

Torts

Helen Campbell, Lecturer

The word Tort is derived from the Latin word, *tortum*, “to twist”



Definitions: Torts

- ▶ Torts are wrongdoings that are done by one party against another.
- ▶ As a result of the wrongdoing, the injured person may take *civil action* (file a lawsuit) against the other party.
- ▶ For example, let's say while walking down the aisle of a grocery store, you slip on a banana that had fallen from a shelf. You become the plaintiff, or injured party, and the grocery store is considered the tortfeasor or defendant, the negligent party.
- ▶ Simply said, you would probably take civil action against the grocery store to recover compensation for pain, suffering, medical bills and expenses incurred as a result of the fall.

Definitions: Crimes

- ▶ Any act harmful not only to some individual but also to a community, society or the state ("a public wrong")
- ▶ It is an offence that merits community condemnation and punishment (by the state or authority), usually by way of *fine or imprisonment*.
- ▶ The parties in a criminal action are the state (prosecutor) and the individual accused of committing a crime (defendant)
- ▶ This is different from a civil wrong (a tort), which is an action by an individual against another individual that requires *compensation*

Definitions: Breach of Contract

- ▶ “Breach of Contract” is a legal term that describes the violation of a *contract* or an agreement that occurs when one party fails to fulfill its promises according to the provisions of the agreement.
- ▶ It is considered a civil wrong
- ▶ The non-breaching party may bring a legal action against the breaching party for *damages* (money) or for *equitable relief* (specific performance, rescission, reformation)

Definitions: Liability vs. Guilt

- ▶ In a *civil action* (tort/breach of contract), the losing party (defendant) is found by the court to be liable
- ▶ In a *criminal action*, the defendant is found by the court to be guilty

Definitions: Remedies vs. Punishment

- ▶ In a civil action (tort/breach of contract), the plaintiff is requesting damages or equitable relief
- ▶ In a criminal action, the state is requesting imprisonment or fines

Definitions: Civil vs. Criminal Trials

- ▶ Parties (plaintiff/defendant; state/defendant)
- ▶ Burden of Proof (initially, plaintiff or state; thereafter, the burden shifts to defendant)
- ▶ Standard of Proof: in civil actions, Preponderance of the Evidence (POE); in criminal actions, Beyond a Reasonable Doubt(BRD)
- ▶ Use of juries
- ▶ Verdict (liable or guilty)

Elements of Tortious Liability

- ▶ Causation (exists when the connection between an act and an injury is strong enough to impose liability)
- ▶ Damages
- ▶ Contributory Damage (apportioned under the Law Reform Act of 1945)

Three Types of Torts

- ▶ **Intentional** (fault-based. Intentional behavior combined with a wrongful act)
- ▶ **Nonintentional (Negligence)** (non-fault based. Nonintentional behavior combined with a wrongful act)
- ▶ **Strict Liability** (liability imposed regardless of fault)

Types of Intentional Torts

- ▶ Defamation (libel or slander)
- ▶ Nuisance (private=tort; public=crime)
- ▶ Trespass (to goods or lands)
- ▶ Trespass to the person (battery, assault, false imprisonment)

Negligence

Elements:

1. Duty of Care (legal duty) (see also “neighbor principle”—injured party is a neighbor if it is reasonably foreseeable that he/she will be affected by the tortfeasor’s behavior)
2. Breach (failure to act as a reasonable person)
3. Causation (X would not have happened but for Y)
4. Damages (usually personal injury or property damage; financial/economic loss is more difficult to prove)

Strict Liability

Rule of *Rylands v. Fletcher* (1868):

“A person may be held liable, regardless of the degree of care exercised, for damages or injuries caused by her/his product or activity”

Strict Liability includes liability for harms caused by abnormally dangerous activities (blasts, explosions); by dangerous animals (elephants); and by defective products (machinery, pharmaceuticals, automobiles)

Damages

1. Pecuniary (loss of earnings, medical expenses, property loss)
2. Non-pecuniary (pain and suffering, loss of amenities [consortium])
3. Types of awards (nominal, compensatory, punitive)

Defences

1. **Consent** (*volenti non fit injuria*), e.g. bungee jumping
2. **Illegality** (*ex turpi causa non oritur action*), e.g. where a burglar sues a homeowner for injuries suffered while burglarizing the homeowner's house)
3. **Freedom of Speech** (defamation)
4. **Truth** (defamation)
5. **License** (trespass), e.g. defendant had permission to enter the property
6. **Justification by Law** (trespass), e.g. police are entitled to enter on to private property
7. **Act of God** (*vis major*)
8. **Contributory negligence**

Hypothetical #1

Liz was riding her bicycle on a city street. While she was riding, she frequently looked back to check that the books she had fastened to the rear part of her bicycle were still attached. On one occasion while she was looking behind, she failed to notice a car that was entering an intersection just as she was crossing it. The car hit her, breaking her leg. Three eye-witnesses stated that the driver of the car had failed to stop at the stop sign before entering the intersection. Liz is suing the driver of the car for negligence.

Hypothetical #2

Mary went to the golf course one Sunday morning, eager to try out a new set of expensive golf clubs she had just purchased. As she “teed off” on the first hole, the head of her club flew off and struck Billy, a nearby golfer. Billy was taken by ambulance to the hospital, and diagnosed with a severe concussion.

Hypothetical #3

Lucy's doctor gave her some pain medication and told her not to drive after taking it, since the medication could cause drowsiness. In spite of the doctor's warning, Lucy decided to drive to the store while on the medication. She failed to stop at a traffic light and crashed into another vehicle, injuring the driver. The driver, who was breathalyzed at the scene of the accident, was legally intoxicated.

Hypothetical #4

As visitors exited at the close of an arts and crafts show, Nigel, an employee of the show's producer, stood near the exit. Suddenly and without warning, Nigel turned around and collided with Martha, an 84-year-old woman. Martha was knocked to the ground, fracturing her hip. Surgery was unsuccessful, and Martha is now suing Nigel and his employer for negligence.

Hypothetical #5

Anna is Rupert's mother-in-law, and he hates her. He sends an anonymous email to Michael, Anna's new husband, informing Michael that Anna is having an affair with Clyde, a local school teacher. Michael, in a fit of rage, murders Clyde with an ax. Michael is arrested and charged with murder. At the trial, it turns out that Anna had never met Clyde.

Hypothetical #6

Londonderry Beach is a popular summer destination for the British public. In 2017, however, sharks were spotted swimming in the water approximately 500 meters from the shore. Edmund, the mayor of Londonderry, would like to close the beach because of this danger. Local business people beg him not to do this, however; they are dependent on tourists for their livelihood. Edmund agrees to keep the beach open, but insists on posting a sign that states “Swim at Your Own Risk”. A week later, Margaret, a 47-year-old woman, is attacked and injured by a shark when swimming 500 meters from the shore. She is now suing Edmund and the town of Londonderry.

Questions?

