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Lesson Eight

Tort Law

I. Read the description of Donoghue v Stevenson case below and use the verbs in brackets in the correct Simple Past or Past Participle form.

On the evening of Sunday 26 August 1928 May Donoghue, **née** M'Alister, (1)..... (get) on a tram in Glasgow for the thirty-minute journey to Paisley. At around ten minutes to nine, she and a friend (2)..... (take) their seats in the Wellmeadow Café in the town's Wellmeadow Place. They were (3)..... (approach) by the café owner, Francis Minchella, and Donoghue's friend (4)..... (order) and (5)..... (pay) for a pear and ice and an ice-cream drink. The owner (6)..... (bring) the order and (7)..... (pour) part of a bottle of ginger beer into a glass containing ice cream. Donoghue (8)..... (drink) some of the contents and her friend (9)..... (lift) the bottle to pour the remainder of the ginger beer into the glass. It was (10)..... (claim) that the remains of a snail in a state of decomposition (11)..... (plop) out of the bottle into the glass. Donoghue later (12)..... (complain) of stomach pain and her doctor (13)..... (diagnose) her as having gastroenteritis and being in a state of severe shock.

On 9 April 1929, Donoghue (14)..... (**bring**) **an action against** David Stevenson, an (15)..... (aerate) water manufacturer in Paisley, in which she (16)..... (**claim**) £500 as damages for injuries(17)..... (sustain) by her through drinking ginger beer which had been(18) (manufacture) by the **defendant**. The **case was** ultimately (19)..... (**settle**) out of court.

The above case is one of the most famous cases in the history of tort law. **Tort** law is the name given to a body of law that addresses, and provides **remedies** for, **civil wrongs** not arising out of **contractual obligations**. A person who **suffers legal damages** may be able to use tort law **to receive compensation** from someone who is legally responsible, or "**liable**," for those **injuries**. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may **be held liable** for another's injury. Torts cover **intentional** acts and accidents.

What is Tort Law?

Personal injury lawsuits are regularly filed by individuals or groups who have been injured as a result of another party's **negligence** or **wrongdoing**. These wrongs, which are **civil wrongs** because they fall under the umbrella term of civil law, are called torts. The area of law that covers torts and lawsuits filed for torts is called tort law.

There are three kinds of torts – **intentional**, **negligent** and **strict liability** torts – and your step will be to determine under what category your injury falls. For example, an intentional tort is caused by

someone's clear intention to harm, and creates a much more black and white case than a negligent lawsuit does.

Intentional torts

These torts include intentional wrongs which result in harm. Some intentional torts may also be crimes such as **assault, battery, wrongful death, fraud, conversion** (a euphemism for theft), and **trespass on property** and form the basis for a lawsuit for **damages** by **the injured party**. **Defamation**, including intentionally telling harmful untruths about another, either by print or broadcast (**libel**) or orally (**slander**), is a tort and used to be a crime as well.

II. Fill in the gaps below with the names of some intentional torts:

1.: the situation in which wrongdoer converts the goods to his or her own use and excludes the owner from use and enjoyment of them.
2.: threat of violence against another person
3.: the taking of the life of an individual resulting from the wilful or negligent act of another person or persons.
4.: oral defamation, in which someone tells one or more persons an untruth about another which untruth will harm the reputation of the person defamed.
5.: violence against another person
6.: unlawful entry onto another person's property
7.: published in print (including pictures), written or broadcast through radio, television or film, an untruth about another which will do harm to that person or his/her reputation.
8.: any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held.

Negligence torts

When people perform any acts they have a legal obligation requiring that they **adhere** to a standard of reasonable care that could foreseeably harm others is. This obligation is **the duty of care**. If people fail to use ordinary care they **breach** the duty of care and negligence occurs because:

- somebody does not exercise the amount of care that a reasonably careful person would use under the circumstances; *or*
- somebody does something that a reasonably careful person would not do under the circumstances.

The concept of the **reasonable person** distinguishes negligence from intentional torts such as assault and battery. To prove an intentional tort, the **plaintiff** seeks to establish that the **defendant** deliberately acted to injure the plaintiff. In a negligence suit, however, the plaintiff seeks to establish that the failure of the defendant to act as a reasonable person caused the plaintiff's injury.

III. Read the situation below and try to explain why the driver will be liable for negligence.

A drunk driver accidentally injures a pedestrian.

Strict liability

IV. Read the text and fill in the gaps with the missing prepositions.

Strict liability makes a person responsible (1) the damage and loss caused (2) his acts or **omissions** (3) having to prove negligence. Today strict liability is mostly associated (4) defectively manufactured products.

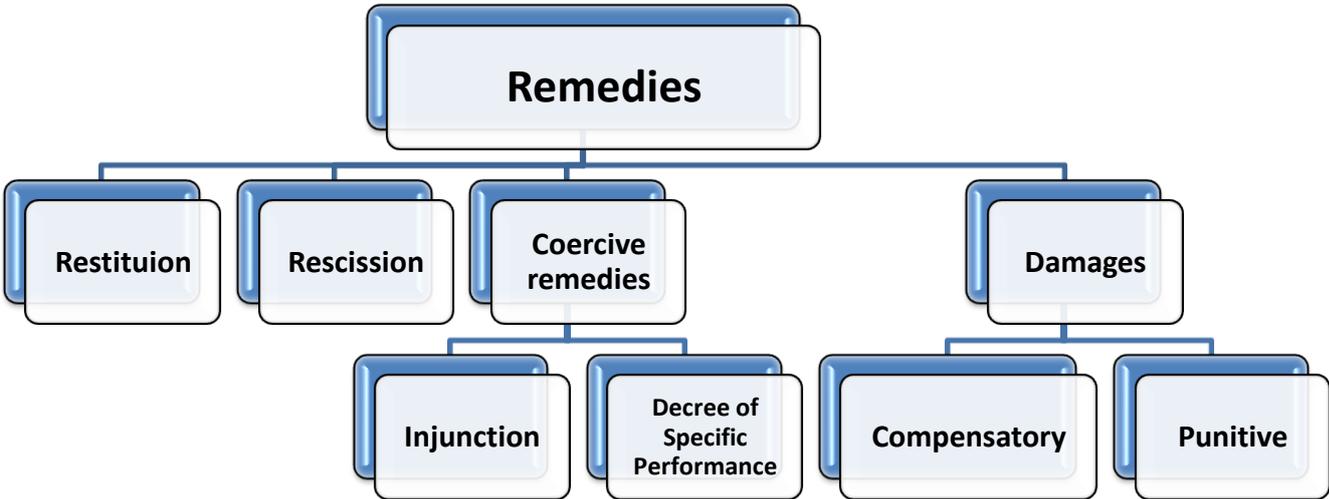
If you've been injured (5) a **faulty or defective product**, or **shoddy** manufacturing, your lawyer will help you file a lawsuit (6) a strict liability tort that will target the manufacturer of the defective product. In this case, your lawyer may even try to contact other victims and **file a class action suit** (7) an irresponsible company. Injured plaintiffs have to prove that the product caused the harm but do not have to prove how the manufacturer was careless.

Remedies

Most any lawsuit filed for a personal injury is going to fall under tort law. In tort cases, the main goal is to collect money, also called **damages**, to recover from lost income, to **account for** pain and suffering, and to **reimburse** any medical expenses that the victim has **incurred** as a result of their injury. In a few personal injury lawsuits, the plaintiffs **seek** something other than money, sometimes **imprisonment** for the defendant, although this is rare.

When an individual suffers some harm or injury which is recognized by society as a wrongful act, the court will **grant remedies** in order to compensate or **redress the damage**.

There are four basic types of judicial remedies:



V. Below you will find the definitions of the above types of remedies. Match them together.

- 1. Orders by the court to force the defendant to do or to stop doing the harm to the plaintiff. The term is _____
- 2. The document in which the court **commands** the defendant to act or to stop doing acting in a certain way. When the defendant **disobeys** he will be **fined** or imprisoned. The term is _____

3. The document which commands the defendant to perform his part of a contract after the breach.

The term is _____

4. A sum of money awarded in civil action by a court to **indemnify** a person for the loss, **detriment** or injury suffered. This sum of money replaces what was lost and nothing more.

The term is _____

5. Monetary compensation awarded to the **injured party** that goes beyond that which is necessary to compensate the individual and that is intended to punish the **wrongdoer**.

The term is _____

6. Monetary compensation that is awarded by a court in a civil action to an individual who has been injured through the wrongful conduct of another party.

The term is _____

7. The measure of damages required to **restore** the plaintiff to the position he or she held before his or her rights were **violated**. It can be **pecuniary recovery** or recovery of property.

The term is _____

8. The **annulment** of a contract restoring the parties to the positions they would have occupied if no contract had ever been formed.

The term is _____

VI. Fill in the gaps below with the correct words listed below:

Remedies can also be divided into:

- a. Legal remedies (remedies at law): (1)..... remedy (2)..... to the (3)..... because they adequately (4)..... him for the loss.

awarded compensate monetary plaintiff

- b. Equitable remedies (remedies in equity): (5)..... when money does not (6)..... complete (7)..... to people who have been (8)..... .

provide relief injured granted

GLOSSARY

to account for = to compensate

to adhere – przestrzegać, trzymać się

annulment - unieważnienie

assault - napaść

battery - pobicie

to be held liable for – być odpowiedzialnym za coś

to breach – zerwać (umowę)

to bring action against sb. – pozwać kogoś

civil wrong – wykroczenie, przestępstwo

to claim £500 as damages for injuries – żądać £500 jako odszkodowania za krzywdy

coercive damages – odszkodowanie represyjne

to command = to order

compensatory damages – odszkodowanie kompensacyjne

contractual obligation – obowiązek wynikający z umowy

conversion – sprzeniewierzenie

damages – odszkodowanie

damage – szkoda, krzywda

decree of specific performance – nakaz spełnienia

określonych obowiązków umownych

defamation - zniesławienie

defective - wadliwy

defendant – pozwany

to disobey – nie przestrzegać

duty of care – obowiązek zachowania ostrożności

faulty - wadliwy

to file a class law suit – złożyć pozew zbiorowy

fine - grzywna

fraud - oszustwo

to grant remedies – przyznać odszkodowanie

imprisonment - uwięzienie

to incur – zaciągać, ponosić

to indemnify – wypłacić odszkodowanie

injunction - nakaz

injured party – strona poszkodowana

injury - krzywda

intentional - celowy

negligent - niedbały

liable for – odpowiedzialny za

libel - zniesławienie
née /nei/ - z domu
negligence - zaniedbanie
omission - zaniedbanie
pecuniary - pieniężny
plaintiff – powód / powódka
punitive damages – odszkodowanie z nawiązką
reasonable person – osoba rozsądna
to receive compensation – otrzymać odszkodowanie
recovery - odzyskanie
to redress damage – zadośćuczynić szkodę
to reimburse – zwrócić koszty
remedies - zadośćuczynienie
rescission - unieważnienie

restitution - zwrot
to restore – przywrócić, odzyskać
to seek damages – domagać się odszkodowania
to settle the case – rozwiązać sprawę
shoddy - tandetny
slander – zniesławienie, pomówienie
strict liability – odpowiedzialność całkowita
to suffer legal damages – ponosić szkody prawne
tort (law) – prawo deliktu
trespass on property – naruszenie praw własności
to violate – łamać (prawo)
wrongdoer - winowajca
wrongdoing – wykroczenie, naganne postępowanie
wrongful death – śmierć w następstwie czynu bezprawnego

Online videos on Tort Law:

<http://studio4learning.tv/business/business-law/basics/tort-law/>

<http://www.videojug.com/interview/tort-law-terms-2>

ANSWERS

I. 1. got; 2. took; 3. approached; 4. ordered; 5. paid; 6. brought; 7. poured; 8. drank; 9. lifted; 10. claimed; 11. plopped; 12. complained; 13. diagnosed; 14. brought; 15. aerated; 16. claimed; 17. sustained; 18. manufactured; 19. settled.

II. 1. Conversion; 2. Assault; 3. Wrongful death; 4. Slander; 5. Battery; 6. Trespass to land; 7. Libel; 8. Defamation.

III. The driver may not have intended to cause the pedestrian's injury. But because a reasonable person would not drive while drunk because it creates an unreasonable risk of harm to pedestrians and other drivers, a drunk driver may be held liable to an injured plaintiff for negligence despite his lack of intent to injure the plaintiff.

IV. 1. for; 2. by; 3. without; 4. with; 5. by; 6. for; 7. Against

V. 1. Coercive remedies; 2. Injunction; 3. Decree of specific performance; 4. Compensatory damages; 5. Punitive damages; 6. Damages; 7. Restitution; 8. Rescission.

VI. 1. monetary; 2. awarded; 3. plaintiff; 4. compensate; 5. granted; 6. provide; 7. relief; 8. injured.