

# Tort Law Summary for Small Claims Magistrates

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1. A tort is a “civil wrong.” It may be intentional or negligent behavior.

How many intentional torts can you list? \_\_\_\_\_  
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\_\_\_\_\_

2. AOC-CVM 200, a *Complaint for Money Owed*, is the appropriate form for a tort action. Unless the action is one for conversion, the specific tort (that is, the wrong complained of) should be listed in the “Other” section.

3. **Conversion** is one of the most frequent intentional torts heard in small claims court. The essential elements of an action for conversion are:
  - 1) The plaintiff owns the property, or is a lawful possessor entitled to immediate possession;
  - 2) The defendant either wrongfully took the property, or wrongfully retained the property after a demand for its return; and
  - 3) The FMV of the property at the time it was wrongfully taken or retained.

4. An intentional tort that you may see more of is **unfair or deceptive practices** (GS 75-1.1). This law prohibits “unfair or deceptive acts or practices in or affecting commerce.”

- A. The essential elements of this tort are:
  - 1) The defendant committed an unfair or deceptive act or practice;<sup>1</sup>
  - 2) The act or practice was in or affecting commerce; and
  - 3) The act caused actual injury to the plaintiff.

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<sup>1</sup> “A trade practice is “unfair,” as required to recover for an unfair and deceptive trade practice, when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. “ Walker v. Fleetwood Homes of North Carolina, Inc., 653 S.E.2d 393 (N.C. 2007).” A party is guilty of an unfair act or practice when it engages in conduct which amounts to an inequitable assertion of its power or position. Pittmann v. Hyatt Coin & Gun, Inc., 735 S.E.2d 856 (N.C. Ct. App. 2012).

- B. A plaintiff who proves liability for this tort is entitled to **triple damages** (which is the amount in controversy). In addition, the plaintiff is entitled to recover a reasonable **attorney fee** if the court finds that the defendant's act was willful and that the defendant had without good reason refused to "fully resolve the matter." GS 75-16.1.
5. The second broad category of torts consists of actions asserting that the defendant was **negligent**. The law says that a person who fails to use reasonable care to avoid causing foreseeable injury to another is responsible for compensating the injured person for damages caused by his or her conduct. Whether conduct is negligent is determined by whether a reasonable person in the same circumstances would have behaved differently. In making this determination, one doctrine the judge may consider is the **sudden emergency doctrine**: this doctrine simply means that a person suddenly confronted with an emergency not of his own making is not necessarily held to the same level of care as a person under circumstances allowing ample time for thoughtful consideration—the time and circumstances should be taken into consideration.
6. The most common defense to a tort action is **contributory negligence**. If the plaintiff's own negligence contributed to the injury, even in the slightest degree, the defendant is excused from liability. An exception to the rule about contributory negligence is the doctrine of **last clear chance**: this doctrine arises when the defendant could or should have recognized the plaintiff's perilous position, had the opportunity to act to avoid harm, and failed to do so.
7. The measure of damages in a tort action may be of two types: compensatory and punitive.
- A. **Compensatory damages** are an effort to make the plaintiff "whole," or in other words to come as close as possible to putting the plaintiff in the position s/he would have occupied had the injury not occurred.
- 1) If the plaintiff has suffered personal injury, the typical damage items are medical expenses, pain and suffering, and lost wages.
  - 2) If the action involves damage to property, there are two possible measures of damages: diminution in value (difference in FMV of property before and after injury, sometimes indicated by cost of repair) and intrinsic value (for property without market value—defined as value to owner).
- B. **Punitive damages** are awardable only in actions for intentional torts and only if plaintiff proves by clear and convincing evidence that defendant's tortious conduct was willful and wanton, fraudulent, or malicious.

- C. **Pre-judgment interest** in a tort action is calculated beginning on the date the action is filed.
8. Miscellaneous
- A. **Acts of children**
- 1) Negligence: Children under 7 are incapable of negligence. Children 7-14 are presumed incapable, rebuttable by showing child failed to use reasonable care compared to other children of comparable age.
  - 2) Intentional torts: Parents are responsible for up to \$2000 worth of damages under GS 1-538 .1 unless custody has been removed or altered. See Small Claims Law by Brannon, p. 116.
  - 3) Parents may also be responsible for their own independent tort of negligent supervision.
- B. **Acts of animals**
- 1) The owner or keeper of a vicious animal is responsible for injury caused by vicious behavior of animal if owner/keeper had knowledge. "Vicious" in this context means dangerous to others, not ill-tempered or malicious. NOTE: Unclear whether this is a strict liability rule in NC.
  - 2) Negligent failure to control animal.
  - 3) Violation of a safety statute.
  - 4) GS 67-4.1 (Dangerous Dog Statute)
- C. Negligence actions against **bailee** (e.g., dry cleaner). Plaintiff is not required to demonstrate specific act of negligence, but rather that property was damaged while in possession of bailee. Burden then shifts to defendant to show absence of negligence.
- D. **Negligence per se.** Violation of safety statute relieves plaintiff of requirement of showing defendant behaved negligently.
- E. **Vicarious liability.** One person is held legally responsible for negligent (and sometimes intentional) acts of another. Examples include parent/child (discussed above), employer/employee, owner of car present when driver behaves negligently, and owner of car pursuant to Family Purpose Doctrine.
- F. **Collateral source rule.** The fact that plaintiff has received compensation for damages from some other source (such as his or her own insurance company or employer) may not be used to reduce damages paid by defendant.