

Torts: Crash Into Me

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Plan

- Use a common tort case example (a car crash) to go through the steps a judge will need to follow when hearing this type of case.
- This webinar does not include any information regarding the Supreme Court and Court of Criminal Appeals emergency orders, OCA guidance, or other information related to the Coronavirus epidemic.
 - That information can be found by visiting TJCTC's Coronavirus Updates, Information, and Resources webpage:
<https://www.tjctc.org/coronavirus.html>

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Resources

- TJCTC Website
 - <https://www.tjctc.org/>
 - Deskbooks, Forms, Webinars, etc.
- Texas Rules of Civil Procedure
 - <https://www.txcourts.gov/rules-forms/rules-standards/>
- O'Connor's Texas Causes of Action – Thomson Reuters
 - Hardcopy or e-book
 - Most of the info in this presentation can be found in the following chapters: 21-A, 21-B, 41 – 45-D, 51, 52

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Before we get started, what is a **Tort** again?

Something that is NOT a breach of contract but a party can recover money for under civil law

Generally, damage to someone's property or economic harm/bodily injury to the person as a result of another person's action or inaction

Purpose: Deter wrongful conduct, make injured parties whole

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Intentional Torts vs. Negligence

- There are two main categories of tort cases.
- **Intentional torts** are actions that a party does on purpose (or sometimes recklessly) that cause damage to property or injury to a person.
- **Negligence** is when a party causes damage or injury, not on purpose, but instead by not being careful enough with the actions they take (or fail to take).

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Negligence

- Negligence is a very common cause of action in justice court.
- At its base level, a negligence cause of action is saying that the defendant caused injury to the plaintiff by either:
 - Doing something that they shouldn't have done, **or**
 - Failing to do something that they should have done.
- *This is the type of case we are going to talk about today – using a car crash case as an example.*

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Keep in Mind

- Self-represented litigants may not know the legal term for their cause of action. They don't have to know the "magic words." Your job is to determine what happened, follow the applicable procedures, and award damages if appropriate.
- Many behaviors can be punished civilly, criminally, or both. (For example, the O.J. Simpson case)
- It is not up to you to decide if the person should pursue a civil case or if a prosecution should occur.
- Process the case that has been filed with you. Do not advise someone what to file or whether to file.

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Setting the Stage

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Bronson is going to the grocery store and has been driving around for awhile looking for a place to park. All of the sudden, he sees a primo spot. He starts turning in to the spot, and then sees a shopping cart in the way. While considering what punishment would be sufficient for leaving a cart like that, Bronson reverses back out of the spot. Amber happens to be driving down the aisle at that time, and the two cars collide.

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- Bronson says it was as much Amber's fault as his and they should each just take care of their own expenses.
- Amber files a case in justice court, asking for \$4,213, the amount of the repairs for her car.
- Bronson files an answer and the case is set for trial.

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Prepare Yourself For Trial

Determine if the
Elements Are Met

Determine if Any
Defenses Apply

Calculate
the Damages

Announce & Enter the
Judgment

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Prepare Yourself For Trial

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- Best practice: Review case files a little ways ahead of any settings.
- So you know what kind of case it is, know what issues you will need to be deciding, and can brush up on any procedures and anything else you may need to know.
- Make sure to do this far enough in advance that you have time to look up anything you need to or contact TJCTC if necessary.

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Reminders About Contacting TJCTC with Legal Questions

- Look up your questions and try to find the answer on your own first (use Deskbooks, previously answered board questions, statutes, rules, etc.)
- If you can't find the answer, you can either post a board question OR call us. Please do not do both.
- Please don't e-mail attorneys – either post a board question or call.

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Reminders About Contacting TJCTC with Legal Questions

- Board questions
 - Will be answered within 5 business days.
 - Make sure to provide enough details so we know what's going on.
- Phone calls
 - Only an option when we are not on the road for a program.
 - You should only do this for questions that aren't practical to post on the board.
 - We will likely be on the phone talking to someone else when you call. Leave ONE message and we will call you back.
 - Messages will be returned within 1 business day (unless we are on the road – then we return in order received once back in the office).
 - Don't call anyone other than the attorney taking calls (will just be forwarded).

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Determine if the Elements Are Met

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- You call the case for trial and start to hear evidence.
- Because you have reviewed the case prior to trial and brushed up on what needs to happen in a negligence case, you know all about the elements Amber has to prove in order to win...

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Negligence – The Elements

- Plaintiff must prove each element by a preponderance of the evidence:
 1. The defendant had a legal **duty** to act in a certain way toward the plaintiff.
 2. The defendant **breached** that duty.
 3. The breach **caused** injury (bodily or economic) to the plaintiff.
- *Preponderance* = More likely than not; 51%

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Negligence Element 1 : **Duty**

- A **general duty** exists to use **ordinary care** to avoid **foreseeable risk** of injury to others.
- Duty can also be created by a relationship between the parties.
 - Ex: attorney-client, accountant-client, parent-child.
 - This would not apply in a car wreck case
- There is **not** a general duty to provide aid or protect others, unless there is a special relationship.
- Civil and criminal laws create statutory duties as well.
 - Ex: You have a duty to stop at a red light.

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Negligence Element 2: Breach

In each situation where a person has a duty to another, they have what is called a **standard of care**. If they fail to meet this standard, they have **breached** their duty.



Normally, the standard is “ordinary care”, which is what an “ordinary prudent person” would have done (or not done) in that situation.

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Negligence Element 2: Breach

When determining what an “ordinary prudent person” would do, the defendant’s age, experience, intelligence, and knowledge are taken into consideration.



Violation of a statute is considered “**negligence per se**”, meaning the act is negligent on its face.

The defendant may be able to provide a defense to this by showing that it was necessary to violate this law – for example, speeding to rush someone having a heart attack to the hospital.

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Negligence Element 2: Breach

- Situations where a different standard other than “ordinary care” may apply include:
- Potential breach by a “**professional**” such as an attorney or a physician.
- The professional is held to the standard of an **ordinarily prudent professional** would have done in that situation, rather than a non-professional.
- **Common carriers** and **handlers of dangerous commodities** are also held to a higher standard of care.

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Negligence Element 3: Causation

- In negligence cases, the breach must be the **actual or proximate cause** of the plaintiff’s injury.
- Actual Cause = The action directly caused the injury.
- Proximate Cause = The action started a chain of events that resulted in the injury.

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Proximate Cause

- There is a two-part test for proximate cause:
 - **Cause-in-fact**
 - Whether the injury would have otherwise occurred.
 - **“But for”** test: “But for the action,” the injury wouldn’t have occurred.
 - **Foreseeability**
 - A person of ordinary intelligence should have anticipated the danger caused by the negligence.

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Understanding “Proximate Cause”

- If the idea of proximate cause has your head spinning, don’t worry: you’re not alone!
- Example:
 - Bill runs a red light and his car strikes a car driven by Jan. Bill running the red light is the **actual cause** of Jan’s damage and injuries.
 - After Bill strikes Jan’s car, it slides into Norah who is walking down the street, breaking her leg. Bill running the red light is the **proximate cause** of Norah’s broken leg.
 - When the ambulance is taking Norah to the hospital, the ambulance driver crashes, breaking Norah’s arm. This injury was not a foreseeable result of Bill’s action of running the light, so Bill running the red light was **not a proximate cause** of Norah’s broken arm.

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Developing the Facts of the Case

- The judge may ask questions to develop the facts of the case and get the info they need to see if all elements of a case have been proven.
- *But note:* you can NOT ask about or consider whether a person has insurance.

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- ***What questions might you ask in Bronson and Amber's case?***

- *(What we know so far: Amber was driving down aisle, Bronson reversed out of a spot, and the cars collided)*

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• *While hearing evidence, you learn:*

- Amber was following all traffic rules and driving slowly.
- Bronson forgot to look in his mirror before reversing out of the spot.
- Amber didn't have an opportunity to stop or get out of the way before Bronson's car hit her.
- The collision damaged Amber's car and she didn't have any damage on it prior to the collision.

• So let's look at the elements:

1. *Did Bronson have a legal duty to act in a certain way toward Amber?*
2. *Did Bronson breach that duty?*
3. *If there was a breach, did it cause injury (bodily or economic) to Amber?*

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• But what if:

- Amber proved the first two elements (that Bronson breached the **general duty** that exists to use **ordinary care** to avoid **foreseeable risk** of injury to others), but couldn't prove the third element (that Bronson's action was the proximate cause of her injury) because Bronson put on evidence that her car was already totaled due to a previous accident?

• *What would happen with the case then?*

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Determine if Any Defenses Apply

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- Bronson says Amber's claim is barred by the statute of limitations.
- You can't remember what the statute of limitations is for tort cases.
- Seems like a good time for a recess...

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Defenses

- Even if all of the elements have been proven in a case, a defense could still be raised by the defendant or discovered by the court while asking questions to develop the facts of the case.
- If the evidence shows (by a preponderance of the evidence) that there is a valid defense, then the defendant wins.

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Defenses to Negligence Include:

Contributory
Negligence by
Plaintiff

Release Agreement

Assumption of the
Risk
(ex: hit by a foul ball)

Act of God
(ex: tornado)

Unavoidable
Accident
(ex: ice on road)

Statute of
Limitations

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Statute of Limitations

- The statute of limitations in a tort case (both intentional torts and negligence) is two years.
- The statute in some cases does not start running until a party is aware or should have been aware of the tort.
- *Note:* If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant doesn't bring that up, and even if the defendant never appears.

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Contributory Negligence by Plaintiff

- In negligence cases, the finder of fact (judge or jury) must assign a percentage of responsibility to each party.
- If the plaintiff is 51% or more responsible, they recover **nothing**.

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- *What if the following were true:*

- Car crash happened on June 1, 2016.
- Amber didn't file a case right away because she had sent a bill to Bronson and assumed he would pay it.
- Amber got really busy dealing with the health problems of a family member and wasn't thinking about the car issue.
- When she realized that Bronson had never responded, she decided to file a case in justice court on Oct. 17, 2019.

- ***What happens with the case?***

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- *What if the following were true about the collision:*

- Bronson looked in his rear-view mirror before pulling out of the spot, but wasn't watching as carefully as he normally would due to his irritation over the shopping cart.
- Amber was pulling through a spot on the other side of the aisle and driving too quickly.

- ***What happens with the case?***

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Calculate the Damages

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- Turns out Bronson's friend who failed the bar exam told him to say the thing about the statute of limitations claim, and he was wrong.

- So now:

- You've made sure all of the elements were proven;
- You've determined that the claim is not barred by the statute of limitations;
&
- No other defenses were raised.

- ***Amber is going to win (sorry Bronson), but how much does she get in damages?***

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What are Damages?

Damages are the money a party gets to compensate them for their injury – one of the main elements of ANY civil case

Same burden as all of the other elements – plaintiff must prove by a preponderance of the evidence

- You should develop the facts of the case and ask questions designed to determine the amount of damages.

It is possible for a plaintiff to otherwise have a valid cause of action, but have no damages.

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- *What if:*
- Amber couldn't provide evidence that there was any actual damage to her car, but she wants Bronson to be punished because there *could have been* damage?
- *What would happen with the case?*

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Available Damages for Negligence Cases



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Compensatory Damages, Sometimes Called "Actual Damages"

Main idea – Put plaintiff back in the position where they would have been IF NOT FOR defendant's conduct.



These damages **compensate** the plaintiff for their loss.

Can be **economic** (medical bills, lost wages, property), **or**

non-economic (pain & suffering, mental anguish, etc.)

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Compensatory Damages

- Do not include the costs of coming to court in actual or compensatory damages.
- Lost income from work can be awarded if the work is missed due to the injury, but not lost income for the day that the party comes to court.
- Travel costs to court are not recoverable.

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Compensatory Damages – Property Damage

- A party may seek to recover compensatory damages for property damage. These damages can include:
 - Valuation Damages
 - Market Value
 - Replacement Value
 - Sentimental Value
 - Repair Damages
 - Loss-of-Use Damages

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Compensatory Damages – Property Damage

- How to calculate sentimental value?
 - Similar to pain/anguish, the plaintiff offers testimony and the **finder of fact** decides what an appropriate and reasonable value would be.
 - Generally unavailable for common household goods or clothing.
 - Available on items such as heirlooms, rare items, or irreplaceable items such as pictures, etc.
- How to decide what measure to use out of market value, replacement value, or repair costs?
 - Generally, the lowest value that still makes the plaintiff **whole**, placing them back where they were before the tort happened.

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- *What if:*
 - The cost to repair the damages to Ambers car is about \$4,000, but Amber decides she doesn't want to have to wait on the repairs and buys a new car instead.
- ***Should Bronson have to pay the \$25,000 she pays for it?***

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Compensatory Damages – Personal Injury

- A party may seek to recover compensatory damages for personal injury. These damages can include:
 - Physical pain (past and future)
 - Mental anguish (past and future)
 - Disfigurement or physical impairment
 - Medical expenses
 - Loss of earning capacity
 - Loss of consortium (love & protection)
- *Note:* Most of these are rare or unlikely in justice court.

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Pain &
Suffering /
Mental
Anguish?

Yes, you CAN award pain and suffering and/or mental anguish damages.

These damages are very difficult to accurately gauge and put a number on.

- Each **finder of fact (judge or jury)** may find a different answer on the same facts.

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Pain & Suffering

The idea is to compensate the person for the pain they endured.

- Medical bills cover economic damages, but not the actual pain.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- You can look at the other damages in the case to get a feel for what the person endured (broken glasses, stitches, etc.)
- The person can testify as to the pain they suffered.

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Mental Anguish

The idea is to compensate the person for the mental pain they endured.

- Can be awarded if there is either a traumatic bodily injury **or**
- If offered direct evidence of the nature and severity of the mental anguish, and how it disrupted the plaintiff's daily routine.

Must be more than just "being mad or upset," something traumatic.
– again rare in justice court, because significant trauma will usually incur other damages that are more than \$10,000.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- What disruptions did the mental anguish cause?

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Punitive or Exemplary Damages

- These are damages that are awarded, not to compensate the plaintiff, but instead to **punish**, or make an **example** out of, the defendant.
- Goal is to punish the defendant for its bad action, as well as deter any future parties from engaging in the same bad behavior.
- Notable examples:
 - McDonald's being forced to pay punitive damages in the "hot coffee" case.
 - Ford being forced to pay punitive damages when they knew of the Ford Pinto explosion danger.

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Punitive or Exemplary Damages

Punitive damages are available if the defendant acted with **malice** (intent to harm the plaintiff) or **gross negligence** (defendant was aware of an extreme degree of risk but disregarded that risk)



How do you decide what amount of punitive damages is appropriate?

How much is sufficient to punish the defendant for what they did, and put other actors on notice that they should not engage in that behavior?

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Punitive Damages in Bronson & Amber's case?

Remember, this is what we learned from the evidence:

- Amber was following all traffic rules and driving slowly.
- Bronson forgot to look in his mirror before reversing out of the spot.
- Amber didn't have an opportunity to stop or get out of the way before Bronson's car hit her.
- The collision damaged Amber's car and she didn't have any damage on it prior to the collision.

So should punitive damages be awarded?

- ***Did Bronson act with malice (intent to harm)?***
- ***Did Bronson act with gross negligence (aware of extreme degree of risk and disregarded it)?***

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Pre-Judgment Interest

- Only awarded on current actual damages – not on exemplary damages, future damages, or court costs.
 - Should be automatically added whether requested or not in personal injury and property damage cases.
 - *See Finance Code 304.102*
- The reason this exists is to encourage settlements and discourage delays in litigation. The award of pre-judgment interest compensates the plaintiff for not being able to have the use of their money.

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Pre-Judgment Interest

- Begins accruing on whichever is earlier:
 - The day suit is filed; or
 - 180 days after the defendant receives notice of the plaintiff's claim (if notice meets certain requirements)
- Stops accruing the day before the judgment is signed.
- It is calculated as **simple interest** (meaning it accrues only on the principal and not on accrued interest) and is the same rate as post-judgment interest.
 - *Formula for calculating = [(interest rate in decimal form) ÷ 365] x (actual damages amount) x (number of days from when begins accruing to the day before judgment was signed)*

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Post-Judgment Interest

All money judgments **must** include an interest rate that applies to the judgment.

- Finance Code Sec. 304.001.

Unless a contract/agreed judgment explicitly says otherwise (with a maximum of 18%), the court should use the rate located at: <https://occc.texas.gov/publications/interest-rates>

- Changes monthly, so court needs to check it.

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Court Costs/Fees

The winning party is automatically awarded the costs involved with the case – they do not need to request them.

Costs include:

Filing fees, service fees, jury fees, interpreter fees if appropriate, etc.

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Contributory Negligence

- As we discussed earlier:
 - The finder of fact must assign a percentage of responsibility to each party.
 - If the plaintiff is more than 51% responsible or more, they recover \$0.
- But what if the plaintiff's responsibility is between 0 – 50%?
 - If the plaintiff is 50% responsible or less, they recover against the defendant the percentage of their actual damages that the defendant is responsible for, plus court costs, any interest, and any exemplary/punitive damages.

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- What if:
- Amber was the one who left the shopping cart in the parking spot?
- ***Would she be partly responsible? What percentage?***

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- What if the following were true:
- The judge finds for Amber.
- Actual damages are \$5,000.
- Judge finds the Bronson 60% responsible and the Amber 40% responsible.
- ***What should be awarded for actual damages?***

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Announce & Enter the Judgment

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Announce & Enter Judgment

- The judgment must be announced in open court.
- A written judgment must be signed and entered.
 - Important! Do not forget to do this!
 - If lawyers are involved, they can submit a proposed judgment, but review it carefully before signing!

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So What Goes in the Judgment in this Case?

- Bench trial is Nov. 21, 2019, Amber has an attorney, and Bronson does not.
- You've found for Amber and determined that she was 0% responsible.
- While Bronson was negligent, you found that he did not act with malice or gross negligence.
- Amber put on evidence that it cost \$4,213 to repair her car and that she paid \$2000 in attorney's fees.
- ***What all should be included in the judgment?***
 - *(Certain information, type of damages, amount of damages, etc.)*

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