



Basic California Personal Injury Law

Personal injury law is based in the law of "torts". A tort is a harmful act or failure to act for which the law provides a remedy.

There are many different kinds of torts. Physically injuring someone is a tort; so is damaging a person's property or character, or wrongly denying someone his or her liberty.

The basic principle of tort law is that injured persons should be compensated by those responsible for their injuries. Thus, a victim of a tort has the right to sue the "tortfeasor" (the person committing the tort) for damages.

It is important to understand the difference between torts and crimes. A tort is a civil wrong against an individual that exposes the tortfeasor to liability to an individual (or individuals). A crime is a wrong against society or the state and is punishable by incarceration or a fine.

Some acts, however, can be both a tort and a crime. For example, someone who uses force to cause bodily injury commits a tort known as battery and is liability to the victim for damages. Battery also is a misdemeanor crime under California law, punishable by up to six months in prison and/or a fine of up to \$2000. Thus, a person committing a battery could be prosecuted and convicted of the crime of battery, and also face a civil lawsuit brought by the victim.

There are three types of torts:

1. intentional torts,
2. negligent torts, and
3. torts based on strict liability.

Each of these torts is unique and has its own requirements for recovery, but may overlap in application. For example, if a person is injured by a product, he or she may sue the manufacturer under a theory of negligence or strict liability.

Intentional Torts: An intentional tort is a wrong based on an intentional action, as contrasted with carelessness or negligence. Battery is an example of an intention tort--the defendant intended to hit the plaintiff. Other examples of intentional torts include assault (threatening someone with physical violence), false imprisonment, invasion of privacy, and trespass. Defamation also is usually considered an intentional tort, because the defendant intentionally prints or speaks the defamatory

statement.

To proceed in a lawsuit for damages caused by an intentional tort, a plaintiff must show that the defendant acted willfully. To act willfully means to deliberately, intentionally, or wantonly perform an act with actual or constructive knowledge that injury is a likely result, coupled with conscious failure to act to avoid the injury. The defendant's willful act must be the cause of the plaintiff's injury.

Negligent Torts: Negligence has to do with how careful a person was when he or she caused an injury, and how careful, according to the law, he or she should have been.

There are four requirements to proving negligence. A plaintiff must show (1) the defendant had a duty to conform to a certain standard of conduct to protect the plaintiff from unreasonable risk, (2) the defendant breached that duty, (3) the defendant's breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages

In some personal injury cases, it turns out the plaintiff was partly at fault in causing his or her injury. In 1975, California adopted the doctrine of "comparative negligence", which allows a jury to apportion liability in a lawsuit. Comparative negligence permits a jury to compare the negligence of the plaintiff with the negligence of the defendant and decide damages accordingly. If the jury finds the plaintiff ten percent negligent in a car accident, and the defendant 90 percent negligent, the defendant has to pay only 90 percent of the damage award. Likewise, if the jury finds the plaintiff 90 percent negligent in the accident, and the defendant ten percent negligent, the defendant has to pay only ten percent of any damage award.

Strict Liability: Under the theory of strict liability, the plaintiff contends that the defendant is liable regardless of fault. The issue of how careful a defendant was or should have been is irrelevant. Even if a defendant's actions were entirely reasonable, strict liability imposes liability on the defendant if he or she caused the plaintiff's injury.

Historically, strict liability was only used in cases in which a wild animal or an ultrahazardous activity caused an injury. For example, people who demolished buildings, dusted crops, or manufactured explosives were automatically liable for injuries caused by their activities. In 1963, strict liability was first applied in a defective product context. Since then, it has become the principal theory of recovery in products liability cases. One reason for applying strict liability to defective product cases is that manufacturers (often large corporations) are in a better position to incur the costs of the injuries caused by their products than the individuals who are injured. Moreover, by requiring manufacturers to pay damages for injuries caused by their products, regardless of fault, the law encourages manufacturers to produce safe and dependable products.

The principal purpose of products liability litigation is to compensate persons injured by defective products. But products liability litigation also serves an important public policy interest. It serves as a means for society to collectively decide how safe manufacturers ought to make products that consumers use every day. The application of strict liability in products liability cases demonstrates society's changing attitudes toward product-related injury.

To prove a case based on strict liability, three basic elements must be established. A plaintiff must show (1) the product was defective, (2) the defect was the proximate cause of the plaintiff's injury, and (3) the plaintiff suffered damages.

Burden Of Proof: A plaintiff in a civil lawsuit has to prove his or her case "by a preponderance of the evidence." In other words, the plaintiff must show that a majority of the evidence establishes that the defendant is liable. This is different from the burden of proof in a criminal case. In a criminal case, the prosecution must prove the defendant's guilt "beyond a reasonable doubt"--a much higher standard. When a tort is also a crime, the results from the civil and criminal cases do not have to be consistent; in fact, the outcomes frequently are contradictory. Because the criminal burden of proof is higher, a defendant may be acquitted of committing a crime, but liable in a tort action.

Affirmative Defenses: A defendant who asserts an affirmative defense does not deny the evidence against him or her, but argues that there is some other reason that he or she should not be liable. In the tort context, an example of an affirmative defense is comparative negligence. Assumption of risk also is an affirmative defense. The doctrine of assumption of risk states that, because the plaintiff was aware of the potential for injury and proceeded nonetheless, the defendant's liability should be reduced, if not erased altogether. Because California follows the doctrine of "pure comparative negligence", which allows a plaintiff to recover damages even if his or her share of fault is greater than 50 percent, the defense of assumption of risk has very limited application.

Vicarious Liability: Vicarious liability is a legal principle under which one person is held liable for the tortious act of another, even though the first person was not involved in the act, did nothing to encourage the act, and even may have attempted to prevent it.

The most common form of vicarious liability occurs in the area of employment. An employer is liable for any tortious act committed by an employee acting within the scope of employment. Another application of vicarious liability is to bar owners or others who provide alcohol to a person who then commits a tort. Under California law, anyone who sells, furnishes, or gives alcohol (other than in a social setting) to an obviously intoxicated minor may be liable for damages caused by that minor as a result of intoxication.

Joint And Several Liability: In cases in which two or more defendants were found responsible for a plaintiff's injury, the law traditionally made the defendants jointly and severally liable for damages. In other words, a plaintiff had the right to collect the damage award from any defendant individually or from the defendants as a whole, depending on the plaintiff's preference.

The California legislature has decided that the doctrine of joint and several liability resulted in inequity and injustice to defendants who bore only slight responsibility for an injury but had to pay the entire damage award. (These defendants sometimes are referred to as having "deep pockets.") Thus, liability for noneconomic damages is several only in California, and not joint. That is, while defendants may be jointly and severally liable for economic damages, each defendant is only liable for the amount of noneconomic damages directly in proportion to that defendant's percentage of fault. Noneconomic damages compensate for subjective, non-monetary losses such

as pain, suffering, inconvenience, emotional distress, loss of consortium, and injury to reputation.

Statute Of Limitations: here are limits on the time period in which a lawsuit can be filed. If a person fails to file a lawsuit within the time period prescribed by the statute of limitations, the person loses the right to file that lawsuit. As of January 1, 2003, the statute of limitations for most personal injury claims was extended from 1 to 2 years. It is unknown whether claims existing before the new law came into effect have their periods extended. To be cautious, assume any personal claim arising before January 1, 2003, has a 1-year statute, and any claim arising as of January 1, 2003, has a 2-year statute.

General Procedural Outline:

No two cases are alike and procedures vary with the nature and complexity of the legal and evidentiary issues involved. The following is a very general outline of the stages of a civil action.

Complaint Filing

Every case begins with the filing and service of a Summons and Complaint. The Complaint will contain one or more "causes of action" such as "Breach of Contract" or "Fraud".

Service Of Complaint

After the Summons and Complaint have been filed with the court, they must be properly served on the defendant(s). If the defendant(s) will accept service, he/she may sign an Acknowledgment of Service." Otherwise the documents will have to be formally served.

Response To Complaint

The Defendant(s) have 30 days from the date of service of the Summons and Complaint to serve on the Plaintiff(s) either an Answer to the Complaint or a pleading challenging the sufficiency of the the Complaint. Responses challenging the sufficiency of the Complaint include a motion called a "Demurrer" and a "Motion To Strike"

Hearing Of Challenges To Sufficiency Of Complaint (If Applicable)

If the defendant(s) decide to file a demurrer or motion to strike, these motions must be heard and ruled upon before the matter may proceed. This can take up to 2 months. If such motion is sustained and the court grants leave to amend the Complaint, a new complaint must be drafted and served and the process starts over. Sometimes a second demurrer or motion will be filed causing more delays.

Discovery

Once the Complaint and Answer have been filed both parties commence "discovery" procedures by which the evidence necessary to prosecute both sides of the case. Depending on the nature and complexity of the case, one or more of the following discovery devices may be used by the parties:

- Interrogatories: Written questions which must be answered under oath.

- Request For Production Of Documents: Demands for production of documents by the parties involved.
- Requests For Admission: Requiring the parties to say which allegations they affirm and which they deny.
- Deposition: The parties may be required to appear in the opposing attorney's office to answer questions under oath in front of a court reporter. Depositions can also be taken from 3rd parties.
- Subpoena Documents From Third Party: Documents may be subpoenaed from 3rd parties such as banks and employers.

Discovery Motions (If Applicable)

If a party fails or refuses to comply with discovery requests, it may be necessary for the party propounding the discovery to make a motion in court to compel responses. If the court grants the motion, further responses will be made. If those responses are still inadequate, another motion may be made and the court can sanction (fine) the resisting party. In extreme cases the court can even terminate the action in favor of the moving party.

Trial Setting:

Throughout the case the court will set a series of Case Management Conferences to be attended by attorneys for all parties. These hearings are designed to determine whether the case is ready for trial. When the court feels that a case is ready for trial, it will set the date for trial and make orders concerning completion of discovery and final preparation for trial.

Settlement Negotiations:

Settlement negotiations may proceed throughout the trial. Often the court will require the parties to try a mediation of the issues or will set a "Mandatory Settlement Conference" (MSC) before the trial date. Settlement negotiations generally become more intense as the trial date approaches.

Trial:

The vast majority of cases settle before trial. However if the parties cannot settle the case, the only way to resolve the issues is by way of trial.

- Gene Kinsey

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