

# Elements Of Torts

## ELEMENTS OF TORTS

Given below is a checklist of the elements that need to be satisfied in order for a wrong to be classified as a tort. All elements need to be satisfied in order to establish that a particular tort has taken place.

### 1. STRICT LIABILITY

The tort is a strict liability tort in a given state when:

The acts prescribed by the law have taken place

[The Intent of a tortfeasor is irrelevant and so is not subject to analysis]

#### **Major types**

*Product liability (liability of a manufacturer for defective product)*

*Liability of operators of motor vehicles*

*Liability of those involved in extremely dangerous activities*

*Liability of holders of animals*

### 2. NEGLIGENCE

**Duty** (what was the duty of a reasonable person in a similar situation? How should such a person have acted?)/DIFFERENT from the Duty to Act

**Breach Of Duty** (has the defendant complied with the duty or not?)

**Causation** (was damage/ injury caused by defendant's actions or not? BUT/FOR connection – if the injury would still occur, even if the defendant won't act, the defendant is not liable)

**Proximate Cause** (was the result foreseeable to the defendant? Has anything else intervened/ contributed to the injury/damages [more])?

**Injury/Damages** (was there injury of damages)

#### **Defenses to Negligence**

**Contributory Negligence:** both parties were negligent and contributed to the injury. Result: Nobody recovers

**Comparative Negligence:** both parties were negligent and contributed to the injury. Result: The recovery might take place proportionally to the degree of fault (50:50, 60:40, etc)

*Assumption of risk*: the plaintiff (the party suing the other for negligence) knew the activity is risky, yet, still decided to get involved therein and got harmed. Result: the plaintiff does not recover

### 3. DEFAMATION

*Intent*

*Untrue statement* (if the statement is true –no defamation)

*About identifiable person* (can you reasonably guess about whom is the statement?)

*Publication* (disclosure to the third party, any) Damages (without damages –no defamation)

*Defenses*

*Statement v. Opinion*

*Privileged Speech*

### 4. ASSAULT

*Intent*

*Threat of immediate physical harm*

### 5. BATTERY

*Intent*

*Unwanted physical contact*

**Important: Injury/ Damages is NOT a necessary element**

### 6. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

*Intent*

*Outrageous Conduct* [Resulting in] strong emotional suffering of a victim (at times medical proof might be needed)

### 7. NUISANCE

*Intent*

*Non-trespassory* (so nobody steps on your land)

*Interference with the enjoyment of property by the plaintiff*

*Causing serious harm*

## 8. TRESPASS

### *Intent*

*Trespassory* (so somebody steps on your land)

*Interference with the enjoyment of property by the plaintiff*

*Important:* The trespasser should be on notice that he is on somebody else's property. If this is not clear – no trespass.

## 9. INVASION OF PRIVACY

### *Intent*

*Unauthorized intrusion into somebody else's private affairs*

*Important:* Injury/ Damages is NOT a necessary element

### *Main Types*

*Appropriation*

*Intrusion*

*Public Disclosure of Private Facts*

## 10. FALSE IMPRISONMENT

### *Intent*

*Detention of somebody against his will*

*Shop keeper's privilege:* [Available to a] Shopkeeper only

*Reasonable suspicion of theft* [for reasonable time only]

## 11. CONTRACT INTERFERENCE

*Intent Existent contract*

*Third party interfering*

*Breach of termination, if a contract*

*Causation* (this termination/ breach has taken place because of the interfering third party, and not for any other reason)