

# CHAPTER 1 Overview of Tort Law

## SUGGESTED DISCUSSION

Since your discussion of Chapter 1 will probably be your first, or at least one of your first, discussions in this class, you might want to do some kind of exercise beforehand that will serve to “break the ice.” If you want your students to feel comfortable participating, you must create an atmosphere of trust and acceptance. Since most people’s favorite topic is themselves, a good exercise is having them introduce themselves by telling about their career goals, their educational and work experiences, their hobbies and interests, and/or their motivation for becoming legal assistants. Alternatively, you can put them in pairs and have them introduce each other. Questions such as What do you like best about yourself? or What is your favorite animal (movie, song, cartoon character, etc.)? enliven the discussion. No matter what questions are asked, students will have an opportunity to break the “sound barrier” by expressing themselves at least once in class without any threat of censure.

Once you have made an effort to make the students feel comfortable, you might open your discussion of tort law with a consideration of some policy questions. Policy questions are some of the most intriguing questions that arise in tort law. A key question that has plagued practitioners and academicians is the question regarding the distribution of losses. Students need to identify their particular biases in answering this question. Do they think, for example, that anyone who injures another, whether intentionally, negligently, or without any fault, should be responsible for compensating the victim? Or do they believe that victims should have to bear their own losses if no one is morally responsible for the harm that occurred to them? Consideration of these questions will allow them to better understand their reactions to the courts’ decisions that they read throughout the semester, as well as the lack of consensus among their peers, as to how disputes should be resolved. Therefore, time spent at the beginning of the semester (quarter) dealing with this basic philosophical premise is time well spent.

To give you some idea of students’ perspective on this issue, as well as some insight into their writing abilities, you might have them write a one- or two-page paper addressing this question in the context of a hypothetical. Consider the following scenarios or the questions raised at the beginning of the chapter as possible contexts in which to raise this question.

- A twelve-year-old child whose parents are chronic smokers develops a severe case of asthma, which a medical doctor ascribes, in part, to his exposure to secondhand smoke. Medical studies are available to prove the deleterious effects of secondhand smoke. Should the cigarette manufacturer and/or the parents be held liable for the child’s injuries?

- A psychotherapist interviews a young man who is exhibiting agitated and aberrant behavior and determines that this condition can be controlled by medication and declines to institutionalize the young man. The mother begs the psychotherapist to hospitalize her son because she fears he is potentially violent. A week later the young man kills his mother while suffering from delusional behavior. Should the psychotherapist be held liable for the woman's death?
- Two neighbors become involved in a shouting match. One neighbor is aware that the other has a heart condition but continues to argue even when the man with the heart condition becomes extremely agitated. The argument ends abruptly when the man with the heart condition succumbs to a heart attack, which, although not fatal, renders him incapacitated for the remainder of his life. Should the neighbor be held liable for his contribution to the victim's pain and suffering?
- A woman develops neurological symptoms including joint pain and loss of control of her jaw and tongue muscles after taking an antidepressant. The manufacturer of the antidepressant claims it was unaware of the possibility of such symptoms. Should the woman be able to sue the manufacturer for her damages?

After having the students write about one or more of these scenarios, involve them in a class discussion. This will give them an opportunity to hear the reactions of their peers and to be exposed to ideas they might not have otherwise considered. Limit your role to that of a facilitator, serving only to keep the discussion on point and to raise questions no one else has considered.

### QUESTIONS FOR STUDENTS

1. What are some purposes of tort law?
2. What is a tort?
3. How does the concept of reasonableness relate to tort law?
4. What place do public policy arguments and morality play in tort law?
5. What is a slippery-slope argument, and how does it affect court decisions?
6. How do each of the following relate to tort law?
  - a. Case law
  - b. Statutes
  - c. *Restatement of the Law of Torts*
7. What are the primary differences between tort law and criminal law?
8. What are the primary differences between tort law and contract law?

**ANSWERS TO REVIEW QUESTIONS***1. What are some of the purposes of tort law?*

The primary purpose of tort law is to provide compensation to those injured by civil wrongs. Tort law helps provide acceptable standards of civil conduct by providing remedies for infractions. Tort law provides an avenue to obtain a just result without the need for personal vendettas.

*2. What is a tort?*

It is a civil wrong for which a victim receives compensation in the form of damages.

*3. How does the concept of reasonableness relate to tort law?*

The common thread interweaving most torts is the notion that socially unreasonable conduct should be penalized and those who are its victims should be compensated.

*4. What place do public policy arguments and morality play in tort law?*

Tort law often goes beyond compensating individuals and considers, more broadly, the interests and goals of society at large and the community in which we live. These interests are often referred to by the courts as public policy concerns.

*5. What is a slippery-slope argument, and how does it affect court decisions?*

That use of an argument in one case will allow application of that same argument in innumerable other cases. The metaphor is used to show that once you take the first step, it is too easy to fall down the slippery slope to the bottom of the hill, presumably into a morass of undesirable outcomes. The slippery-slope argument is, in essence, an administrative concern. The courts fear that if it finds negligence on behalf of the sympathetic plaintiff before it, hundreds of thousands of similarly situated individuals or those whose situations are analogous to the case will also seek similar redress.

*6. How do each of the following relate to tort law?*

- a. case law—*Tort law is largely a product of case law, which involves case-by-case decision making by the state courts.*
- b. statutes—*The decision-making process of case law is affected, to some degree, by statutes, which the courts are mandated to follow unless statutory gaps exist that leave a court with unanswered questions.*
- c. Restatement of the Law of Torts—*A guideline that courts use in formulating their holdings. The Restatement was compiled by eminent legal scholars and practitioners in an attempt to provide lawyers and judges with black-letter principles (legal principles generally accepted by the legal community) of tort law.*

7. *What are the primary differences between tort law and criminal law?*

Although the two share several similarities, they differ in terms of the interests affected, the remedy granted, and the standard of proof procedural mechanisms used. A crime is considered an offense against society, whereas a tort is an offense against another individual or group of individuals. The purpose of prosecuting someone who has committed a crime is to vindicate the interests of society by punishing the offender. The purpose of suing in tort, in contrast, is to compensate the victim.

8. *What are the primary differences between tort law and contract law?*

Tort law differs from contract law in terms of the voluntariness of entering into an agreement. When two or more parties create a contract, they each agree to give up something in return for receiving some benefit. In a contract action, the parties have voluntarily and knowingly assumed duties or obligations to others. In tort law, by contrast, duties are imposed by the law without the express consent or awareness of those involved.

## **TORT TEASERS**

### **Reasons for Holding Manufacturers Liable**

The manufacturer can better afford to bear the losses caused by the child's injuries than can the family.

The manufacturer should bear the responsibility for any damages caused by a product it puts into the stream of commerce.

The manufacturer had an obligation to insure that the drug caused no untoward side effects before putting it on the market.

If certain side effects were possible, even though unlikely, the manufacturer had an obligation to warn consumers.

### **Reasons for Absolving Manufacturer of Liability**

A manufacturer should not be expected to bear the responsibility for every conceivable loss suffered by consumers, irrespective of the likelihood of such a loss occurring.

Holding manufacturers responsible for all damages that stem from their products will result in the financial ruin of, or at the very least, financial instability of manufacturers.

Holding manufacturers responsible for all damages that stem from their products could deter technological advancement.

Unless a manufacturer acts negligently or recklessly, consumers should expect to bear the burden of the losses they suffer.

## ANSWERS TO INTERNET INQUIRIES

The Cornell Law School Legal Information Institute is a major legal resource gateway. At this site you will find links to United States Court of Appeals' recent decisions, state courts' decisions and statutes, and a host of relevant resources. Be sure to bookmark this site; you will use it often.

To become familiar with what this site has to offer, do the following exercises:

- a. Go to <http://www.law.cornell.edu> and search "Tort Law."
- b. Find and select the link to "Appellate Decisions from Other States." Then go to "Listing by jurisdiction." Go to your state and make a list of the resources that are available online.

Answers will vary.

- c. From "Tort," select "Recent Tort Law Decisions" for the U.S. Supreme Court. On the search page that comes up, put a check mark next to "liability," "Ginsberg," and "claim." In the cases that come up, look for a case involving El Al Israel Airlines. Read the synopsis at the beginning and write down the holding of the case.

**Holding:** The Warsaw Convention precludes a passenger from maintaining an action for personal injury damages under local law when her claim does not satisfy conditions for liability under the Convention.

## ANSWERS TO PRACTICAL PONDERABLES

Much ado has been made in the media about the elderly woman who collected a substantial judgment from MacDonald's as a result of the injuries she sustained from hot coffee she spilled on her lap. To get more details about this case, enter the search term "The Actual Facts About the McDonald's Coffee Case." (Note that this article was written by the American Trial Lawyers Association [ATLA], whose primary members are plaintiffs' attorneys.)

After reading this article, write a short paper on your assessment of the appropriateness of the judgment. In your paper, consider some of the arguments raised in this chapter about the purpose of tort law. Answers will vary but students should consider whether this award would serve to protect consumers, whether McDonald's conduct justified such a substantial punitive damage award, and whether the plaintiff should have been held more accountable for her own contribution to her injuries. They should also contemplate the effect this award has and will continue to have on other businesses.