

## 5.1: Introduction

### LEARNING OBJECTIVES

1. Define torts.
2. Understand intentional torts, and how to defend against an accusation of one.
3. Explore negligence.
4. Explain strict liability and how product liability affects manufacturers.

A tort can be understood as a civil wrong to a person or property other than breach of contract. A **tort** is any legally recognizable injury arising from the conduct (or sometimes failure to act) of persons or corporations. There are several key differences between torts and contracts, which are also different than crimes:

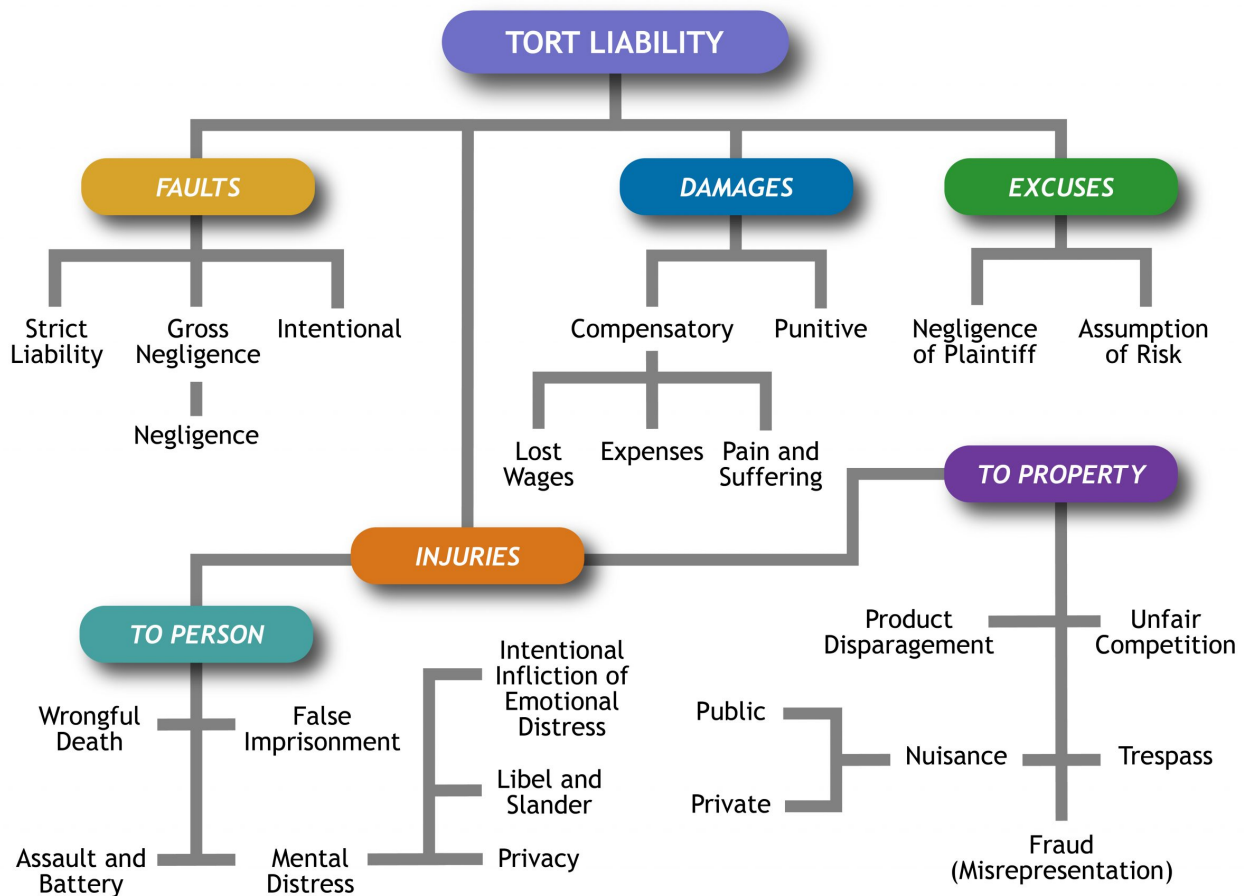
	<b>Contract</b>	<b>Tort</b>	<b>Crime</b>
<b>Obligation</b>	The parties agree to a contract; which imposes duties on them	Civil law imposes duties	Legislatures pass laws prohibiting certain conduct
<b>Enforcement</b>	Party to contract or beneficiary sues for breach of contract	Injured party sues for tort claims	Government prosecutes
<b>Consequences</b>	Monetary damages	Monetary damages; injunction	Criminal conviction may include fine, imprisonment, & restitution

Some conduct can be both a crime and a tort. If Allie punches Bentley without provocation, then Allie has committed both the tort of battery and the crime of battery. In the tort case, Bentley could sue Allie in civil court for money damages (typically for his medical bills). That case would be tried based on the civil burden of proof—preponderance of the evidence. That same action, however, could result in Allie being charged with criminal battery. If convicted beyond a reasonable doubt, Allie may have to pay a fine or go to jail.

The standard of proof in a criminal case (beyond a reasonable doubt) is far higher than the standard of proof in a civil case (a preponderance of evidence). Therefore, victims of crimes often wait to bring related tort claims against a defendant until after the criminal trial is over. If the defendant is convicted of a crime, it is easier and less expensive to prove liability at a civil trial.

Torts can be broadly categorized into three categories, depending on the level of intent demonstrated by the **tortfeasor** (the person committing the tort). If the tortfeasor acted with intent to cause the damage or harm, then an **intentional tort** has occurred. If the tortfeasor didn't act intentionally but failed to act as a reasonable person, then **negligence** occurs. Finally, **strict liability** occurs where the tortfeasor is held responsible regardless of intent.

Figure 9.1 Tort Liability Diagram



**Counselor's Corner** Not every injury or harm gives rise to a legal claim. You can't sue someone just because your feelings are hurt or something bad happened. Even though you may have been through something harmful, if the law doesn't recognize the injury as something you can recover for, you don't have a legal claim. Lawsuits are meant to address really bad injuries or really bad behavior. Many things that drive us crazy when dealing with other people are things that we just have to learn to deal with. Or resolve in another forum. ~Heather C., attorney

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