



Session 2

Comparative Studies in Tort Law (1)

Subject: Tort Law
For English Language Based Bachelor of Law Program (ELBBL)
Lecturer: Dr. Phalthy Hap

1

Outline

- Definition of Torts
- Category of Torts
- Elements of Torts
- Damages for Non-economic Harm
- Incompetent in Torts

2

Definition of Torts (1)

- Tort: A civil wrong, other than breach of contract or a breach of duty. (Bryan A. Garner, ed. *Black's Law Dictionary*, 8th edition, reprint 2004 (St. Paul, Minneapolis: Thomson Business, 1990), 1326)
- A tort, which means “wrong” in French (from the Latin “tortus” meaning twisted), is a wrong against an individual, as opposed to a crime, which is a wrong against the public at large. (Goden W. Brown, *Legal Terminology*, n.d.)

3

Definition of Torts (2)

- A tort is a civil wrong that is a result of intentional, accidental or negligent conduct of an individual that causes an injury to another for which the law indicates the wrongdoer is liable for doing so and for which the law provides a remedy to the injured party.
- **A tort is a civil wrong** (distinct from a criminal wrong or a breach of contract)

(Catherine Groll, *Law of Torts*, 2012)

4

Definition of Torts (3)

- 1) **that is a result of**
 - ✓ **intentional** (done with purpose)
 - ✓ **accidental** (unplanned) or
 - ✓ **negligent** (careless or preventable act)
- conduct** (a combination of one's actions and words)
- ✓ **of an individual**
- ✓ **that causes an injury to another**
- 2) **and for which the law indicates** (usually, in the civil code)
 - ✓ **the wrongdoer** (as identified among the parties involved)
 - ✓ **is liable for doing so** (responsible for the result; "owing a duty")
- 3) **and for which the law provides** (through statutes or a law suit)
 - ✓ **a remedy** (usually, money)
 - ✓ **to the injured party** (likely from the wrongdoer)

(Catherine Groll, Law of Torts, 2012)

5

Definition of Torts (4)

- **An intentional or unintentional act is either of the following types of act:**
 - a. acting to harms another where the actor has foreseen that a particular result would occur and accepted the occurrence of such a result; or
 - b. acting with respect to which a person having the same profession or experience as the actor could have foreseen that a particular result would normally occur from the act, but the actor failed to foresee the result due to an absence of care, and although the actor owes a duty to avoid the occurrence of such a result, he or she neglects to fulfill such a duty.

(CC, Art. 742)

6

Categories of Torts (1)

1. **Intentional Tort:** In general, an intentional tort is considered to be an act that occurs when a tortfeasor either intends to do the act or knows with substantial certainty that the act will result. To “know with substantial certainty” is a term of art used to describe when someone should realize that their conduct is problematic.

List of intentional torts:

Injury to Person	Harm to Property
<ul style="list-style-type: none"> • Assault • Battery • Defamation • False imprisonment or arrest • Infliction of emotional distress 	<ul style="list-style-type: none"> • Trespass to land • Nuisance • Infringement of patents or copy rights

(Catherine Groll, Law of Torts, 2012)

7

Categories of Torts (2)

2. **Negligence Tort:** This is an act that does not meet the standard of care that a reasonable and prudent person would use in the same or similar circumstances – by overt act or omission.

There are a few terms of art in negligence tort:

- ✓ “standard of care” describes how careful someone should be
- ✓ a “reasonable and prudent person” (RPP) is a hypothetical, typical and ordinary person of Cambodia who uses rational and careful behavior in their decisions and actions

(Catherine Groll, Law of Torts, 2012)

8

Categories of Torts (3)

There are a few terms of art in negligence tort: (Cont.)

- ✓ “same or similar circumstances” describes what others would have hypothetically done in order to establish and compare what the wrongdoer should have done
- ✓ an overt act, here, refers to someone physically doing something that he shouldn’t do
- ✓ an omission, here, refers to someone specifically deciding not to do something that he should do

(Catherine Groll, *Law of Torts*, 2012)

9

Categories of Torts (4)

3. Strict and Absolute Liability Torts

Strict Liability is created by specific rules within a body of law which plainly state that if a party is involved in a particular act, he is liable. Generally speaking, the injured party need not prove fault or intent, but only that the injury occurred. The area of law known as “products liability,” when a consumer is injured by a product, is considered part of the strict liability area of torts. A product may have a bad design, may have been manufactured badly, or may not have provided an adequate warning.

(Catherine Groll, *Law of Torts*, 2012)

10

Categories of Torts (5)

3. Strict and Absolute Liability Torts

Absolute Liability refers to a party being required to take responsibility for a hurt to another without regard to a standard of care or the personal actions of anyone involved in the incident. The incident surrounds an activity (usually, an inherently dangerous activity) that assigns liability to the host parties who invite the act. An “inherently dangerous activity” is a term of art often used to refer to such an activity that is, by nature, unsafe and which would be paired with absolute liability.

(Catherine Groll, *Law of Torts*, 2012)

11

Elements of Torts

- 1 A person who intentionally or negligently infringes on the rights or benefits of another in violation of law is liable for the payment of damages for any harm occurring as a result.
- 2 Paragraph 1 shall apply *mutatis mutandis* to cases where a harm has occurred due to non-performance of a certain act with respect to which the actor owes a duty to perform such act.
- 3 Except as otherwise provided in this Code or in other laws, the person seeking damages must prove the intent or negligence of the tortious actor, **the causal relationship between the actions of the tortious actor and the harm that occurred**, and the harm suffering the injured party.

(CC, Art. 743)

12

Damages for Non-economic Harm

- The person liable under the provisions of Article 743 (Elements and liability of general tort) must also pay damages for non-economic harm. (CC, Art. 744)

13

Incompetence in Torts

- A minor under the age of 14 cannot be held liable in tort.
- A person who due to mental defect or other reason lacks the capacity to understand the legal ramifications of their actions when committing a tortious act cannot be held liable in tort. However, this shall not apply where the person's condition was invited through intent or negligence.

(CC, Art. 745)

14

Thank you!!!

Questions and Answers

Contact:

hphalthy@yahoo.com

www.phalthy.wordpress.com