

## Weekly Information Sheet 11

# Torts

### **Definition of Tort:**

*“A civil wrong, other than a breach of contract, for which a remedy may be obtained, usually in the form of damages, most often resulting from a breach of duty that the law imposes on persons who stand in a particular relation to one another.”*

### **The Essence of Tort Law:**

Tort law establishes standards of conduct for all members of society. It defines as civil wrongs the following antisocial behaviors:

- **Intentional Torts:** Intentional interference with one’s person, reputation, or property;
- **Negligence:** The failure to exercise reasonable care; and
- **Strict Liability:** Liability without a demonstration of fault.

### **The Intersection Between Torts and Crimes:**

Torts are often the civil side of behavior that may also rise to the level of a crime.

### **Intentional Torts:**

These are torts that are based on willful misconduct or intentional wrongs. They include:

- **Assault;**
- **Battery;**
- **Conversion;**
- **Defamation;**
- **False imprisonment;**
- **Intentional Infliction of Emotional Distress;**
- **Interference with Contractual Relations;**
- **Malicious Prosecution;**
- **Trespass.**

### **Torts of Negligence:**

**Elements of Negligence:** The elements necessary for an action in negligence are:

- **Duty:** Negligence requires a duty or standard of care recognized by law;
- **Breach of Duty:** Negligence also requires a breach of duty from the failure to exercise reasonable care;
- **Harm:** Negligence requires that a person must sustain provable harm from the breach of duty;
- **Causation:** Negligence requires that the harm sustained was caused by the breach of duty; and
- **Foreseeability:** Negligence lastly requires that the harm sustained was foreseeable from the breach of duty.

## **Actions in Negligence:**

- **Personal Injury:** Persons who sustain a physical injury as a result of another's breach of a duty of reasonable care can sustain an action in negligence.
- **Product Liability:** Persons who sustain an injury as a result of product defects, including defects in design, manufacturing defects, and warning defects, may be able to obtain a recovery in negligence. This recovery can be had from anyone in the chain of sale or manufacture.
- **Malpractice:** Persons who are injured from professional negligence may also recover in an action for negligence. Professionals are held to have a higher degree of knowledge, skills, or experience than a reasonable person, and are consequently required to use that capacity, and accordingly must act as would a reasonably skilled, prudent, competent, and experienced member of that same profession.

## **Liability:**

**Defined:** Liability is defined as "the quality or state of being legally obligated or accountable, pursuant to a legal responsibility to another, and enforced by means of a civil remedy."

**Determination of Liability:** The question as to whether liability exists in a tort action is determined by a jury. In order to deliver a finding that liability exists, the jury must determine that all of the elements necessary for an action in negligence are present.

**Liability and Damages:** Whereas the question as to whether liability exists in a tort action is a yes or no question, the issue of damages is a matter of degree. The jury will determine that degree, by deciding what is the monetary value of the plaintiff's loss. In making that determination, the jury will assess the damages, considering both economic and non-economic damages.

**Economic Damages:** Lost earnings, lost earning capacity, and medical and other out-of-pocket expenses are considered economic or tangible damages, since they are actual dollar losses that can be calculated.

**Non-Economic Damages:** Conversely, harm suffered, such as pain, suffering, infliction of emotional distress and loss of consortium and loss of enjoyment are non-economic or intangible damages which the jury has no mathematical or accounting basis for valuing, and must be instead determined by a jury's considered judgment.

## **Strict Liability:**

**Defined:** Strict Liability is defined as "liability that does not depend on a finding of actual negligence or intent to harm, but instead is based upon the breach of an absolute duty to make something safe."

**Determination of Strict Liability:** Strict Liability is often the product of a statutorily defined obligation, or in certain instances of product liability (liability for the defective manufacture, design or sale of a consumer product). It can also be found in certain ultra-hazardous activities, where society has a particular interest in making an important activity as safe as possible (such as scaffolds or explosives). In strict liability cases, the jury merely determines that the defined duty was breached and then determines the extent of damages sustained by the plaintiff.

## **Defenses to a Negligence Action:**

**Generally:** Often in a negligence lawsuit, the defense will raise what are called "affirmative defenses." This could mean that even if a plaintiff's claims of negligence are true, the defendant may not be responsible if the affirmative defenses can be proven. These defenses include Comparative Negligence, Assumption of Risk and Statutes of Limitations.