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Introduction to Tort Law

Questions regarding the appropriate scope and content of tort law have often provoked debate inside and outside of Congress. This In Focus surveys basic tort law principles and identifies pertinent legal considerations for Congress.

What Is Tort Law?

Tort law is the body of rules concerned with remedying harms caused by a person's wrongful or injurious actions. For instance, if a surgeon tasked with amputating a patient's left leg commits medical malpractice by instead amputating her right leg, that patient may be able to pursue a tort lawsuit for monetary damages against the surgeon.

Traditionally, with a few significant exceptions, tort law has primarily been a matter of state rather than federal law. Tort law has also historically been a matter of common law rather than statutory law; that is, judges (not legislatures) developed many of the fundamental principles of tort law through case-by-case adjudication. Over time, however, state legislatures and Congress have begun to intervene in the development of tort law to a greater extent.

Why Does Tort Law Exist?

Tort law serves at least three purposes. The first is to **compensate** plaintiffs who are injured by a defendant's conduct. The second is to **deter** persons from acting in ways that may cause injury to others. A third purpose—albeit one of somewhat lesser significance—is to **punish** people who wrongfully injure others.

Negligence

Perhaps the paradigmatic example of a tort is **negligence**. For example, a motorist who causes a fatal collision by looking at his cellular phone instead of the road may have committed a tort by driving negligently. To establish a defendant's negligence, a plaintiff must ordinarily prove all four of the following elements:

- The defendant owed a **duty** to the plaintiff. (Different defendants may owe different duties depending on the circumstances. For instance, whereas motorists owe a duty of **reasonable care** to not injure pedestrians and other drivers, doctors generally owe their patients a stricter duty to abide by the standard of care and prudence prevailing in the medical community.)
- The defendant **breached** that duty. (For instance, a defendant may breach his duty of reasonable care by acting carelessly.)
- The plaintiff suffered a legally cognizable **injury**. Whereas a plaintiff may ordinarily sue a defendant for personal injury or property damage, courts have

generally been less willing to entertain negligence claims alleging pure economic losses like lost revenues.

- The defendant's breach of his duty **caused** the plaintiff's injury. The plaintiff must prove not only that the defendant **actually** caused his injury—that is, that the injury would not have occurred but for the defendant's breach—but also that the defendant **proximately** caused his injury—that is, that the causal connection between the defendant's breach and the plaintiff's injury was sufficiently direct as a matter of public policy. (Typically, a defendant is responsible only for injuries it could reasonably anticipate and not those that are unforeseeable or remote.)

Notably, under certain circumstances, a defendant may be liable for negligence committed by a third party. For instance, under the doctrine of *respondeat superior*, an employer may be liable for torts committed by its employees. To illustrate, if an employee negligently causes a vehicular collision while driving a company car on company business, that driver's employer may be liable to persons injured in the crash. The employer will ordinarily not be liable, however, for torts an employee commits outside the scope of his employment.

Strict Liability and Products Liability

Whereas negligence is chiefly concerned with whether the defendant acted carefully or carelessly, **strict liability** torts impose liability without regard to the defendant's level of care. One prominent example of a strict liability tort is **products liability**, which permits a plaintiff injured by a defective product to recover damages from the seller of that product without having to prove that the seller acted negligently. Instead, generally speaking, a products liability plaintiff only needs to prove that

- the defendant **sold a product**;
- the defendant was a **commercial seller** of such products;
- the product was in a **defective condition** at the time the defendant sold it;
- the plaintiff sustained an **injury**; and
- the defect **actually and proximately caused** the injury.

Courts have identified several rationales for subjecting commercial sellers to strict liability, including the fact that a business entity is often in a better economic position to bear

(or insure against) a loss caused a defective product than an individual consumer injured by the product.

Intentional Torts

Critically, none of the torts discussed above require the plaintiff to prove that the defendant *intended* to cause injury. A driver who negligently causes a car crash, for instance, may be liable even if he did not mean to cause the collision. Other torts, by contrast, *do* require the plaintiff to prove that the defendant intentionally caused harm. Depending on the circumstances, a defendant who commits an intentional tort may more likely be held liable for additional damages, such as punitive damages.

Perhaps the most familiar example of an intentional tort is **battery**—that is, an intentional harmful or offensive contact with another person. For example, a brawler who purposefully punches an innocent bystander in the face may be liable for his victim’s dental bills. Another intentional tort is **intentional infliction of emotional distress (IIED)**—that is, engaging in extreme and outrageous conduct intended to cause another person severe mental anguish. For instance, a person who subjects someone else to a concerted campaign of harassment and bullying with the purpose of causing that person psychological harm may have committed IIED. Yet another example is **defamation**—making a spoken or written statement that harms another person’s reputation.

Tort Remedies

A plaintiff who proves that a defendant has committed a tort may potentially recover various types of monetary damages. For instance, a successful tort plaintiff may generally recover **compensatory damages**, which attempt to make an injured plaintiff “whole.” To illustrate, a defendant who negligently causes \$3,000 in property damage may be required to pay \$3,000 in compensatory damages to the property owner. Notably, a plaintiff may potentially also recover **noneconomic damages** to compensate the plaintiff for injuries—such as pain and suffering—that may be more difficult to quantify. In exceptional circumstances in which a defendant has engaged in particularly egregious behavior, a plaintiff may also recover **punitive damages**—that is, damages in excess of compensatory damages that are solely intended to punish the defendant for his conduct. Notably, however, constitutional and statutory limitations may cap or otherwise restrict the amount and types of damages that a plaintiff may recover.

Considerations for Congress

Because tort law has traditionally been the domain of the states, federal legislation that proposes to **preempt** (i.e., displace) state tort law, modify prevailing tort doctrines, or impose caps on damages awards may implicate federalism principles. For one, Congress may only enact legislation pursuant to one of its enumerated powers of the Constitution, and the U.S. Supreme Court has articulated constraints on Congress’s ability to regulate purely intrastate activities. Thus, whenever Congress creates or modifies tort duties at the federal level, it needs to point to a source of constitutional authority (such as the Commerce Clause) that empowers it to enact the legislation in

question. Additionally, legislation intended to preempt state tort law in a particular context raises questions regarding its preemptive scope. Depending on the circumstances and the way in which Congress drafts legislation preempting state tort law, a federal statute may either displace state law entirely or leave pockets of state law intact.

Other constitutional doctrines may affect the federal government’s ability to enact certain types of tort legislation as well. For example, some federal policymakers have proposed making it easier to pursue defamation lawsuits. However, because defamation claims penalize defendants for the content of their speech, the First Amendment may limit the circumstances in which a plaintiff may constitutionally pursue a defamation cause of action.

One issue over which Congress enjoys a substantial degree of control, however, is whether (and under what conditions) a plaintiff may pursue tort litigation against the United States. Congress has enacted a statute called the Federal Tort Claims Act that governs whether, when, and how a plaintiff may pursue lawsuits against the federal government for torts committed by federal employees.

Congress also possesses significant legislative authority over the procedural rules governing tort litigation in the federal courts. For instance, Federal Rule of Evidence 702 regulates when an expert witness may testify in a federal tort suit. In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the U.S. Supreme Court interpreted Rule 702 to require federal judges to play an active gatekeeping role in scrutinizing experts’ qualifications and methodology before they may testify. Because expert testimony is a critical element of many types of tort cases (such as medical malpractice actions), Congress may modify these evidentiary standards by amending the Federal Rules of Evidence. Similarly, Congress may amend Federal Rule of Civil Procedure 23, which governs whether and under what circumstances a tort lawsuit may proceed as a class action.

CRS Products

CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Kevin M. Lewis

CRS Legal Sidebar LSB10118, *Tort and Litigation Reform in the 115th Congress*, by Kevin M. Lewis

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