

## Chapter 10 – Core Subjects: Tort

A “tort” is a type of civil wrong. Like contract, it is based largely in common law and therefore made up of the decisions of judges. Also like contract it is a type of civil law and therefore cases are heard in the civil courts such as the County Court and the High Court. A tort is not a criminal offence, although it is possible that the commission of certain criminal offences could lead to an actionable tort, whereby the victim can also sue the perpetrator of the crime for damages (compensation).

The most important tort and one which most people will be aware of is the tort of negligence. This is where someone causes harm to another person due to their carelessness, rather than intentionally. Damage caused to people and property intentionally usually gives rise to a criminal offence of some kind such as assault or criminal damage. However, if it is caused carelessly, then the “victim” must generally seek redress in the civil courts (although some crimes are based on careless behaviour, such as careless driving for example).

If we say that contract law is about agreement then we are really saying that we enter into such relationships voluntarily; if we don't like the contractual terms on offer then we can simply not accept them. Negligence does not require there to be a contractual relationship. If I am driving my car in a careless fashion, then I am potentially liable in negligence if I injure anyone or damage their property. I have not agreed in a contract not to cause that harm or damage, but if I do then I might be liable to the person who suffers.

Negligence was illustrated in the famous case of *Donoghue v Stevenson* (1932). The case also highlights the difference between contractual and tortious liability. Ms Donoghue drank a bottle of ginger beer and became seriously ill due to a decomposed snail in the bottle. As she had not actually purchased the drink, she had no contractual relationship with the seller. She therefore sued the manufacturer directly, who was found liable for negligence. The court said that we all have a duty to take reasonable care not to cause injury or damage to those around us. The manufacturer had breached this duty by allowing a snail to enter the production chain at some point. This caused harm to Ms Donoghue and she was therefore entitled to damages (compensation) from the manufacturer.

Another “branch” of negligence is called “negligent misstatement”. This is where someone (an expert) negligently (carelessly) makes a statement which causes loss to someone else. There generally needs

to be a special relationship between the people involved, as in the case of someone giving a reference for another person, or a surveyor who knows their report will be read by a house buyer.

The leading case here is *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1964). A bank gave a negligent credit reference and, despite no contractual relationship with the recipient of the reference, was potentially liable for the financial loss caused.

Another example of a tort or civil wrong is the law of private nuisance. This generally relates to property. I am entitled to enjoy my property, use it as I see fit and benefit from any rights I might have over it. A private nuisance occurs when someone does something unreasonable to interfere with that enjoyment. Examples would include noise, dust, smoke, tree roots and overhanging branches. If my neighbour allows the roots of her tree to cause damage to my property, then this may well constitute a private nuisance. This is not a crime, but a tort; I should be able to seek compensation in the civil court system if I am the "victim" of such a nuisance.

Another tort which most people have heard of is trespass. We can split this into two categories, being trespass to land and trespass to goods.

Trespass to land is the type of trespass that most people think of when seeing the word "trespass". It covers the situation when a person goes onto land possessed by another person or places something on that land without permission. If I trespass on someone else's land, they can sue me for the tort of trespass, and if they can prove what happened, they would be entitled to damages (compensation). Unlike other torts it is not necessary to show that I have caused the land-owner any loss; the fact that I have trespassed on their land means that the court will make an award of damages.

Trespass to goods, on the other hand, is where I touch, mark or move goods belonging to another. This can be useful when a person interferes with objects which belong to someone else but not in a way that constitutes a criminal offence. For example, if someone borrows my lawn mower fully intending to return it within a short period of time, then technically this may well not be classified as a crime of theft. However, the fact that they have touched, moved and possibly used my possession means I could probably sue them for compensation as a trespass to goods.

Other torts exist such as the tort of conversion (denying ownership of goods to the true owner) but

these are rather technical in nature and beyond the scope of an introductory text such as this.

The important thing to remember about torts is that they are civil law mechanisms to provide a remedy to someone who suffers a wrong at the hands of another person. Often there will not be a contractual relationship between the parties, but it is entirely possible that an act could be both a breach of contract and a tort. For example, if a person undertakes a contractual obligation in a negligent fashion, then they could be liable to the "victim" in both contract (for breach of a contractual obligation to act with reasonable skill and care) and in tort (for a breach of the general duty of negligence).

This chapter has given you a brief introduction to the law of torts, covering the law of negligence, nuisance and trespass.