

# Personal Injury with Gwyneth Paltrow

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## What Is Happening?

We are going to be using the  
March 2023 Gwyneth Paltrow  
negligence trial to try and learn  
something to apply in justice  
courts.

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## Funded By A Grant From The Texas Court Of Criminal Appeals

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## Resources:

### [www.tjctc.org](http://www.tjctc.org)

- Deskbooks, Forms, Charts, and Checklists
- Legal Question Board and Legal Calls
- Recordings and Self-Pace Modules

### [www.sll.texas.gov/legal-help](http://www.sll.texas.gov/legal-help)

- Has Texas Laws and Court Rules

### **O'Connor's Texas Causes of Action**

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## Control Of The Courtroom

- The court should exercise reasonable control over the presentation of evidence and examination of witnesses.
  - TRE 611
  - Court may apply it under Rule 500.3(e)

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### Court Reporter or Record of Trial?

- Within court's discretion (i.e. control of courtroom)
  - Except for truancy (See Family Code 65.016)
  - However, JP court is not a court of record
    - Appeals are trial de novo
- If allowed, party requesting it is responsible for costs

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# Zoom Questions

Zoom okay still?  
Teleconference?

What are the  
rules?

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## See TRCP 500.10

- Judge may allow or require appearance by videoconference, teleconference, or other available electronic means
- Many factors to consider in that determination
  - Case type, number of parties/witness, objections (etc.)
- Reasonable notice required in the papers of the case
- Open court still generally required

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## Right To A Jury Trial

- Either party is entitled to a jury trial.
  - But the party must file a written demand for a jury no later than 14 days before the date the case is set for trial.
  - And pay a jury fee of \$22.
- TRCP 504.1(a) and (b)*

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## Right To A Jury Trial Continued

- A demand for a jury may be included in a pleading (a petition, answer or counterclaim).
- If the demand is not timely, then the right to a jury trial is waived unless the late filing is excused by the judge for good cause.

*TRCP 504.1(a)*



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# Juror Screening



Mandatory questions



Check with County—may be handled by previous juror registration system



If not, you must ask them!



Jurors must have certain qualifications



Other excuses may apply, ex: scheduled surgery



Exemptions Apply—Like age over 75 --Can still serve if they want to

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# Voir Dire

Both side asks questions

- Usually, each side gets limited time
- Generally, 15 minutes each for Justice Court

Court asks questions

Questions not allowed:

- Irrelevant, immaterial, repetitious, or commitment

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## Peremptory And Batson

Each side may strike 3 people from the jury pool without telling the court a reason, as long it is not challenged by a Batson Challenge

Batson is when one side argues (and objects) that the other side used a peremptory strikes to eliminate jurors for race, ethnicity, or sex.

If objected to, the party will have to give a reason and the court decides if it is neutral and not related to race, ethnicity, or gender.

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## Strikes For Cause

- Objection made alleging juror is disqualified
- Such as bias or prejudice
- Party must explain to the judge reasoning
- No limit on #
- Example: "I do not believe in lawsuits. People should work it out privately."
- Judge can always follow up and ask if they can put that aside and be fair and impartial

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## Other Rules Of Civil Procedure and Rules Of Evidence

- Do not apply to civil cases in justice court unless the judge decides that a particular rule must be followed to ensure the proceedings are fair to all parties; or
- unless specifically provided by law or the rules of civil procedure. -- Rule 500.3(e)
- Good Examples: Evidence of offers to compromise and if someone had liability insurance=not admissible. TRE 408 and 411

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## How To Rule On Objections/Motions to Strike?

- “I will give it the weight to which it is entitled. We have no record to strike.” ✓
- “The objection is overruled.” ?
- “The objections is sustained.” ?
- “The jury shall give the weight to which they think the evidence is entitled.” ✓

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## Causes of Action

In criminal cases, you must consider “elements of the offense,” which are what the state must prove for someone to be guilty of a criminal offense.

In civil cases, there will be elements of the case that must be proven as well, but instead of elements of the offense, they are elements of the cause of action.

Less likely to be clearly spelled out in statute than criminal elements are – O’Connor Causes of Action is a great resource!

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## Practice Tips

Have a “cheat sheet” of the elements of the offense or cause of action on the bench and make notes as to which elements you have heard evidence on

Make a flowchart/checklist if necessary to ensure the right result

Can you “take the day off” with a jury trial, since this is all their job anyway? Why or why not?

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## Personal Injury Cases

- Something that is not a breach of contract, but a party can recover money for under civil law
- Generally, damage to someone's property or economic harm/bodily injury to the person
- Purpose: Deter wrongful conduct, make injured parties whole

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### Intentional Torts vs. Negligence

- There are two main categories of tort cases.
- **Intentional torts** are actions that a party does on purpose (or sometimes recklessly) that cause damage to property or injury to a person.
- **Negligence** is when a party causes damage or injury, not on purpose, but instead by not being careful enough with the actions they take (or fail to take).

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## Statute of Limitations – Personal Injury Cases

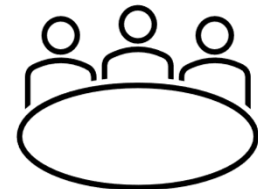


- The statute of limitations (both for intentional torts and negligence) is two years in Texas.
- The statute in some cases does not start running until a party is aware or should have been aware of the tort.
- If the case is outside the statute of limitations, the plaintiff cannot have a judgment, even if the defendant does not bring that up, and even if the defendant never appears.

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## Look at Handout 1 and 2--

- If this case was in your court, was it filed within the statute of limitations?
- What is/are the causes of action here?
- Who asked for the jury trial?
- What are two or three of the defenses asserted?



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# Negligence

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## What is Negligence?

- Negligence is a very common cause of action in justice court (even though many of the people filing the cases may not know to use that word.)
- At its base level, a negligence cause of action is saying that the defendant caused injury to the plaintiff by either:
  - Doing something that they should not have done, **or**
  - Failing to do something that they should have done.

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# Negligence – The Elements

1. The defendant had a legal **duty** to act in a certain way toward the plaintiff.
2. The defendant **breached** that duty.
3. The breach **caused** injury to the plaintiff.
4. You must have suffered actual **damages** that the civil justice system can compensate you for.

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## Negligence Element 1—Duty

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• A <b>general duty</b> exists to use <b>ordinary care</b> to avoid <b>foreseeable risk</b> of injury to others.</li></ul> | <ul style="list-style-type: none"><li>• Duty can be created by a relationship between the parties.<ul style="list-style-type: none"><li>• For example, attorney-client, accountant-client, parent-child.</li></ul></li></ul> |
| <ul style="list-style-type: none"><li>• There is <b>not</b> a general duty to provide aid or protect others, unless there is a special relationship.</li></ul>   | <ul style="list-style-type: none"><li>• Civil and criminal laws create statutory duties as well.<ul style="list-style-type: none"><li>• You have a duty to stop at a red light.</li></ul></li></ul>                          |

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## Negligence Scenario (1 of 2)– Duty

The location: a local bar. Rebecca is drunkenly juggling beer bottles. Thea is walking back from the bathroom into the path of the bottles. Mark sees this but says nothing. A bottle lands on Thea's head, knocking her unconscious. Amber and Bronson see this and provide no medical assistance. Amber is a lawyer, and Bronson is a doctor.

Thea sues Rebecca, Mark, Amber, and Bronson. Who, if anyone, had a duty toward Thea in this scenario?

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## Negligence Scenario (2 of 2)– Duty 2

A famous movie star and a retired optometrist are skiing at a luxury Deer Valley resort in Park City, Utah.

Who has the duty of care? Was this in contention here?

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## Negligence Element 2 – Breach (1 of 2)

In each situation where a person has a duty to another, they have what is called a **standard of care**. If they fail to meet this standard, they have **breached** their duty.

Normally, the standard is “ordinary care”, which is what an “ordinary prudent person” would have done (or not done) in that situation.

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## Negligence Element 2 – Breach (2 of 2)

When determining what an “ordinary prudent person” would do, the defendant’s age, experience, intelligence, and knowledge are taken into consideration.

Violation of a statute is considered “**negligence per se**”, meaning the act is negligent on its face.

The defendant may be able to provide a defense to this by showing that it was necessary to violate this law – for example, speeding to rush someone having a heart attack to the hospital.

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## Negligence Element 3 – Causation

A prison guard fails to search an inmate, which is a job responsibility. The inmate stabs the magistrate on duty with a screwdriver they smuggled in.

- Did the prison guard have a duty?
- Did the guard breach that duty?
- Was that breach a proximate cause of the magistrate's injury?
- Was the negligence a substantial factor in the injury?
- Would the injury have occurred without the negligence?
- Would a prison guard of ordinary intelligence have foreseen a risk of this injury?

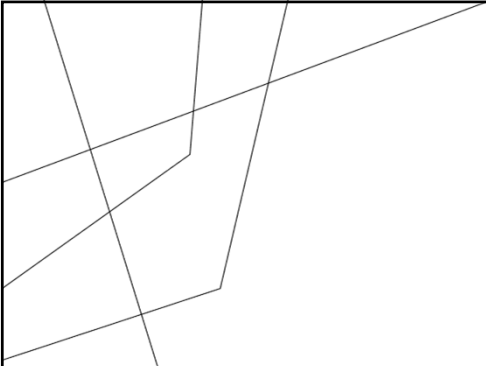
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## Understanding Proximate Cause (1 of 3)

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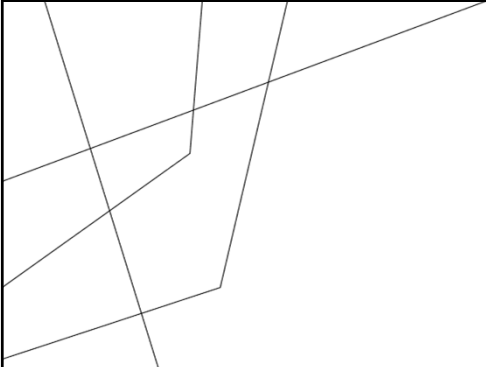




Understanding  
“Proximate  
Cause” (2 of 3)

- If the idea of proximate cause has your head spinning, do not worry, you’re not alone!
- Terry Sanderson runs a red light, and his car strikes a car driven by Gwyneth. Terry running the red light is the actual cause of Gwyneth’s damage and injuries.
- After Terry strikes Gwyneth’s car, it slides into Sting who is walking down the street, breaking his leg. Terry running the red light is the proximate cause of Sting’s broken leg.

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Understanding  
“Proximate  
Cause” (3 of 3)

- When the ambulance is taking Sting to the hospital, the ambulance driver crashes, breaking Sting’s arm. This injury was not a foreseeable result of Terry’s action of running the light, so Terry running the red light was not the actual cause and not a proximate cause of Sting’s broken arm.

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## Defenses to Negligence Include:

Comparative  
Negligence by  
Plaintiff

Release  
Agreement

Assumption of  
the Risk (hit  
by a foul ball)

Act of God

Unavoidable  
Accident

Limitations

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## Damage Calculation Issues – Comparative Negligence

- In **negligence** cases, the finder of fact (judge or jury) must assign a percentage of responsibility to each party.
- If the plaintiff is more than 50% responsible, they recover \$0, due to what is called **contributory negligence**.
- If the plaintiff is less than 50% responsible, they recover against the defendant the percentage of their damages that the defendant is responsible for.
  - So if damages are \$5,000 and the jury finds the defendant 40% responsible and the plaintiff 60%, how much does the plaintiff get? What if they flip those percentages?

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## Juror Questions

- Do we know how many jurors in the case?
  - How many in JP courts?
- Were they unanimous?
- Do they have to be unanimous in JP civil cases?

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## Attorney's Fees – Ch. 38, CPRC

**To recover attorney's fees, the claimant must be represented by an attorney, and must make the claim for fees to the opposing party and not have been paid within 30 days of the claim. Sec. 38.002, 38.003**



- Usual and customary attorney's fees are presumed to be reasonable, but that presumption may be rebutted.

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## Attorney's Fees – Ch. 38, CPRC

Sec. 38.001 lists the types of suits where a party can recover attorney's fees:

- Rendered services or performed labor
- Furnished material
- Freight or express overcharge or loss/damage
- Killed or injured stock
- Sworn accounts
- Oral or written contract

What about personal injury cases, like a car accident case or ski accidents?

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## Compensatory Damages – Personal Injury

- In **both negligence and intentional tort cases**, a party may seek to recover compensatory damages for personal injury. These damages can include:
  - Physical pain (past and future)
  - Mental anguish (past and future)
  - Disfigurement or physical impairment
  - Medical expenses
  - Loss of earning capacity
  - Loss of consortium (love & protection) – unlikely in justice court

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## Compensatory Damages

- Do not include the costs of coming to court in actual or compensatory damages.
- Lost income from work can be awarded if the work is missed due to the injury, but not lost income for the day that the party comes to court.
- Travel costs to court are not recoverable.

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## Pain & Suffering / Mental Anguish?

**Yes, you can award pain and suffering and/or mental anguish damages.**

**These damages are very difficult to accurately gauge and put a number on.**

- Each **finder of fact (judge or jury)** may find a different answer on the same facts.

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## Pain And Suffering

The idea is to compensate the person for the pain they endured.

- Medical bills cover economic damages, but not the actual pain. In a personal injury situation, if the victim didn't get medical treatment, their only actual damages are the pain they suffered.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- You can look at the other damages in the case to get a feel for what the person endured (broken glasses, stitches, etc.)
- The person can testify as to the pain they suffered.

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## Mental Anguish

The idea is to compensate the person for the mental pain they endured.

- Can be awarded if there is either a traumatic bodily injury **or**
- If offered direct evidence of the nature and severity of the mental anguish, and how it disrupted the plaintiff's daily routine.

Must be more than just "being mad or upset," something traumatic.  
– again rare in justice court, because significant trauma will usually incur other damages that are more than \$20,000.

How to decide how much?

- How much would someone have to be paid to willingly endure the pain?
- What disruptions did the mental anguish cause?

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## Punitive or Exemplary Damages

- These are damages that are awarded, not to compensate the plaintiff, but instead to **punish**, or make an **example** out of, the defendant.
- Goal is to punish the defendant for its bad action, as well as deter any future parties from engaging in the same bad behavior.
  - Notable examples include McDonald's being forced to pay punitive damages in the "hot coffee" case and Ford being forced to pay punitive damages when they knew of the Ford Pinto explosion danger.

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## Available Damages – *Intentional Tort Cases*

Compensatory Damages (personal injury and property damage)

Punitive/  
Exemplary Damages

Court Costs/Post-Judgment Interest (available in all cases).

Pre-Judgment Interest (personal injury or property damage cases only, **not on economic damage cases**)

Attorney's Fees are **not available** in intentional tort cases.

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## Available Damages – Negligence Cases

Compensatory Damages (personal injury and property damage)

Punitive/ Exemplary Damages (Gross Negligence only)

Court Costs/Post-Judgment Interest (available in all cases).

Pre-Judgment Interest (personal injury or property damage cases only, **not on economic damage cases**)

Attorney's Fees are **not available** in negligence cases.

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## Damage Calculation Issues – Punitive Damages

Punitive damages are available if the defendant acted with **malice** (intent to harm the plaintiff) or **gross negligence** (defendant was aware of an extreme degree of risk but disregarded that risk)

How do you decide what amount of punitive damages is appropriate?

How much is sufficient to punish the defendant for what they did, and put other actors on notice that they should not engage in that behavior?

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# Thank You!

## Questions?

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