**TORTS AND DAMAGES: REFORM**

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| A “**tort**” is defined as a civil wrong that causes someone to suffer harm or loss, creating legal financial liabilities by the person who has committed the act in question.  Medical expenses, loss of income, repair costs, personal injury, and/or pain and suffering are examples of compensable losses. With a criminal act, intent matters. By contrast, a defendant may be liable for damages in a tort case for an injury that he causes, even if it was an accident. |  |

**Tort reform** is a proposed change to the civil justice system. It can be a reference to one of two different proposed outcomes. Some may pursue tort reform to reduce the ability of a victim to bring forth tort litigation or reduce the amount of damages that can be received if they win their case. Others may pursue tort reform to increase the ability of victims to pursue tort litigation and the amount of damages that can be awarded.

Most debates about tort reform involve the limiting liabilities or the damages that can be received as a result of lawsuits.

**PROS of TORT REFORM**

1. It limits the punitive costs of civil liability.

The justice system is about making people whole. It should not be about making people become rich because of a mistake or unexpected circumstance. Under most tort reform proposals, the goal is to limit the amount of punitive costs that can be awarded to individuals so that this part of the civil justice system doesn’t become about making profits.

2. It maintains the ability to file a lawsuit.

Tort reform doesn’t attempt to limit an individual’s ability to be made whole. It does not prevent lawsuits from being filed. It simply requires individuals to provide some sort of justification for their stated position within the lawsuit. Tort reform looks to limit frivolous lawsuits.

3. It allows juries to focus on the case instead of the reward.

A jury should be used to determine the innocence or guilt of the defendant involved in a tort case. They should not be used to determine a specific monetary amount. By limiting the total amount that can be awarded punitively in such a case, the focus shifts back toward the actions of the defendant and if those actions caused harm to the plaintiff.

4. It offers different methods of resolution.

Lawsuits are one way to find justice so that a victim can be made whole. There are cheaper methods to obtain this need as well. Tort reform can encourage plaintiffs and defendants to resolve their differences through arbitration or mediation before proceeding to a lawsuit. That means funds could be made available faster to the victim, allowing them to meet their obligations immediately instead of potentially years down the road.

5. It limits attorney fees.

One of the most popular advantages of tort reform is that it limits attorney fees to something that is considered reasonable. That helps to limit the damages that are awarded in a specific case and allows more of the awarded money to the victim. Attorneys deserve to earn a living, just like anyone, but should they be awarded hundreds of millions of dollars while the average victim might receive a few hundred dollars in compensation? This comes back to the idea of fairness within the civil justice system.

**CONS of TORT REFORM**

1. It changes the liability structure for businesses.

The goal of unlimited punitive damages is to control the actions of businesses or individuals in terms of overall liability. Some large corporations may find that in a world where tort reforms are implemented, the cost of paying someone to make them whole is less than the profits that can be achieved by causing that harm in the first place. It almost encourages corporations to maximize their profitability without any regard to how their actions affect society.

2. It can result in more injuries and harm.

With tort reforms implemented, more people may find themselves being victimized in a quest toward greater profit. With limits in place on punitive damages, unscrupulous individuals or corporations could continue operating as they do. They could cause harm over and over again and then just pay the costs to make the individual whole. From a legal standpoint, justice is served, and everyone can move on. From the victim’s standpoint, however, that may not be the case at all.

3. It prolongs the time required to get needed compensation.

People who have experienced harm have cost obligations that occur immediately. That may include medical bills, rent, a mortgage payment, or even basic grocery needs. Tort reform may tie-up cases in the legal system for years, prolonging the ability for victims to receive the compensation they need. This has become such a common practice that companies have formed around the concept of providing a smaller amount of cash now in return for receiving the full amount of the settlement or verdict that occurs in the future.

4. It targets specific industries.

Most tort reform efforts in the United States target the healthcare industry, providing safeguards for providers. This includes pharmaceutical agencies, asbestos manufacturers, and malpractice limitations. The goal is to eliminate joint liability, limit non-economic damages, and even limit or eliminate rewards if a plaintiff has another source of recovery, like their own health insurance or compensation under workers compensation.

5. It could stop a lawsuit before it even starts.

Many tort reform proposals include what is called a “Good Samaritan” clause. This may protect individuals or healthcare providers from being sued, even if there is an error made in the care of an individual that causes harm. This proposal is often limited to the provision of emergency care to someone who has already been injured, but could be extended to other issues that may cause harm as well.

These tort reform pros and cons may limit the liabilities of corporations and individuals, which could reduce overall costs for services. It may also increase the number of people who are victimized and limit their ability to be made whole.

**CIVIL LAW: INJURIES & DAMAGES ESSAY**

**QUESTION:**

**Do you think there should be limits to the types (and numbers) of lawsuits that can be brought, and limits to the amount of damages that a plaintiff can win in an injury case? Why or why not?**

Think about what these limits might look like (if any). Brainstorm your ideas, and then put them into a persuasive paragraph arguing your position. Write at least 6-7 sentences with a topic sentence and several examples (you may create them or use ones we have discussed) to support your argument.

**Make sure to include:**

* A thesis or topic sentence that clearly explains your answer to the question.
* Two reasons why there should/shouldn’t be limits to lawsuits.
* Two examples that help to support your major points (you may use ones we have discussed OR create your own).
* A conclusion that sums up your major argument and leaves a strong impression with the reader.

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