

## **Lesson 10: Tort Law**

### **Script:**

Tort law, just like criminal law, is an area of law that receives a lot of media coverage and public discussion because of often unusual facts situations, interesting court decisions and its wider societal implications.

So, first of all what is a tort. It is, simply put, a **civil wrong** that results in harm or damage to a person or to property. **Harm** and **damage** essentially mean the same thing although in many situations harm usually affects people and damage affects property. The person who suffers harm or damage to property is the **injured party** while the one who causes such harm or damage is the tortfeasor. To simplify the **tortfeasor** is simply the person who commits a tort.

When someone or something is harmed or damaged it requires a **remedy**. Remedy is basically some sort of a compensation most often in the form of damages. As we have seen before, there can be different types of damages such as compensatory damages or punitive damages which are usually the two most common types of damages that are **awarded** by courts in civil cases.

**Compensatory damages**, as the name suggests, compensate the injured party, for the harm suffered at the hands of a tortfeasor. This is in fact the very purpose of tort law, to compensate the injured party. Under compensatory damages, the injured party may also be entitled to compensation for **loss of earnings**; **pain and suffering** also known as **emotional distress**; medical expenses incurred as a result of the injury and others.

**Punitive damages**, on the other hand, are meant to punish the wrongdoer, especially in cases where their conduct was reprehensible and should serve as a deterrent to others not to engage in similar conduct.

Tort law is based on the principle of **duty of care** that we all owe to each other. This means to engage in conduct that would not, in normal circumstances, cause harm or damage to others and their property. In tort law, therefore, we are **liable** (meaning responsible) for actions or omissions that could **foreseeably** cause harm or damage to persons and their property. If we are not careful enough, and we cause for example an accident, this means that we are being negligent. **Negligence** is in fact the most common ground for claimants to bring actions in tort.

As we explained in the previous module, in tort law we talk about **claimants** and **defendants or respondents**. The claimant files or brings a **civil action** against the defendant. In many TV shows and movies, to simplify the terminology, you would simply hear of a claimant **suing** a defendant. When the court agrees with the claimant's action or lawsuit it grants **an order** awarding damages to him or her. As we have also previously discussed, the standard of proof in these cases is lower than a criminal cases as it is that of **balance of probabilities** meaning just greater than 50%.

In addition to negligence there are also other types of common torts, such as **trespass** to someone's property; **defamation** (which sometimes is further broken into slander and libel; **slander** being a spoken statement while **libel** being in written form, for example in a newspaper

or a book); **Medical malpractice** (meaning any wrong committed by a medical professional) as well as torts related to defective consumer products that harm the public.

In any tort case what the court will be looking for is a clear **chain of causation** meaning that there is a direct link between the action of the tortfeasor and the harm or damage suffered by the injured party. If the harm suffered was not reasonably foreseeable then it will be described as **remote damage** for which no remedy is usually available.

In common law countries there have been many tort cases that received a lot of media attention due to the unusual fact patterns and their outcomes in Court. One of such cases is the famous McDonalds Hot Coffee case where an elderly woman who spilled hot coffee on her legs was awarded substantial damages from the court for the injuries that she suffered. Now, while many argue that these types of cases are **frivolous** meaning they have no legal **merit**, in the common law tradition and especially given the purpose of tort law meaning to compensate the injured party, these types of cases are quite legitimate, and the courts do consider the **contributory negligence** (meaning the personal responsibility for what happened on the part of the injured party) when deciding on the amount of damages to be awarded.