

Chapter 01: Overview of Tort Law

True / False

1. Under all circumstances, those who create risks should bear the burden of injuries they create rather than those who fall prey to such injury.

- a. True
- b. False

ANSWER: False

2. A tort is a civil wrong in which a victim is compensated in the form of damages for the injuries they suffer.

- a. True
- b. False

ANSWER: True

3. Whether conduct is reasonable is sometimes difficult to determine.

- a. True
- b. False

ANSWER: True

4. The ideas of justice, fairness, and equality are the cornerstones of public policy concerns.

- a. True
- b. False

ANSWER: True

5. Understanding public policy is essential to tort law.

- a. True
- b. False

ANSWER: True

6. “Slippery slope” arguments reflect administrative concerns of courts.

- a. True
- b. False

ANSWER: True

7. Issues of personal and public morality cannot be taken into consideration in tort law.

- a. True
- b. False

ANSWER: False

8. If there is a statute that exists for a case, the judge is mandated to follow it.

- a. True
- b. False

ANSWER: True

9. The *Restatement* is a set of guidelines created by the courts.

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- a. True
- b. False

ANSWER: False

10. The Restatement has been adopted in all states.

- a. True
- b. False

ANSWER: False

11. A tort is considered an offense against society.

- a. True
- b. False

ANSWER: False

12. The purpose of suing under tort law is to punish the offender.

- a. True
- b. False

ANSWER: False

13. There is no overlap between tort law and criminal law.

- a. True
- b. False

ANSWER: False

14. The plaintiff in a tort case has the burden of proving their case by a preponderance of the evidence.

- a. True
- b. False

ANSWER: True

15. Some actions can result in a criminal offense as well as a tort offense.

- a. True
- b. False

ANSWER: True

16. In tort law, duties are imposed by law rather than by being voluntarily assumed or consented to by the parties.

- a. True
- b. False

ANSWER: True

17. In a tort action, the remedy is to compensate the prevailing party with the benefit of the bargain.

- a. True
- b. False

ANSWER: False

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18. The primary goal of the blood feud in early societies was compensation for the victim.

- a. True
- b. False

ANSWER: False

19. An action in trespass requires a showing of fault on the part of the defendant while a trespass on the case does not.

- a. True
- b. False

ANSWER: False

20. A plaintiff in a trespass on-the-case action must show injury and damage.

- a. True
- b. False

ANSWER: True

21. A rise in negligence cases led to the disintegration of actions in trespass and trespass on the case actions.

- a. True
- b. False

ANSWER: True

Completion

22. _____ is a tort in which no fault or intent must be shown.

ANSWER: Strict liability

23. The burden of proof for a tort is preponderance of evidence while the burden of proof for a crime must be proven _____.

ANSWER: beyond a reasonable doubt

24. In tort law, it is the _____ interest that has been violated, while in criminal law, it is _____ interest that has been violated.

ANSWER: individual's, society's

25. Tort law looks to the _____ to determine if an action is universally regarded as right or wrong.

ANSWER: public morality

26. _____ means that the use of an argument in one case can lead to the same argument in numerous other cases with no end in sight.

ANSWER: Slippery slope argument

27. The _____ is frequently cited and used to guide persons through the maze of tort law decisions.

ANSWER: Restatement of Torts

28. The primary purpose of criminal law is _____ while the primary purpose of tort law is _____.

ANSWER: punishment, compensation

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29. A plea of _____ by a defendant precludes any guilt from being used against them in a civil trial.

ANSWER: nolo contendere

30. In barbaric societies, the process used to remedy a wrong suffered by a member of the clan was by means of a(n) _____.

ANSWER: blood feud

31. A(n) _____ requires proof that the defendant used force directly on the plaintiff or the plaintiff's property, while a(n) _____ requires no showing of force and can be sustained even where an injury was inflicted indirectly.

ANSWER: action in trespass, trespass on the case

32. _____ arose as a cause of action as more traffic-related cases came before the courts.

ANSWER: Negligence

Subjective Short Answer

33. What is one argument regarding the allocation of risks in reference to tort law?

ANSWER: Advocates of expanded tort liability see tort law as the knight in shining armor, duly anointed to protect the interests of the consumer. In their perception, manufacturers and those who deliver services are better able than consumers to predict and prevent injuries from the use of their products and services. The burden of injury, they reason, should be borne by those who create risks rather than by those who fall prey to them. The philosophical and political debates on the issue of risk allocation have gained new significance in one of the most recent developments in tort law—product liability.

34. Give a counterargument to the argument you presented in question #1.

ANSWER: Others argue that we have become too paternalistic in our efforts to protect individuals and that we should allow people to bear the consequences of their decisions. After all, they point out, the process of living comes with no guarantees and the assurance of safety is too high a price to pay for freedom. In addition to this philosophical concern, there is reluctance to burden a defendant, particularly an industry, with all losses, for fear of financial ruin.

35. How does the “slippery slope” argument affect decisions made by the courts?

ANSWER: Perhaps you have heard of the slippery-slope argument, which means, essentially, that use of an argument in one case will allow application of that same argument in innumerable other cases. The metaphor is used to show that once you take the first step, it is too easy to fall down the slippery slope to the bottom of the hill, presumably into a morass of undesirable outcomes. The slippery-slope argument is, in essence, an administrative concern. A court fears that if it finds negligence on behalf of the sympathetic plaintiff before it, hundreds of thousands of similarly situated individuals or those whose situations are analogous to the case will also seek redress. The precedential effect of arguments regarding physician-assisted suicide, racial composition of juries, and the use of marijuana for medical purposes are among the many slippery-slope issues considered by the courts.

36. Name two differences between torts and crimes.

ANSWER: TORTS/CRIMES

PURPOSE: Compensation/Punishment

STANDARD OF PROOF: Preponderance of Evidence/Beyond a Reasonable Doubt

INTERESTS VIOLATED: Individual's Interest/Society's Interest

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PROCEDURAL RULES: Civil Rules/Criminal Rules

The primary purpose of criminal law is punishment and the primary purpose of tort law is compensation..

37. What is one difference between contract law and tort law?

ANSWER: CONTRACT/LAW TORT LAW

DUTIES ASSIGNED: By Parties' Consent/Imposed by Law

OBLIGATIONS MADE TO: Specific Individuals/Society in General

In a contract action, the parties have voluntarily and knowingly assumed duties or obligations to others. In tort law, duties are imposed by the law without any express consent or awareness of those involved. The remedy in a contract action is to compensate the prevailing party and provide them what they expected under the contract. Under tort law, the remedy is broader and can include monetary damages for pain and suffering, economic damages, and punitive damages.

38. What are two differences between an action in trespass and a trespass on the case?

ANSWER: Action in trespass/Trespass on the case (wrongful intent or negligence)

(No fault)/No force or indirect injury)

(*Vi et armis*)/Negligence (fault required)

(Direct use of force)/Strict liability (no fault)

Action in trespass required plaintiff alleging that the defendant has used force directly on their person or property. No other showing of fault was required. Trespass on the case allowed recovery in the absence of force or where an injury was inflicted indirectly. Trespass on the case required proof of the defendant's wrongful intent or negligence.

39. In what sense have we come full circle in tort law in terms of assigning fault?

ANSWER: Strict liability (no fault) reigned supreme during early Anglo-Saxon law and was evident in the action in trespass. Only in actions on the case did the notion of duty and neglect arise. Now, at the beginning of the twenty-first century, strict liability has once again assumed importance in our legal system. More and more modern courts are assigning liability even where there is no showing of fault. The idea behind strict liability being that it would not be fair to require an injured consumer to have to prove every element of their injuries in order for a manufacturer to be liable.

40. Describe how the interests of society or the public policy concerns affect tort law.

ANSWER: Tort law often goes beyond compensating individuals and considers the interests and goals of society at large and the community in which we live. These public policy concerns dictate the norms of the community or the public based on its beliefs and values regarding justice, fairness, and equality. All laws, including tort law, are based in part on the public policy of the society and/or community. Finding the public policy of a law often means looking at the rationale or reason for the law. Understanding public policy is essential to understanding tort law.