

Tort Liability Definitions

The following definitions are frequently used in tort liability and risk-management discussions. Each of the terms has specific meaning to the court.

Tort – A civil wrong or injury committed to a person or a person's property. It is an act or a failure to act which gives rise to a legal obligation, enforceable by a civil court, to pay money damages to those who suffer damage.

Liability – An obligation by law to be responsible for an activity or action. A liability is a court-enforceable duty of a person or an entity (city, township, state or private corporation).

Duty – A responsibility to show reasonable care if the risks or dangers are reasonably foreseeable.

Prudent – Able to govern and discipline oneself by the use of reason, or exercising caution as to danger or risk.

Reasonable – Not extreme or excessive; rational; possessing sound judgment.

Negligence – A failure to use the same standard of care that a reasonably prudent person would have done under the given circumstances. NOTE: this reasonable person is a personification of a community ideal of reasonable behavior, determined by the jury's social judgment.

Comparative Negligence – A judge or jury will determine each party's percentage of fault. A plaintiff may not recover if his or her percentage of fault exceeds 50%.

Notice (Actual) – The public entity is given specific notice of a defect in the highway system. For example, a citizen calls the city and tells them a stop sign has been knocked down.

Notice (Constructive) – The public entity should have known about a highway defect. For example, nobody calls the city to report the downed stop sign, but after two weeks, a city employee should have noticed the missing sign.

Proximate Cause – The legal cause of the accident.

Actual Cause – The specific action resulting in the accident.