

## Personal Injury Law: The Basics

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At any moment in America, millions of people are driving, walking, shopping, traveling, and working, so it is no wonder that accidents and injuries have become an inevitable part of life. But the fact that mishaps are fairly commonplace does not detract from the pain and confusion that can result when an accident or injury happens to you or a loved one. This is especially true when any harm could have been avoided if others had not acted carelessly. If you decide to take steps toward protecting your legal rights after an accident or injury, you may have a number of general questions about "personal injury" cases. What is a "Personal Injury" Case?

"Personal injury" cases are legal disputes that arise when one person suffers harm from an accident or injury, and someone else might be legally responsible for that harm. A personal injury case can become formalized through civil court proceedings that seek to find others legally at fault through a court judgment or, as is much more common, such disputes may be resolved through informal settlement before any lawsuit is filed:

**Formal "Lawsuit"** Unlike criminal cases, which are initiated by the government, a formal personal injury case typically starts when a private individual (the "plaintiff") files a civil "complaint" against another person, business, corporation, or government agency (the "defendant"), alleging that they acted carelessly or irresponsibly in connection with an accident or injury that caused harm. This action is known as "filing a lawsuit".

**Informal Settlement** In reality, most disputes over fault for an accident or injury are resolved through informal early settlement, usually among those personally involved in the dispute, their insurers, and attorneys representing both sides. A settlement commonly takes the form of negotiation, followed by a written agreement in which both sides forgo any further action (such as a lawsuit), choosing instead to resolve the matter through payment of an agreeable amount of money.

### Where Are Personal Injury Lawsuits Filed?

Personal injury lawsuits usually fall under the authority (or "jurisdiction") of state courts in the county where the injury occurred, or where those involved (the "parties") in the incident are located. So, if a resident of Los Angeles County is involved in a car accident in Los Angeles, he or she will ordinarily file a personal injury lawsuit in the Superior Court of California, County of Los Angeles. Injury cases in which a

relatively low amount of damages is sought (typically a maximum of \$2000 to \$5000) usually must be filed in a court's "small claims" division.

An exception to the rule of state court jurisdiction arises when parties in a personal injury case live in different states, and the case involves an amount "in controversy" over \$75,000. Such a personal injury case may be filed under federal jurisdiction in the federal trial courts (called U.S. District Courts), or the case may be moved there if it was originally filed in a state court. Issues of jurisdiction can be tricky for those unfamiliar with the legal process, but an experienced attorney can sort through any problems that may arise in deciding where to file a lawsuit.

### Where Are the Laws that Govern Personal Injury Cases?

Unlike other areas of the law that find their rules in statutes (such as penal codes in criminal cases), the development of personal injury law has taken place mostly through court decisions, and in treatises written by legal scholars. Many states have taken steps to summarize the development of personal injury law in written statutes, but for practical purposes court decisions remain the main source of the law in any legal case arising from an accident or injury. (Note: in some types of injury cases, most notably those arising from car accidents in which a state vehicle code section was violated, statutes can be used to help establish fault for an accident or injury.)

To understand how pre-existing case law (or "legal precedent") might be used to strengthen an injury case, suppose that you are involved in an accident or are injured, and decide to hire an attorney to protect your legal rights. During settlement negotiations with insurers or opposing counsel, and especially in any legal filings with the court, your attorney will make reference to (or "cite") prior cases in which the courts in your state decided on issues like fault or damages, in ways that are favorable to your position. For example, suppose you have been injured in a "slip and fall" on an uneven sidewalk outside your apartment building. In seeking to prove that the owner of your building is at fault, your attorney might cite a case in which your state's supreme court held that owners of residential buildings have a legal duty to ensure that the premises surrounding the building are properly maintained.