

## **A Guide to Texas Personal Injury Law**

Every year, tens of thousands of people are seriously injured by negligent individuals and businesses. These injuries can result in long-lasting and sometimes debilitating physical complications and leave victims with lingering mental and emotional trauma.

The days, weeks, and months following a personal injury accident can be stressful and confusing. Injured victims are often left dealing with medical bills, lost wages, and insurance companies that have no interest in providing real help. However, you do not have to navigate these struggles alone. Hiring an experienced personal injury lawyer allows you to focus on healing while your attorney deals with the insurance companies and financial turmoil.

### **I. What is Personal Injury Law?**

In broad terms, personal injury law deals with legal disputes that arise when one person suffers an injury due to another person's negligence or wrongful conduct. Unlike criminal law, personal injury cases do not involve the government prosecuting the wrongdoer. Instead, a private plaintiff, the person who is claiming an injury occurred, seeks compensation from a defendant, the person or business accused of causing that injury.

Personal injury claims can result from accidents as well as intentional acts. Common types of personal injury claims include:

- Auto accidents
- Trucking accidents
- Workplace accidents
- Premises liability (e.g. slip and fall accidents)
- Product liability
- Medical malpractice
- Dog bites
- Assaults
- Negligent security
- Child injury
- Child abuse
- Wrongful death

### **II. What Does a Texas Personal Injury Lawyer Do?**

In the broadest sense, a [personal injury attorney](#) is a lawyer that provides legal services to those who claim to have been injured as a result of negligence or wrongful behavior of another party. However, there is a lot more that goes into a personal injury lawsuit than you may expect.

As soon as you contact an attorney, your attorney will begin taking steps to preserve and gather evidence for your claim and will begin working with insurers on your behalf. When investigating your

case, your attorney will have one goal – to gather all the evidence necessary to verify how the accident happened and establish who was at fault. They will gather photographic evidence, witness statements, and official reports and may file a temporary restraining order to preserve any evidence that is at risk of damage, destruction, or tampering.

Once a personal injury lawsuit has been filed, both your attorney and the defense's attorney will begin pretrial investigations. This is known as the discovery process. During discovery, attorneys will begin gathering evidence and may solicit written answers from the opposition, known as interrogatories, or request sworn testimony under oath, known as depositions.

Settlement negotiations will likely begin after pretrial investigations are complete. At this point, your attorney will begin seeking fair compensation for the damages you suffered. If a settlement is negotiated, your attorney will contact you for your approval.

If your attorney and the defense cannot agree upon a fair settlement or if the defense continues to challenge liability, then your case will go to trial and your attorney will represent you in court.

### **III. What Texas Laws Govern Personal Injury Cases?**

In Texas, personal injury cases are governed by the Civil Practice and Remedies Code. This section of law helps define and determine negligence, duties of care, statutes of limitations, liability, damages, and recovery.

As with all states, many of Texas' personal injury laws are based on the doctrine of negligence. The [Legal Information Institute](#) defines negligence as a failure to behave with the level of care that a reasonable person would have exercised under the same circumstances.

By law, a general legal duty of care is owed by every member of society and requires them to act responsibly and avoid putting others at risk. Therefore, if you were injured in an accident and wanted to seek financial recovery in the form of a personal injury claim, you would need to show that a reasonably prudent person placed in the same position as the defendant would have acted differently under the circumstances that led to your accident or injury.

Stricter duties of care (e.g. special duties) are established in cases that involve a professional providing a service. For example, in the case of a medical malpractice claim, the doctor or physician accused of wrongdoing would be held to the same duty of care as a reasonable member of his or her profession. Stricter duties of care can also be owed by a business to a consumer or an employer to an employee.

Texas Civil Practices and Remedies Code also establishes Texas' shared fault rule.

### **IV. What is Texas' Shared Fault Rule**

Texas personal injury law is further governed by a modified comparative negligence rule (commonly referred to as the "shared fault rule" or "proportionate responsibility").

Texas' shared fault rule states that if a person or business is partially to blame for your accident or injury, then they can be held liable for an amount of damages proportionate to their share of fault. So in a case where multiple parties contributed to your injuries, the court will assign each party a percentage of fault based on how much responsibility they bear. When damages are awarded, each party is responsible for paying a percentage of your total recovery equivalent to their determined percentage of fault.

Texas' shared fault rule also means that you are able to make a recovery even if you are determined to be partially at fault for your own accident and injuries.

For example, if you were texting on your phone when your vehicle was t-boned by a car that ran a stop sign, the court could determine that you were 30% at fault for the accident and therefore 30% at fault for your injuries. As such, if you were awarded \$10,000 in damages, you would only be able to recover 70% of that amount or \$7,000.

It is important to remember, however, that Texas follows the 51% bar rule. This means that you may not collect damages for injuries if you are determined to be 51% or more at fault for your injuries.

## **V. What is the Statute of Limitations for Personal Injury Claims in Texas?**

The statute of limitations for a personal injury claim in Texas depends on the unique circumstances of that case. While the Texas Civil Practices and Remedies Code does establish a general statute of limitations for various personal injury cases, the real-life application of these statutes is much more complicated and your Texas personal injury attorney would need look at the details of your case for nuances and exceptions.

For example, in some cases the statute of limitations is not tied to the event that caused your injury, but rather the point at which you knew or should have known that an injury occurred. A statute might even provide that you have two years to bring an action from the date you knew of an injury while also stating that you have no more than six years from the date of the event in question to file suit.

This is why it is essential that you consult with a lawyer when trying to determine if the statute of limitations has expired on your case.

Typically, the statutes of limitations for personal injury claims are as follows:

- General personal injury: 2 years (*Tex. Civ. Prac. & Rem. Code § 16.003(a)*)
- Medical malpractice: 2 years (*Tex. Civ. Prac. & Rem. Code § 74.251(a)*)
- Product liability: 2 years or 15 years (*Tex. Civ. Prac. & Rem. Code § 16.003(a)*; *Tex. Civ. Prac. & Rem. Code § 16.012(b)*)
- Legal malpractice: 2 years (*Tex. Civ. Prac. & Rem. Code § 16.003(a)*)
- Assault and battery: 2 years (*Tex. Civ. Prac. & Rem. Code § 16.003(a)*)
- Wrongful death: 2 years (*Tex. Civ. Prac. & Rem. Code § 16.003(a)*)

### **A. Statute of Limitations for Injured Children**

There are circumstances where Texas law allows for an existing statute of limitations to be “tolled” (or extended). For example, in cases where a minor is injured, personal injury claims are tolled until the child turns 18-years-old or is otherwise legally deemed an adult. The child would then have two years from the date they were legally recognized as an adult to settle or prosecute their personal injury case.

It is important to note, however, that this extension only applies to claims that legally belong to the child. Claims that apply to the child’s parents must be satisfied within the normal statute of limitations. As an example, claims for medical expenses would not be tolled because, under Texas law, the child’s parents have the legal duty to provide medical care for their child. This means any claims made in connection with those medical expenses would belong to the parents as well.

Examples of damages that may be tolled include:

- Pain and suffering
- Mental anguish
- Scarring
- Disfigurement
- Physical impairment
- Medical expenses procured as an adult

## **VI. What are the Common Elements of a Valid Personal Injury Lawsuit?**

The most important part of a personal injury lawsuit is establishing negligence. Without evidence of negligence, there is no personal injury case.

As previously mentioned, the [Legal Information Institute](#) defines negligence as a failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. While the behavior in question usually consists of actions, it can also consist of omissions when there is some duty to act.

When attempting to ascertain whether a person’s conduct or behavior lacked reasonable care, a Texas personal injury attorney will consider the four elements that are required to establish a prima facie case (a legally required rebuttable presumption). The elements are:

1. The existence of a legal duty that the defendant owed to the plaintiff
2. The defendant’s breach of that duty
3. The plaintiff’s sufferance of an injury
4. Proof that the defendant’s breach caused the plaintiff’s injury

### **A. Determining the Existence of Legal Duty**

The first step in building a prima facie case of negligence is establishing the existence of a legal duty that the defendant owed to the plaintiff. In a Texas personal injury case, there are typically two kinds of duty that can be owed:

1. **Duty of Care:** A duty to conduct oneself in a manner that a person of ordinary prudence, acting under similar circumstances, would conduct himself. (*i.e. Would a reasonable person have acted the way the defendant acted while operating a motor vehicle if the reasonable person was operating a motor vehicle under circumstances similar to those as the defendant?*)
2. **Special Duty:** A duty imposed by a statute or case law which may exist either in addition to or in place of general duty of care. (*i.e. A statute requiring drug manufacturers to list possible [side effects, contraindications, and warnings](#) on product labels.*)

To determine if a general duty of care or a special duty was owed, your attorney and the court will look at the relationship between the plaintiff and the defendant and identify if a duty was owed based on that relationship.

### **B. Determining Breach of Duty: The Hand Formula**

If it is determined that a duty was owed by the defendant to the plaintiff, the next step to establishing negligence is to determine whether the defendant breached that duty. For this, your Texas attorney will likely apply the Hand Formula.

The Hand Formula was first used by Judge Learned Hand in *United States v. Carroll Towing* and says that if the burden of taking precautions is less than the probability of injury multiplied by the gravity of any resulting injury, then the party with the burden of taking precautions has some amount of liability.

The formula can be simplified as  $B < PL$  with B representing burden of taking precautions, P representing the probability of personal loss, and L representing the gravity of personal loss.

### **C. Determining if the Plaintiff Suffered an Injury**

As your attorney considers the Hand Formula, they will also be working to show that an injury occurred. In a case of negligence, an injury must be one of two things:

- Bodily harm
- Harm to personal or real property

Common examples of bodily harm cited in Texas personal injury cases are:

- [Fractures and soft tissue damage](#)
- [Traumatic brain injuries](#)
- [Back and neck injuries](#)
- Development of adverse health conditions (*i.e.* cancer/kidney damage/heart attack)
- Delayed or failed diagnosis of a detrimental medical condition
- [Wrongful death](#)

While pure economic loss will likely fail to meet the injury requirement for a Texas personal injury case, emotional distress and emotional harm can meet the bodily harm requirement even in if no accompanying physical harm is present (*e.g.* emotional abuse, mental anguish, loss of consortium).

### **D. Proving that the Breach of Duty Caused the Injury**

The final part of forming a prima facie negligence case is establishing proof that the plaintiff's injuries were caused by the defendant's breach of duty. There are two types of causation in cases of negligence which must be addressed:

- **Cause-in-Fact Cause (Actual Cause):** Cause-in-fact is pretty straightforward. It simply states that the actions of the defendant are the actual cause of the plaintiff's injuries. This can normally be shown through the "but-for" test. For example, if a bus driver ran a red light and hit a pickup and the driver of the pickup suffered back injuries, the "but-for" test would state "But for the bus driver running the red light, the pickup driver would not have sustained his back injuries."
- **Proximate Cause (Legal Cause):** Proximate cause deals with the question of foreseeability: *Are the injuries of the plaintiff suffered a foreseeable result of the defendant's behavior?* For example, a drunk driver hitting and killing a pedestrian is a foreseeable consequence of the driver choosing to get behind the wheel while intoxicated. However, if a drunk driver were to collide with an 18-wheeler carrying volatile chemicals which exploded on impact and caused a poorly maintained utility pole a half-mile away to fall over and injure a pedestrian on a late night walk, it is unlikely the drunk driver would be held liable for the pedestrian's injuries as the collapse of the utility pole is a highly unforeseeable consequence of the defendant's drunk driving.

Another way to think of proximate cause is that the injury of the plaintiff should be close (proximate) in time and close (proximate) in the "chain of causation" linked to the defendant's actions.

## VII. What Damages are Available in Texas Personal Injury Lawsuits?

In Texas, personal injury damages are generally fall into two categories:

1. Economic damages (those that have intrinsic monetary value)
2. Non-economic damages (those that do not have a clear monetary value)

However, if your injuries were the result of especially reckless or malicious behavior by the defendant, you may be eligible for a third type of damage called punitive damages. While economic and non-economic damages are awarded with the goal to "make the plaintiff whole," the sole purpose of punitive damages is to make an example out of a defendant and show society that the conduct displayed by the defendant will not be tolerated.

### A. What are Examples of Economic Damages in a Personal Injury Lawsuit?

The two most common examples of economic damages sought in a personal injury case are medical expenses and lost wages.

When seeking medical expenses in a personal injury lawsuit, you are entitled to reimbursement for procedures and services, including:

- Doctor visits
- Hospital stays
- Emergency room treatment

- Ambulance fees
- Nursing services
- Medication costs
- MRIs, x-rays, and other scans
- Surgery
- Rehabilitation and physical therapy

In order to be awarded medical expenses, you must demonstrate that the expenses are related to medical conditions resulting from the accident or injuries alleged in your personal injury lawsuit. You may also be entitled to future medical expenses provided your injuries will need ongoing treatment.

Lost wages represent the amount of money you would have earned from the time of an injury to the date of settlement. You can also recover loss of earning capacity if you have sustained a [long-term disability](#) and will be unable to make as much money as you did before your accident as well as damages for lost opportunities such as an interview or promotion you missed out on while you were recovering.

Aside from basic wage calculations (how much direct pay you lost), you are also able to claim:

- Money that reflects a promotion or wage increase provided you were due for a wage increase or promotion while out of work.
- Loss of commissions on sales.
- Bonuses that you were paid in the past and were on track to receive prior to your injury.
- Loss of fringe benefits.
- Loss of pension benefits.

You can even recoup damages for the vacation or sick leave you used while recovering from your injury.

## **B. What Are Examples of Non-Economic Damages in a Personal Injury Lawsuit?**

Non-economic damages are any damages that do not have a clear monetary value connected to them. Because there is no “paper trail” to base the value on, non-economic damages can be very difficult to quantify, and it can be even more of a challenge to demonstrate their value to a jury.

Some common examples of non-economic damages awarded in personal injury lawsuits include:

- **Pain and suffering** – If your injury has resulted in pain or serious discomfort, you may be entitled to pain and suffering damages. This can include pain experienced when an injury was caused, pain experienced immediately after an injury was caused, and any ongoing pain that can be attributed to the injury or accident.
- **Loss of enjoyment** – These damages attempt to quantify loss of enjoyment in day-to-day pursuits like hobbies, exercise, and other recreational activities.
- **Emotional distress** – Not all injuries are physical. If your accident or injury has had a psychological impact and has resulted in things like anxiety, depression, or sleep loss, you may be entitled to emotional distress damages.
- **Loss of consortium** – Typically applied to [wrongful death lawsuits](#), loss of consortium damages can also be sought when a severe injury has resulted in a loss of companionship or an inability to

maintain a sexual relationship with a spouse. Children may also sue for loss of consortium if the injuries have significantly hampered the victim's ability to provide care, nurturing, or comfort.

### **C. How are Punitive Damages Awarded in a Texas Personal Injury Lawsuit?**

In order for punitive damages to be awarded, there must first be actual damages. Actual damages include medical bills, pain and suffering, mental anguish, and loss of wages. Without actual damages, punitive damages cannot occur.

Second, you must be able to demonstrate that the defendant acted with gross negligence. This means showing:

1. That a reasonable person in the same situation as the defendant would have known that their behavior or conduct involved an extreme degree of risk.
2. That the defendant knew of the risk but acted with disregard.

The most common example of gross negligence in an auto accident is when a person is injured or killed by a drunk driver. When a drunk driver gets behind the wheel, they have made a deliberate choice to ignore the obvious risk they could pose to others.

## **VIII. What Can I Expect from My Personal Injury Settlement in Texas?**

The amount you will receive in your Texas personal injury settlement is based entirely on the unique circumstances of your case. For example, a person who suffered severe, debilitating injuries will likely receive a larger settlement than a person who suffered moderate injuries because their damages carry more of a financial and emotional burden.

Another thing to consider when trying to determine what to expect from a personal injury settlement is insurance limits. Insurance policy limits may keep settlement offers low as an insurance company is unlikely to offer a settlement that is over the insured person's policy limit. Typically, companies will have higher policy limits than individuals.

### **A. Is My Texas Personal Injury Settlement Taxable?**

Whether or not your Texas personal injury settlement is subject to taxes depends on actions you took prior to your settlement.

According to the [IRS](#), if you received a personal injury settlement for physical injuries or physical illness and DID NOT take an itemized deduction for the medical expenses related to the injury or illness in prior year, then the full amount of the settlement is non-taxable and does not need to be filed as income.

However, if you did deduct medical expenses during any prior year, you must include the portion of your settlement that is for medical expenses as income and that portion would be taxable.

Damages awarded for emotional distress or mental anguish are treated the same as physical injuries and physical illness by the IRS as long as they originated from a physical injury or physical illness.



Lost wages, on the other hand, are taxable and also subject to the social security wage base and social security and Medicare tax rates in effect in the year paid.

## **IX. How to Prepare for a Free Case Review with a Texas Personal Injury Lawyer**

When meeting with a Texas personal injury attorney for a free case review, there are things you can bring that will help the attorney evaluate your claim.

The first thing you will want to do is gather all the evidence that you collected related to accident or incident that caused your injuries. This may include:

- Photographs of the accident scene, damage to your car and other vehicles involved, your injuries, or anything else pertaining to the incident
- Copy of a police report or accident report
- List of names, phone numbers, or addresses of witnesses you spoke with at the scene
- Medical records

If you received any kind of medical attention after your accident, you should bring records or documents showing the procedures or treatments you had done in addition to the names and contact information of the doctors or medical professionals that saw you. Also bring documentation of any future treatment they have recommended and along with the expected costs of your continued care.

Other documents that you may have that you should bring to your first meeting with a lawyer include:

- Letters or emails you received from your insurer or the other driver's insurer
- Name and phone number of the at-fault driver from the accident (and their insurance company's information)
- Contact information of any insurance company or claims adjusters that you have spoken with
- Receipts of anything you purchased to remedy an injury or repair due to the accident

You may also want to prepare a list of questions for the attorney. Important questions to ask your prospective accident attorney include:

- How long have you been practicing law in this practice area?
- What is your track record of succeeding in these cases?
- Do you have trial experience?
- How much will it cost to hire you?

## **Have You Been Injured in an Accident?**

At Thomas J. Henry, we focus on personal injury matters and achieving the maximum recovery for you and your family. Our firm has the resources to take care of you and your family during the legal process. Our lawyers are dedicated to each and every client and their unique case. Let us help you get the compensation you deserve for the injuries you have sustained. [Contact our personal injury attorneys](#) — available 24/7, nights and weekends — for a free legal consultation.

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