

**REVIEW
OF
TORTS,
PROPERTY,
AND
CRIME**

Torts, Property, Crime ABL Fall 99 O'Hara (C)

1

TORTS

part of social contract

PLAINTIFF IS AN INDIVIDUAL
wrong done to the individual
compensation, not punishment

TYPES OF TORTS

Intentional:

create harm

Negligence:

create risk of harm

Strict Liability:

social risk allocation, not based on fault

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2

GENERAL ELEMENTS OF ALL TYPES OF TORTS

1. duty of care
2. breach of the duty
3. injury
4. proximate cause
(i.e., legal, not factual, cause)
proximate cause if the injury is
reasonably foreseeable
(the breach is the proximate cause of the injury)
5. no defenses

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3

DEFENSES TO NEGLIGENCE

- 1. CONTRIBUTORY Negligence
bar (old rule used with actual causation)
- 2. COMPARATIVE Negligence
offset (new rule used with proximate causation)
- 3. ASSUMPTION OF THE RISK
knowing AND voluntary
- 4. MISUSE

res ipsa loquitur
per se negligence: statutory standard of care

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4

CRIMES

part of social contract
PLAINTIFF IS THE STATE
wrong done to the state
punishment, not compensation

ELEMENTS:

- 1. bad deed or *actus rea*
- 2. bad thought or *mens rea*
CAPACITY
minors
insane
- 3. no defense
DEFENSE admits deed and thought,
but justifies the deed

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5

recall civil versus criminal burden of proof
recall appellate court review of trial court
recall frequency of error found by appellate courts

CRIMES MUST BE CREATED BY THE LEGISLATURE

but, void for vagueness
but, punitive damages
but, contempt of court

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6

PROPERTY

part of social contract,
but malleable to individual desires
bundle of rights

REAL PROPERTY

ground, water, air, and
any personal property affixed to ground

FIXTURES

- * personal property that is still removable, but so firmly affixed as to become part of the realty
- * measured by **intent**: **objective** over subjective

NUISANCE

interference with the "reasonable use and enjoyment"

PRIVATE NUISANCE

PUBLIC NUISANCE

also may be partly private nuisance
recall standing to sue

PERSONAL PROPERTY

any property that is not real property
tangible (e.g., car)
intangible (e.g., patent, stock)

BAILMENT

transfer only possession,
not transfer of ownership
half way between contract and property

ZONING

Police Power: State's power to regulate for the
People's health, safety, morals, and
general welfare

Eminent Domain: Power of a government to
take private property
for a public purpose
upon due process and
payment of just compensation

"mere regulation" v. "taking"
