Definition. Although it is relatively easy to point to the activities within the compass of tort law, it is not so simple to offer a satisfactory definition of a tort. The term itself is a derivation of the Latin word, tortus, which means twisted or crooked. The expression found its way into the early English language as a synonym for the word “wrong”. It is no longer used in everyday language, but it has survived as a technical legal term to this day.4 Many authors have striven to define tort law and to mark it off from criminal law, contract law and quasi-contract law, but none of them has been entirely successful. Perhaps the best working definition so far produced is a civil wrong, other than a breach of contract, which the law will redress by an award of damages.2 But even this formulation does not tell us very much. It merely asserts that a tort consists of conduct for which the courts will order compensation, which is almost as circular as saying that a tort is a tort. A tort is a legal construct which only exists where the law says it exists.3

Objectives. The purposes of negligence law are manifold.1 One of its prime functions is the provision of compensation for accident victims. But this is not its only goal. If it were, compensation would be furnished to every accident victim, regardless of fault. Negligence law does not aim to compensate everyone — only those whose injuries result from someone else’s faulty conduct. The second objective of negligence law is deterrence — seeks to reduce the frequency of accidents. By making only negligent actors liable to pay for the losses they cause, negligence law encourages people to exert themselves to behave carefully in order to avoid liability. It also confers on individuals the right to civil redress, that is, the power to hold each other accountable for their wrongful conduct.2 Negligence law, like all law, is an educator and a reinforcer of values. Such laudable values as individual responsibility, concern for one’s fellow human beings, and respect for the dignity of the individual are embedded in the principles of negligence law. Certain psychological functions are also served by negligence law, which furnishes a peaceful substitute to those who might indulge in more violent forms of retribution in its absence.

In addition, negligence law produces some market deterrence by making accident-prone activities more expensive and therefore less attractive than other safer, less expensive alternatives. Negligence law may also serve society as an ombudsman, focussing attention on abuses of power by industry, the professions, and government agencies.

Significance. Negligence is the most important field of tort liability today, for it regulates most activities in modern society. Wherever anyone is accidentally injured, negligence law may be called in to determine whether there will be compensation. Consequently, negligence law is a vibrant and dynamic instrument.3 It has to be if it is to survive. As soon as some new type of activity emerges, it is accommodated within the general framework of negligence principles. Because of this, it has been said that “the categories of negligence are never closed.”4 This may be merely the instinct for self-preservation at work, for if negligence law abandoned its fluidity, it would probably wither away. In order to serve the community, the law of negligence, like all law in a free society, must be attuned to the popular will. It may adapt only slowly to new conditions, but it does and must move.

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**Supplemental Readings**

**Torts Law**

- *Introduction to the Canadian Law of Torts, 3rd Edition* (Fridman)
- *Canadian Tort Law – Cases, Notes & Materials, 14th Edition* (Linden, Klar and Feldthusen)

**General**

- *Understanding Lawyers’ Ethics in Canada* (Woolley)