

# Oklahoma Tort Claims Act

Overview

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# What is a Tort?

- The name itself lends nothing to understanding what they are about, but they do mean a lot to everything that happens in our lives.
- Most people probably never heard of the word “Tort”, and if they do hear it, they probably think its some kind of pastry.
- Tort law is a branch of civil law that is concerned with civil wrongs, but not contract actions.
- A tort is best defined as a civil wrong which the victim seeks remedy for, in the form of some kind of damages.
- Tort law imposes the duty to act with caution when it is possible to injure another or cause injury to another’s property. This law requires all people to act reasonably when conducting our lives.

# Tort Explained

Some torts are also criminal acts that can be prosecuted by the state. The essential difference between a tort and a crime is that a tort involves a legal dispute between individual citizens and a crime involves the prosecution by the state of a person that has broken a law.

A classic example is the OJ Simpson case in which OJ was found not guilty in the criminal courts but was found liable in the civil courts. The result being that OJ didn't end up going to jail but he did end up owing millions of dollars in damages.

# Burdens of Proof

This raises the obvious question of how can an award of damages be made on similar if not identical evidence on which a not guilty verdict was granted?

The answer lies in the burden of proof that exists in the relevant situations.

- In the civil courts the burden of proof is the balance of probabilities (preponderance of the evidence). Essentially the judge or jury weighs the evidence and if the scales tip towards the Plaintiff (the person making the claim) then damages are awarded.
- In the criminal courts, the burden of proof is guilt beyond a reasonable doubt. Therefore the judge or jury must decide that on the evidence there is no reasonable alternative than that the accused committed the crime in question.

# Types of Torts

**Torts are intentional, negligent, or strict liability.**

# Intentional Tort

- Intentional torts (as the title suggests) involve the intentional acts of the Defendant in bringing some harm to the Plaintiff.
- These torts include battery, assault, trespass, false imprisonment, defamation and nuisance.
- Since these torts require the intent of the Defendant for the act, the questions of volition and cognition both need to be addressed. In short, the Defendant has to have known what he/she was doing and has to have intended the action, *but not necessarily the results of the action.*

# Negligence - Background

**Negligence** was not always recognized as an actionable tort. For policy reasons it was long considered too broad and problematic to hold members of society legally liable for the unintended results of their reckless behavior. However, the 20th century saw the universal emergence and development of negligence law in common law jurisdictions worldwide as courts were able to develop legal mechanisms for holding people accountable for their negligent acts.

# Negligence

**Is the failure to use reasonable care.** The doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do under like circumstances.

Negligence is a 'legal cause' of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so it can reasonably be said that if not for the negligence, the loss, injury or damage would not have occurred.

Negligence may be a legal cause of damage even though it operates in combination with the act of another, a natural cause, or some other cause if the other cause occurs at the same time as the negligence and if the negligence contributes substantially to producing such damage.

*Example: Automobile accidents are one of the most common types of negligence tort. When a person drives, they are responsible to operate the vehicle in a safe manner. Failure to use proper or reasonable care in the operation of that vehicle is a breach of duty, and if it caused injury to another, it is a tort.*

# Strict Liability

The doctrine of strict liability imposes legal responsibility for injuries sustained by or as a result of an actor's conduct, whether or not the actor used reasonable care and regardless of the actor's state of mind. Strict liability cases are limited to certain narrowly-defined areas of the law, including the following:

- Products Liability - Products liability suits are probably the most familiar strict liability cases. These include claims for injuries resulting from the defective design or manufacture of consumer products. A plaintiff need not show that the manufacturer was negligent in designing or manufacturing the product; a successful plaintiff need only show that the product was in fact defective in design or manufacture, rendering it unreasonably dangerous and the cause of injury.
- Ultrahazardous Activities - Strict liability is also imposed upon persons engaged in ultrahazardous activities, such as blasting, oil drilling, dams, and other dangerous but beneficial enterprises. If the quarry next door causes damage to your building due to blasting, you need not show they were careless to prevail in a lawsuit.
- Care of Animals - In most states, owners of wild animals are typically held strictly liable for any injury or damage caused by such animals whether or not the animal in question is known to be dangerous. Because such animals are known to revert to their natural tendencies, they are considered to be wild no matter how well trained or domesticated. (Oklahoma and farm animals vs. most states)
- Certain Statutory Offenses - Another category of strict liability includes certain statutory offenses for which state of mind and exercise of due care are irrelevant. Something as simple as a speeding violation in your car is a strict liability offense. The Commonwealth need only show that you were going faster than the speed limit; your reasons for doing so and whether you were doing so carefully are not relevant.

# Strict Liability

The philosophy behind imposition of strict liability is utilitarian: Society has made a determination that it is better to hold persons responsible for certain actions even without a showing of negligence because the benefits derived (such as safety, improved products, accountability, etc.) outweigh the burden placed upon the defendant in a strict liability lawsuit. Especially in the area of consumer product development, strict liability laws have fostered meaningful safety developments which have prevented countless deaths and injuries. Strict liability is not without its cost, however, and the price of consumer goods surely reflects this cost-shifting mechanism.

# Damages

Damages is money awards.

Two types of damages may be recovered in a civil tort suit:

- Compensatory Damages - are awarded to cover the actual monetary loss suffered by the plaintiff, to make them whole. Usually paying to repair or restore property damages. If the damages occurred were personal, then compensatory damages would also cover medical bills, lost wages, pain and suffering and cover an estimated loss of future earnings.
- Punitive Damages are often awarded where compensatory damages are deemed an inadequate remedy. Punitive damages are intended to punish, reform, or deter the defendant and similar persons from pursuing a course of action such as that which damaged the plaintiff.

# Damages

- The calculation of damages is complicated since you are placing money amounts to harm which can seem somewhat arbitrary particularly in the area of torts where there is no written agreement as to the conduct between the parties.
- A Plaintiff will obviously estimate their losses at a different level than a Defendant and judges and juries are left to analyze medical reports, actuarial figures, and past judgments in similar circumstances to determine what a fair amount would be.
- However, in the end there is no way to make the analysis of damages fully objective and awards invariably depend on the ability of counsel to get their client's position across and the temperament of the decision maker.

# Theories of Defense

- Legal Defenses – These are defenses provided by the rules of procedure, e.g., improper service of process, statute of limitations...
- Factual Defenses – These are defenses provided by the evidence, e.g., the damages were not the result of the acting parties work...
- Sovereign Immunity – This is the doctrine that holds that the government cannot be sued and held liable for its actions, civil or criminal; hence the saying, *the king can do no wrong*.
  - In many cases, governments have waived this immunity to allow for suits

# Oklahoma Governmental Tort Claims Act – Sovereign Immunity

Oklahoma established by law “The Governmental Tort Claims Act”

- The Act declares that Oklahoma adopts the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts.

# Oklahoma Governmental Tort Claims Act - Exception

The state, only to the extent and in the manner provided in this act, waives its immunity and that of its political subdivisions.

*In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution.*

# Oklahoma Governmental Tort Claims Act - Liability

- The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to this act and only where the state or political subdivision would be liable for money damages under the laws of this state.
- The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of employment.
- The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state.

# Tort Defined Under the Act

Tort means a legal wrong, independent of contract, involving violation of a duty imposed by general law, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

# Conservation Districts

Are defined as political subdivisions

# Employee

Means any person who is authorized to act in behalf of a political subdivision whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis.

- Includes all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor

# Scope of Employment

Means performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud.

# Oklahoma Governmental Tort Claims Act – Extent of Liability

The total liability of the state and its political subdivisions on claims within the scope of this Act shall not exceed:

- Twenty-five Thousand Dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;
- One Hundred Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence.
- The limit of liability for the state or any city or county with a population of three hundred thousand (300,000) or more according to the latest federal Decennial Census shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000.00); or
- One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

# Oklahoma Governmental Tort Claims Act – Extent of Liability

- Punitive damages cannot be awarded in an action or any claim against the state or a political subdivision.
- When the amount awarded to or settled upon multiple claimants exceeds the limitations of this Act, the district court has the power to apportion the amounts.
- The state or a political subdivision may petition the court to join all parties and actions arising out of a single accident or occurrence and can interplead in any action which may impose on it any duty or liability.
- The liability of the state or political subdivision shall only be for that percentage of total damages that corresponds to its percentage of total negligence so long as it does not exceed the set limits of monetary recovery of this act.

# Governmental Tort Claims Act – Exemptions from Liability

The state or a political subdivision shall not be liable if a loss or claim results from:

- Execution or enforcement of the lawful orders of any court;
- Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;
- Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;
- Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;
- Any claim based on the theory of attractive nuisance;
- Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;
- Entry upon any property where that entry is expressly or implied authorized by law;
- Natural conditions of property of the state or political subdivision;
- Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;
- Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

# Governmental Tort Claims Act – Exemptions from Liability

- Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;
- Any loss to any person covered by any workers' compensation act or any employer's liability act;
- Any claim which is limited or barred by any other law;
- Misrepresentation, if unintentional;
- An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;
- Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee;
- Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision;
- Any claim or action based on the theory of indemnification or subrogation;
- Acts or omissions done in conformance with then current recognized standards;
- Remedial action and any subsequent related maintenance of property pursuant to and in compliance with an authorized environmental remediation program, order, or requirement of a federal or state environmental agency.

# Presentation of Claim

- Any person having a claim against a political subdivision shall present a claim to the political subdivision for any appropriate relief including the award of money damages.
- Claims against a political subdivision are to be presented within one (1) year of the date the loss occurs. (Barred from recovery if presented outside the 1 year)
- A claim against the state shall be in writing and filed with the Office of the Risk Management Administrator of the Department of Central Services who shall immediately notify the Attorney General and the agency concerned and conduct a diligent investigation of the validity of the claim within the time specified for approval or denial of claims by Section 157 of this title. A claim may be filed by certified mail with return receipt requested. A claim which is mailed shall be considered filed upon receipt by the Office of the Risk Management Administrator.
- A claim against a political subdivision shall be in writing and filed with the office of the clerk of the governing body.
- The written notice of claim shall state the date, time, place and circumstances of the claim, the identity of the state agency, agencies, or political subdivisions involved, the amount of compensation or other relief demanded, the name, address and telephone number of the claimant, and the name, address and telephone number of any agent authorized to settle the claim. (Failure to state either the date, time, place and circumstances and amount of compensation demanded shall not invalidate the notice unless the claimant declines or refuses to furnish such information after demand by a political subdivision).
- The time for giving written notice of claim pursuant to the provisions of this section does not include the time during which the person injured is unable due to incapacitation from the injury to give such notice, not exceeding ninety (90) days of incapacity.
- When the claim is one for death by wrongful act or omission, notice may be presented by the personal representative within one (1) year after the death occurs. If the person for whose death the claim is made has presented notice that would have been sufficient had he lived, an action for wrongful death may be brought without any additional notice.

# Claim

- A person may not initiate a suit against a political subdivision unless the claim has been denied in whole or in part. The claimant and the political subdivision may continue attempts to settle a claim, however, settlement negotiations do not extend the date of denial.
- No action for any cause arising under this act shall be maintained unless valid notice has been given and the action is commenced within one hundred eighty (180) days after denial of the claim. The parties can not agree to extend filing of a claim beyond two (2) years from the date of the loss.

# Settlements and Judgments

- The state or a political subdivision, after conferring with authorized legal counsel, may settle or defend against a claim or suit brought against it or its employee under this act subject to any procedural requirements imposed by statute, ordinance, resolution or written policy, and may appropriate money for the payment of amounts agreed upon.
- Judgments, orders, and settlements of claims shall be open public records unless sealed by the court for good cause shown.

# Recovery of Payments from Employees

A political subdivision shall have the right to recover from an employee for any claim or action under this act or any other claim or action any payments made by it for any judgment or settlement, and costs or fees by or on behalf of an employee's defense if it is shown:

- That the conduct of the employee which gave rise to the claim or action was outside the scope of employment, or
- That the employee failed to cooperate in good faith in the defense of the claim or action. (A judgment or settlement in an action or claim under this act shall constitute a complete bar to any action by the claimant against an employee whose conduct gave rise to the claim resulting in the judgment or settlement). Remember a political subdivision cannot pay for any punitive damages rendered against an employee.

# Who Represents You?

When the state has a duty to defend any action pursuant to the provisions of this act, it shall be the duty of the Attorney General to defend all such actions.

# Defense of Employees

A political subdivision shall:

- Provide a defense for any employee when liability is sought for any violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;
- Pay or cause to be paid any judgment entered in the courts of the United States, the State of Oklahoma or any other state against any employee or political subdivision or settlement agreed to by the political subdivision entered against any employee, and any costs or fees, for a violation of property rights or any rights, privileges or immunities secured by the Constitution or laws of the United States which occurred while the employee was acting within the scope of employment.
  - The maximum aggregate amount of indemnification paid directly from funds of the state or any political subdivision to or on behalf of any employee shall not exceed the maximum figures authorized by the act regardless of the number of persons who suffer damage, injury or death as a result of the occurrence
  - Unless, in the case of a political subdivision, the political subdivision establishes higher limits
- For any cause of action filed against an employee on or after January 1, 1990, post or cause to be posted any supersedeas or other bond ordered by the court.

# Indemnification

- A political subdivision shall not be required to indemnify any employee of the state unless the employee is judicially determined to be entitled to indemnification and a final judgment is entered.
- The employee of the state or a political subdivision must file an application for indemnification within thirty (30) days of final judgment, or the right to seek indemnification shall be lost forever.
- In order to recover indemnification from the state or a political subdivision the court has to determine by a preponderance of the evidence that:
  - the employee reasonably cooperated in good faith in the defense of the action upon which the judgment or settlement was awarded and for which indemnification is sought;
  - the actions or omissions upon which the judgment or settlement has been rendered were not the result of fraudulent conduct or corruption by the employee;
  - the employee, in committing the acts or omissions upon which a judgment or settlement has been rendered was acting in good faith and within any applicable written administrative policies known to the employee at the time of the omissions or acts alleged;
  - the employee was acting within the scope of employment at the time that the acts or omissions upon which a judgment or settlement has been rendered were committed by the employee;
  - the acts or omissions of the employee upon which a judgment or settlement has been rendered were not motivated by invidious discriminatory animus directed toward race, sex, or national origin; and
  - when punitive damages are included in the total award rendered against the employee of a political subdivision, the indemnification amount sought for fees and costs does not include amounts attributable to the employee's defense against the punitive damages.
- The state or political subdivision shall have the right to recover from an employee the amount expended by the state or political subdivision to provide a defense, or pay a settlement agreed to by the employee and the state or political subdivision, or pay the final judgment, if it is shown that the employee's conduct which gave rise to the action was fraudulent or corrupt or if the employee fails to reasonably cooperate in good faith in defense of the action.
- The state or a political subdivision shall not, under any circumstances, be responsible to pay or indemnify employee for any punitive damages rendered against the employee, nor to pay for any defense, judgment, settlement, costs or fees which are paid or covered by any applicable policy or contract of insurance.



**THE END**

**AND THERE IS GREAT REJOICING!!!**

