

J. P. Mallor, A. J. Barnes, T. Bowers, M. J. Phillips, and A. W. Langvardt,
The Legal Environment, First Edition, "Intentional Torts" and "Negligence and Strict Liability,"
pp. 87–88, 107–21.

OUTLINE

I. INTENTIONAL TORTS

A. Types of Intentional Torts

1. **Tort** – "civil wrong that is not a breach (breaking) of a contract"
2. Types of wrongfulness
 - a. **Intent** – "desire to cause certain consequences or substantial certainty that those consequences will result from one's behavior"
 - b. **Recklessness** – "conscious indifference to a known high risk of harm created by one's behavior"
 - c. **Negligence** – "conduct that falls below the level necessary to protect others against unreasonable risks of harm"
 - d. **Strict liability** – "liability without fault, or liability irrespective of fault"
 - 1) No need to prove intent, recklessness, or negligence
 - 2) Must prove certain things but not fault
3. May be difficult to distinguish negligence from recklessness; latter involves a higher probability of harm

B. Comparison of Civil and Criminal Liability

1. Wrongfulness vs. wrong behavior
2. Mainly statutory law vs. mainly common law
3. Suit between two parties vs. a prosecutor and defendant
4. Proof through preponderance of the evidence vs. beyond a reasonable doubt
5. Compensatory and punitive damages vs. execution, imprisonment, or a fine

C. Types of Civil Damages

1. Actual or compensatory damages for the following:
 - a. Direct and immediate harms
 - 1) Physical injuries
 - 2) Medical expenses
 - 3) Lost pay and benefits
 - b. Intangible harms
 - 1) Loss of privacy
 - 2) Injury to reputation
 - 3) Emotional distress
2. **Punitive damages** – damages "designed to punish flagrant wrongdoers and to deter them and others from engaging in similar conduct in the future"
 - a. Reserved for worst behavior
 - b. Increased controversy over them because of size and lack of justification

II. NEGLIGENCE

A. Background

1. Injuries resulting from the technology of the Industrial Revolution do not fit the framework of intentional injuries
2. Changes in negligence law over time
 - a. Lessening of the fear that assigning responsibility for all harms to industry will retard development
 - b. Assignment of financial costs to the party best able to bear them rather than assignment based on fault
 - c. Courts and legislatures impose strict liability in some cases
3. In response to changes, tort reform movement seeks to limit recoveries
4. Elements of negligence
 - a. Breach of duty
 - b. Injury
 - c. Causation

B. Element of Negligence: Breach of Duty

1. Reasonable person standard
 - a. Everyone has a duty to avoid unreasonable risks of harm to others; should act like a reasonable person of ordinary prudence in similar circumstances
 - b. Characteristics of the standard
 - 1) Objectivity of the reasonable person
 - a) Hypothetical person with ideal attributes
 - b) Focus on behavior, not mental state
 - 2) Courts given flexibility in application to individual cases
 - c. Factors courts consider in applying
 - 1) Reasonable foreseeability, e.g., danger from falling asleep while driving
 - 2) Risks involved must be unreasonable ones and thus the following factors are involved:
 - a) Seriousness or magnitude of the harm
 - b) Social utility of the defendant's conduct
 - c) Ease or difficulty of avoiding the risk
 - 3) Personal characteristics to a limited extent
 - a) Children and physically disabled are compared to reasonable persons of the same type
 - b) But mental deficiencies and voluntary and negligent intoxication do not eliminate responsibility
 - 4) Context of the action, e.g., emergency situation does not require the same amount of caution as other cases
2. *Duncan v. Union Pacific Railroad Co.* (1990, 1992) – railroad not held liable for damages from an accident as no obvious hazard and the state has the responsibility for installing warning signs and devices

PAST CAS EXAMINATION QUESTIONS

A. Tort Law and Elements of Negligence

- A12. According to Mallor et al., in *The Legal Environment*, what three elements must a plaintiff establish in a negligence claim? (00-7US-71-1)
- A13. Mallor et al., in *The Legal Environment*, describe the three elements of negligence a plaintiff in a negligence claim must establish.
- a. State the three elements.
 - b. For two of the elements stated in a., give an example of a scenario in which it would be difficult or impossible for a plaintiff to establish the element. (01-7US-42-1ea.)
- A14. Which of the following elements must be established by a plaintiff in a negligence claim?
1. A legal duty owed to the plaintiff to use due care
 2. A causal connection between the negligent act and the plaintiff's injury
 3. Actual loss or damage to the plaintiff
- A. 1 B. 3 C. 1,2 D. 2,3 E. 1,2,3 (04-7US-1-1)
- A15. a. Define the following potential actions a plaintiff might allege in tort:
i) Recklessness ii) Negligence iii) Strict liability
- b. For each of the items listed in a., indicate whether the cause of action is one that an employee might likely have alleged in an employers liability suit prior to the implementation of workers compensation statutes. (06-7US-1a&b-.75/.75)
- A16. A compact car struck a sport-utility vehicle (SUV) at an intersection in a state without a no-fault statute. The driver of the compact car sued the owner of the SUV for negligence in a tort action. Identify three elements the plaintiff must prove to recover damages from the SUV owner in tort. (06-7US-2a-.75)
- A17. A bus driver has taken medicine that is commonly known to cause drowsiness. The driver falls asleep, causing an accident. An ambulance responds to the call, and is involved in an accident on the way. The ambulance driver requires medical care and sues the bus driver for damages, alleging negligence.
- a. Briefly describe three distinct elements required to be proven for a plaintiff to substantiate a negligence claim.
 - b. For each element identified in a., state whether or not the criterion is met in the ambulance driver's suit against the bus driver. Briefly explain each answer. (07-7US-1-.75/1.5)

Mallor Negligence

- A12. 1) A breach of duty by the defendant A
2) Actual injury suffered by the plaintiff
3) Actual and proximate causation between the breach and the injury, p. 108.
- A13. a. See A12.
b. 1) There is no legal duty to rescue a drowning person.
2) An intervening agency breaks the original chain of events and creates a new chain.
3) If a person suffers no physical or financial harm, no damages occur, pp. 108, 112–14.
- A14. E, p. 108.
- A15. a. i) Recklessness is "a conscious indifference to a known high risk of harm created by one's behavior."
ii) Negligence is "conduct that falls below the level necessary to protect others against unreasonable risks of harm."
iii) "Strict liability is liability without fault, or liability respective of fault," pp. 87–88.
b. Negligence may have been alleged in such a prior suit. Since recklessness involves a greater lack of care, it also may have been alleged. Since strict liability is a recent development, it would not have been alleged in such a suit, pp. 107–8.
- A16. See A12.
- A17. a. See A12.
b. 1) The criterion is met as the bus driver has breached the duty of driving safely by taking medication.
2) The criterion is met as the ambulance driver has suffered actual injury.
3) The criterion is not met as there is no actual and proximate causation between the breach and the injury.