

NAME:	Ieva Butkute
LESSON:	Torts: The Elements of Negligence
SOURCE:	Original, with some references to the Streetlaw textbook
SUPPLIES:	The Simpsons DVD (Season 2, Episode 11), student handouts, news articles
DURATION:	50 minutes

I. GOAL: To help students gain a better understanding of tort law and especially the concept of negligence.

II. OBJECTIVES:

A. Knowledge Objectives - As a result of this class, students will be better able to:

1. Understand the difference between civil and criminal law.
2. Understand what “tort” is and give examples of some torts.
3. Identify the three categories of torts (Intentional Torts, Negligence and Strict Liability).
4. Identify the elements of negligence.

B. Skills Objectives - As a result of this class, students will be better able to:

1. Identify key facts in a tort case.
2. Evaluate whether or not tortuous behavior is evidenced by a set of facts.
3. Argue that the elements of an unintentional tort are or are not satisfied.

C. Attitude Objectives - Students will be better able to feel:

1. That law discourages negligent behavior
2. That tort law is designed to put the victim where she or he would have been if the tort had not been committed.
3. Avoid situations in which their actions could give rise to liability.

III. CLASSROOM METHODS

A. Slip and Fall Introduction. Come into class pretending to talk on your cell phone, walk by a pre-placed wet floor sign ignoring it. Slip and fall. Ask the students what their reaction to the situation. You can ask the following questions:

- a) Has someone done something wrong?
- b) What was a wrongdoing?
- c) Has someone been harmed?
- d) Should the victim be compensated?

Inform students that today’s focus will be the discussion of how the law deals with situations in which people suffer harm or injury to themselves or their property because of the negligent behavior of another person.

B. Lecture on Torts

1. **Discuss the differences between civil and criminal law.** Put up the overhead explaining the differences between civil and criminal law.
 - a. Inform students that our legal system recognizes two different kinds of legal cases: civil and criminal.
 - b. In a criminal case, the defendant is charged with a crime such as murder, burglary, robbery, or theft. The legal action is initiated by the prosecutor on behalf of particular people and society at large. In criminal litigation, the state must prove that the defendant is guilty beyond reasonable doubt. The punishment in criminal law can be incarceration, a fine, or even the death penalty.
 - c. In a civil case, it is the individual who feels wronged or injured who decides whether to file a civil suit. The person who brings a lawsuit is called a plaintiff, and the person against whom relief is sought is called a defendant or respondent. In a civil trial the plaintiff will win if the judge or jury believes there was more than a 50 percent chance that the defendant was acting negligently. This is a very low standard compared to burden of proof in criminal law. In civil law the party who lost is never incarcerated or executed. The losing party is typically required to reimburse the plaintiff the amount of loss, which is also called “damages”.
 - d. Inform students that it is possible to try a defendant in criminal court and then try the same defendant again in a civil court for the same conduct. For example, a person might be tried for homicide in a criminal trial, and then have a second trial for the tort of wrongful death. Tell students that the most famous example of this situation is the *cases of O.J. Simpson*.
2. **Define what a “tort” is.** Tell students a tort occurs when one person causes injury to another person or to another person’s property or reputation. Tort law provides the injured party with a remedy, which is usually in the form of money damages.
3. **Explain the three types of torts.** Inform students that tort liability exists for *intentional torts*, acts of *negligence* and activities for which *strict liability* is imposed. Tell the students that today’s focus is on negligence.
4. **Discuss the concept of negligence.** Negligence is unintentional tort which occurs when a person’s failure to use reasonable care causes harm. Some examples of negligent conduct:
 - a. A city employee working on a manhole forgets to replace the cover and a pedestrian falls in and is injured.

2. **Assumption of risk:** if a person voluntarily encounters a known danger and decides to accept the risk of that danger, he or she may be prevented from recovering for related negligent acts by a defendant.

C. **CLASSROOM ACTIVITY**

1. **Review the video clip from “The Simpsons”.** Inform students that they will be watching a video clip and that they will need to determine whether or not tortious behavior is evidenced by a set of facts. Tell students that after watching the clip they will analyze the fact scenarios and will need to fill out a chart on their handout. Remind them that in order to identify all possible elements of a tort action they have to watch the clip carefully.

The clip is taken from the eleventh episode of the Simpsons’ second season. It is called “**One Fish, Two Fish, Blowfish, Blue Fish.**” (*start the clip with a scene where the Simpsons family arrives at a sushi restaurant for dinner. Lisa had suggested that they go to a sushi restaurant instead of having another night of pork chops at home. Even though Homer was reluctant at first, he finally agrees. At the restaurant, Homer discovers that he loves sushi and starts ordering everything from a menu, including a fugu fish which can be poisonous if not prepared properly. The waiter tries to warn Homer about dangers associated with this fish, but Homer interrupts him. Because the master chef was romantically “involved” with a lady in the parking lot, his inexperienced apprentice had to prepare the potentially poisonous dish. The apprentice tries to do it carefully, but Homer becomes very impatient, and the apprentice is forced to serve the fish. Homer considers it a treat, but it is poorly prepared, and Homer is told that he may have been poisoned. Homer and Marge go to the hospital, where the doctor informs Homer he is indeed going to die and has 24 hours left to live. The doctor corrects himself by saying that Homer actually had only 22 hours because Homer spent too long waiting for the doctor. Homer is told that he is expected to go through five stages of grief, all of which he experiences as the doctor lists them for him. **Stop the video clip** when Homer gets the brochure, “So, you’re going to die” from his doctor.)*

2. After reviewing the clip, ask students to identify the material facts that will be useful in trying to establish whether or not the tort(s) occurred. Write the important facts on the board.
3. Ask students who are the likely plaintiff(s) in this case. (Answer: Homer and/or members of his family). Ask students who are the likely defendant(s). (Answer: the restaurant (for negligently preparing the fish) and the doctor (for providing inadequate medical care)).

4. Divide the students into the pairs of two. Assign a number to each pair. Have the even-numbered pairs to analyze the restaurant's liability and the odd-numbered pairs to analyze the doctor's liability. Tell the students that they need to fill out the chart in their handouts which contains elements of the negligence action. Give students 10 minutes to complete the assignment.
5. Once the students complete filling out their charts, ask each student group representative to provide an answer to one question from the chart (e.g. have group #1 answer question #1). After the answer is given, ask the rest of the class whether or not they agree to the conclusion. After all the questions are answered, ask students to show by raising their hands whether or not they found the defendant liable. Ask several students to explain why they reach their conclusion. Ask the students what other information would have been useful to know in each scenario.
6. Conclude the activity by pointing out that the restaurant is likely to be found liable for failing to use proper care when preparing the potentially toxic fish. Note, however, that Homer might have contributed to his own harm by failing to listen to the attempts to warn him about the risks associated with eating the fugu fish. As for the doctor, he might be found liable because he misdiagnosed Homer and did not provide him with an adequate care – Homer was forced to wait for a long time and the doctor made his diagnosis based on the chef's story alone.

IV. DEBRIEF:

1. Review the elements of the negligence action. Remind students that it is not always easy to determine what duties individuals have to others.
2. Inform students that we will be learning more about other types of torts in more detail next class, as well as how to measure damages.

V. EVALUATION:

1. Student participation in class activity and debriefing.
2. Knowledge of the material.
3. Student advocacy skills.

VI. HOMEWORK ASSIGNMENT: Have students read the real-life stories (handout #2) which have similar fact-patterns to the Simpsons case. Have each student pick one story and analyze it in the same way that they analyzed the Simpsons case in class. Tell the students that they must fill out the chart on handout #1. Finally, have them write a paragraph on whether or not, in their opinion, the plaintiff(s) in the news article have a stronger case than Homer. Why, why not?

COMPARING CRIMINAL LAW AND CIVIL LAW

CRIMINAL LAW	CIVIL LAW
<ul style="list-style-type: none">• Legal action is initiated by the government against the defendant• The party bringing a criminal action (the government) is called the prosecution• The prosecution must prove the guilt of the defendant “beyond reasonable doubt”• The punishment in criminal law can be incarceration, a fine, or even the death penalty.	<ul style="list-style-type: none">• Legal action is initiated by one private individual against another• The party bringing a civil action is called the plaintiff• To prevail, the plaintiff must demonstrate its claim by a "preponderance of evidence", meaning that the plaintiff must show that it is more likely than not that his or her claims are true.• The losing party is typically required to pay money damages.

Handout #1:

Name: _____

NEGLIGENCE

Elements of Negligence:

Duty: the defendant owed a duty of care to plaintiff, or injured person. The duty of care owed is determined by a reasonable person standard. The reasonable person does not represent the typical, average individual, but it is rather an idealized version of a person who acts in a way that a community expects its members to act. A reasonable person would consider: (1) the burden of taking precautions; (2) the likelihood of harm; and (3) the seriousness of the harm that might be caused.

Breach: the defendant's conduct breached or violated that duty.

Causation: the defendant's conduct caused the plaintiff's harm.

- a. **Cause in fact:** if the harm would not have occurred without the wrongful act, the act is the cause in fact.
- b. **Proximate cause:** the harm caused must have been a foreseeable result of the act or acts.

Damages: the plaintiff suffered actual injuries or losses. The goal is to restore the plaintiff to his or her pre-injury position, to the extent that this can be achieved with money.

Defenses to a Negligence Action:

Contributory negligence: a plaintiff cannot recover damages from the defendant if his/ her own negligence contributed in any way to the harm suffered.

Assumption of risk: if a person voluntarily encounters a known danger and decides to accept the risk of that danger, he or she may be prevented from recovering for related negligent acts by a defendant.

THE SIMPSONS CASE

Plaintiff _____ Defendant(s): _____

1.	What duty did the defendant(s) owe to the plaintiff?	
2.	Was there a breach of duty?	
3.	Did the defendant's cause the harm suffered by the plaintiff?	
4.	What kind of damages did the plaintiff suffer?	
5.	What, if anything, did the plaintiff do wrong?	

Handout #2

SOME REAL-LIFE STORIES

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Fish Importer Announces Monkfish Recall

Source: The Denver Post, May 24, 2007.

CHICAGO, ILLINOIS - Frozen product labeled monkfish distributed in 3 states is being recalled after 2 Chicago area people became ill after eating it, the importer announced Thursday. Hong Chang Corporation of Santa Fe Springs, CA., said it is recalling the product labeled as monkfish because it may contain tetrodotoxin, a potent toxin.

While the frozen fish imported from China was labeled monkfish, the company said it is concerned that it may be pufferfish because this toxin is usually associated with certain types of pufferfish. Eating foods containing tetrodotoxin can result in life-threatening illness or death and the toxin cannot be destroyed by cooking or freezing.

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Briton Misdiagnosed With Terminal Cancer Sues After Spending Life Savings

Source: Associated Press, May 07, 2007.

LONDON — A man who spent his life savings after being told he had months to live is seeking compensation after doctors in Britain conceded they had got the diagnosis wrong. John Brandrick, 62, was told two years ago that he had terminal pancreatic cancer. He decided to spend his remaining time in style, quitting his job and spending his savings on hotels, restaurants and holidays.

A year later, doctors at the Royal Cornwall Hospital in southwest England revised their diagnosis: Brandrick was suffering from pancreatitis, a nonfatal ailment. "My life has been turned upside down by this," Brandrick said. "I was told certainly, by the doctor, that I had cancer, and from that day I lived life in full.