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## Introduction to Tort Law

The appropriate scope and content of tort law often provoke 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?

A tort is an act or omission that causes legally cognizable harm to persons or property. Tort law, in turn, 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 instead amputates the right leg, that patient may be able to pursue a tort lawsuit alleging medical malpractice and seeking monetary damages against the surgeon.

With a few significant exceptions, tort law is largely 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 tort law's fundamental principles through case-by-case adjudication. Over time, however, state legislatures and Congress have begun to intervene in the development of tort law by enacting tort law statutes.

### Why Does Tort Law Exist?

Tort law serves at least three purposes. First, it facilitates **compensation** for injuries resulting from wrongful conduct. Second, it can **deter** persons from acting in ways that may produce harm. Third, it can provide a way of **punishing** people who wrongfully injure others.

### Negligence

A common example of a tort entails **negligence**. For example, a motorist who causes a fatal collision by looking at their 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 each of these elements:

- The defendant owed a **duty** to the plaintiff. (Different defendants may owe different duties depending on a case's circumstances. For instance, while 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** a duty owed. (For instance, a defendant may breach their 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 duty **caused** the plaintiff's injury. The plaintiff normally must prove not only that the defendant **actually** caused their injury—that is, that the injury would not have occurred but for the defendant's breach—but also that the defendant **proximately** caused their 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 that they could reasonably anticipate and not those that are unforeseeable or remote.)

In some cases, a defendant may be liable for injuries resulting from a third party's negligence. 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 and carrying out company business, the driver's employer may be liable for any consequent injuries. The employer ordinarily is not liable, however, for torts an employee commits outside the scope of employment.

### Strict Liability and Products Liability

Whereas negligence is chiefly concerned with whether the defendant acted 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, a products liability plaintiff generally only needs to prove

- 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 that a business entity is often in a better economic position to bear

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

## Intentional Torts

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 they 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 is more likely to be held liable for additional damages, such as punitive damages.

Perhaps the most familiar example of an intentional tort is **battery** (i.e., an intentional harmful or offensive contact with another person). For example, someone who purposefully punches an innocent bystander in the face may be liable for the victim's dental bills. Another intentional tort is **intentional infliction of emotional distress (IIED)**, which entails 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. Another intentional tort is **defamation**—making a false spoken or written statement that harms another person's reputation.

## Tort Remedies

A plaintiff who proves that a defendant has committed a tort can potentially recover monetary damages. A successful tort plaintiff can 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 need to pay \$3,000 in compensatory damages to the property owner. Notably, a plaintiff can possibly also recover **noneconomic damages** to compensate them for injuries—such as pain and suffering—that might be harder to quantify. In exceptional circumstances in which a defendant has engaged in particularly egregious behavior, a plaintiff might also recover **punitive damages** (i.e., damages in excess of compensatory damages intended solely to punish the defendant for their conduct). Even so, constitutional and statutory limitations might 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 might implicate federalism principles. For one, Congress can only enact legislation pursuant its powers enumerated in 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 law in question. Additionally,

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

Other constitutional doctrines may also affect the federal government's ability to enact certain types of tort legislation. 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 might limit the circumstances in which a plaintiff can constitutionally pursue a defamation case.

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

Congress also has 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 can testify. Because expert testimony is critical to many types of tort cases (such as medical malpractice lawsuits), 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 in federal court as a class action.

### CRS Products

CRS Report R45732, *The Federal Tort Claims Act (FTCA): A Legal Overview*, by Michael D. Contino and Andreas Kuersten

CRS Report R45323, *Federalism-Based Limitations on Congressional Power: An Overview*, coordinated by Kevin J. Hickey

CRS Report R45825, *Federal Preemption: A Legal Primer*, by Bryan L. Adkins, Alexander H. Pepper, and Jay B. Sykes

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