

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
1. Defendant does something. 2. Plaintiff is injured. 3. Injury to Plaintiff is caused by Defendant's act or omission.	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.