

Civil Justice 101

Constitutional Right to Trial by Jury

The Seventh Amendment of the Bill of Rights in the U.S. Constitution says "...the right of a trial by jury shall be preserved..." Article I, section 5 of the Ohio Constitution states that the right to trial by jury shall remain "inviolable." Accordingly, both the U.S. and Ohio Constitution guarantee the right to trial by jury to resolve disputes between two citizens. If one citizen damages or harms another's property or person, the injured person can bring a legal action, in which a judge presides and a jury considers admissible evidence and ultimately decides the case by determining whether the offending party is liable.

Torts

A tort is an act by one person that harms another and serves as the grounds for a civil lawsuit. A tort constitutes the basis for a legal claim whereby the injured person can seek redress, usually in the form of compensation, from the wrongdoer. Some torts are crimes and some crimes are torts. The easiest way to remember the difference between civil tort law and criminal law is that a civil lawsuit allows two parties or organizations to enforce their rights in courts for alleged harms, while criminal acts are enforced by the government, typically the "prosecutor." Additionally, much of tort law comes into existence by way of court decisions rendered in civil lawsuits, while most criminal law comes into existence by way of statutes and others laws enacted by the government, including elected officials, in addition to criminal cases decided by the courts.

Civil Cases

A civil case is a request that a court resolve a dispute between two parties or organizations. Civil cases are initiated by the plaintiff, the person or organization filing the lawsuit, typically by filing a Complaint with a court that asserts the cause(s) of action(s) against the defendant, the person or organization being sued. A plaintiff can file a Complaint against multiple defendants, and multiple plaintiffs can join together to file a lawsuit against one or more defendants. In some instances, the plaintiff may be a defendant in the very same case; for example, if the defendant files a cross-claim against the plaintiff.

Gross Negligence or Reckless Conduct

Gross negligence or reckless conduct is when a person knew or should have known that their actions would cause harm to another person and the person behaves with complete indifference to the harm their actions may cause.

Judge or Jury

Generally, judges may decide cases unless a party, the plaintiff or the defendant, requests a jury. In a jury trial, the verdict requires a vote of at least three-fourths of the jury (six of eight), but there are variations depending on the jurisdiction and the type of jury trial. For example, criminal cases typically require a unanimous verdict, but this is not required in a few states.

Statute of Limitations

As the name implies, the statute of limitations, or often seen simply as “SOL,” is a law setting forth the maximum amount of time from when an actionable event occurred that a person may file a legal claim. It is the legal system’s way of ensuring that individuals do not unnecessarily delay in filing their legal action. Unnecessary delay in exercising one’s rights causes a number of problems, including the loss of evidence, the loss of witnesses and the loss of memories. After the expiration of that time period, unless a legal exception applies, the injured person loses the right to file a claim because it will be time-barred by the applicable Statute of Limitations.

Bodily Injury or Injury to Personal Property: Two years in Ohio, unless a statutory exception applies. Oh. Rev. Code § 2308.10(A).

Medical malpractice: One year or four years in Ohio, depending on certain statutory requirements, including when the injury is discovered by the patient, or when the physician-patient relationship is terminated. Oh. Rev. Code § 2305.113.

Contracts: Eight years in Ohio. Ohio Rev. Code § 2305.06.

Negligence

Negligence is defined as the failure to use ordinary or reasonable care. While there are variations depending on who the offending actor is, the reasonable care standard can be conceptualized by asking, “What would the average, or reasonable, person in this situation do?” In legal terms, a person can be found negligent if he or she fails to use the degree of care that a reasonable person would have exercised in a similar situation.

Simple Negligence

Simple negligence is different from other forms of negligence as it does not include the bad actor as having acted with a certain degree of recklessness or disregard for others. Rather, simple negligence occurs when a person does not act; for example, the person fails to act reasonably, and by failing to act reasonably creates a risk of harm to others.

Requirements to Prove Simple Negligence

To prove a negligence case, the plaintiff has to establish, by a “preponderance of the evidence,” (which means by showing more than 50 percent of the evidence is in the plaintiff’s favor), that a defendant owed a duty of care, that the defendant failed to maintain that duty of care, and that it was the defendant’s failure to maintain care that caused the plaintiff’s injury.

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Damages

The concept of damages is the legal systems way of quantifying the wrong that has been proven, and it is typically measured in money.

Compensatory Damages - money paid to a plaintiff to compensate for damages, injury, or loss caused by the defendant. This is typically understood as an amount of money that would make the plaintiff whole again, as best as possible.

Economic Damages – money paid to a plaintiff to compensate for objectively verifiable monetary losses, such as damage to their motor vehicle, medical expenses, loss of past and future earnings, loss of use of property, or loss of employment or business opportunities. Objectively verifiable typically means what the plaintiff can prove in simple dollars and cents. For example, the plaintiff can show how much he or she earned at the job for the last year, but can no longer perform because of the injury. Another example is a plaintiff proving the value of his or her home that was burnt down by providing one or more appraisals.

Non-Economic Damages – money paid to a plaintiff to compensate for permanent disability (loss of limb, blindness, or loss of mobility), pain and suffering, emotional distress, loss of consortium or companionship, and other intangible injuries. Non-economic damages are based on the loss suffered by the plaintiff that now prevents him or her from enjoying life. What makes life worth living is not the money we earn, or the car we drive, but the pleasure of living that is now denied or impaired because of the serious injury the plaintiff sustained as a result of the defendant's negligence.

Punitive Damages – money that the court orders the defendant to pay the plaintiff in order to punish or deter the defendant's negligent actions where the defendant is shown to have acted intentionally, recklessly or maliciously. Punitive damages are rarely awarded.

Caps on Damages – limits on the amount that a jury can award for damages, no matter how severe the injury, which were established by the Ohio legislature in 2005 and can vary in other states. This cap is a dollar figure that overrides the authority of judges or juries to determine a fair amount for damages, despite the evidence presented in the case.

Caps on Non-Economic Damages – limits the amount that a jury can award for non-economic damages (see definition of non-economic damages above). Caps on non-economic damages are unfair to injured people who have lower incomes, such as women and men who work inside their home, children, the disabled, senior citizens and the poor. Caps hurt most of those who suffer the most severe injuries because they cannot be fairly compensated.

Contingency Fees

The typical fee arrangement between a plaintiff attorney and his/her client. Rather than being charged by the hour for legal services, which most people cannot afford, contingency fee clients are allowed to pay their attorney a portion of the potential recovery from their case.

Contingency fee attorneys only get paid if the case is successful and there is a financial recovery from the case. Contingency fee arrangements facilitate access to the courts for those who cannot afford to hire an attorney and pursue their legal case without such an arrangement. Because injury cases often take years and thousands of dollars in litigation costs to resolve, and because the attorney pays all the costs upfront, contingency fee attorneys must be careful when choosing which cases to take on. As a result, not only do contingency fee arrangements give lower income persons greater access to the courts, but contingency fee arrangements also have the effect of discouraging and reducing unnecessary lawsuits.