

Chapter 1 Overview of Tort Law

COMPLETION

1. _____ is a tort in which no fault or intent must be shown.

ANS: Strict liability

PTS: 2

2. A tort must be proved by a preponderance of evidence while a crime must be proved _____.

ANS: beyond a reasonable doubt

PTS: 2

3. In tort law, it is the _____ interest that has been violated, while in criminal law, it is _____ interest that has been violated.

ANS: individual's, society's

PTS: 2

4. In tort law, the obligations owed are owed to _____, while in contract law, any obligations owed are owed to _____.

ANS: society, the individual

PTS: 2

5. In barbaric societies, the process used to remedy a wrong suffered by a member of the clan was by means of a _____.

ANS: blood feud

PTS: 2

6. A(n) _____ requires proof that the defendant used force directly on the plaintiff or the plaintiff's property, while a(n) _____ requires no showing of force and can be sustained even where an injury was inflicted indirectly.

ANS: action in trespass, trespass on the case

PTS: 2

7. _____ arose as a cause of action as more traffic-related cases came before the courts.

ANS: Negligence

PTS: 2

8. We have come full circle in tort law in the sense that we began with the cause of action of _____, which required no fault, and in modern times we have the cause of action of _____, which also requires no showing of fault.

ANS: action in trespass, strict liability

PTS: 2

TRUE/FALSE

1. Without question, those who create risks should bear the burden of injuries they create rather than those who fall prey to such injury.

ANS: F PTS: 1

2. A tort is a civil wrong in which a victim is compensated in the form of damages for the injuries he or she suffers.

ANS: T PTS: 1

3. Whether conduct is reasonable is sometimes difficult to determine.

ANS: T PTS: 1

4. The ideas of justice, fairness, and equality are the cornerstones of public policy concerns.

ANS: T PTS: 1

5. Issues of morality cannot be taken into consideration in tort law.

ANS: F PTS: 1

6. “Slippery slope” arguments reflect administrative concerns of courts.

ANS: T PTS: 1

7. The *Restatement* is a set of guidelines created by the courts.

ANS: F PTS: 1

8. A tort is considered an offense against society.

ANS: F PTS: 1

9. The plaintiff has the burden of proving his or her case by a preponderance of the evidence.

ANS: T PTS: 1

10. In tort law duties are imposed by law rather than by being voluntarily assumed by the parties.

ANS: T PTS: 1

11. The purpose of the blood feud in early societies was compensation for the victim.

ANS: F PTS: 1

12. An action in trespass requires a showing of blameworthiness or fault on the part of the defendant while a trespass on the case does not.

ANS: F PTS: 1

13. A plaintiff in a trespass on-the-case action must show injury and damage.

ANS: T PTS: 1

14. Most states have retained trespass on the case as a cause of action today.

ANS: F PTS: 1

SHORT ANSWER

1. What is one argument regarding the allocation of risks in reference to tort law?

ANS:

Advocates of expanded tort liability see tort law as the knight in shining armor, duly anointed to protect the interests of the consumer. In their perception, manufacturers and those who deliver services are better able than consumers to predict and prevent injuries from the use of their products and services. The burden of injury, they reason, should be borne by those who create risks rather than by those who fall prey to them. The philosophical and political debates on the issue of risk allocation have gained new significance in one of the most recent developments in tort law—product liability.

PTS: 3

2. Give a counterargument to the argument you presented in question 1.

ANS:

Others argue that we have become too paternalistic in our efforts to protect individuals and that we should allow people to bear the consequences of their decisions. After all, they point out, the process of living comes with no guarantees and the assurance of safety is too high a price to pay for freedom. In addition to this philosophical concern, there is reluctance to burden a defendant, particularly an industry, with all losses, for fear of financial ruin.

PTS: 3

3. How does the “slippery slope” argument affect decisions made by the courts?

ANS:

Perhaps you have heard of the slippery-slope argument, which means, essentially, 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. A court fears 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 redress. The precedential effect of arguments regarding physician-assisted suicide, racial composition of juries, and the use of marijuana for medical purposes are among the many slippery-slope issues considered by the courts.

PTS: 3

4. Name two differences between torts and crimes.

ANS:

	TORTS	CRIMES
PURPOSE	Compensation	Punishment
STANDARD OF PROOF	Preponderance of Evidence	Beyond a Reasonable Doubt
INTERESTS VIOLATED	Individual's Interest	Society's Interest
PROCEDURAL RULES	Civil Rules	Criminal Rules

PTS: 3

5. What is one difference between contract law and tort law?

ANS:

	CONTRACT LAW	TORT LAW
DUTIES ASSIGNED	By Parties' Consent	Imposed by Law
OBLIGATIONS MADE TO	Specific Individuals	Society in General

PTS: 3

6. What are two differences between an action in trespass and a trespass on the case?

ANS:

Action in trespass (No fault) (<i>Vi et armis</i>) (Direct use of force)	Trespass on the case (wrongful intent or negligence) (No force or indirect injury) Negligence (fault required) Strict liability (no fault)
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PTS: 3

7. In what sense have we come full circle in tort law in terms of assigning fault?

ANS:

Strict liability (no fault) reigned supreme during early Anglo-Saxon law and was evident in the action in trespass. Only in actions on the case did the notion of duty and neglect arise. Now, at the beginning of the twenty-first century, strict liability has once again assumed importance in our legal system. More and more modern courts are assigning liability even where there is no showing of fault.

PTS: 3

8. When is reasonableness of conduct not relevant in a tort case?

ANS:

In strict liability actions

PTS: 3