

Tort Law Basics

Some ways tort law differs from criminal law:

	CRIME	TORT
How it's committed:	Typically by acting . Can be by inaction ("criminal negligence, e.g.), but that's exceptional.	By acting (e.g., defamation) or by inaction (failing to take care); by inaction is common
Who's harmed:	Society "U.S. vs. Defendant"	Private party (individual, corporation, or class) "Plaintiff vs. Defendant"
Who prosecutes:	Public officials: district attorneys, US attorneys; they represent "the people"	Private party (the plaintiff and/or their lawyer(s))
Standard of evidence:	Guilty beyond a reasonable doubt	Preponderance of evidence (lower standard)
Judgement:	Defendant is " convicted "	Defendant is " held liable "
Remedy:	Punishment: offender deprived of life, liberty, and/or property, in order to protect society	Liable parties pay damages (typically \$) to victims (plaintiffs): <ul style="list-style-type: none"> • Compensatory • Punitive
Limits on remedy:	8 th Amendment	<ul style="list-style-type: none"> • Liable parties may not be made destitute • Laws may limit damages • General prohibition on "excessive" damages
Double jeopardy:	5 th Amendment: No person shall "be subject for the same offense to be twice put in jeopardy of life or limb"...	...but even if you're acquitted of a crime you may be sued by the victims and made to pay damages (example: O.J. Simpson)

- Losses "lie where they fall" unless there is a good reason to shift the burden from the victim to someone else. (E.g., normally if you fall down and get hurt, it's your problem.)
 - "Good reasons" = liability rules, which specify what plaintiffs must show to get others forced to pay. (E.g., Wal-Mart was found partially liable for Holden's fall in their parking lot, so they had to pay Holden some money.)
 - Liability rules fall roughly into two types: Strict Liability, and Negligence.

Strict Liability	Negligence
<ol style="list-style-type: none"> 1. Defendant does something. 2. Plaintiff is injured. 3. Injury to Plaintiff is caused by Defendant's act or omission. 	<ol style="list-style-type: none"> 1. Defendant does something. 2. Plaintiff is injured. 3. Injury to Plaintiff is caused by Defendant's act or omission AND 4. Defendant was "at fault" (negligent).

- Negligence is determined by an objective standard of a "reasonable person."
- Basic problem in tort law: balancing justice (holding people liable for harms they cause) with efficiency.