dismissing the New York Law Students case exemplified the importance of establishing damages. In the order the judge states that law students failed to satisfy the requirement that actual injury resulted to each plaintiff as a result of misrepresented statements. Thus, the first obstacle law students will have to overcome is establishing that they have suffered damages as a result of the misrepresentation.

Although, proximate cause is not always specified as an element of fraud it is always an element incorporated through the damages element. The proximate cause element equates to “reasonable foreseeability.” Therefore, the foreseeability of element limits the scope of liability for “consequential or special damages”.

The plaintiffs suing the law schools have the burden of proving their damages resulted from the misrepresentation. The plaintiffs seek damages and equitable relief which includes: “punitive damages, disgorgement of tuition monies, costs and expenses, including attorneys' and experts' fees; and any additional relief that this Court determines to be necessary.” “Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representation must be shown.”

To overcome obstacles of the damages element students will need to prove compensatory damages and punitive damages. “Compensatory damages’ are the damages awarded to a person as compensation, indemnity, or restitution for harm sustained by him.” “Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him
for his outrageous conduct and to deter him and others like him from similar conduct in the future.”

ii COMPENSATORY DAMAGES

The two most common ways compensatory damages are measured when plaintiffs are suing for economic loss, due to fraud, are known as the Contract Rule or Benefit of the Bargain, and the Tort Rule or Out of Pocket Expenses. The Benefit of the Bargain rule is measured by the difference between the value actually received, and the value if there had not been a misrepresentation. The Out of Pocket rule measures the loss between what was paid for and what was received.

Law students will have to consider the facts of their case when determining how they wish to calculate the damages they seek. The Benefit of the Bargain rule requires that a contract be entered into. On the other hand, the out of pocket rule requires that the plaintiff prove with reasonable certainty what the bargain was worth. Courts, however, do allow for some flexibility in the measure of damages when “alleged fraud does not involve the sale of property, to compensate the plaintiff for whatever loss he has suffered.”

iii BENEFIT OF THE BARGAIN RULE

Law students could possibly use the Benefit of the Bargain rule based on their implied contract with the law school. The benefit of the bargain rule is measured by the difference between the value actually received and of the amount promised if there had not been a misrepresentation. In this case measuring the value actually received and the amount promised is very difficult to determine.

In the New York Law School case, the students used the Benefit of the Bargain rule. The students asked for the difference between the true value of the education received and the
inflated value they paid for their legal education. Determining, however, what the difference in the “inflated value” they paid and the true cost of the education is not an easy determination.

The law students will have to “prove that . . . what they received was not the actual value of what they had bargained for.” Education has a value, however, calculating a specific amount is difficult. Therefore, there is no way of knowing the specific value of a professional education, or what type of future value the education will create.

Nevertheless, students could attempt to seek recovery through Benefit of Bargain by using hard numbers to evaluate the damage. Students could ask for the true value of the education, for example if the tuition was $50,000 each year for three years equaling $150,000, they could ask for the difference from what they will pay over 25 years with a 7 percent interest rate, which ends up being $357,229. Then the total amount owed by the school for damages is $207,299 and the student still pays the $150,000 for the education they received. “The measure of damages in a fraud case is the actual amount of the plaintiff's loss that directly and proximately results from the defendant's fraudulent conduct.”

Therefore, because the students cannot return the education the students would have a better chance of proving their actual loss was directly and proximately caused the misrepresentations. Specifically, students are not receiving the same pay and employment opportunities as Ivy League schools disseminating the same postgraduate employment data, so they should seek merely the difference not a complete refund.

\[ \text{iv OUT OF POCKET RULE} \]

On the other hand, law students could possibly use the Out of Pocket rule to measures the loss between what was paid for and what was received. The Out of Pocket rule requires that the plaintiff prove with reasonable certainty what that the bargain was worth. It may,
however, be difficult for the plaintiffs to establish with reasonable certainty the value of what was bargained for.

Again, calculating a specific value for education is difficult. Nonetheless, the Out of Pocket rule, like the Benefit of the Bargain rule can use definitive numbers to reach a definitive value—the cost of tuition. At law schools where law student’s tuition contributes to more than one-third of the Universities budget, and law school enrollment accounts for just over 25 percent of the university, students could seek the value of the cost of their tuition and the value of the Universities cost to fund their portion of the law school program. Law school students can seek to recover the 30 percent of their law school tuition revenues that the school uses to subsidize other fields of study at their universities.

For example, if tuition generated an additional $1.45 million in revenue and only $80,000 went back to the law school. Students could ask for the difference between the $80,000 spent to bring them their education and the $1.45 million that their tuition generated. The law school would pay back the students the $1,370,000 in tuition that did not contribute to the value of their education.

V PUNITIVE DAMAGES

Punitive damages are awarded as a punishment against the defendant for wrongful acts. The purpose of punitive damages is to deter persons and businesses from doing wrongful acts. Therefore, an award of nominal damages in some cases is “enough to support a further award of punitive damages, when a tort . . . is committed for an outrageous purpose, but no significant harm has resulted.” Although, the extent of the harm may not be required when determining punitive damages, only receiving nominal damages may limit the ability of the courts award
amount in punitive damages. Generally, courts limit the punitive damages so that the award does not exceed a single-digit ratio between the punitive and compensatory damages.

Punitive damages “blend together the interests of society and the aggrieved individual, and gives damages not only to recompense the sufferer, but to punish the offender.” Thus, law students may emphasize, to the courts, how destructive allowing law schools to fraudulently report postgraduate statistics, which in return drives up demand for the schools services and encourages students to attend their institution.

The outstanding student loan debt is rising rapidly. It now exceeds credit card debt. Recent reports signify that outstanding student loan debt has reached the threshold of one trillion dollars. Student loan debt could turn into another crisis for the economy, according to the president of the National Association of Consumer Bankruptcy Attorneys.

Law Schools, however, have more to contribute to fixing this societal mess than the courts. Law schools can stop the practice that cause them to end up with a surplus of tuition funds, which are then used to compensate for 30 percent of other programs, once law schools enroll a specific number of students. It has been suggested, “there isn't one big bubble, but many smaller significant ones stretching across different sectors” such as “lawyers who borrow six figures for law school and can't find a job.”

Law students contribute to the 5 percent of student loan borrowers who owe more than $75,000. On average in 2010, it is reported that law students owed more on average than $98,000 upon graduation in student loan debt and some school’s law students graduated with more than $120,000 in student loan debt. In 2010, American Law Students borrowed 3.7 billion dollars to pay for their legal education. However, it has been reported that some law
schools are taking in some situations more than 30 percent of the tuition their law students pay to compensate other programs.\textsuperscript{245}

If the students wish to receive punitive damages that will not be determined grossly excessive or arbitrary on appeal the student will have to consider the factors a reviewing judge will consider when they ask for the punitive damages. The law students will want to make sure there is a record of the “reprehensibility of the defendant’s misconduct, the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.”\textsuperscript{246}

\textbf{vi ECONOMIC LOSS RULE}

The unsettled Economic Loss Rule will apply in cases where negligence causes purely economic losses.\textsuperscript{247} The Economic Loss Rule is interpreted along a spectrum of different definitions. On one end, “some authorities hold that tort law offers no redress for negligence that causes only economic losses unaccompanied by person injuries or property damages.”\textsuperscript{248} Alternatively, jurisdictions such as Texas recognize ““that the ‘economic loss' rule has never been a general rule of tort law; it is a rule in negligence and strict product liability’ and ‘[p]ure economic loss is commonly recoverable in certain torts’”.\textsuperscript{249} In fact, Texas recognizes pure economic loss as recoverable for—negligent misrepresentation claims, and fraud.\textsuperscript{250} Therefore, if the students can overcome the hurdles imposed by the economic loss rule they will then have to prove damages.

\textbf{III. CONCLUSION}

\textbf{A. THE PRINCIPLE BEHIND TORT LAW}

Tort law is the “vehicle of legal redress for victims.”\textsuperscript{251} It provides compensation or other types of relief to a diverse form of injuries and damages.\textsuperscript{252} The changing ideas and concerns of
what duties two people owe one another gives rise to the consistent change in legal status of new and reformed torts recognized by law.\textsuperscript{253}

Progression and development can result in harm and losses, which in turn causes ideas and concerns to change causing new torts to be recognized.\textsuperscript{254} Progression and development that are followed by damages and injuries produce lawsuits.\textsuperscript{255} It is the lawsuits that follow damages caused by progression and development that “offer the public a mechanism for . . . forc[ing] innovators to internalize the costs of their endeavors.”\textsuperscript{256}

The post progression and development lawsuits that result in harm and loss play three key factors in maintaining a civil society. First, these lawsuits creat[e] incentives which measure the cost future harm and holds the party liable,\textsuperscript{257} so that in the future the party or other parties in the same position will be less likely to cause the same or similar loss to others.\textsuperscript{258} Second, the lawsuits reduce the activity that causes the damages or increases precautions.\textsuperscript{259} Third, this type of litigation provides a check and balance on “market excesses by requiring persons who benefit to bear the burden of loss among those who enjoy the services.” Therefore, even when damages may be difficult to prove there is always hope that changing ideas and concerns of what duties two people owe one another will give rise to a new or reformed torts recognized by law.\textsuperscript{260}

\textbf{i  POLICY ARGUMENTS}

Modern tort law is viewed as the implementation of policy according to several hundred years of law that has been established through case law.\textsuperscript{261} This modern view, however, takes for granted the idea that judges are making and implementing policy decisions when they rule on tort issues.\textsuperscript{262} The several hundred year old rules that make up our tort law is wide spread, “not because it is necessarily right,”\textsuperscript{263} but because it is so old.\textsuperscript{264} The formation of tort law emerged over course of time when policy concerns were quite different than they are today.\textsuperscript{265}
Nonetheless, many issues remain the same, however, some concerns have changed dramatically.  

One significant change facing America is the economy. “A growing chorus of economic observers [is] warning that student-loan debt could become a significant albatross on the overall U.S. economy.” In light of this recent challenge S&P warns that the “Student Loans May Be The Next Bubble To Burst In US Economy.” Student loan “debt now outpaces credit-card debt, approaching $1 trillion for the first time.” Thus, the vast contours that shape the field of tort law commands a “degree of support as being a socially desirable objective” and may support the damages sought by law students seeking economic damages from law schools for misrepresentations. “[C]ourts even now, if they think fit, [can] enlarge the list” of actionable torts.

ii JUDICIARY’S ROLE IN POLICY MAKING

Indeed, it is the legislatures duty to function as the policy-making agency. Unarguably, judges do not generally have an extensive background in economics or statistics and they do not have the equipment to “conduct even the most basic empirical research.” Nonetheless, since the holding of Marbury v. Madison, in 1803 it is settled law that it is “the province and duty of the judicial department to say what the law is.” Thus, Judicial action may be the best remedy for states to be able to address this issue of law school’s misrepresenting postgraduate earning capacity and the contribution the misrepresentations are adding to weak economies.

Student loans, however, are federal and governed by federal law that complies with laws established by the U.S. Department of Education. It is well-settled law that state legislatures are pre-empted from creating laws that conflict with federal law. Conversely, judicial action
may be the best remedy to address this issue by targeting schools that are contributing to the financial crisis by misrepresenting post employment figures to induce students to borrow more than they can pay.\textsuperscript{278} at the state level because tort law “is a creature of the state, rather than the national, government.”\textsuperscript{279} Therefore, considering the pervasive acknowledgement that the judiciary “can encourage a strong legislative response . . . in order to implement costly education reform measures,”\textsuperscript{280} and the ability of “courts even now, enlarge the list” of actionable torts\textsuperscript{281} the judiciary may be the best remedy to the current misrepresentation issue, which has an effect on the student loan issue.

Sadly, if courts do not consider making policy when addressing the issue of law school misrepresentation students may have a difficult time establishing their case. Fraud that does not result in damages is not actionable,\textsuperscript{282} and establishing each element of this type of fraud case is going be very difficult. Therefore, if the student cannot establish each and every element they will probably lose their case unless judges use this case to make policy.

\begin{flushright}
\textsuperscript{1} Karen Sloan, \textit{Law schools’ credibility at issue}, THE NATIONAL LAW JOURNAL, (Sep. 19, 2011) “http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202514708103, (acknowledging that “[p]lenty of attention has been paid during the past two years to what critics see as the manipulation of graduate employment and salary data by law schools.”).

\textsuperscript{2} Karen Sloan, \textit{Fresh round of litigation targets 12 law schools over jobs data}, THE NATIONAL LAW JOURNAL, (Feb. 1, 2012) www.law.com/jsp/nlj/PubArticleNLJ.jsp?id= (citing the law schools to be sued as: Albany Law School of Union University; Brooklyn Law School;
California Western School of Law; Chicago-Kent College of Law; DePaul University College of Law; Florida Coastal School of Law; Golden Gate University School of Law; Hofstra University Maurice A. Deane School of Law; The John Marshall Law School; University of San Francisco School of Law; Southwestern Law School; and Widener University School of Law).


6 See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, 11, 41 (Carolina Academic Press 2010) (discussing the toll of law school on students emotional and mental intelligence along with the time and money it requires).

7 See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, 41 (Carolina Academic Press 2010) (implying that making the right decision about law school is critical and should take time because it is expense and time consuming).


9 *Cf. Karen Sloan, ABA gives ground on law schools' graduate jobs data reporting*, THE NATIONAL LAW JOURNAL, (Dec. 5, 2011)
http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202534457162 (referencing how the ABA did not require that ABA accredited schools send the ABA employment statistic).


http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202534457162 (referencing how the ABA did not require that ABA accredited schools send the ABA employment statistic).


http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202534457162 (mentioning the new questions the ABA added to their 2012 updated questionnaire).

12 John T. MACDONALD Jr., Chelsea A. Pejic, Shawn Haff, and Steven Baron, on behalf of themselves and all others similarly situated, Plaintiffs, v. Thomas M. COOLEY LAW SCHOOL, and Does 1-20, Defendants., 2011 WL 3486444 (W.D.Mich.) (arguing that “[b]y playing fast and loose with its employment data, Thomas Cooley creates an impression of bountiful employment opportunity that in reality does not exist.”). The reason law schools have been accused of playing fast and loose with employment data could be contributed to the lack of over site by the ABA.


Twelve More Law Schools Sued, JD JOURNAL, (FEB. 6, 2012) http://www.jdjournal.com/2012/02/03/twelve-more-law-schools-sued/ Albany Law School (with job placement rates between 91% and 97%); Brooklyn Law School (with job placement rates between 91% and 98%); California Western School of Law (with job placement rates between 90% and 93%); Chicago-Kent College of Law (with job placement rates between 90% and 97%); DePaul University College of Law (with job placement rates between 93% and 98%); Florida Coastal School of Law (with job placement rates between 80% and 95%); Golden Gate University School of Law (reports rates of 85% nine months after graduation); Hofstra Law School (with job placement rates between 94% and 97%); John Marshall School of Law (Chicago) (with job placement rates between 90% and 100%); Southwestern Law School (with job placement rates between 97% and 98%); University of San Francisco School of Law (with job placement rates between 90% and 95%) and Widener University School of Law (with job placement rates between 90% and 96%).


John T. MACDONALD Jr., Chelsea A. Pejic, Shawn Haff, and Steven Baron, on behalf of themselves and all others similarly situated, Plaintiffs, v. Thomas M. COOLEY LAW SCHOOL,
and Does 1-20, Defendants., 2011 WL 3486444 (W.D.Mich.)(arguing that Cooly only bases its’ employment statistics on a small percent of graduates).

19 See John T. MACDONALD Jr., Chelsea A. Pejic, Shawn Haff, and Steven Baron, on behalf of themselves and all others similarly situated, Plaintiffs, v. Thomas M. COOLEY LAW SCHOOL, and Does 1-20, Defendants., 2011 WL 3486444 (W.D.Mich.)(suggesting that Cooley’s employment statistics would drop if they were to disclose pertinent information such as how many graduates are permanently employed full-time in a position that requires a J.D).


21 See www.cooley.edu/overview/_docs/ERSS_Report_2010.pdf (reporting 52% of graduates in private practice); (http://www.nyls.edu/user_files/1/3/4/21/CSRS%20Employment%20Stats%20for%20Web%200511%20v1-rev.pdf (reporting 84%-91% employment after graduation)

22 See www.cooley.edu/overview/_docs/ERSS_Report_2010.pdf (reporting 52% of graduates in private practice); (http://www.nyls.edu/user_files/1/3/4/21/CSRS%20Employment%20Stats%20for%20Web%200511%20v1-rev.pdf (reporting 84%-91% employment after graduation)

23 cite to complaint

tuition-rises.html (discussing how New York Law School claimed to have a median salary equal to that of Harvard law).


30 David Segal, Law School Economics: Ka-Ching!, THE NEW YORK TIMES, (Jan. 16, 2011) http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html (discussing how “Mr. Matasar . . . noted that the school takes the over-and-above step of posting more granular salary data on its Web site ‘In these materials and in our
conversations with students and applicants,’ he wrote, ‘we explicitly tell them that most graduates find work in small to medium firms at salaries between $35,000 and $75,000.”

31 Prospective or current law students


33 See Michael Ariens, Law School Getting In, Getting Out, Getting on, xii (Carolina Academic Press 2010) (discussing the different income potential of lawyers).

34 See Michael Ariens, Law School Getting In, Getting Out, Getting on, xii (Carolina Academic Press 2010) (discussing the BLS salary statistics for lawyers and clarifying that sole practitioners are not included in the figures, and that they make up roughly one-third of the legal profession).


36 Mary Flood, Salary reality: Many lawyers don’t earn big bucks, CHRON.COM, (5:30 a.m., July 26, 2007) http://www.chron.com/business/article/Salary-reality-Many-lawyers-don-t-earn-big-bucks-1841042.php (explaining that the “reality is that first-year graduates from the three Houston law schools make as little as $30,000 a year and have a median salary of around $70,000”).

37 David Segal, Law School Economics: Ka-Ching!, THE NEW YORK TIMES, (Jan. 16, 2011) http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html (referencing how the allure of a law degree has enabled law schools to increase “tuition four times faster than the soaring cost of college. And many law schools have
added students to their incoming classes — a step that, for them, means almost pure profits — even during the worst recession in the legal profession’s history.”).


40 Karen Sloan, *Law schools ‘tax’ at Baltimore more than twice university claimed*, THE NATIONAL LAW JOURNAL, (Feb. 28, 2012) http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543799288&et=editorial&bu=National%20Law%20Journal&cn=20120229nlj&src=EMC-Email&pt=NLJ.com-%20Daily%20Headlines&kw=Law%20school%20%27tax%27%20at%20Baltimore%20more%20than%20twice%20what%20university%20claimed&slreturn=1 (examining the transfer of funds from Baltimore law school to the university’s general fund after the school claimed that the transfer of funds was less).

University Law School “In-state tuition increases which were “162 percent between 2000 and 2010” to the other state law school which was “145 percent”)”

42 Karen Sloan, Law schools ‘tax’ at Baltimore more than twice university claimed, THE NATIONAL LAW JOURNAL, (Feb. 28, 2012) http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543799288&et=editorial&bu=National%20Law%20Journal&cn=20120229nlj&src=EMC-Email&pt=NLJ.com-%20Daily%20Headlines&kw=Law%20school%20%27tax%27%20at%20Baltimore%20more%20than%20twice%20what%20university%20claimed&slreturn=1 (noting that former dean Closius stated “the percentage of law school tuition money going to the university grew in 2011, when a tuition increase generated an additional $1.45 million in revenue — only about $80,000 of which went back to the law school”)

43 Karen Sloan, Law schools ‘tax’ at Baltimore more than twice university claimed, THE NATIONAL LAW JOURNAL, (Feb. 28, 2012) http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543799288&et=editorial&bu=National%20Law%20Journal&cn=20120229nlj&src=EMC-Email&pt=NLJ.com-%20Daily%20Headlines&kw=Law%20school%20%27tax%27%20at%20Baltimore%20more%20than%20twice%20what%20university%20claimed&slreturn=1 (discussing how Baltimore law school defended itself against accusations of funneling law school funds into the general university fund. A 14% transfer of funds, which the president claimed, from the law school to the university general funds is in line with the 11% transfer of law school funds to university general funds at other law schools.).


the courage to tell law students it was their own fault for the rampant price gouging that happens as a result of the ABA’s ineffective oversight of law schools”.

49 David Segal, *Law Students Lose the Grant Game as Schools Win*, THE NEW YORK TIMES, (April 20, 2011) http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all (discussing how at “law schools nationwide, students are graded on a curve, which carefully rations the number of A’s and B’s, as well as C’s and D’s, awarded each semester [and] all but ensures that a certain number of students will lose their scholarships and wind up paying full tuition in their second and third years”).

50 David Segal, *Law Students Lose the Grant Game as Schools Win*, THE NEW YORK TIMES, (April 20, 2011) http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all (discussing how at “law schools nationwide, students are graded on a curve, which carefully rations the number of A’s and B’s, as well as C’s and D’s, awarded each semester [and] all but ensures that a certain number of students will lose their scholarships and wind up paying full tuition in their second and third years”).

51 David Segal, *Law Students Lose the Grant Game as Schools Win*, THE NEW YORK TIMES, (April 20, 2011) http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all (explaining that “[a]fter fall semester exams, it dawns on thousands of 1L’s, as first-year law students are known, that their financial future is about to change dramatically for the worse”).


See www.cooley.edu/overview/_docs/ERSS_Report_2010.pdf (reporting 52% of graduates in private practice); (http://www.nyls.edu/user_files/1/3/4/21/CSRS%20Employment%20Stats%20for%20Web%200511%20v1-rev.pdf (reporting 84%-91% employment after graduation)


This comment will not address other possible tort actions, but they do exist. This comment will only focus on fraud and misrepresentation.


61 Robert P. Schuwerk, The Law Professor As Fiduciary: What Duties Do We Owe to Our Students, 45 S. TEX. L. REV. 753, 754 (2004)(mentioning the role of law professors in molding tomorrows attorney).


66 The Restatement (Second) of Torts § 525 (1977).


median salary is $75,000, even though most students are more likely to make $35,000–$45,000 after graduation).


76 Disner v. Westinghouse Elec. Corp., 726 F.2d 1106, 1109 (6th Cir. 1984) (discussing how the majority of Michigan courts require fraud to be proven by clear and convincing evidence).

Disner v. Westinghouse Elec. Corp., 726 F.2d 1106, 1110 (6th Cir. 1984) (mentioning how
“Courts have recognized, perhaps because the nature of the evidence in cases involving
allegations of fraud is often circumstantial, that claims of fraud can be fabricated easily.”)

Geri Lynn Mankoff, Florida’s Economic Loss Rule: Will It Devour Fraud in the Inducement
Claims When Only Economic Damages Are at Stake?, 21 NOVA L. REV. 467, 482 (1996)
(explaining the elements of common law fraud that must be proved for liability).

Geri Lynn Mankoff, Florida’s Economic Loss Rule: Will It Devour Fraud in the Inducement
Claims When Only Economic Damages Are at Stake?, 21 NOVA L. REV. 467, 482 (1996)
(explaining the elements of common law fraud that must be proved for liability).

26 Williston on Contracts § 69:12 (4th ed.) (“discussing the matter of materiality have set
forth many different formulations of the concept.”).

Federal Trade Commission Act, § 5 (defining a misrepresentation as material “if it involves
information that is important to consumers and, hence, likely to affect their choice of, or conduct
regarding a product.”).

prior Alabama case law “A material fact is one that is ‘of such nature as to induce action on the
part of the complaining party.’”).

See Faulkner Drilling Co., Inc. v. Gross, 943 S.W.2d 634 (Ky. Ct. App. 1997) (stating “that a
material fact is one which is likely to affect the conduct of a reasonable man and be an
2001) (discussing the knowledge causing the person to act).
85 See Faulkner Drilling Co., Inc. v. Gross, 943 S.W.2d 634 (Ky. Ct. App. 1997) (stating “that a material fact is one which is likely to affect the conduct of a reasonable man and be an inducement of the contract”).

86 Robert H. Miller, Law School Confidential, 63 St. Martin Press (2000) (explaining the importance of knowing a schools placement ratings when choosing which law school to attend).

87 Robert H. Miller, Law School Confidential, 63 St. Martin Press (2000) (explaining the importance of knowing a schools placement ratings when choosing which law school to attend).

88 See Federal Trade Commission Act, § 5 (defining a misrepresentation as material “if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product.”).

89 Dizick v. Umpqua Cmty. Coll., 599 P.2d 444, 448 (1979) (discussing how the jury found the misrepresentations to be material, and how from that point the jury merely need to find damages by a preponderance of evidence).

90 See Federal Trade Commission Act, § 5 (defining a misrepresentation as material “if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding a product.”).


93 37 Am. Jur. 2d Fraud and Deceit § 205

94 37 Am. Jur. 2d Fraud and Deceit § 205

95 37 Am. Jur. 2d Fraud and Deceit § 205
See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, xii (Carolina Academic Press 2010) (discussing the BLS salary statistics for lawyers and clarifying that sole practitioners are not included in the figures, and that they make up roughly one-third of the legal profession), cf. Richard Montauk, J.D., *HOW TO GET INTO THE TOP LAW SCHOOLS*, 50-51 (Prentice Hall Press 2008) (commenting on how there are “no books equivalent to the best college guides, but that even the guides are composed of information from a “very week field” of data).

www.americanbar.org

www.nalp.org/

www.bls.gov/

NALP provides information based on nationwide statistics and does not provide specific regional information, BLS provides attorney employment information, but does not include solo practitioners information in the statistics it provides, ABA provides employment statistics, but dose not include specific information on how the information is obtained.

Richard Montauk, J.D., *HOW TO GET INTO THE TOP LAW SCHOOLS*, 58 (Prentice Hall Press 2008) (referencing how it is easier to get a job in the region of the law school than having nation wide placement opportunities).


Dizick v. Umpqua Cmty. Coll., 599 P.2d 444, 448 (1979) (mentioning how the jury found the misrepresentations to be material because the plaintiff may “not have in fact enrolled or continued in school had the plaintiff known that such representations were false”).


Mary Flood, *Salary reality: Many lawyers don’t earn big bucks*, CHRON.COM, (5:30 a.m., July 26, 2007) http://www.chron.com/business/article/Salary-reality-Many-lawyers-don-t-earn-big-bucks-1841042.php (explaining that the “reality is that first-year graduates from the three Houston law schools make as little as $30,000 a year and have a median salary of around $70,000”).

See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, xii (Carolina Academic Press 2010) (discussing the BLS salary statistics for lawyers and clarifying that sole practitioners are not included in the figures, and that they make up roughly one-third of the legal profession).

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37 Am. Jur. 2d Fraud and Deceit § 205

See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, xii (Carolina Academic Press 2010) (discussing the BLS salary statistics for lawyers and clarifying that sole practitioners are not included in the figures, and that they make up roughly one-third of the legal profession), cf. Richard Montauk, J.D., *HOW TO GET INTO THE TOP LAW SCHOOLS*, 50-51 (Prentice Hall Press 2008) (commenting on how there are “no books equivalent to the best college guides, but that even the guides are composed of information from a “very week field” of data).

Dizick v. Umpqua Cmty. Coll., 599 P.2d 444, 448 (1979) (mentioning how the jury found the misrepresentations to be material because the plaintiff may “not have in fact enrolled or continued in school had the plaintiff known that such representations were false”); See Michael Ariens, *Law School Getting In, Getting Out, Getting on*, xii (Carolina Academic Press 2010) (discussing the BLS salary statistics for lawyers and clarifying that sole practitioners are not included in the figures, and that they make up roughly one-third of the legal profession), cf. Richard Montauk, J.D., *HOW TO GET INTO THE TOP LAW SCHOOLS*, 50-51 (Prentice Hall Press 2008) (commenting on how there are “no books equivalent to the best college guides, but that even the guides are composed of information from a “very week field” of data).

See Phillips v. Chevron U.S.A., Inc., 792 F.2d 521, 526 (5th Cir. 1986) (recognizing that *scienter* “requires proof of an intent to deceive or to mislead at the time the promise was made”).

Alice D. v. William M., 450 N.Y.S.2d 350, 354 (finding for the defendant “because the plaintiff could not establish *scienter*”).

*United States v. Chubb Inst.*, CIVA 06-3562, 2010 WL 1076228 (D.N.J. Mar. 22, 2010) (explaining how 31 U.S.C.A. § 3729(b)(1)-(3) defined the *scienter* requirement as “a person who ‘(1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information,” but notes that “no proof of specific intent to defraud is required”).


*Zutz v. Case Corp.*, 422 F.3d 764, 770 (8th Cir. 2005) (acknowledging two types of misrepresentations as intentional or reckless).
recognizing that reckless misrepresentation occurs “when the representer asserts a fact as of his own knowledge without knowing whether it is true or false”).

Cite to Johnson an affirmative statement may be accepted at face value, unless: Its falsity is patent to the senses or There are danger signals requiring investigation


See Sec. I in this comment.

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If the students cannot prove Scienter they may have a change at bring a negligent misrepresentation cause of action. See Goehring v. Chapman Univ., 121 Cal. App. 4th 353, 364 (Cal. Ct. App. 2004) (stating that [t]he tort of negligent misrepresentation does not require scienter or intent to defraud, but it does, of course, require a showing of resulting damage.);

§Restatement (Second) of Torts § 552 (1977): (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Restatement (Second) of Torts § 531 (1977) (clarifying that reliance can result from either an intent or an expectation).
Vincent R. Johnson & Shawn M Lovorn, *Misrepresentation by Lawyers About Credentials or Experience*, OK. L. REV. 529, 555-56 (2004) (explaining that cases frequently overstate the requirements for misrepresentation as Scienter and intent, when expectation to induce reliance is also allowed under the restatement of Torts).

See Vincent R. Johnson & Shawn M Lovorn, *Misrepresentation by Lawyers About Credentials or Experience*, OK. L. REV. 529, 555-56 (2004) (explaining that cases frequently overstate the requirements for misrepresentation as Scienter and intent, when expectation to induce reliance is also allowed under the restatement of Torts).

Restatement (Second) of Torts § 531 cmt. c, d (1977) (discussing how desire is sufficient to fulfill the element of intent).

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Restatement (Second) of Torts § 531 (1977)


*Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 219 (Tex. 2011) (explaining that “[i]ntent-to-induce reliance is not satisfied by evidence that a misrepresentation may be read in the future by some unknown member of the public or of a specific industry”).

Holley v. Cent. Auto Parts, 347 S.W.2d 341, 343 (Tex. Civ. App.--Austin 1961, writ ref’d n.r.e.) (explaining that merely stating that a product is a “good one” is an opinion and opinions are not actionable as material misrepresentations).
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Guitar Trust Estate v. Boyd, 120 S.W.2d 914, 918 (Tex. Civ. App.—Eastland 1938, no writ) (concluding that statements made regarding the lack of value in a piece of land was merely “trade talk,” and that each party was sparring for an advantage, and “considering the matter from his own standpoint;” but finding the “general tenor and statement of these negotiations” to have arose above the level of mere opinion and not actionable as fraud”).


Beckett v. Computer Career Inst., Inc., 120 Or. App. 143, 145 (Or. Ct. App. 1993) (stating that the school was reporting 50% graduate placement rate to its accrediting agency).

Beckett v. Computer Career Inst., Inc., 120 Or. App. 143, 145 (Or. Ct. App. 1993) (noting that students were unable to find a work in their field of study).


Beckett v. Computer Career Inst., Inc., 120 Or. App. 143, 149 (Or. Ct. App. 1993)(recognizing the school was aware that students would rely on the misrepresentation”).


Ashby Jones and Joseph Palazzolo, What's A First-Year Lawyer Worth? Not Much, Say a Growing Number of Corporate Clients Who Refuse to Pay, ONLINE.WSJ.COM, HTTP://ONLINE.WSJ.COM/ARTICLE/SB10001424052970204774604576631360989675324.HTML (referencing the new trend for corporate clients and there refusal to pay for first or second year associates).

See I(B) supra.

*Guitar Trust Estate v. Boyd*, 120 S.W.2d 914, 919 (Tex. Civ. App—Eastland 1938, no writ) (pointing out that a plaintiff must also have a right to rely on the misrepresentation).

*Guitar Trust Estate v. Boyd*, 120 S.W.2d 914, 917 (Tex. Civ. App—Eastland 1938, no writ) (mentioning that “one has no right to rely upon a representation which is expressly stated to be merely an opinion, for the truth of which the speaker declines to be bound”).

See *Guitar Trust Estate v. Boyd*, 120 S.W.2d 914, 919 (Tex. Civ. App.—Eastland 1938, no writ) (expressing the fact that plaintiffs cannot rely on statements which are absurd).


See *Guitar Trust Estate v. Boyd*, 120 S.W.2d 914, 917 (Tex. Civ. App.—Eastland 1938, no writ) (noting that “[t]he law does not place a premium on negligence or unreasonable credulity. Prudence and diligence should be exercised in the execution of contracts.”).

*Guitar Trust Estate v. Boyd*, 120 S.W.2d 914, 917 (Tex. Civ. App—Eastland 1938, no writ) (explaining that generally a person has a duty to “rely on his own judgment and investigate before entering into transactions with others”).

Restatement (Second) of Torts § 547 (1977) (stipulating “the maker of a fraudulent misrepresentation is not liable to another whose decision to engage in the transaction that the representation was intended to induce is not caused by his belief in the truth of the representation
but is the result of an independent investigation made by him.(2) The fact that the recipient of a fraudulent misrepresentation is relying upon his own investigation does not relieve the maker from liability if he by false statements or otherwise intentionally prevents the investigation from being effective.”).

166 Restatement (Second) of Torts § 551 (1977) (defining scenarios when defendants owe a duty to disclose omissions).

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168 Restatement (Second) of Torts § 551 (1977).

169 See Restatement (Second) of Torts § 551 (1977).

170 Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 183 (2002) (noting how it has been difficult for courts to expand the concept of fiduciary to include the relationship between a University and a student).

171 Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 183 (2002) (noting how it has been difficult for courts to expand the concept of fiduciary to include the relationship between a University and a student).

172 Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 180 (2002) (referencing how courts generally define the relationship between Universities and Students as contractual to avoid infringing on the freedoms in academia).


Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 158 (2002) (recognizing that courts have become more apt to find a fiduciary relationship between a University and a Student in the past five years when claims are more specific).

Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 158 (2002) (pointing out that students and universities do not deal with each other at arms length “and, even if they are, the universities typically include such significant disclaimers of liability and reserve rights to modify the “contract” at will, that students are left with no promises at all”)

Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 158 (2002) (focusing on how “Graduate students have ‘surrender[ed a degree] of independence,’ and placed trust and confidence in faculty members or administrators”).


Fiduciary Duties of College and University Faculty and Administrators, 29 J.C. & U.L. 153, 158 (2002) (developing the argument that a relationship between a University and a student can exist). “With the growth of social networking sites, however, online misrepresentation has given rise to a variety of claims outside these traditional ways of understanding misrepresentation. In other words, online deceit has led to a variety of legal implications, but the law of
misrepresentation has yet to provide a cause of action for such misrepresentations.” Geelan Fahimy, *Liable for Your Lies: Misrepresentation Law As A Mechanism for Regulating Behavior on Social Networking Sites*, 39 Pepp. L. Rev. 367, 393 (2012). Thus, if students relied on the data they received from the schools websites the students this may pose yet another obstacle to proving fraud.

181 Restatement (Second) of Torts § 551 (1977) (defining a fiduciary relationship as a scenarios when defendants owe a duty to disclose omissions).


183 *Fiduciary Duties of College and University Faculty and Administrators* 29 J.C. & U.L. 153, 158 (2002) (explaining that “[o]ne of the key elements in fiduciary relationships is the dependence of the beneficiary on the fiduciary. ‘As in a status relation, one party to a fiduciary relation (the entrustor) is dependent on the other (the fiduciary) .... By definition, the entrustor becomes dependent because he must rely on the fiduciary for a particular service.’ Students at universities depend on the university to help them become educated.”).

184 *Fiduciary Duties of College and University Faculty and Administrators* 29 J.C. & U.L. 153, 158 (2002) (recognizing that students give tuition, a “thing of value,” to the university to manage). It should also be noted that law schools generally have a separate financial aid office for law students.


based on trust can be used to establish that the student has reposed “trust and confidence in the dominant party.”).


190 Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 ( Carolina Academic Press 2009) (discussing how dynamic the field of tort law is and how there is no central place to obtain all the rules).

191 Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 ( Carolina Academic Press 2009) (mentioning that the field of tort law is not easily described).

192 Dizick v. Umpqua Cmty. 599 P.2d 444, 448 (1979) (discussing how the burden of proof for proving damages in a misrepresentation case is merely by a preponderance of the evidence, even though the burden for proving the fraudulent misrepresentation is by clear & convincing evidence).

193 Dizick v. Umpqua Cmty. 599 P.2d 444, 448 (1979) (discussing how the burden of proof for proving damages in a misrepresentation case is merely by a preponderance of the evidence, even though the burden for proving the fraudulent misrepresentation is by clear & convincing evidence).
Dizick v. Umpqua Cmty. 599 P.2d 444, 448 (1979) (explaining that “once a jury find[s] that the defendant made a fraudulent representation, there is no reason why the burden of proof of damages in fraud should be different from proof of damages caused by any other tort”).


Cf. Knepper v. Brown, 195 P.3d 383, 387 (2008) (determining that some notion of proximate cause is subsumed under the last element in that abbreviated list: ‘Damage to the plaintiff, resulting from [the plaintiff's] reliance [on defendant's representation].’”).


See Knepper v. Brown, 195 P.3d 383, 387 (2008) (recognizing “that the scope of liability for an intentional, fraudulent misrepresentation depends on the nature of the misrepresentation, the audience to whom the misrepresentation was directed, and the nature of the action or forbearance, intended or negligent, that the misrepresentation justifiably induced”).


Restatement (Second) of Torts § 903 (1979) (defining compensatory damages).
Restatement (Second) of Torts § 908 (1979) (stating the definition of punitive damages).


Goehring v. Chapman Univ., 121 Cal. App. 4th 353, 364 (Cal. Ct. App. 2004) (stating that “[d]amage[s] to be subject to a proper award must be such as follows the act complained of as a legal certainty”); Vincent R. Johnson, *Advanced Tort Law A problem Approach*, 74 (LexisNexis 2010) (discussing how plaintiff must be able to prove with reasonable certainty what he bargain was worth. Johnson).

Dizick v. Umpqua Cmty. Coll., 599 P.2d 444, 449 (1979) (contending that when the alleged fraud does not involve the sale of property, the proper measure of damages must be flexible to compensate the plaintiff for whatever loss he has suffered).

the benefit of the bargain rule when measuring damages for fraud requires a contractual
relationship be entered into).

discussing the benefit of the bargain rule when measuring damages for fraud).

2012).

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mentioning that the party will have to establish that what they bargained for was not what they
received).

Rev. 1081, FN 30 (1997) (discussing how education “has value, although the exact measure is
difficult to calculate and noting that a use of the cost of tuition, does not demonstrate the value,
because it varies from school to school).

216 Joyce Davis, *Enhanced Earning Capacity/human Capital: The Reluctance to Call It Property*,
17 Women's Rts. L. Rep. 109, 117 (1996) (noting that “[w]hether a professional education is and
will be of future value to its recipient is a matter resting on factors which are at best difficult to
anticipate or measure.”).

how_long_can_the_law_school_bubble_last/ (calculating the amount students are actually
paying back).
Befit of the bargain calculation in this scenario could also take into consideration any fault that the students may have had for their own lack of pure ignorance, but no one ever said lawyers were good at math, so they should get some type of break of their lack of mathematical skills.

*Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194 (Tex. 2011) (discussing how the damages for fraud are measured by what the plaintiff actually lost).


Goehring v. Chapman Univ., 121 Cal. App. 4th 353, 364 (Cal. Ct. App. 2004) (stating that “[d]amage[s] to be subject to a proper award must be such as follows the act complained of as a legal certainty”); Vincent R. Johnson, *Advanced Tort Law A problem Approach*, 74 (LexisNexis 2010) (discussing how plaintiff must be able to prove with reasonable certainty what he bargain was worth. Johnson).

C. Peter Goplerud III, *Pay for Play for College Athletes: Now, More Than Ever*, 38 S. Tex. L. Rev. 1081, FN 30 (1997) (discussing how education “has value, although the exact measure is difficult to calculate and noting that a use of the cost of tuition, does not demonstrate the value, because it varies from school to school).

University “nearly 37% of the universities indirect cost” come from law school funds, even though the law school accounts for only 28% of the total enrollment).


226 Given the presumption that students paid university fee’s that contributed to the general maintenance and upkeep of the university, which should be part of every student’s tuition fees.

227 The schools would have to have already charged fee’s for general maintenance and upkeep of the university grounds that all student’s pay in conjunction with their tuition. However, on average that is only 10% of a law schools tuition rate. Karen Sloan, *Law schools ‘tax’ at Baltimore more than twice university claimed*, THE NATIONAL LAW JOURNAL, (Feb. 28, 2012) http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543799288&et=editorial&bu=National%20Law%20Journal&cn=20120229nlj&src=EMC-Email&pt=NLJ.com-%20Daily%20Headlines&kw=Law%20school%20%27tax%27%20at%20Baltimore%20more%20than%20twice%20what%20university%20claimed&slreturn=1

228 Restatement (Second) of Torts § 908 cmt. a (1979) (commenting on how punitive damages are a punishment).
Restatement (Second) of Torts § 908 cmt. a (1979) (commenting on how punitive damages are a punishment).

Restatement (Second) of Torts § 908 cmt. c (1979) (discussing how a mere finding of nominal damages may lead to a finding of punitive damages).


Graham v. Roder, 5 Tex. 141, 149 (1849) (discussing the role of exemplary damages in American jurisprudence).

Graham v. Roder, 5 Tex. 141, 149 (1849) (discussing the role of exemplary damages in American jurisprudence).

The Associated Press, Will Student Loans Be the Next Bubble to Burst?, THE NEW YORK LAW JOURNAL, (Nov. 8, 2011) http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202529477022&slreturn=1

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how_long_can_the_law_school_bubble_last/.


246 Bunton v. Bentley, 176 S.W.3d 21, 23 (Tex. App.—Tyler 2005, pet. denied) (defining the guideposts established to avoid excessive punitive damages).


249 Sharyland Water Supply Corp. v. City of Alton, 354 S.W.3d 407, 418 (Tex. 2011), reh'g denied.

250 Sharyland Water Supply Corp. v. City of Alton, 354 S.W.3d 407, 418 (Tex. 2011), reh'g denied.


253 See Vincent R. Johnson and Alan Gunn, Study In American Tort Law, 3 (Carolina Academic Press 2009) (discussing the changing dynamics of tort law, which gives rise to new torts obtaining legal status as the ideas of duties that people owe one an other change).
See Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 (Carolina Academic Press 2009) (acknowledging that “innovation is frequently followed by litigation because new or expanded practices often cause harm”).


“Tort law is concerned not only with fairly allocating past losses, but also with minimizing the costs of future accidents” Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 (Carolina Academic Press 2009)


See Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 (Carolina Academic Press 2009) (explaining that after new innovation results in harm and lawsuits to compensate for that harm future harm can be minimized “by reducing activity levels or increasing”); Vincent R.

260 See Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 3 (Carolina Academic Press 2009) (discussing the changing dynamics of tort law, which gives rise to new torts obtaining legal status as the ideas of duties that people owe one another change).


265 Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 10 (Carolina Academic Press 2009) (observing the change in the policy concerns over the several hundred years which developed modern day tort law).

266 Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 10 (Carolina Academic Press 2009) (observing the change in the policy concerns over the several hundred years which developed modern day tort law).


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268 Tyler Kingkade, *S&P Warns Student Loans May Be The Next Bubble To Burst In US Economy*, THE HUFFINGTON POST (Jan. 9, 2012 5:02 PM)

http://www.huffingtonpost.com/2012/02/09/sp-warns-student-loans-bubble-burst_n_1266209.html

269 Tyler Kingkade, *S&P Warns Student Loans May Be The Next Bubble To Burst In US Economy*, THE HUFFINGTON POST (Jan. 9, 2012 5:02 PM)

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271 *See* Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 7 (Carolina Academic Press 2009) (noting that the field of tort suits the needs of several different end results, but each end in some way support a socially desirable objective).


273 *See* Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 10 (Carolina Academic Press 2009) (mentioning that it is the legislatures duty to create and implement policy).
274 See Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 10 (Carolina Academic Press 2009) (elaborating on the concept that judges are policy makers, they do not have abilities to do empirical research and know little about economics or statistics).


277 See Vincent R. Johnson and Alan Gunn, *Study In American Tort Law*, 736 (Carolina Academic Press 2009) (focusing on the dynamics of federal pre-emption and how the law is well settled that any state law conflicting with a federal law is “without effect”).

278 Tyler Kingkade, *S&P Warns Student Loans May Be The Next Bubble To Burst In US Economy*, THE HUFFINGTON POST (Jan. 9, 2012 5:02 PM) http://www.huffingtonpost.com/2012/02/09/sp-warns-student-loans-bubble-burst_n_1266209.html (stating that “An increasing concern for economists is that “many students may be getting their loans for the wrong reasons, or that borrowers — and lenders — have unrealistic expectations of borrowers' future earnings.”)

