



ALIPATO PROJECT

Together, we can hold batterers financially accountable.

Domestic Violence Torts 101

What is a tort?



What is a tort?

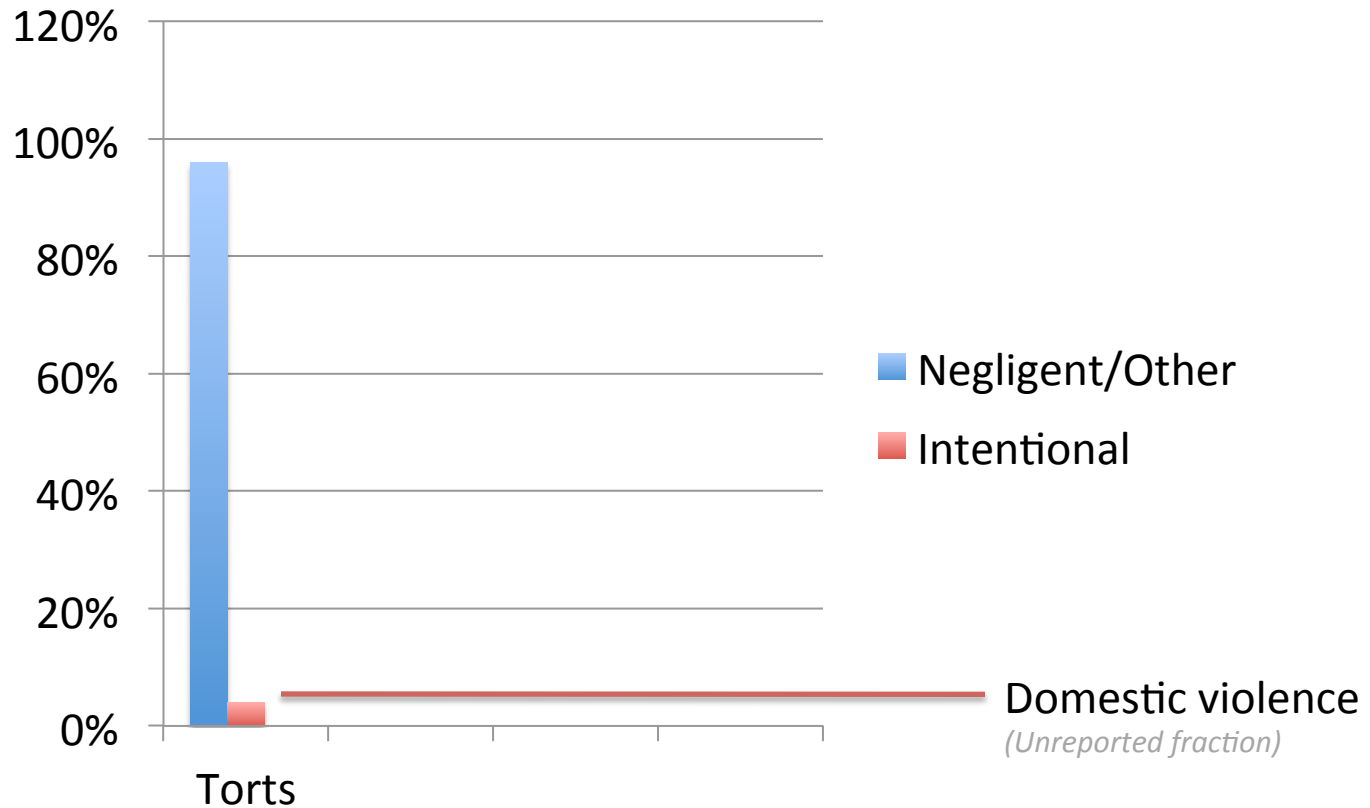


A tort is a civil wrong for which a remedy may be obtained in court, usually in the form of damages.

Legislative History

- Tort of Domestic Violence
 - California Civil Code §1708.6
 - Legislative intent: “to underscore society’s condemnation of these acts, to ensure complete recovery to victims, and to impose significant financial consequences upon perpetrators,” (AB 1933)

Litigated Torts: Breakdown




Problems

- Liability insurance policies do not cover intentional torts
- Assumption: batterers have no assets
- Lack of awareness in legal and DV community

Solutions

- Liability insurance policies do not cover intentional torts
- Assumption: batterers have no assets
- Lack of awareness in legal and DV community



BUT home owner's insurance should cover all injuries caused negligently! (example: plaintiff falls down stairs after DV incident)

Solutions

- Liability insurance policies do not cover intentional torts
- Assumption: batterers have ~~no~~ assets
- Lack of awareness in legal a

Examples of wealthy batterers: Charlie Sheen (actor), John Michael Farren (former White House deputy counsel), Chris Brown (music artist).



Solutions

- Liability insurance policies do not cover intentional torts
- Assumption: batterers have no assets
- **Raise** ~~Lack of~~ awareness in legal and DV community



**This is where you can
help! Please tell people
about us!**



Domestic Violence, defined

- Same as Penal Code §13700, which defines abuse as the intentional or reckless “causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself or another.”

Timing

Statute of Limitations

- Three years from the last incident of *harassment*.



Continuing Tort Theory

- The continuing tort theory allows DV victims to recover damages for all acts of DV occurring during the marriage, provided the victim proves a continuing course of abusive conduct. *Pugliese v. Superior Court* (2007) 146 Cal. App. 4th 1444

Tort Case Anatomy

Liability

- Did perp intend to cause bodily injury? or
- Did perp intend to put victim in reasonable apprehension of bodily injury?
- If yes → prove damages

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Damages

- General damages
 - Physical (bruises, wounds, broken bones)
 - Emotional (diagnosed PTSD, depression, anxiety)
- Special damages
 - Lost earning potential
 - Medical bills
- Punitive damages
 - To deter future misconduct

Tort Case Anatomy

LIABILITY
+ INJURY
DAMAGE\$



Eligibility for our Program

- Client or perpetrator live in Berkeley's 94703 zip code and surrounding areas
- Client has at least some of the following:
 - Police reports
 - Witnesses
 - Diagnosis of PTSD
 - Photographs
 - Videos
 - Harassing text messages/ e-mails
- Charitable class: Client must either be low-income or have a disability (most resisters of DV have PTSD, which counts as a disability)

Other Causes of Action

- Negligent Infliction of Emotional Distress
 - Defendant was negligent
 - Plaintiff suffered serious emotional distress
 - Defendant's negligence was a substantial factor in causing plaintiff's serious emotional distress.
 - Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.
 - Serious emotional distress exists if an ordinary, reasonable person would be unable to cope with it.

Other Causes of Action

- Intentional Infliction of Emotional Distress
 - Defendant's conduct was outrageous
 - Defendant intended to cause plaintiff emotional distress or Defendant acted with reckless disregard of the probability that plaintiff would suffer emotional distress, knowing that plaintiff was present when the conduct occurred
 - Plaintiff suffered severe emotional distress
 - Defendant's conduct was a substantial factor in causing plaintiff's severe emotional distress
 - Severe emotional distress is emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it. *Fletcher v Western Life Ins.*

Other Causes of Action

- Sexual Battery (Civil Code Section 1708.5)
 - Defendant intended to cause a harmful or offensive contact with plaintiff's sexual parts, and a sexually offensive contact with plaintiff resulted
 - OR defendant intended to cause a harmful or offensive contact with plaintiff by use of defendant's sexual parts, and a sexually offensive contact with plaintiff resulted
 - OR defendant caused an imminent fear of a harmful or offensive contact with plaintiff's sexual parts by use of defendant's sexual parts, and a sexually offensive contact with plaintiff resulted
 - AND plaintiff did not consent to the touching
 - AND plaintiff was harmed or offended by defendant's conduct

Other Causes of Action

- Stalking (Civil Code Section 1708.7)
 - Defendant engaged in a pattern of conduct with the intent to follow/alarm/harass plaintiff. The pattern of conduct must be supported by evidence in addition to plaintiff's testimony.
 - As a result of this conduct, plaintiff reasonably feared for her safety.
 - Defendant violated a restraining order prohibiting the pattern of conduct or
 - As part of the conduct, defendant made a believable threat with the intent to place plaintiff in reasonable fear for her safety, and
 - Plaintiff clearly demanded at least once that defendant stop, and
 - Defendant persisted in their pattern of conduct.
 - Plaintiff was harmed
 - Defendant's conduct was a substantial factor in causing plaintiff's harm

Questions?

E-mail info@alipatoproject.org for more information.

Or sign up for our free weekly legal clinic for resisters of domestic violence! RSVP at <https://alipatoproject.org>.