

An Introduction to Tort Law in the U.S

- I. Tort: Private (civil) wrong actionable in court in which the defendant's actions cause injury to the plaintiff or to property. The usual remedy is monetary damages.
- II. Types of tort liability
 - A. Intentional torts: against persons or property
 1. Examples: battery, assault, false imprisonment, intentional infliction of emotional distress, trespass, invasion of privacy, defamation
 2. Defenses to intentional torts (reasons excusing the conduct and excluding liability) include consent, self defense, etc.
 - B. Torts based on negligence
 1. Four elements: 1) duty of reasonable care exists
2) breach of that duty 3) injury
4) causation between conduct and injury
 2. Examples: traffic accidents, medical malpractice, wrongful death, defects in product design, manufacture, labeling
 3. Joint and several liability: multiple defendants may be at fault
 4. Contributory negligence: plaintiff's fault may reduce the defendant's liability.
 5. Judge decides the legal question of whether a duty exists; jury determines whether the duty of reasonable care has been breached.
 - C. Products Liability: theory of tort recovery that imposes liability on the manufacturer, seller, or distributor of products for injuries sustained by consumers or bystanders who use the product; liability for defects in design, manufacture, marketing (instructions, labeling).
 - D. Strict liability: "Automatic responsibility for damages due to manufacture or use of equipment or materials that are inherently dangerous, such as explosives, animals, poisonous snakes, or assault weapons. A person injured by such equipment or materials does not have to prove the manufacturer or operator was negligent in order to recover money damages." (definition from Nolo.com)

III. Damages

- A. Nominal damages: Minimal monetary award to an individual where the person has not suffered any substantial injury or loss for which he or she must be compensated
- B. Compensatory damages: Money awarded to a person for actual harm suffered, including economic and non-economic damage, i.e. medical expenses, lost earnings, pain, suffering, loss of quality of life
- C. Punitive damages, also called exemplary damages: Money awarded beyond actual damages where the defendant's conduct was so wanton, reckless, or reprehensible as to justify "punishment" NOTE: Awarded in only 1 -2 % of tort cases.

IV. Many torts are also crimes and many crimes have tortuous aspects to them. A single action can result in a civil lawsuit and a criminal action.

V. The McDonald's Hot Coffee Case! (*Liebeck v. McDonald's Corporation 1995*)