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Tort

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Introduction

A tort is a civil wrong that causes harm to another person by violating a protected right. The specific rights protected give rise to the unique “elements” of each tort. Elements are the essential facts that are required to be proven. Courts impose liability for torts to compensate an injured party for an act or an omission that causes harm. One is never “guilty” of a tort, as that is a term from the criminal law that implies a violation of some moral standard. One who commits a tort is a tortfeasor; the tortfeasor is “liable,” rather than guilty. Tort liability is meant to monetarily reimburse the tort victim for the harm caused them by the tortfeasor. Other remedies are also possible, including restitution or injunctions. A tort may arise from intentional acts, from negligent acts (frequently an omission of action when there was a duty to act), or from the violation of a statute. The idea of tort law is that people are liable for the consequences of their actions. Under most tort laws, the injury suffered by the plaintiff does not have to be physical. Torts may include causing emotional distress or a violation of personal rights (e.g., the “right to privacy”). There are different types of torts based on the rights violated. [0][0]

Issues of Concern

Tort Liability Pathway:

Duty -> Breach of Duty -> Proximate Cause -> Damages

The analysis of tort liability starts with some “duty.” The breach of that legal duty leads to an injury and thus damages. The concept of “proximate cause” is a legal fiction that acts as a check on imposing damages that are too speculative or remote. An injury may have multiple causes, but proximate cause is the legal cause of an injury and the cause that produces the foreseeable consequences of the injury. The concept of foreseeability is key to the liability analysis in tort law. Consider the case of a sponge left in an abdomen after surgery. An analysis might show several “causes” including miscounting by the nurse, initial placement of the sponge in the abdomen by the surgeon, not performing an x-ray when the “count” was off, failure by a radiologist to “see” the sponge on an x-tray, and so on. Proximate cause is a legal hedge that permits assignment of a “main” cause where several downstream or upstream causes may have intervened. In the end, proximate cause is the legal, foreseeable cause of the injury. Generally, no foreseeability means no liability. Foreseeability is accessed by what a “reasonable person” would expect to happen.

The burden of compensation for an injury is determined by the type of liability. Liability can be “joint and several,” vicarious, proportional, or “strict.” Joint and several liabilities are usually apportioned by the degree of fault. Liability is classified as “joint and several” when more than one tortfeasor is involved, with each potentially liable for the whole amount of the damages if one cannot pay. Vicarious liability is usually imposed as a matter of public policy, such as holding an employer liable for the torts of his employees while operating within the scope of their employment. The analysis is that the employer is in a better position than the employee to absorb the financial loss. Proportional liability is usually apportioned by the degree of fault and is common when the injured party was partially at fault for the injury. In this situation, an award is typically reduced by the proportion of liability attributed to the

claimant (if a party is 50% responsible for his/her own injury, then the amount of the award is reduced by half). Strict liability is also a policy decision made by the law that penalizes an individual, with or without the individual determined at fault, when an injury occurs in the course of a known dangerous activity. An example would be holding a zoo responsible for an injury caused by a lion that escaped when a crack appeared in his cage after an earthquake. Even if the zoo did nothing wrong in permitting the lion to escape his cage, keeping wild animals is an intrinsically dangerous activity and public policy holds the entity that engages in such activity is liable for such injuries regardless of fault.

Damages must be proved to a certainty; estimates are not sufficient. Damages may be limited by statute. Common statutory limitations on the value of pain and suffering in medical malpractice cases are one example. Governmental entities also may limit damage awards against them (so-called “sovereign immunity”).

The boundaries of tort law are defined by common law (case by case analysis of appealed cases on a specific point of law) and by state or federal statutory law (so-called “black letter law”). Judges, in interpreting the language of statutes, have wide latitude in determining which actions qualify as legally cognizable for the purpose of measuring damages. Tort law varies by State. [0]

Clinical Significance

Torts fall into three general categories: intentional torts (e.g., performing surgery without a valid consent); negligent torts (e.g., failure to diagnose a ruptured ectopic pregnancy); and strict liability torts (e.g., implanting defective prosthetic hip components or using defective drugs). Intentional torts are wrongs that the defendant knew or should have known would have resulted in his/her actions or omissions. Negligent torts occurred when the tortfeasor’s actions were unreasonably unsafe. There are a variety of specific torts including assault, battery, trespassing, negligence, products liability, and intentional infliction of emotional distress. In the healthcare setting, “wrongful death” is the name of the tort where loss of life is due to medical negligence. There is also a tort called “wrongful life,” which is a claim that a person should not have been born (e.g., when a tubal ligation fails, and a single mother is “burdened” with the cost of raising an unintended child).

The elements of various torts sometimes seem convoluted and difficult to understand to the non-legal mind. For instance, the common law defines assault as an intentional act that creates an apprehension in another person of an imminent harmful or offensive contact. Suppose, as an example, an individual starts to throw rocks at a person standing stationary on the goal line of a football field, from 100 yards away on the opposite goal line. Each time the potential tortfeasor misses; he steps up one yard and throws another rock. At what yard line does it become the tort of assault? (It is a “battery” as soon as he hits you with one of the rocks). The answer is: it is an assault when the person reasonably begins to fear being hit. The point is, it may be different for different people, depending on their sensitivity. Thus, highly sensitive individuals may have a lower threshold for some particular torts like assault than others. The analysis is individualized. However, there is also an element of reasonableness that operates in the evaluation. If the rock thrower is a bad aim, and rocks are falling far away from where you are standing, then a reasonable person (a jury gets to decide what a reasonable person would think) might not become apprehensive until rocks were landing quite close. This might be different if the person were an agile high school football player who could dodge the rocks rather than an elderly blind person.

The burden of proof in tort cases is different than in the criminal law, where the standard is beyond a reasonable doubt. For tort cases, the burden is “by a preponderance of the evidence” which translates to more likely than not, or greater than 50% likely. While jury votes in criminal cases must be unanimous, in tort cases, depending on the state, a verdict against a tortfeasor may require less than the full jury compliment to agree. [4][0]

Questions

To access free multiple choice questions on this topic, [click here](#).

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