

U.S Tort Law: Basic Elements and Modern Applications

This **intensive short course** will introduce students to the legal evolution and the current legal position of tort law, one of the richest bodies of substantive law, in the United States. Students will have the opportunity to examine the **processes of legal method and legal reasoning**, with an eye to understanding the evolution of legal rules, and the huge impact that these changes have had on our social institutions. Students will also gain some sense of the different systematic and intellectual approaches to the study of torts over the years. The diversity of opinion on the proper approach to tort law carries over to disputes about the proper substantive basis of tort liability. From the earliest times until today courts have entertained **two main theories**—each subject to many variants—for recovery in tort. First, there is recovery for harms negligently inflicted, that is, through the lack of reasonable or ordinary care. Second, there is recovery under a theory of strict liability, that is, for harms inflicted on the plaintiff by a defendant who acts without negligence and without any intention to harm.

The topics and **course materials** (cases and article excerpts) I have selected will allow us to confront tort law not only as a collection of discrete rules but also a systematic intellectual discipline. Looking at the tort law system as a system of social control, advocates of the economic approach to tort law have generally argued that the proper function of the tort law is to set feasible liability rules that create incentives for both individuals and firms to minimize the costs of accidents, the costs of their prevention, and the administrative costs of running the legal system. In this view of the subject, the compensation of individual parties is not an end in itself, but only a means to enlist private parties to help police the harmful activities of others. Tort law is thus understood as part of a complex system that necessarily interacts with legislative and administrative regulation, and contractual and customary limitations on proper conduct.

Part I begins with a detailed analysis of the **negligence principle**, which addresses the different interpretations that can be attached to the idea of unreasonable conduct and the role of custom, as well as the two major issues of causation, cause-in-fact and proximate cause.

Part II addresses **strict liability** with a focus on abnormally dangerous activities and the special issue of vicarious liability.

Part III examines modern applications of **products liability** in dealing with design defect and failure to warn. It also addresses the ever more important question of whether and when federal regulation displaces the rights of action in duty to warn and design defect cases, which has been the subject of intense litigation in the U.S. Supreme Court in recent years.

Part IV completes the exposition of the elements of the basic tort with an analysis of the rules governing **damages**, both compensatory and punitive.