How Do Crimes and Torts Differ?

A crime is an offense against society. It is a public wrong.
A tort is a private or civil wrong. It is an offense against an individual. If someone commits a tort, the person injured can sue and obtain a judgment for damages.

An act can be both a crime and a tort. Example—reckless driving resulting in an accident

Elements of a Tort

There are many specific torts, but there are certain elements that are common to all of them.

1. Duty (a legal obligation to do or not to do something)
2. Breach (a violation of the duty)
3. Injury (a harm that is recognized by the law)
4. Causation (proof that the breach of duty caused the injury)

Duty

The following are the duties created by tort law.
1. The duty not to injure another (bodily injury, injury to one’s reputation, invasion of one’s privacy)
2. The duty not to interfere with the property rights of others, for example, by trespassing on their land
3. The duty not to interfere with the economic rights of others, such as the right to contract

Violation of the Duty

Whether a breach of duty occurred is almost always a question of fact for a jury to decide. Some torts require intent (intentional torts) and some torts do not require intent (negligence).

Injury

Injury must be proved. If someone is acting recklessly, but no one is injured, than there is no tort.

Causation

There must be proof that violating the duty is what caused the injury. Proximate cause—exists when it is reasonably foreseeable that a breach of duty will result in an injury.
On a windy autumn day, Mason was burning fry leaves in his backyard. When he went inside to answer a telephone call, flames from the fire leaped to the next door neighbor’s fence and then to a tool shed where a small can of gasoline exploded. Soon the neighbor’s house was ablaze, and it burned to the ground.

*Did Mason commit a tort?*

1.) **Duty** he owed a duty to the neighbors not to injure their property

2.) **Violation** he breached the duty when he left the fire unattended so it spread to the neighbor’s property

3.) **Injury** the injury occurred when the neighbor’s house was burned

4.) **Causation** leaving the fire unattended was a proximate cause of the loss of the fence

**Responsibility for Another’s Torts**

With few exceptions, all persons, including minors, are liable for their conduct and are therefore liable for their torts.

Children and insane persons may be held liable for injuring others.

When one person is liable for the torts of another it is called **vicarious liability**.

For example, parents may be held liable if they give their children guns or other dangerous materials without proper instruction.
What are the most common intentional torts?
Intentional torts are torts in which the defendant possessed the intent or purpose to inflict the resultant injury.

<table>
<thead>
<tr>
<th>Tort</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>occurs when one person intentionally puts another in reasonable fear of an offensive or harmful bodily contact</td>
</tr>
<tr>
<td>Battery</td>
<td>harmful or offensive touching, includes pushing, punching, spitting, or shooting</td>
</tr>
<tr>
<td>False imprisonment</td>
<td>the intentional confinement of a person against the person’s will and without lawful privilege handheld, locked in a room or car</td>
</tr>
<tr>
<td>Defamation</td>
<td>false statements that injure a person’s reputation or good name</td>
</tr>
<tr>
<td></td>
<td>slander—spoken defamation</td>
</tr>
<tr>
<td></td>
<td>libel- written or printed defamation</td>
</tr>
<tr>
<td></td>
<td>To be defamatory the statement must be:</td>
</tr>
<tr>
<td></td>
<td>o False</td>
</tr>
<tr>
<td></td>
<td>o Communicated to a 3rd party</td>
</tr>
<tr>
<td></td>
<td>o The victim’s reputation is ruined or he/she faces ridicule</td>
</tr>
<tr>
<td>Invasion of privacy</td>
<td>Uninvited intrusion into an individual’s personal relationships and activities</td>
</tr>
<tr>
<td>Trespass to land</td>
<td>Entry onto the property of another without the owner’s consent</td>
</tr>
<tr>
<td>Conversion</td>
<td>When property is stolen, destroyed, or used in a manner inconsistent with the owner’s right</td>
</tr>
<tr>
<td>Interference with contractual relations</td>
<td>Encouraging someone to breach a contract</td>
</tr>
<tr>
<td>Fraud</td>
<td>Intentional misrepresentation of an existing important fact</td>
</tr>
</tbody>
</table>
What is Negligence?

- Negligence is the most common tort.
- Intent is not required for negligence.
- Like other torts, it involves the elements of duty, breach of duty, causation, and injury.

The Duty in Negligence

The general duty imposed by negligence law is the **reasonable-man standard**.

*reasonable-man standard*—requires that we act with the care and good judgment of a reasonable person as not to cause injury to others.

Children under the age of 7 are incapable of negligence.

Professionals and skilled tradespersons are held to a higher degree of care in their work.

The Breach of Duty in Negligence

The defendant’s conduct is compared to the reasonable-man standard to see if a violation of the duty occurred.

Causation and Injury in Negligence

The violation of the duty must be the cause of injury.

Defenses to Negligence

*Contributory negligence*—defendant may not have to pay, his negligence may only have been part of the problem (some states)

*Comparative negligence*—applies when a plaintiff is partially at fault therefore the defendants payment will be reduced (most states)

*Assumption of the risk*—if plaintiff's are aware of the danger, but decide to subject themselves to the risk anyway  Ex.—walking on a wet floor when there is a warning sign.

Strict Liability

Liability that exists even though the defendant was not negligent.
- Engaging in dangerous activities—storing flammable liquids
- Owning animals—having a dog bite someone
- Sale of goods that are dangerous
Remedies Available in a Civil Suit
Two types of remedies are available to civil lawsuits—injunctions and damages.

- An **injunction** is a court order for a person to do or not to do a particular act.
- **Damages** are a monetary award to the injured party. The purpose of the award is to place the injured party in the same financial position as if the injury had not occurred. Referred to as **compensatory damages**. Amount usually determined by a jury.

Lawyers at times handle a civil lawsuit for a percentage of recovery. This is referred to as taking the case on a contingency fee basis.

What Procedure is Used to Try a Civil Case?

<table>
<thead>
<tr>
<th>The Sequence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Judge or Jury</td>
</tr>
<tr>
<td>• Opening Statements and Testimony</td>
</tr>
<tr>
<td>• Closing Arguments and Instructions to the Jury</td>
</tr>
<tr>
<td>• Jury Deliberation and the Verdict</td>
</tr>
</tbody>
</table>

- Civil juries are made up of 6 to 12 citizens who listen to witnesses, review physical evidence and reach their decision. In most states, jury decisions in civil trials do **not** have to be unanimous.

**Opening Statements and Testimony**
- Opening statements will outline what the plaintiff and defendant will try to prove.

- Evidence is then presented by the plaintiff first and then by the defendant. Evidence may consist of written documents, records, charts, sobriety test results, photographs of skid marks, and anything else the judge allows to be presented.

- Testimony consists of statements made by witnesses under oath. A witness is someone who has personal knowledge of the facts. Expert witnesses possess superior knowledge of important facts.

- Witnesses are summoned to court by a subpoena. You must appear in court if you receive a subpoena or you can face contempt of court.

**Closing Arguments and the Instructions to the Jury**
- Each attorney will summarize the court and try to persuade the judge/jury.
• The judge will then give instructions to the jury---he will tell them the rules of law that apply and the issues of fact they must decide.

**Jury Deliberation and the Verdict**
• In a civil action, a unanimous vote is not required. The jury’s decision is called the verdict. The judgment is the final result of the trial.

**How are Civil Damages Collected?**
When the civil judgment becomes final, the defendant will pay the judgment. If the defendant does not pay, the plaintiff may obtain a writ of execution. The court will order that the defendant’s property be seized or sold. The proceeds will be used to pay the judgment.