



# University of Zurich

Faculty of Law  
Fall Semester 2012

## Law & Economics Tort Law - Introduction

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# Tort Law

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A tort is a civil wrong committed by one person against another person. The two persons are not (necessarily) linked by a legal relationship as for example a contract.

## Examples

- Car accident
- Defamation
- **Product liability** (no contract between manufacturer and consumer)

# Relationship to other fields of law

Several sets of rules apply at the same time:

- General Tort Law
- Absolute liability in special statutes (e.g. product liability)
- Contract Law (if there is – in addition – a contractual relationship)  
But see the *règle de non-cumul* in France: *Either* contract law *or* tort law applies
- Criminal Law

The **standard of proof** is different in *private* and in *criminal* law: In the murder trial, O.J. Simpson was acquitted. In the civil trial, the tort of wrongful death was held to be proven.

# Goals of Tort Law

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What is the goal of tort law?

Compensation, deterrence, punishment?

Classical legal science: compensation

L&E: deterrence and incentives

(overlap with criminal law)

# Two Different Systems

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## 1. Common Law

tort law

## 2. Civil Law

law of delict

# Structural Differences

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## 1. Common Law: Different Torts Developed by the Courts

- Negligence

A duty of care is broken which is owed by one person to another person.

- Breach of statutory duty

- Nuisance

Interference with the right to use one's land (e.g. immissions)

- Defamation

- Wrongful death

# Structural Differences

## 2. Civil Law: Two different systems

- Countries with specific tort rules (e.g. Germany)
- Countries with a general clause (e.g. France and Switzerland)

This is important for the following problem: Are there damages available for "pure economic loss" (in absence of a specific injury)?

Example: An excavating machine cuts through power lines supplying a nearby factory. Does the responsible have to pay for the production shortfall?

# Structural Differences

- Countries with specific tort rules (e.g. Germany)

## § 823 CC ("Bürgerliches Gesetzbuch" Germany)

(1) Anyone intentionally or negligently trespassing, contrary to law, on the life, body, health, freedom, property or any other right of another party shall be liable for the damage thus incurred to that other party.

(2) The same duty affects anyone breaching a law aiming to protect another party. [...]



# Structural Differences

- Countries with a general clause (e.g. Art. 1382 of the French Civil Code and Switzerland)

## Art. 41 CO (Switzerland)

1 Any person who unlawfully causes loss or damage to another, whether willfully or negligently, is obliged to provide compensation.

[...]

→ However, Swiss tort law is interpreted as if there were specific tort rules.