TORTS
Learning Objectives

- Categorize torts into three main types and compare the types of actions that create legal responsibility in the three tort categories.
- Understand the prima facie case and shifting burdens of proof in a tort case.
- Analyze the types of damages awarded in tort litigation and understand why tort damage awards sometimes generate controversy.
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**CLASSIFICATION OF LAWS**
A tort is a violation of a duty imposed by civil law.
PURPOSE OF TORT LAW

- Corrective Justice - Compensate those who have been injured; making the victim whole again.
- Deterrence from Tortious Behavior
- Discourage Self-Enforcement
  - Retaliation/Escalation of conflict
  - Economic Efficiency – Waste resources on self-protection
CATEGORIES OF TORTS

Intentional

Misconduct

Negligent

Careless Conduct or Failure to Act

Strict Liability

Breach of an Absolute Duty
TORT LAW

Intentional Torts
All intentional torts require intention to commit the elements that define the tort.

- Actions must be **volitional**.
- Intent as “Desire”
- Intent as “Substantial Certainty”

*Intention is a **subjective** standard.*
An 11-year-old and a 14-year-old sat across from each other in a classroom. The first bell rings, but the teacher had not begun class. The 11-year-old moves his foot across the aisle to kick the 14-year-old in the shin. Unfortunately, the 14-year-old had a prior infection in his leg, and the kick caused the infection to spread, leading to permanent loss of the leg.

Is the 11-year-old liable for battery?

Yes. He intended the offensive touching and knew it was offensive when he did it voluntarily.

Harmful Intention ≠ Intention to Cause Harm.
INTENTIONAL TORTS

1. **Assault** - Placing of another in immediate anxiety for his or her physical safety

2. **Battery** - Harmful or offensive touching of another

3. **Defamation** – making a false statement about someone (written or verbal)

4. **False imprisonment** – intentionally restraining another person without reasonable cause and without consent.

5. **Malicious Prosecution** – causing someone to be arrested without proper grounds.

6. **Intentional infliction of emotional distress** – results from extreme and outrageous conduct that causes serious emotional harm.

7. **Fraud** – injuring another person by deliberate deception.

8. **Conversion** – Wrongful exercise of dominion and control over resources

9. **Trespass** – Entering another’s land without consent or remaining there after being asked to leave
INTENTIONAL TORTS (Cont'd)

Invasion of privacy: Comprises invasions of personal interest:
- Using a person’s name or likeness for personal gain.
- An intrusion upon a person’s physical solitude.

Injurious falsehood (aka "trade disparagement"): Publication of untrue statements that disparage the business owner’s product or its quality.
- Contrast with defamation above, either libel (written) or slander (oral), which relates to reputation
  - For injurious falsehood, a economic damages and a higher level of "malice" is required

Intentional interference with contractual relations:
Raiding another company for employees.
Interfering with contract of merger of one company with another.
DEFENSES TO INTENTIONAL TORTS

Example Affirmative Defenses

Consent
Actual or Implied

Self-Defense
Reasonable, proportionate force to protect from bodily injury.
TORT LAW ANALYSIS

#1 Plaintiff proves the **Prima Facie Case**

- Required tortious conduct (varies by tort category)
- Causation (direct/proximate)
- Damage/Harm/Injury (physical or emotional/dignitary)

#2 Defendant proves any applicable **Affirmative Defenses**
#1 Plaintiff proves the **Prima Facie Case**
- Harmful or offensive Touching
- Causation (direct/proximate)
- Damage/Harm/Injury (physical or emotional/dignitary)

#2 Defendant proves any applicable **Affirmative Defenses**
- Consent
- Self-Defense
Adam shoots Barbara, leading Barbara to sue for battery and negligence. The prima facie case for battery requires proof of 6 elements. Barbara proves 5 of the 6 elements by a preponderance of the evidence but the jury concludes she failed to prove one element by a preponderance of the evidence. The court should:

A. Rule for Barbara because she proved 5 of 6 elements (a preponderance of the elements)
B. Rule for Adam so long as Adam raised no affirmative defenses.
C. Rule for Adam regardless of whether he raised affirmative defenses.
D. Rule for Adam on Barbara’s battery and negligence claims.
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Negligence
Sometimes termed *unintentional* torts, negligence can be defined as a failure to use reasonable care, resulting in damage or injury to another.
Duty → Breach → Causation → Damages

REQUIRED ELEMENTS OF NEGLIGENCE
In general, everyone has a duty to avoid creating unreasonable risks of harm to others.

- Duty arises out of a person’s conduct or activity or a special relationship.
- One has no duty to avoid injuring others through non-conduct or lack of relation.

**Duty of Care**
DUTY OF CARE — CREATION OF RISK

John Monster is walking by a pool when he sees a man he does not know flailing in the water. Monster thinks about the man a life preserver or using his cell phone to call for help, but ultimately he just keep walking.

Is Monster guilty of negligence?

What if Monster had accidentally knocked the drowning man into the pool?

What if Monster was an on duty lifeguard?
Negligence can be based upon a failure to act or an act that is improperly performed in the context of a special relationship.

Examples of special relationships include:

1. Employer/Employee
2. Innkeeper/Guest
3. Parent/Child
4. Prison Warden/Prisoner
5. Doctor/Patient

**Good Samaritan Rule** - Even if no special relationship exists, if someone assumes a duty, for example to assist a person in peril, you have a duty to follow through with reasonable care without putting yourself in peril.
SPECIAL DUTY: LANDOWNERS

1. **Trespassing Adults** – not to injure intentionally.

2. **Trespassing Children** – if a man-made item on the land attracts children, landowner may be liable.

3. **Licensees** – to warn of known but hidden dangerous conditions licensees are unlikely to discover for themselves.

4. **Invitees** – to exercise reasonable care to protect invitees against dangerous conditions possessor should know of but invitees are unlikely to discover.
Elements of NEGLIGENCE

1. Duty
2. Breach
3. Causation
4. Damages
The defendant’s conduct violated the duty of care because:

- His or her conduct fell short of the standard of care.
- In other words, he or she did not act like a reasonable person would have acted.
A reasonable person would consider:

(1) the burden of taking precautions;
(2) the likelihood of harm; and
(3) the seriousness of the harm.
Because of the objective standard, defendant can’t defend actions as the best that could be expected from a person with poor judgment or limited intelligence.

A defendant is expected to know things that a reasonably prudent person would know.

DUTY OF CARE:
THE REASONABLE PERSON
Standards will be adjusted for:

- Young Age ("reasonable child standard")
  - No negligence under 4 years old
- Physical Disability (but not mental deficiency)
- Emergency Circumstances
- Professionals

DUTY OF CARE:
THE REASONABLE PERSON
Scratchy comes to an uncontrolled intersection (i.e. no traffic lights or signs) on foot. He stops at the intersection, looks to the left and to the right and then crosses the street.

How would a “reasonable person” act?

Did Scratchy breach the standard of care?
Scratchy comes to an uncontrolled intersection (i.e. no traffic lights or signs) on foot at night. He is wearing black pants, a black sweatshirt, black shoes, black gloves and a black ski mask. Scratchy puts his iPod headphones on and begins blasting music at full volume. Without looking, Scratchy crosses the street.

How would a “reasonable person” act?

Did Scratchy breach the standard of care?
Duty

Breach

Causation

Damages

REQUIRED ELEMENTS OF NEGLIGENCE
- **Cause in fact:** Plaintiff must prove that the defendant’s negligent conduct actually caused the injury.

- **But for** the defendant’s tortious conduct, the plaintiff’s injury would not have occurred.
CAUSATION

- Laurent is running through the airport to catch his plane. Because he is careless, he bumps into Joanne, who is also trying to catch her plane. She falls and hurts her foot. Is Laurent liable for Joanne’s medical bills relating to her hurt foot?

- Suppose Joanne’s injury caused her to have to rest a few minutes before she could walk and she missed her plane. Should Laurent be liable for the penalty Joanne has to pay to get on the next flight?

- While traveling on the next available flight, Joanne’s plane is struck by lightning. The plane crashes and Joanne suffers serious personal injuries. Should Laurent be liable for the damages resulting from a subsequent plane crash?
PROXIMATE CAUSATION: FORESEEABILITY

1. **Directness Test**: Natural and continuous sequence of events.
   - Supervening events → cuts off liability

2. **Foreseeability** - Could the defendant have foreseen or guessed that his or her actions would cause an injury?
   - Different type of harm than what was foreseen → cuts off liability
   - Extent of harm / specific harm greater than foreseen → does not cut off liability
Duty

Breach

Causation

Damages

REQUIRED ELEMENTS OF NEGLIGENCE
The plaintiff must have suffered actual damage.

- medical costs
- lost wages
- pain and suffering
DEFENSES TO NEGLIGENCE

Affirmative defenses

Contributory negligence
(Plaintiff’s fault)
(Doctrine of comparative responsibility)

Assumption of risk
(Plaintiff’s knowing and willing undertaking of an activity)
- **Pure contributory**
  - Any negligence by plaintiff completely bars recovery.

- **Pure comparative (CA)**
  - Plaintiff’s damages are discounted by the amount she contributed to the negligence.

- **Modified comparative**
  - Plaintiff is barred from recovery if s/he is more than 50% or 51% responsible.

**Contributory vs. Comparative Negligence**
CONTRIBUTORY/COMPARATIVE NEGLIGENCE

State Negligence Laws

* South Dakota: Damages reduced in proportion to fault; no recovery if fault is more than “slight” compared to defendant’s negligence.
Bruce was involved in an accident in a state that uses a pure comparative negligence rule. Bruce was found to be 75 percent responsible for the accident. His actual damages were $20,000. How much will Bruce be able to recover from defendant?

*Here, Bruce was 75% responsible, so he can only recover 25% of the damages or $5,000.*

What if this is a modified comparative negligence state?

*Bruce can’t recover damages if he is more than 50% or 51% negligent.*

What if this is a pure contributory negligence state?

*Bruce would recover $0*
#1 Plaintiff proves the *Prima Facie Case*

- Duty
- Breach
- Causation
  - Actual
  - Proximate
- Damages

#2 Defendant proves any applicable *Affirmative Defenses*

- Assumption of the Risk
- Contributory Negligence
Compensatory Damages - Try to return victim to pre-injury state.
  - What would your life have looked like if the tort had not occurred?
  - What does your life look like now?

Punitive Damages – intended to punish gross or willful and wanton conduct.
  - Defendant shows a conscious disregard for the interests of others.

Nominal Damages - Token fine to recognize that unlawful conduct did occur, but resulted in no meaningful monetary damages.
In 1994, a 79-year-old woman bought a cup of coffee from the drive thru window at McDonald's. She put the cup between her knees and tried to open the lid to add cream and sugar. The coffee spilled and caused second and third degree burns to over 16% of her body. She spent 8 days in the hospital and had to undergo very painful skin graft operations. A jury found that McDonalds was liable, and awarded her $160,000 in damages.
Did McDonald’s have a legal or ethical obligation to its customers?

Did they breach that duty?

Did this breach cause Liebeck’s injury?

Could McDonald’s have foreseen Liebeck’s injury?

Are there damages in this case? If so, what are they?
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Strict Liability
- Injury-causing behavior that is neither intentional nor negligent

- In Strict Liability, the law assigns the costs of the consequences of defendant’s activity against the defendant.
STRICT LIABILITY: PRODUCTS LIABILITY

Seller who sells an unjustly dangerous faulty product that causes injury to a user of the product is strictly liable.

1. **Production defects**: Not created to standards (Consumer Expectation Test)
2. **Design defects**: Injury caused due to unsafe design (Risk-Utility Test = Negligence)
CASE 10.4 - STRICT PRODUCTS LIABILITY

Case: Branham v. Ford Motor Co.
701 S.E.2d 5 (S.C. Sup. Ct. 2010)

South Carolina Supreme Court

Issue: Hale, while driving several children in a Ford Bronco, overcorrected the vehicle for veering off road which resulted in a rollover and caused severe injury to Jesse Branham. Branham sued Ford on a design defect claim related to the vehicle's tendency to rollover. Is Ford motor Co. strictly liable for the design defect?
- Ultrahazardous activity
  - Transporting and using explosives and poisons
  - Keeping dangerous wild animals
  - Artificial storage of large quantities of liquid
- Other strict liability torts
  - Dram shop acts
  - Transportation companies licensed to serve the public
Compensatory damages
Compensate plaintiff for injuries suffered

- Past and future medical expenses
- Past and future economic loss
- Past and future pain and suffering

Punitive damages
Awarded by courts to punish defendants

- Arise from intentional torts or extreme wilful and wanton negligence
- Awarded for risky negligent conduct
Peter lives in a residential neighborhood and owns a panther which he keeps as a pet. The panther is kept in the back yard which is enclosed by a 24’ electrified fence. Inside of the fence there is a 13’ moat filled with water. If the power went out through no fault of Peter and the panther escaped, if a child was injured by the panther, would Peter be liable?
Learning Objectives

- Categorize torts into three main types and compare the types of actions that create legal responsibility in the three tort categories.
- Explain the elements of negligence and apply these elements to a real world scenario.
- Analyze the types of damages awarded in tort litigation and understand why tort damage awards sometimes generate controversy.