

Basic School Content Outline/Module 7: Torts

A tort is a civil wrong (and often also a crime. Remember the rule: either, neither, or both – but never double recovery!)

Torts fall into two general classes: intentional and negligent.

Common intentional torts are: assault, damage to property, false imprisonment, conversion, unfair/deceptive acts or practices in commerce, and trespass. When a defendant has intentionally behaved in a way that injured the plaintiff, that is quite likely to be a tort. Note, though: Intentionally breaching a contract is NOT a tort. We don't punish that, unless there are additional circumstances making it something worse than not doing what you promised to do.

Negligent torts involve actions by a *tortfeasor* who failed to behave as a reasonably prudent person would have behaved in similar circumstances. This defendant wasn't trying to hurt the plaintiff. Instead, their behavior might be described as thoughtless, careless, reckless – NEGLIGENT. The test is whether a reasonably prudent person would have behaved differently, given all the circumstances.

The general essential elements of an action for negligence require the plaintiff to prove that:

- ✓ Defendant had a duty of reasonable care to the plaintiff.
- ✓ Defendant breached that duty (i.e., was negligent).
- ✓ Defendant's negligence was the proximate cause of injury to plaintiff or plaintiff's property.
- ✓ Plaintiff suffered damages because of defendant's negligence.

Vicarious liability is a legal rule holding principals liable for the negligent acts of their agents. "I hope if I die because a truck mows me down, it's a Walmart truck." Be clear – the truck driver is also responsible for her own behavior. But my family is more likely to be successful in collecting a money judgment from Walmart."

NOTE: Parents are not vicariously liable for the negligent acts of their children. But they do have some exposure to liability for their children's intentional tortious acts under GS 1-538.1 (\$2000 maximum/strict liability).

The most common defense in a negligence action is *contributory negligence*. Even 1% negligence by the plaintiff completely bars recovery.

A plaintiff is entitled to collect *compensatory damages* in a successful tort action. These damages aim to, as much as possible, make the plaintiff “whole.” In addition to reimbursement for actual monetary damages such as cost of medical treatment, lost wages, etc., a plaintiff who has suffered physical injury is also entitled to damages for pain and suffering. A plaintiff who has suffered property damage is generally entitled to recover money offsetting the amount of reduction in the property’s FMV. Cost of repair may be considered in determining this reduction. Consequential damages – such as loss of use, for example, may also be considered. When a plaintiff has suffered physical injury, they are always entitled to collect for pain and suffering. Except I never say always. So, not always.

The *collateral source rule* prohibits consideration of evidence that plaintiff has received compensation from some source other than the defendant. If someone is going to benefit from the fundraiser held by my church, it’s going to be me—not the person whose actions caused me to need a fundraiser.