

# Tort law

Law



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Tort Law Order 567510 If I were the person charged with making the decision about dividing up liability among the people who had a part in the amputation of both of Bobby's hands, I would assess the liability this way: Ace Sports 10% for having installed a basketball hoop that would cut somebody when they dunked the ball; City General Hospital 35% for their policy of turning away people without insurance; Nurse Williams 5% because she followed the unethical policy and for not giving Bobby the necessary treatment to save Bobby's wrist; the county hospital 25% and Dr. Andrews the rest of the liability, or 25%. Because of the combined efforts of the county hospital staff, and Dr. Andrews the disability that will make Bobby's life more difficult now will be doubly worse.

Ace Sports might argue that Bobby shares comparative negligence because he should not have dunked the ball. However, had it not been Bobby who cut up his wrists dunking a ball, it would have eventually happened to some kid with the metal dangerously positioned as it was. Ace Sports had a contractual agreement with the school and a social duty to install a safe product. Gary Owen defines the five components of negligence as duty, breach, cause in fact, proximate cause and harm. Duty involves choices. "Negligence law assesses human choices to engage in harmful conduct as proper or improper. . . . Serving in this manner as the foundational element of a negligence claim, duty provides the front door to recovery for the principal cause of action in the law of torts" (Owen, 2010, p. 1674). Ace Sports had a duty to install a safe basketball hoop and breached that duty by leaving harmful metal sticking out around the rim. Bobby just happened to be the first to encounter the pieces of jagged metal. The school, of course, shares no liability because they relied on the competency of the people they

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hired to install the rims and presumably had no knowledge of the sharp rims.

The first hospital, City General, where Rachel took Bobby, has some responsibility in Bobby's hands being amputated. Their staff had a duty to treat Bobby at least to a point where no further damage would have been caused by a delay. Obviously, from City General's point of view, they could have treated Bobby and then not been paid because he had no insurance. Their policy implies they had the right to refuse service based on a patient's uninsured status and therefore his ability to pay for treatment. Paul H. Rubin calls medical care a commodity, specifically an "ambiguous product." Rubin explains this designation, "The primary function of these products is to reduce risks, but they may in turn create different risks. For medical care, the additional risks are called 'malpractice.' . . . Proper regulation of the risks associated with these items requires a careful balance between harms created and harms averted" (Rubin, 2011, p. 225). The harm averted, presumably higher medical costs for people who do have insurance and less profit for the hospital, does not outweigh the harm created by delaying Bobby's care. Therefore, City General should have given him the care he needed regardless of his insured status. They, too, breached their duty to provide minimum care.

Nurse Williams was operating under the hospital policy most likely because her job requires it. That is why she is less responsible than the hospital itself. Yet, as a person trained in medical knowledge, Williams had a duty to do what she could to minimize the damage. The delay that ultimately caused the amputation of Bobby's wrist was the cause in fact of Bobby's injuries, and therefore should be assigned a large portion of the negligence in his

losses than that assigned to Ace Sports, who caused the initial injury that could have been mitigated had City General acted appropriately. Laws have been passed to prevent hospital policies such as City General's. Ryan Cicero says the 1986 Emergency Medical and Labor Treatment Act (EMTALA) was intended to stop "patient dumping," which is "the practice of transferring a patient from one hospital to another before stabilization, refusing to treat a patient or delaying care . . . discriminatorily, usually because of the patients indigency or lack of insurance" (Cicero, 2010, p. 418). A lawyer could argue a tort case based on the violation of EMTALA alone.

The second hospital, the low-budget county facility, was even more incompetent than the first, and Dr. Andrews should shoulder most of the blame. Had he not amputated the wrong wrist in the first place, Bobby would only be half as disabled as he is now. This county hospital is not responsible for the original injury or for the delay, but they and the surgeon who botched the job are completely responsible for half of Bobby's losses because of their negligence in removing the wrong hand in the first surgery. The botched surgery is the proximate cause of half of Bobby's losses

Not only can Bobby file a tort claim lawsuit against City General and Williams, but also the county hospital and Doctor Andrews who amputated the wrong hand. Dr. Andrews is responsible for performing amputation surgery on a presumably healthy wrist. However, he did not prepare Bobby for the surgery himself and there was some sort of staff assisting the doctor in surgery. They are also responsible for making sure the correct limb is removed. According to William J. Warfel and Peter J. Mikolaj, "Injured patients may file a legal action against a hospital based on (1) vicarious liability for the tortious conduct of its employees and resident physicians; <https://assignbuster.com/tort-law-essay-samples-2/>

[and/or] (2) corporate negligence of the hospital itself” (Warfel & Mikolaj, 2003, p. 2). Dr. Andrews may have been tired and overworked. The hospital policy about the number of hours worked by physicians and others may be responsible for the mistake, in part. Dr. Andrews could have made the mistake because of fatigue. At a hospital that accepts uninsured patients, that is a plausible reason for such an egregious error.

At one time, Bobby could have sued each of the defendants for 100% of the liability. Bobby has grounds for suing all of the defendants jointly and severally. After all, the liability in this case belongs to not only to City General’s policy but also to the county hospital’s staff’s competence, or lack thereof, and the law says all of them can be held responsible. Yet many states, according to Jan Ambrose and Anne Carroll, have changed the rules about joint and several liability. In a proportionate liability case, such as the one Bobby presumably has, plaintiffs are required now to reveal what sort of compensation they have already received from co-defendants. In other words, if the county hospital and Dr. Andrews should concede their fault, make an offer to Bobby, and Bobby accepts the offer, that amount of compensation must be revealed in a case against City General. That way City General may be required to pay less than if they were held severally liable for all of Bobby’s damages (Ambrose & Carroll, 2007, p. 850) . This seems fair and would definitely go a long way in reducing the cost of medical malpractice insurance and perhaps eventually the cost that is passed on to the consumer, but it may also mean that one defendant who is responsible for a portion of the damage pays more than a defendant who is equally or even more responsible.

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