

LexisNexis® Reference Card: Torts Law



Extracted from:

[Halsbury's® Laws of Canada – Torts \(2012 Reissue\)](#)

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[Halsbury's® Laws of Canada – Negligence \(2012 Reissue\)](#)

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▼HTO-1▼ **Nature of tort law.** The law of torts hovers over virtually every activity of modern society. The driver of every automobile on our highways, the pilot of every aeroplane in the sky, and the captain of every ship plying our waters must abide by the standards of tort law. The producers, distributors and repairers of every product, from food to machinery, must conform to tort law's counsel of caution. No profession is beyond its reach: a doctor cannot raise a scalpel, a lawyer cannot advise a client, nor can an architect design a building without being subject to potential tort liability. In the same way, teachers, government officials, police, and even jailers may be required to pay damages if someone is hurt as a result of their conduct. A blogger booting up a computer must take care. Those who engage in sports, such as golfers, hockey-players, and snowmobilers, may end up as parties to a tort action. The territory of tort law encompasses losses resulting from fires, floods, explosions, electricity, gas, terrorism, and many other catastrophes that may occur in this increasingly complex world. A person who punches another person on the nose may have to answer for it not only in a criminal case but also in the civil courts. A person who says nasty things about another may be sued for defamation. Hence, any one of us may become a plaintiff or a defendant in a tort action at any moment. Tort law, therefore, is a subject of abiding concern not only to the judges and lawyers who must administer it but also to the public at large, whose every move is regulated by it.

Definition. Although it is relatively easy to point to the activities within the compass of tort law, it is not so simple to offer a satisfactory definition of a tort. The term itself is a derivation of the Latin word, *tortus*, which means twisted or crooked. The expression found its way into the early English language as a synonym for the word "wrong". It is no longer used in everyday language, but it has survived as a technical legal term to this day! Many authors have striven to define tort law and to mark it off from criminal law, contract law and quasi-contract law, but none of them has been entirely successful. Perhaps the best working definition so far produced is a civil wrong, other than a breach of contract, which the law will redress by an award of damages.² But even this formulation does not tell us very much. It merely asserts that a tort consists of conduct for which the courts will order compensation, which is almost as circular as saying that a tort is a tort. A tort is a legal construct which only exists where the law says it exists.³

Notes

1. *Lawson v. Wellesley Hospital*, [1975] O.J. No. 2443, 9 O.R. (2d) 677 at 681, per Dubin J.A. (Ont. C.A.), aff'd on another point [1977] S.C.J. No. 83, [1978] 1 S.C.R. 893 (S.C.C.).
2. Fleming, *The Law of Torts*, 10th ed. (North Ryde, N.S.W.: LBC Information Services, 2011), at 1; *Prosser and Keeton on the Law of Torts*, 5th ed. (St. Paul, Minn.: West Pub Co., 1984), at 1-2, reproduces several definitions; Williams and Hople, *Foundations of the Law of Torts* (London: Butterworths, 1976); for an excellent treatise on the Québec law, see Baudouin, *La Responsabilité Civile*, 6th ed. (Cowansville, Qué.: Yvon Blais, 2003); see Dobbs, *The Law of Torts* (St. Paul, Minn.: West Group, 2000), at 1.
3. *Angus v. Hart*, [1988] S.C.J. No. 75, 52 D.L.R. (4th) 193 at 199, per La Forest J. (S.C.C.). See also Cory J.'s definition of a tort in *Hall v. Hebert*, [1993] S.C.J. No. 51, 15 C.C.L.T. (2d) 93 at 118 (S.C.C.). One case has emphasized that an essential element of a tort is damage: without damage there is no tort and an action cannot proceed. "Damage" includes damage to chattels, personal injury and economic loss. It is an error for a court to equate "damage" with "damages", erroneously requiring the latter before it considered that the plaintiffs might have evidence that, if believed, could support a finding that the defendant has committed a tort; *Brown v. Douglas*, [2011] B.C.J. No. 242; 2011 BCCA 521 (B.C.C.A.).

▼HNE-1▼ **Meaning of negligence.** The word "negligence" has two meanings, one restricted and one broad. In its narrow sense, it refers to *conduct* which falls below the standard required by society. In this context, negligence connotes more than a mere state of mind. It refers to an evaluation of a particular course of action, one element of which is the state of mind of the actor. The second and wider meaning of negligence makes reference to a *cause of action for negligence*. Negligence in the first sense is only one fragment of this expanded meaning of negligence.

Objectives. The purposes of negligence law are manifold! One of its prime functions is the provision of compensation for accident victims. But this is not its only goal. If it were, compensation would be furnished to every accident victim, regardless of fault. Negligence law does not aim to compensate everyone – only those whose injuries result from someone else's faulty conduct. The second objective of negligence law – deterrence – seeks to reduce the frequency of accidents. By making only negligent actors liable to pay for the losses they cause, negligence law encourages people to exert themselves to behave carefully in order to avoid liability. It also confers on individuals the right to civil redress, that is, the power to hold each other accountable for their wrongful conduct.² Negligence law, like all law, is an educator and a reinforcer of values. Such laudable values as individual responsibility, concern for one's fellow human beings, and respect for the dignity of the individual are embedded in the principles of negligence law. Certain psychological functions are also served by negligence law, which furnishes a peaceful substitute to those who might indulge in more violent forms of retribution in its absence. In addition, negligence law produces some market deterrence by making accident-prone activities more expensive and therefore less attractive than other safer, less expensive alternatives. Negligence law may also serve society as an ombudsman, focussing attention on abuses of power by industry, the professions, and government agencies.

Significance. Negligence is the most important field of tort liability today, for it regulates most activities in modern society. Wherever anyone is accidentally injured, negligence law may be called in to determine whether there will be compensation. Consequently, negligence law is a vibrant and dynamic instrument.³ It has to be if it is to survive. As soon as some new type of activity emerges, it is accommodated within the general framework of negligence principles. Because of this, it has been said that "the categories of negligence are never closed".⁴ This may be merely the instinct for self-preservation at work, for if negligence law abandoned its fluidity, it would probably wither away. In order to serve the community, the law of negligence, like all law in a free society, must be attuned to the popular will. It may adapt only slowly to new conditions, but it does and must move.

Notes

1. See *Halsbury's Laws of Canada: Torts*, Chapter 1 ("Introduction").
2. See John Goldberg and Benjamin Zipursky, "The Easy Case for Product Liability" (2010) 123 *Harv. L. Rev.* 1919 at 1947.

3. See, generally, M.A. Millner, *Negligence in Modern Law* (1967); J.C. Smith, *Liability in Negligence* (Toronto: Carswell, 1984).
4. See *Donoghue v. Stevenson*, [1932] All E.R. Rep. 1, [1932] A.C. 562 at 619, per Lord Macmillan.

Supplemental Readings

Torts Law

[*Introduction to the Canadian Law of Torts, 3rd Edition*](#) (Fridman)

[*Canadian Tort Law – Cases, Notes & Materials, 14th Edition*](#) (Linden, Klar and Feldthusen)

[*Canadian Tort Law, 9th Edition, Student Edition*](#) (Linden and Feldthusen)

General

[*Legal Problem Solving – Reasoning, Research & Writing, 6th Edition and The Ultimate Guide to Canadian Legal Research*](#) (Fitzgerald)

[*Legal Writing and Research Manual, 7th Edition, Student Edition*](#) (Whitehead and Matthewman)

[*Understanding Lawyers' Ethics in Canada*](#) (Woolley)

[*Lawyers' Ethics and Professional Regulation, 2nd Edition*](#) (Woolley, Cotter, Devlin and Law)