

Torts-Just Desserts

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MAGISTRATES' FALL CONFERENCE 2023

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What is a tort?

THIS



NOT THIS



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A tort is a civil wrong.

Torts are divided into two big classes: intentional and negligent. (Also note "strict liability")

Most - but not all - intentional torts involve behavior that is also a crime.

The same action may be both a crime and a tort. (Remember the rule: "either, neither, or both.")

Each intentional tort has different essential elements (just like a crime does).

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There are LOTS of intentional torts. And they each have their own essential elements.

Assault

Battery

False Imprisonment

Conversion

Trespass to Real Property

Trespass to Personal Property (aka
Trespass to Chattel)

Fraud

Unfair or deceptive trade practices

Defamation (Libel & Slander)

Criminal Conversation

Alienation of Affection

Abuse of Process

Malicious Prosecution

Wrongful Discharge

Destruction of property

Intentional Infliction of Emotional
Distress

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Intentional Torts

Plaintiff must prove:

1. Defendant committed an act,
2. With intent to commit the act, and
3. The act caused harm to Plaintiff.

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File No. _____

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff _____

County _____ Telephone No. _____

VERSUS

Name And Address Of Defendant 1 Individual Corporation _____

County _____ Telephone No. _____

Name And Address Of Defendant 2 Individual Corporation _____

County _____ Telephone No. _____

Name And Address Of Plaintiff's Attorney _____

County _____ Telephone No. _____

Name And Address Of Plaintiff's Attorney _____

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division-Small Claims

County _____

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	\$
Interest Owed (if any)	\$
Total Amount Owed	\$

(check one below)

On An Account (attach a copy of the account) _____

For Goods Sold And Delivered Between _____

For Money Lent _____

On a Promissory Note (attach copy) _____

For conversion (describe property) _____

Other: (specify) _____

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Date _____ Name Of Plaintiff Or Attorney (Type Or Print) _____ Signature Of Plaintiff Or Attorney _____

(over)

AOC-CVM-200, Rev. 9/13
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CONVERSION

ESSENTIAL ELEMENTS

1. Plaintiff=Owner or Lawful Possessor
2. Defendant wrongfully took or wrongfully retained property after demand
3. FMV of property at time it was taken or retained



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ASSAULT AND BATTERY

ASSAULT-ESSENTIAL ELEMENTS

1. Defendant, by an intentional act or display of force or violence, threatened the plaintiff with imminent bodily harm.
2. The act caused the plaintiff to have a reasonable apprehension that harmful or offensive contact was imminent.

BATTERY-ESSENTIAL ELEMENTS

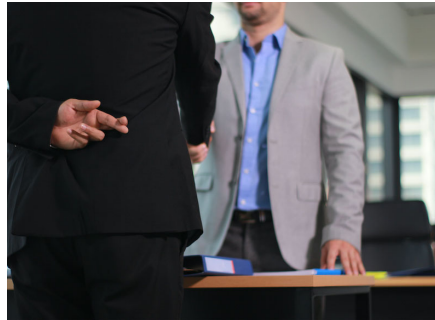
1. Defendant intentionally caused bodily contact with the Plaintiff.
2. The bodily contact actually offended a reasonable sense of personal dignity or caused physical pain and injury.
3. The bodily contact occurred without the plaintiff's consent.

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UNFAIR OR DECEPTIVE PRACTICES

ESSENTIAL ELEMENTS

1. Unfair or deceptive act or practice
2. Act or practice affects commerce
3. Actual injury to Plaintiff



NCGS 75-1.1

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Traditional Negligence Analysis

Did defendant have a **duty** of reasonable care to the plaintiff?

Did defendant **breach** that duty (i.e., was defendant negligent)?

Was defendant's negligence the **proximate and actual cause** of injury to plaintiff or plaintiff's property?

What **damages** did plaintiff suffer?



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ELEMENTS OF NEGLIGENCE

1. **Duty**=exercise amount of care that would be taken by a reasonably prudent person under the same or similar circumstances
2. **Breach**=violates duty standard
3. **Causation**
 - a) **Actual**=but for defendant's negligence, plaintiff would not have been injured
 - b) **Proximate**=defendant should have foreseen plaintiff might be harmed if defendant did not exercise reasonable care
4. **Damages**=actual physical injury or property damage or out-of-pocket loss

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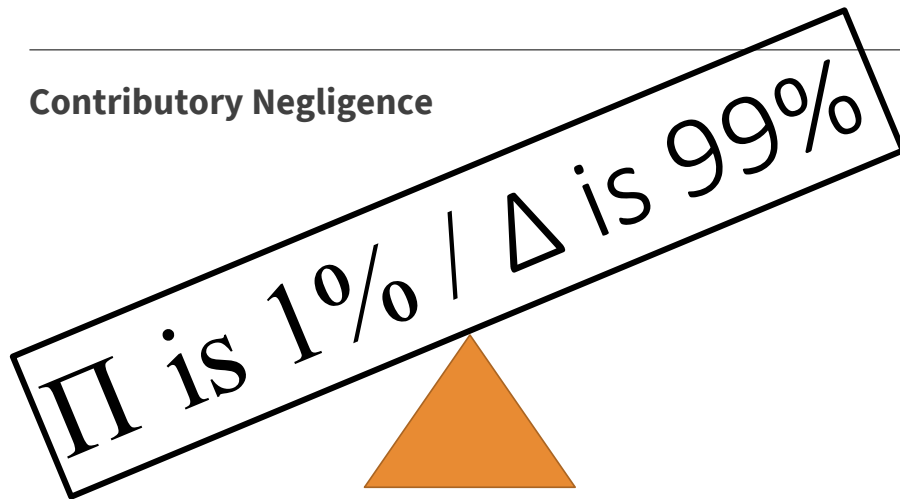
Test for
negligence

**What would a
reasonably prudent
person, acting with due
care and diligence, do
under the same
circumstances?**

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Most common defense

Contributory Negligence



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But Wait...Don't Forget About Last Clear
Chance

-
- **An exception to Contributory Negligence**
 - **Applies if plaintiff can prove:**
 1. **Plaintiff's negligence put plaintiff in a position of peril from which plaintiff could not escape;**
 2. **Defendant knew, or by the exercise of reasonable care should have recognized, the plaintiff's position of peril and inability to escape from it;**
 3. **Defendant had the time and the means to avoid injuring the plaintiff and failed to use reasonable care to do so; and**
 4. **That failure proximately caused plaintiff's injury or damage.**

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Statute of Limitations

CAUSE OF ACTION	STATUTE OF LIMITATION
NEGLIGENCE	3 YEARS
MOST INTENTIONAL TORTS	3 YEARS
LIBEL AND SLANDER	1 YEAR

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Three last things to remember:

Vicarious Liability

Measure of Damages

Collateral Source Rule

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Vicarious liability, aka “When I die, I hope it’s because I got hit by a Walmart truck.”



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Vicarious Liability

- **Liability based not on a person’s own wrongdoing, but rather on that person’s relationship to the wrongdoer**
- **Parents are liable for the willful and intentional torts of their children up to \$2,000 (G.S. 1-538.1)**
- **Employer may be responsible for acts of employees**
- **Owner of a car may be responsible for acts of driver**

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MEASURE OF DAMAGES

- ❖ COMPENSATORY DAMAGES
 - ❖ Effort to make plaintiff whole
 - ❖ Personal injury damages include medical expenses, pain and suffering and lost wages
 - ❖ Damage to property damages include diminution in value and intrinsic value
- ❖ PUNITIVE DAMAGES
 - ❖ Only for intentional torts
 - ❖ Clear and convincing evidence
 - ❖ Willful and wanton, fraudulent, or malicious tortious conduct
- ❖ PRE-JUDGMENT INTEREST

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Collateral Source Rule, aka “My church didn’t hold a fundraiser for YOU!”



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Collateral Source Rule

- **Wrongdoer's liability should not be reduced by compensation plaintiff receives from an independent source**
- **Defendant prohibited from even introducing evidence that plaintiff has received payment from some other source**

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The Last Course

- ❖ Torts include both intentional acts and negligence.
- ❖ When analyzing a torts claim, listen for evidence to prove each essential element of the claim.
- ❖ Don't forget about the rules about contributory negligence, vicarious liability, and collateral sources.



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