

Tort

Definition

A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers.¹

Overview

The primary aims of tort law are to provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts. Torts can shift the burden of loss from the injured party to the party who is at fault or better suited to bear the burden of the loss. Typically, a party seeking redress through tort law will ask for damages in the form of monetary compensation. Less common remedies include injunction and restitution.

The boundaries of tort law are defined by common law and state statutory law. Judges, in interpreting the language of statutes, have wide latitude in determining which actions qualify as legally cognizable wrongs, which defenses may override any given claim, and the appropriate measure of damages. Although tort law varies by state, many courts utilize the Restatement of Torts (2nd) as an influential guide.

Torts fall into three general categories: intentional torts (e.g., intentionally hitting a person); negligent torts (e.g., causing an accident by failing to obey traffic rules); and strict liability torts (e.g., liability for making and selling defective products - see Products Liability). Intentional torts are wrongs that the defendant knew or should have known would result through his or her actions or omissions. Negligent torts occur when the defendant's actions were unreasonably unsafe. Unlike intentional and negligent torts, strict liability torts do not depend on the degree of care that the defendant used. Rather, in strict liability cases, courts focus on whether a particular result or harm manifested.

There are numerous specific torts including trespass, assault, battery, negligence, products liability, and intentional infliction of emotional distress. There are also separate areas of tort law including nuisance, defamation, invasion of privacy, and a category of economic torts.

Remedies

The law recognizes torts as civil wrongs and allows injured parties to recover for their losses. Injured parties may bring suit to recover damages in the form of monetary compensation or for an injunction, which compels a party to cease an activity. In certain cases, courts will award punitive damages in addition to compensatory damages to deter further misconduct.

In the vast majority of tort cases, the court will award compensatory damages to an injured party that has successfully proven his or her case.¹⁰ Compensatory damages are typically equal to the monetary value of the injured party's loss of earnings, loss of future earning capacity, pain and suffering, and reasonable medical expenses. Thus, courts may award damages for incurred as well as expected losses.

When the court has an interest in deterring future misconduct, the court may award punitive damages in addition to compensatory damages. For example, in a case against a manufacturer for a defectively manufactured product, a court may award punitive damages to compel the manufacturer to ensure more careful production going forward.

In some cases, injured parties may bring suit to obtain an injunction rather than monetary relief. The party seeking an injunction typically must prove that it would suffer considerable or irreparable harm without the court's intervention.

Distinguishing Torts from Other Bases of Liability

Torts are distinguishable from crimes, which are wrongs against the state or society at large. The main purpose of criminal liability is to enforce public justice. In contrast, tort law addresses private wrongs and has a central purpose of compensating the victim rather than punishing the wrongdoer.² Some acts may provide a basis for both tort and criminal liability. For example, gross negligence that endangers the lives of others may simultaneously be a tort and a crime.³

Some actions are punishable under both criminal law and tort law, such as battery. In that case, ideally tort law would provide a monetary remedy to the plaintiff, while criminal law would provide rehabilitation for the defendant, while also providing a benefit to society by reforming the defendant who committed assault.

Tort law is also distinct from contract law. Although a party may have a strong breach of contract case under contract law, a breach of contract is not typically considered a tortious act.⁴

Incomplete List of Torts and their Prima Facie Cases (D=defendant; P=plaintiff)

Trespass

- D had the intent to invade the land
- D invaded land
- P possessed the land and did not give consent to D

Battery

- D acts

- D intends to cause a contact with P via D's touch
- D's touch is harmful or offensive (objective test)
- Causation b/w intentional touch & harm (2b & 2c)
- P does not consent to the touch

Assault

- D acts
- D intentionally acts so as to cause P to apprehend (not fear) imminent harmful or offensive contact with P
- D's act causes P reasonably to apprehend (not necessarily fear) such a contact

False Imprisonment

- D willfully acts . . .
- . . . intending to confine P w/o P's consent & w/o authority of law
- D's act causes P's confinement
- P is aware of P's confinement

Intentional Infliction of Emotional Distress

- D acts
- D's conduct is outrageous
- D acts for the purpose of causing the victim emotional distress so severe that it could be expected to adversely affect mental health
- D's conduct causes such distress

Negligence

- D owed P a *duty* of reasonable care
- D *breached* that duty
- P suffers an injury
- D's breach *caused* P's injury

Negligence Per Se

- Statute or administrative created a duty
- P is in class of people protected by the duty statutorily imposed on D
- D violated that statute or administrative regulation
- The Statute was intended to prevent the type of injury suffered

Res ipsa loquitur negligence: P must prove 3 things:

- The incident was of a type that does not generally happen w/o negligence
- It was caused by an instrumentality solely in D's control
- P did not contribute to the cause

Private Nuisance

- D's action is an intentional non-trespassory activity
- D's action is a recurring activity
- D's action unreasonably interferes w/P's right to use & enjoy his land

Public Nuisance

- Injury resulting from intentional, unreasonable interference w/right common to the public
- The injury singles out P from the rest of the public

Products Liability

- D sells a product that P uses
- D is the commercial seller of such a product
- P suffers an injury
- When D sold the item, the item was defective
- The defect was an actual and proximate cause of P's injury

Inducement of contract

- Valid contract b/w P & third party (a contract that is not currently voided)
- D has knowledge of a valid contract
- D induces third party to disrupt the contract with P
- D's inducement causes harm to P
- P must show that the inducement was not justified

1. Restatement (Second) of Torts § 7
2. Dobbs' Law of Torts § 1
3. See Dobbs' Law of Torts § 1

Menu of Sources

Federal Material

U.S. Constitution and Federal Statutes

- U.S. Code: [28 U.S.C., Chapter 171](#) - Federal Torts Claim Act (governs tort claims against the U.S.)
- [CRS Annotated Constitution](#)

Federal Judicial Decisions

- U.S. Supreme Court:
 - [Recent Torts Law Decisions](#)
 - [liibulletin Oral Argument Previews](#)
- U.S. Circuit Courts of Appeals: [Recent Torts Law Decisions](#)

State Material

State Judicial Decisions

- N.Y. Court of Appeals:
 - [Recent Torts Law Decisions](#)
 - [Commentary from liibulletin-ny](#)
- [Appellate Decisions from Other States](#)

Other References

Key Internet Sources

- [Personal Injury \(Nolo\)](#)
- [Torts Notebook - Korematsu Law Library](#)

Useful Offnet (or Subscription - \$) Sources

- Good Starting Point in Print: Prosser and Keeton, *Hornbook on Torts*, West Group (1984)

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