

Tort Law

AS YOU ENTER A STORE, you slip and fall on a floor with a large spill on it. You are in a great deal of pain, but you are able to walk. However, your knee appears to be out of joint. When you approach the owner about the situation, he says the floor was just washed and that any reasonable person knows to be careful when walking on a wet floor. Welcome to tort law 101.



Objective:



Describe the elements of a tort and the categories of torts.

Key Terms:



assault

battery

breach of duty

causation

injury

intentional tort

negligence

presence of a duty

strict liability

tort

tortfeasor

Civil Torts

Civil law tries to resolve non-criminal disputes (e.g., divorce, child custody, contract disagreements, property ownership, and personal and property damage). A civil court is a place where people can solve problems peacefully. The function of civil law is to provide a legal remedy to solve problems. Sometimes civil law is based on a state or federal statute. Other times, however, civil law is based on a court ruling. Civil tort law is a branch of law that deals with breaches of civil duties rather than contractual duties or general societal duties. It covers many legal field specialties.

ELEMENTS OF A TORT

A **tort** is a legal wrong. Tort law gives people the right to compensation for wrongs and injuries that do not derive from a statute or a contract. People who suffer injuries caused by

someone else may be able to pursue compensation from the person or people responsible through a civil lawsuit. The primary aim of tort law is to provide relief for the damages incurred and to deter others from committing the same harm.

To prove a case in court, the plaintiff's attorneys will typically need to prove that the four essential elements of a tort are present. These elements are:

1. The **presence of a duty** is the responsibility to take all reasonable precautions to prevent the injury of someone nearby.
2. The **breach of duty** is an element in which the defendant must have failed in his or her duty.
3. An **injury** is a physical, mental, emotional, or economic loss. It could be the loss of earnings capacity or even injuries to a person's reputation.
4. **Causation** is a situation in which the breach of duty caused injury. Therefore, a causal link exists between the breach of duty and the injury.



FIGURE 1. Caution: Wet floor signs are used to inform guests of potentially dangerous conditions.

TORT CATEGORIES

Torts in the United States cover primarily common law. Individual states have separate civil codes that must be verified by the paralegal. There are, however, three general categories of torts: negligence, intentional torts, and strict liability.

Public policy objectives in tort laws are designed with the following principles in mind:

- ◆ To protect people and property from unjust injury by providing legally enforceable rights
- ◆ To compensate victims by holding accountable the people responsible for causing such harm
- ◆ To encourage minimum standards of social conduct among society's members
- ◆ To deter a violation of those standards of social conduct
- ◆ To allocate losses among different participants in the social arena

Negligence

Each tort type is associated with different standards of proof, remedies, and defenses. The vast majority of tort claims are based on negligence. **Negligence** is a situation that occurs when the tortfeasor breaches a care of duty, resulting in harm or injury to the plaintiff. Negligence involves carelessness, not intentional harm. Examples of negligence are car accidents, slips and falls, medical malpractice, premises liability, and some product liability. The law of negligence judges fault. A defendant will only be liable for damage that can be said to be his or her fault.

A person who alleges negligent medical malpractice must prove four elements:

- ◆ Duty of care was owed by the physician.
- ◆ The physician violated the applicable standard of care.
- ◆ The person suffered a compensable injury.
- ◆ The injury was caused in fact and proximately caused by the substandard conduct.

For example cases, see the following link regarding medical malpractice summaries at http://blog.caringlawyers.com/2011/02/13_disturbing_cases_of_medical_1.html.

Compensation for injury is typically financial, and many states have enacted damage award limits. Defenses for negligence depend on the case specifics. Generally, they look to the following:

- ◆ Assumption of risk or status by the plaintiff or invitee
- ◆ Assertion that he or she did act in accordance with the standard of care
- ◆ Examination of any superseding causes
- ◆ Examination of any contributing negligence
- ◆ Attack of the causal link between act or omission and harm or injury
- ◆ Challenging and questioning whether the plaintiff suffered any actual loss



FURTHER EXPLORATION...

ONLINE CONNECTION: Tortious Injury

Review the Crimes v. Torts chart by Peter Suber of the Philosophy Department at Earlham College at <http://www.earlham.edu/~peters/courses/ct/crimtort.htm>. Create a new chart using a similar chart layout, demonstrating the similarities and differences between the three general categories of torts: intentional torts, negligence, and strict liability. Cite example cases for each type of tort, and distinguish between similarities and differences. It may be necessary to list information at the bottom of the chart similar to the style used by Suber. You may vary your style, but the information should be clear to you and the reader.

Intentional Tort

Intentional tort is a situation that occurs when the tortfeasor acts knowingly and willfully to injure the victim. The **tortfeasor** is the person violating the tort law. Examples of an intentional tort are assault, battery, and IIED. **Assault** is an attempt at battery. **Battery** is any physical contact with another person to which the other person has not consented as well as intentional infliction of emotional distress (IIED).

Compensation for intentional torts is monetary. In addition, the four elements of a tort must be proven. Defenses for intentional torts are similar to those for negligence, with the addition of proving that harm came intentionally.



FIGURE 2. Negligence occurs when the tortfeasor breaches a care of duty, resulting in harm or injury to the plaintiff. Negligence involves carelessness, not intentional harm.

Strict Liability

Strict liability is a tort that occurs when the tortfeasor becomes liable even if he or she does not act intentionally or breach a duty of care. A strict liability tort is common if the injury involved an unusually dangerous activity, such as those involving hazardous materials (e.g., explosives or demolition) or wild animals, even dog bites. This tort makes a person responsible for the damages caused by his or her actions, regardless of fault or intent. The victim does not need to prove negligence with this type of tort. Common strict liability cases often pertain to defectively manufactured products or drugs. See the example case of *Greenman v. Yuba Power Products, Inc.* (1963) 59 Cal.2d 57 [13 A.L.R.3d 1049]. For more information on liability, see <https://www.shsu.edu/~klett/CH%206%20NEW%20PRODUCT%20LIABILITY%20NEGLIGENCE.htm>. Other types of torts include property torts, dignitary torts, economic torts, duty to visitors, and nuisance torts.

Summary:



Civil tort law is a branch of law that deals with breaches of civil duties, rather than a contractual duty or a general societal duty. Tort law gives people the right to compensation for wrongs and injuries that do not derive from a statute or a contract.

People who suffer injury caused by someone else may be able to pursue compensation from the person or people responsible through a civil lawsuit. The primary aim of tort law is to provide relief for the damages incurred and to deter others from committing the same harms.

To prove a case in court, the plaintiff's attorneys will typically need to prove that the four essential elements of a tort are present. Three general categories of torts are intentional torts, negligence, and strict liability torts.

Checking Your Knowledge:



1. Explain causation.
2. Explain the public policy objectives in tort laws.
3. The majority of tort claims are based on what?
4. Name another type of tort other than the three major categories.
5. How are intentional torts and negligence torts similar?

Expanding Your Knowledge:



Write a compare and contrast paper explaining how intentional torts and negligence torts are different. You may want to create a Venn diagram before beginning your paper. Be thorough. Use resources, as needed. However, make sure you cite any sources you use.

Web Links:



Torts

<http://www.legalgrind.com/index.php?act=GetContent&cid=36>

Tort Law

<http://www.law.cornell.edu/wex/tort>

Tort Branch

http://www.justice.gov/civil/torts/torts_home.html