CHAPTER 6: PERSONAL INJURY LAWS

HOW DO CRIMES AND TORTS DIFFER?

- **tort**: a private or civil wrong against an individual.
- When a tort happens, the injured person can sue and get a judgment for money damages from the person who committed the tort. The money is meant to compensate for the injury.
- One act can be both a tort and a crime.
- **Example**: one person is speeding and crashes into another car injuring the other person and the other car.
  - **criminal**: reckless driving → fine and/or jail
  - **tort**: injuring the other person and his/her car → money damages

ELEMENTS OF A TORT

A. **DUTY**

- The duty not to injure the person → bodily injury, injury to reputation, invasion of someone’s privacy
- The duty not to interfere with other’s property rights → trespassing on their land
- The duty not to interfere with the economic rights of others → their right to enter into a contract
- Whether a **duty exists** or not in a certain situation is a question of law for the judge to decide.
- The judge will make the decision by consulting state case and statutory law, and occasionally federal law.

B. **VIOLATION OF THE DUTY**

- also called a breach.
- Must be proved before the injured party can collect damages.
• It is a question of fact for the jury to decide.

• intentional tort → some torts require that the breach be intentional.

• negligence → intent is not necessary for other torts, because someone was careless or negligent.

• strict liability → intent or carelessness is not required to prove a tort.

  → liability is imposed simply because a duty was violated and this caused the injury.

C. INJURY

• Injury resulting from the breach of duty must be proved.

• If you act recklessly, but no one is injured, then there is usually no tort.

D. CAUSATION

• The idea that the breach of duty caused the injury.

• proximate cause → exists when it is reasonably foreseeable that a particular breach of duty will result in a particular injury.

RESONSIBILITY FOR THE TORTS OF ANOTHER

• All persons, including minors, are responsible for their conduct and are therefore liable for their torts.

• Even children or insane people may be held responsible.

• vicarious liability → when one person is liable for the torts of another.

• With some exceptions, parents are not liable for the torts of their children.

• Some state statutes say that parents are liable up to a specified amount of money for property damage by their minor child.
Examples: vandalism and malicious destruction of school property

Parents are liable up to the limits of financial responsibility laws for damages negligently caused by their children while operating motor vehicles.

Parents may be liable if they give their child a dangerous instrument (example: gun) without proper instructions.

Parents may be liable for their child’s continuing dangerous habits such as throwing rocks or bricks at trains and cars.

Example: the employer is responsible for the acts of employees committed within the scope of the employment.

COMMON INTENTIONAL TORTS

intentional torts are torts for which the defendant intended either the injury or the act.

A. ASSAULT

• Placing another in fear of physical or offensive touching.

• Examples: raising a fist threatening to punch you or unwanted sexual touching by threatening to kiss you

• There must be a threat of injury, and that it is believable that the person would follow through with the threat.

• There doesn’t have to be actual physical contact.

B. BATTERY

• Harmful or offensive touching of another.

• Examples: shooting, pushing in anger, spitting at, or throwing a pie in a person’s face
• It is often the follow-through of an assault and then is called “an assault and battery”.

• Battery without assault ➔ hit someone from behind without a warning.

• When you act in self-defense, it is not a battery.

C. FALSE IMPRISONMENT

• Depriving a person of freedom of movement without the person’s consent and without privilege.

• Examples: handcuffed; locked in a room, car, or jail; told in a threatening way to stay in one place; or otherwise deprived of their liberty

• Consent occurs when the person agrees to be confined ➔ a burglary suspect sits voluntarily in a police car to describe his actions

• When the police have probable cause to arrest people, they are privileged to imprison them.

• If the police mistake one person for another and have the wrong person in custody, then they may commit false imprisonment in the course of the arrest.

• Merchants in many states have a privilege to detain a person they reasonably believe was shoplifting.

D. DEFAMATION

• Injury of a person’s reputation by false statements, oral or written.

• slander ➔ spoken statements

• libel ➔ written or printed statements

• To be legally defamatory, the material must:

  (1) be false

  (2) be communicated to a third person, and
(3) bring the victim into disgrace, disrespect, or ridicule by others.

- **Exception to the requirements of defamation** → defamatory comments about public officers or other prominent public personalities.

- The “exception” is intended to encourage free discussions of issues of public concerns.

- **malice** → when a statement was known to be false when made.

## E. INVASION OF PRIVACY

- Unwelcome and unlawful intrusion into another’s private life so as to cause outrage, mental suffering, or humiliation.

- Right of privacy includes freedom from unnecessary publicity regarding personal matters.

- Publication of a true statement about someone may be an invasion of privacy.

- It includes freedom from commercial exploitation of one’s name, picture, or endorsement without permission.

- Pictures taken at public events, such as a Giants football game, to be used in the newspaper are not an invasion of privacy.

- It is illegal to eavesdrop by using listening and electronic devices, interfere with telephone calls, and unauthorized opening of letters and telegrams, emails.

- The police are allowed to tap phone lines secretly if they have a warrant to do so.

- Politicians, actors, people in the news give up much of their right to privacy when they step into the public domain.
F. **TRESPASS TO LAND**

- wrongful interference with the use of another’s property.

- it can include wrongful entry onto someone’s property and also interfering with the property.

- **Examples:** dumping your garbage onto your neighbor’s lawn or breaking their window

- intent is required—the intruder intended to be on the property.

- getting pushed or thrown onto someone’s property does not involve intent.

G. **CONVERSION**

- wrongfully depriving another of possession of personal property.

- right of possession is violated by another who steals, uses, or destroys the property.

- a thief is always a converter.

- a person who buys stolen goods in good faith and doesn’t know they are stolen is also a converter.

- intent to do the act is enough for conversion.

- **Example:** buying a car without knowing the car had been stolen

- The injured party from the conversion can receive damages.

- The converter can be compelled to purchase the converted goods from their owner.
H. INTERFERENCE WITH CONTRACTUAL RELATIONS

• When a third party entices or encourages a breach of contract, the third party will be held responsible to the nonbreaching party.

• Parties may be able to breach a contract if they pay for the injury (damages) suffered by the other party.

I. FRAUD

• This can happen when someone makes an intentional misrepresentation of fact and thereby causes financial injury to a person who relies on the misrepresentation.

• Example: selling a used car and telling the person that it is in great condition, when in fact, the transmission needs to be replaced.

WHAT IS NEGLIGENCE?

• The most common tort.

• Intent is NOT required, only carelessness.

• It involves the following:

A. DUTY AND NEGLIGENCE

• reasonable person standard→the duty to act with the care, prudence, and good judgment of a reasonable person so as to not cause injury to others.

• Children under the age of seven years of age are presumed incapable of negligence.

• Older children are only required to act with that care which a reasonable child of the same age, intelligence, and experience would act.
• When a child takes on an adult activity, such as driving a car, then the child is held to the adult standard.
• Professionals and skilled tradespersons are held to a higher degree of care and are required to act in their work with that degree of care and skill of their profession.

• **Examples:** doctors, lawyers, plumbers, carpenters

**B. BREACH OF DUTY IN NEGLIGENCE**

• A defendant’s conduct is compared with the reasonable person standard to see if a violation of the duty has occurred.

**C. CAUSATION AND INJURY IN NEGLIGENCE**

• The violation of the duty must be the proximate cause of the injury.

• **proximate cause** → legally recognizable cause of harm.

**D. DEFENSES TO NEGLIGENCE**

1. **Contributory Negligence**

• Cannot recover damages if the injury is partly the result of carelessness by the plaintiff.

• It doesn’t matter that one person was grossly negligent and primarily responsible for causing the injury while the other person was only slightly negligent.

• **Example:** not looking when you back your car out of your driveway and another car, who was speeding at the time and the driver was drunk, crashes into you you walk across a floor that has a sign “caution: wet floor” and then slip and fall. You then cannot collect damages.

2. **Comparative Negligence**

• Most states have substituted comparative negligence for contributory negligence.
Damages are awarded in proportion to the plaintiff’s negligence.

The plaintiff is awarded damages that are reduced in proportion to the amount of the plaintiff’s negligence.

Example: the jury awards the plaintiff $50,000. The plaintiff was 20% responsible, so the plaintiff would receive $40,000.

\[
\text{\$50,000 \times 20\% = \$10,000} \\
\text{\$50,000 - \$10,000 = \$40,000}
\]

Some states do not allow a plaintiff whose negligence was greater than the defendant’s to recover.

3. Assumption of the Risk

- This happens when a plaintiff is aware of a danger, but decides to subject themselves to the risk.
- You cannot recover damages due to negligence because you assumed the risk.
- Example: you walk across a floor that has a sign “caution: wet floor” and then slip and fall. You then cannot collect damages.

WHAT IS STRICT LIABILITY?

- Liability that exists even though the defendant meant or intended no harm and was not negligent.
- It makes the defendant liable on the basis that the defendant engaged in an activity, which resulted in injury.
- Proof of both the activity and the injury substitutes for proof of a violation of a duty.
- If you engage in unusually dangerous activities and someone is injured, you are held responsible.
- dangerous activities→target practice, blasting, crop dusting with dangerous chemicals, or storing flammable liquids in
large quantities

- If you own a dangerous animal (not a domesticated animal) and that animal causes injury, then you are liable.

- **dangerous animals**—bears, tigers, snakes, elephants, and monkeys

- The manufacturer and any seller in the chain of distribution are liable to any buyer or user of a defective product who is injured by it.

- The manufacturer can carry liability insurance to help against lawsuits, but the costs may go above and beyond what they are insured for.

---

**WHAT CAN A TORT VICTIM COLLECT?**

**A. Damages**

- Monetary compensation for loss or injury.

- Purpose is to place the injured party in the same financial position as if the tort had not happened.

- These damages are called **actual or compensatory damages**.

- In many cases, the loss may be difficult to measure.

- **Example:** ongoing pain and suffering or even death

- A dollar value of the injury or loss must be set.

- Damages are usually decided by a jury.

- Juries are requested to consider reimbursing the plaintiff for lost wages, medical bills, and pain and suffering.

- Lawyers will handle a civil lawsuit for a percentage of the recovery. When they do this, they are taking the case on a **contingency fee** basis rather than being paid by the hour.
Example: 25% if case is settled before a trial
33% if case must be won at trial
40% or more if the case is won on appeal

B. Punitive Damages

- ADDED damages intended to punish and make an example of the defendant.
- Are always available where an intentional tort has been committed.

HOW IS A CIVIL CASE TRIED?

Selection of Jury → Opening statements → Presentation of evidence by Plaintiff → Direct examination of witnesses by Defendant → Cross examination by Plaintiff → Presentation of evidence by Defendant → Direct examination of witnesses by Defendant → Cross examination by Plaintiff → Closing Arguments → Judge instructs Jury → Jury Deliberation → Verdict of Jury → Judgment
• Judges always decide any **issues of law**.

• Juries decide **issues of fact**.

• In civil cases, there is not always a right to a trial by jury.

• The plaintiff and the defendant may decide to forgo the right to a trial by jury. When this happens, the judge decides the issues of both law and fact.

• Civil juries consist of 6 to 12 people who listen to witnesses, review physical evidence, and reach their decisions.

• In most states, decisions in civil trials do not have to be unanimous.

• A majority vote of the jurors is usually required to find for the plaintiff.

• **evidence** → anything that provides information used to prove or disprove the alleged facts that is allowed by the judge.
  
  → it may be written documents, records, charts, photographs, weapons, and other objects.

• **testimony** → statements made by witnesses under oath.
  
  → most common form of evidence.

• **subpoena** → a written order by the judge commanding the named person to appear in court at a given time and place to testify.

• **contempt of court** → willful disrespect to a court or disobedience of its order that can be punished by the judge without having a trial.

• A jury must determine whether a preponderance (a majority of at least 51%) of the evidence supports the plaintiff’s case.

• **judgment** → the final result of a trial.

• if the plaintiff wins → it is normally a judgment for money

• if the defendant wins → ”judgment for the defendant”
• Appeals to a higher court can be made if either party believes the judge did not rule properly.

• **judicial error** → incorrect instructions to the jury, admission of evidence that should have been rejected, or exclusion of evidence that should have been admitted.

**HOW IS JUDGMENT SATISFIED?**

• When a civil judgment for the plaintiff becomes final, the defendant will pay the judgment.

• **writ of execution** → a plaintiff may obtain this if the defendant doesn’t pay

  → it is a process by which a judgment for money is enforced.

  → the directs that the defendant’s property be seized or sold, with the proceeds used to pay the judgment.