

## 13.9: Tort Law

### Learning Objectives

- Define tort law
- Explain the concept of negligence as it relates to tort law
- Explain the concept of strict liability under tort law

The word “tort” is a legal term derived from the French word meaning to harm or to be in the wrong.<sup>[1]</sup> In a legal context, a tort is a violation of civil law that causes harm or injury to a person or property and an associated legal liability on the part of the person who commits a tortious act.

Tort lawsuits have a lower burden of proof than in criminal law. In a criminal case, the fault of the defendant must be proved beyond a reasonable doubt. However, in tort law, the plaintiff must only prove a preponderance of the evidence—that is, that there is more than a 50 percent chance, given the evidence, that the plaintiff’s claims are true.

In tort law, it is the responsibility of the plaintiff to file a lawsuit to seek damages for the wrong. There are a number of types of tort, broadly categorized as either intentional or unintentional. Intentional torts include defamation, false imprisonment, infliction of emotional distress, assault and battery and trespass, conversion and fraud. In the business environment, intentional torts include interference with business relations: for example, a contract or economic relationship. We’ll discuss unintentional torts in the next section.

### ? PRACTICE Question

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### Negligence



Negligence falls under the unintentional category of a tort; that is, it involves harm that arises from unintentional action. The standard used to determine negligence is that of a reasonable person under the circumstances. Specifically, the law assumes that individuals have a duty to behave as a reasonable person under the circumstances. There are five elements to a negligence case, as outlined below. In order to prevail, a plaintiff must prove all five elements.

1. **Duty of due care:** The question posed by this point is whether the defendant has a legal responsibility or duty of care to the plaintiff. The key test for proving this element is “foreseeability;” that is, whether the defendant could have foreseen that the plaintiff would be harmed by his or her action.
2. **Breach:** The question posed by this point is whether the defendant failed to meet (breached) his or her duty of due care. See exception below.
3. **Factual causation:** The question posed by this point is whether the defendant’s failure to meet his or her duty of due care caused the harm.
4. **Proximate causation:** This element requires the plaintiff to prove that the defendant could reasonably foresee the general type of harm. For example, it’s reasonable for a mechanic to foresee that failure to fix a customer’s brakes would result in an accident. If the court determines that an event leading to the harm is not foreseeable, the event is termed a “superseding” cause and the defendant is not liable.

5. **Damage:** The final element is proof of harm—an injury and/or other measurable loss. These can include emotional, economic, or reputational damages. Note that courts decide to award damages based on the single recovery principle; that is, they must factor in present and future damages.

A state legislature can pass statutes that override the “reasonable person” standard, setting a minimum standard of care relative to a particular activity in order to protect the public or a particular group of people that are considered to be at risk. Violation of speed limits or building codes and driving under the influence are common bases for a negligence per se claim. When a plaintiff is relying on negligence per se, there is no need to prove the defendant’s conduct was negligent. If the law was violated, the question is simply whether the violation was the proximate cause of damage. That is, negligence per se eliminates the duty of due care and breach elements of a negligence claim.

### ? Practice Question

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## Strict Liability

Most states have evolved product liability negligence into strict liability tort law. Strict liability acknowledges that some products are inherently dangerous; thus strict liability is a significantly higher level of liability that applies when a tort or harm results from ultrahazardous activity or defective products. In a strict liability case, elements of proof such as duty of due care, breach, and proximate causation are irrelevant. Ultrahazardous activities are those that introduce an exceptional level of danger into the community; examples drawn from cases include the manufacture, storage or use of hazardous chemicals or explosives and the transport and possession of dangerous animals.

As emphasized in *Business Law and the Legal Environment*, “a defendant engaging in an ultrahazardous activity is almost always liable for any harm that results.” Given the significantly higher probability of being found liable, the question of whether a defendant is, in fact, engaged in an ultrahazardous activity is pivotal in tort cases. Strict liability as it pertains to product liability is addressed in the next section.

### ? Practice Question

<https://assessments.lumenlearning.co...essments/14336>

1. "English Translation of 'tort'." Collins French-English Dictionary. Accessed June 12, 2019.  
<https://www.collinsdictionary.com/us/dictionary/french-english/tort>. ↵

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