

Introduction to Torts



A SAMPLE LAW SCHOOL CLASS

Criminal Law v. Civil Law



Criminal Law

Criminal law is concerned with public welfare and harm.

Prosecution is done by the government (state or federal) (e.g. State v. Doe)

The prosecution must prove guilt beyond reasonable doubt.

Civil Law

Civil law is concerned with the private welfare, not necessarily wrongdoing.

The plaintiff is generally a private party.

The plaintiff only needs a preponderance of the evidence to prove liability (>50%).

So, What Is a Tort?



Black's Law Dictionary defines a tort as

1. A civil wrong for which a remedy may be obtained, usually in the form of damages...

A far less formal definition of a tort is

1. All the crazy stuff that you can possibly imagine happening to a person.

Types of Torts



There are a variety of torts, which can broadly be broken into the following three categories:

- **Negligent torts**

Negligent torts, as their name suggests, are torts that are caused by the negligence of the tortfeasor, or person who commits the tort.

- **Intentional torts**

Intentional torts, also as their name suggests, are torts caused intentionally by the tortfeasor.

Strict liability torts

Strict liability torts are torts where the law has determined that some activities are so dangerous that an individual engaging in those activities is liable for damages regardless of intent or negligence resulting in harm.

Negligent Torts: Elements



There are four elements for the tort of negligence:

- 1) Injury
- 2) Duty
- 3) Breach
- 4) Causation

Negligent Torts: Injury



Injury is the most basic element. It asks if there is some sort of adverse effect that the plaintiff suffered for which they should be compensated for.

Most injuries take the form of physical harms. However, some emotional and financial harms also count as injuries for the purpose of the elements of negligence.

Negligent Torts: Duty



Everyone has a duty to exercise due care all of the time. What is due care?

Due care is the amount of care that a reasonable person would exercise under the circumstances. What is a reasonable person?

Negligent Torts: Duty



Everyone has a duty to take due care to avoid causing harm (generally physical) to foreseeable victims.

Due care is the amount of care that a reasonable person would exercise under the circumstances. What is a reasonable person?

A reasonable person is not any real person or even the average person, but an imaginary prudent person who takes the precautions necessary to avoid harming another person or their property.

In some scenarios, people owe a heightened duty of care. Can you think of any examples where a heightened duty of care might be required?

Negligent Torts: Duty



Can you think of examples of due care that each of the following people must exercise?:

1. A lifeguard at a municipal pool.
2. A lumberjack felling a tree.
3. An owner of an aggressive dog.
4. A high school football coach.

Negligent Torts: Breach



To determine breach, you must first determine duty. Breach asks if the defendant has failed to meet their duty (AKA the required standard of care).

For example, if the standard of care requires that you keep one hand on the wheel when driving, and you drive with your knees and no hands, then you have breached your duty of care.

Negligent Torts: Causation



There are two types of causation:

Causation in fact; and
Proximate cause

Negligent Torts: Causation



Causation in fact, also known as “but-for” causation, asks “but for” the defendant’s actions would the injury have occurred?

Example: A hits B in the shin with a golf club. “But for” A hitting B in the shin with a golf club, B would not be injured.

Proximate Cause



Proximate cause pairs with but-for causation; both must be present.

Proximate cause asks: Is the defendant's careless conduct related enough to the injury that the defendant should bear responsibility for it?

Two main theories exist regarding proximate cause:

- 1) Foreseeability
- 2) Risk rule



This is Mike Trout

Mike likes to practice his swing in his living room.

Unfortunately, this sometimes leads to disaster...



Negligent Torts: Causation Hypo

Negligent Torts: Causation Hypo 1



One day, while practicing his swing in his living room, Mike loses his grip on the bat. The bat flies into the sitting room and hits his wife's friend in the head, causing minor injuries.

Q1: Is there but-for causation?

Q2: Is there proximate causation?

Negligent Torts: Causation Hypo 2



Mike did not learn his lesson when he injured his wife's friend. Once again, during a practice session, Mike loses his grip. This time the bat flies through a window and hits the ladder his roofer is using to climb onto his roof. The roofer falls and breaks both his arms.

Q1: Is there but-for causation?

Q2: In there proximate causation?

Negligent Torts: Defenses



Even where the plaintiff has proven all of the elements of a negligent tort, the defendant may be found not to be liable or the defendant's liability may be reduced based on certain defenses. These defenses include:

1. Contributory Negligence
2. Comparative Negligence
3. Assumption of the risk (consent)
4. Illegality

Negligent Torts: Damages Hypo



Betty and Derek are walking to school. Steven is driving down the street talking to his friends in the backseat. One of Steven's friends screams "Look out!" Steven reacts by turning the wheel of his car, which jumps the curb and pins Betty's arm to the wall crushing it. What remains of Betty's arm needs to be amputated.

Q1: How much is Betty's arm worth?

Q2: Does the answer change if Betty was a concert pianist?

Q3: What if Betty simply wanted to be a concert pianist, but wasn't one yet?

Negligent Torts: Damages



The basic idea of damages is fairly simple: All injuries can be reduced to a monetary amount.

The real difficulty comes in calculating damages. For example, it is pretty easy to figure out how much a totaled car is worth, but it's not so easy to figure out how much eyesight is worth.

“Eggshell skull” rule states that you take the victim as they are.