

Personal Injury:
A Need-to-Know Guide

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Chapter 1

You've had an accident. Now what? --

Treat any accident like it's serious.

In any emergency or intense situation, your body starts to produce adrenaline. Adrenaline is an incredible natural phenomenon. It's the chemical that allows marathon runners to push through their final miles and gives heroes the superhuman strength to pull people out of crashed cars or burning buildings. Adrenaline numbs people's pain and infuses them with energy.

When you're in a car crash, adrenaline starts flowing like crazy to help you fight through the stress. It also desensitizes you to your injuries. After a car accident, even if you do notice some aches or pains, the adrenaline will mask how serious they are. You'll think it's nothing a Tylenol can't cure. However, as the stress dies down, and the adrenaline wears off, those tiny aches may become giant points of pain.

In that case, you'll need the proper information to get your injuries covered by the party that caused them.

Get every possible bit of information when the accident occurs

- A. The other party's driver's license and insurance details
- B. The other party's contact information
- C. The names and contact information of any witnesses

Call 911

To cover your bases, you need a police report. The other party may ask you not to report the accident because they don't want their insurance rates to go up. As much as they may pull on your heartstrings, you have to look out for your own wellbeing. You can tell them you're just trying to cover your bases and act responsibly. Ultimately, you have to take care of yourself and your family -- and this is exactly why we have insurance!

Even if you are the one at fault, you should call 911 and get a police report because that documentation freezes the facts in place. You don't want people to change their stories or exaggerate what happened. It's very hard to prove those details after you've driven away from the scene of the accident, unless you're super lucky, and there's a camera to back up your story.

Go to the doctor to get checked out

If it happens that you have an injury, the other party's insurance company will want to see that the injury originated at the crash - not before or after. If you want your injuries to be covered, you need to document them well. And you need to document them promptly.

If you wait too long to get checked by a physician, the other party may dispute the cause of your injuries. They may introduce the possibility that a later incident caused the injuries.

Take note of exactly what happened at the accident itself

It's sometimes easy while you're in the moment to think you're always going to remember exactly how an incident played out. But the sharpness of a memory fades rather quickly.

You need to take pictures and videos of the scene. Walk around and show where the cars are and what damage they appear to have. Also, video the other people involved. Their behavior and attitude can help you build your case, especially if they're acting like jerks or behaving erratically. Feel free to narrate the video with your version of how the accident happened.

You'll also want to write down how the accident occurred. You can also use a voice recorder on your phone.

Call your insurance company

Your insurance company works for you. They'll help you get started on the road to recovery. They'll set you up to get an estimate to fix your car, and they'll take your statement of what happened at the scene of the accident.

It might seem tempting to call the other party's insurance company if you're hoping to get them to pay for your injuries, but don't do it!! That insurance company's entire goal in this situation is to find ways to pay you *less, not more*. They'll record your statements and listen to them closely. Anything you say that doesn't align with your original story or shows that you might have been at fault will come

back to haunt you in a big way. Let your attorney and your insurance company talk to the other party's insurance. You keep to yourself. But be sure to share with your lawyer any information related to your case.

Start keeping a journal about your days

Every problem or change you experience after an accident matters. Write them down as they happen so you can track your injuries and demonstrate your suffering. If you don't, you'll forget what happened. You'll forget how many meetings you had to cancel, how many family events you missed, and how many meals you had to order in. All of those unusual activities can help show how significantly the incident impacted your life, so make note of them to look back on months down the road. Any change in your daily life may constitute an injury.

Do not post on social media

If there winds up being a dispute or a disagreement about who was at fault or what your injuries were, the other side is going to look at any and every piece of evidence that will disprove your statements. If you have an accident on Friday and then post pictures of yourself at your cousin's wedding on Saturday, you can count on it that the opposing party will use that post against you. Even if you were hobbling in pain. Even if you only went because someone forced you to. Post nothing, and don't let anyone tag you. Even the most

innocent and seemingly meaningless information can be held against you.

Call a lawyer

If you have an accident, it's highly likely that the local police will come to the scene to document what happened. They'll ask you to make a statement about the event. Having an accident is a very emotional experience, and you want to avoid saying too much when you're under that kind of pressure. **Don't say it was your fault. Don't say you're sorry. All you need to say to the other party is, "Are you alright?"**

In the wake of an accident, it's very hard to know who was at fault or who should be apologizing without examining the entire situation. Just tell the police truthfully what happened. Keep your statements short and simple.

Later, when you sit down with your attorney, you can give all the details you want. Your attorney will also pull more information about the circumstances surrounding the accident to present your case in the best light possible. Lean on your attorney's guidance for what to say; after all, that's why you hired one!

Chapter 2

Facts You Should Know about Personal Injury Cases

1. The insurance company's original offer is often a serious lowball.

Insurance companies are not in the business of paying out money. They're in the business of making money. An initial offer is usually a fraction of what the insurance company has calculated that your claim is worth. After doing the math, the adjuster will offer you the lowest possible amount they think you will accept and walk away. The insurance company also wants you to believe this is the *only* offer you'll get. That is simply not true. But you have to be persistent and strong to get the highest possible settlement.

Insurance companies know that most people don't feel comfortable pressing for a larger settlement and desperately need a payout. They take advantage of any weaknesses they spot.

2. People who hire attorneys usually get much higher payouts.

Research shows that people who hire attorneys get about four times as much in compensation as people who do [not](#).

Why? Because lawyers know how to build a case, collect evidence, and negotiate with adjusters. Lawyers go beyond discussing the current and obvious facts of a case to finding how an injury will affect a client in the long run. They can use those facts to demand larger settlements.

Lawyers also know how to fight effectively with insurance companies, and insurance companies know that a serious attorney is always willing to take them to court and fight for the maximum payout allowed under the policy. Insurance companies don't want to go to court. They know that juries are far more sympathetic to injured individuals seeking fair compensation for all their injuries than they are to large corporations that don't want to part with their profits. They also know that a good lawyer can guide a jury to a judgment favorable to the plaintiff, and that will cost a lot more in the end than paying a large, fair settlement early on.

Here, we have an interesting example. An attorney friend of ours was contacted by a party who had been rear-ended by an eighteen wheeler. The insurance company offered to pay the client only \$20,000 for his injuries. Our friend countered and demanded \$50,000. The insurance company dug in its heels and refused to go higher. In the end, there was a court battle, and the client received a judgment for \$3 million! Without the attorney's help, where would that client be today? It's crazy to think about how much it helped him to hire an attorney.

Furthermore, the next time that adjuster's path crosses our friend's, the adjuster will remember what happened the last time he lowballed our friend. Good lawyers only get underestimated once.

3. Your time to fight for a larger settlement in court is limited.

In most states, you have to file a lawsuit within two years from the date that an injury occurs. This period of time, referred to as the statute of limitations, is a hard and fast rule, and *if you miss the deadline, you're out of luck*. That's why you don't want to delay in hiring an attorney and compiling the evidence to support your case.

4. The party paying for your claim is an insurance company -- not the other party in the incident.

Sometimes, people feel guilty about pursuing a claim after an accident, especially if there was a friend, family member, or an employer involved. However, in almost all cases, the party who will pay for your injuries and related losses is an insurance company, not the other party individually. This is exactly why people have insurance: to pay for accidents and injuries. So, don't feel bad about it. And if you hear of another person filing a claim against a friend's insurance company, please don't judge them. They're just using very fair, very well-established channels to get justly compensated for their injuries.

5. Even if you were partly responsible for the accident, you can pursue a personal injury claim.

In almost every state in the nation, you can pursue a claim even if you were partly responsible for the accident. The only places where you're barred from filing a personal injury claim if you were partly at fault are Alabama, D.C., Maryland, North Carolina, and Virginia. Everywhere else follows a policy called comparative negligence,

which means you won't get as big a settlement if you were partly at fault, but you can still recover compensation for your injuries.

One of the authors' friends dealt with this situation personally on one occasion. He was hit at a stoplight by a driver who had been drinking alcohol. While you might think the other driver would be fully responsible for the accident, he wasn't. Our friend had made a driving error of his own because he didn't see the "No Right on Red" sign ahead. Because of his oversight, our friend was also liable for his own injuries, and he could only recover a percentage of his damages.

6. Personal injury claims are for all injuries, not just for physical ones.

You can file a personal injury claim even if you think your physical injuries are minor. You have to look at the entire picture. Many accidents result in physical injuries, but that's not the only kind of injury that people suffer after accidents. Personal injury claims cover emotional injuries, psychological trauma, and property damage. Regardless of the type of injury you've suffered, you deserve compensation.

7. Most personal injury claims are resolved quickly.

You might worry that if you file a personal injury claim, it'll take forever to get your money. However, that's simply not true. According to *Forbes* magazine, 95% of civil cases do not go to trial. They are settled before the case goes to court, usually in less than a

year. Sure, the fastest thing to do is to take an insurance company's first offer, but you will leave so much money on the table if you don't negotiate that it doesn't make sense to do so.

Chapter 3

What Is Negligence?

Most personal injury claims are based on what is called “negligence,” which means that the injury was caused because someone failed to do something they were supposed to do.

Proving negligence

To prove a claim that someone has been negligent, you must show the following:

1. The person had a duty of care to you.

In society, we all have duties to one another. We are expected to act in ways that don’t put others in harm’s way.

The Reasonable Person Test

When trying to determine someone’s duty in a given situation, you have to ask what a reasonable person would do. Would a reasonable person text and drive? Would a reasonable driver go 85 in a 55 or run a stoplight? In all those cases, the answer is no. A reasonable person has a duty to pay attention while driving; a reasonable person has a duty to follow the speed limit; a reasonable person has a duty to respect traffic signals. People who violate those duties are potentially liable for negligence.

Everyone is held to the same standard for negligence. It doesn't matter whether a person is 17 or 70, whether they're from a little town or the big city, whether they've graduated from medical school or are still in high school. In fact, adolescents driving any motor vehicle are held to the same standard as a reasonable adult.

2. The person breached that duty.

A breach occurs when a person behaves in an unreasonable way. They do something that a reasonable person wouldn't do.

3. You have an actual injury.

As we've discussed before, there are multiple types of injuries. This doesn't only refer to physical injuries. The term "injury" encompasses physical injury, emotional trauma, financial losses, and property damage. Any negative consequence of the incident counts as an injury.

4. The person's negligence caused your injuries.

You have to show that the person's poor behavior led to your injuries. If the person had been acting in a reasonable manner, you would not have been injured.

To illustrate how to prove negligence, let's look at an example.

Alesha was driving down the country road she takes every day to her job at the local laundromat. She's driven it so many times that she could do it with her eyes closed, and she's never seen anyone on her morning drive to work. There's a stop sign ahead, but she hasn't paid attention to it in months because she always has the road to herself. She has the music up, blaring Garth Brooks. She approaches the stop sign just as she gets to the chorus, and she starts to sing at the top of her lungs. But then === CRASH === her car comes to a loud, metallic stop, as her 1973 Mustang barrels into an unsuspecting, law-abiding citizen, Larry, who'd just started accelerating through the intersection after stopping at the stop sign.

Poor Larry has a broken leg and multiple wounds from broken glass. He also happens to have hemophilia, a blood disorder that prevents him from forming normal clots. He is rushed to the hospital for surgery to set his leg. Because of his hemophilia, Larry needs to spend extra time in the hospital and get blood transfusions. Additionally, the wound takes months to heal properly, and he can't return to his job as a UPS driver unless he can walk without assistance while carrying heavy packages. While he does not lose his job, he has to go without pay for four months. He also has \$52,000 in medical bills, and because of the trauma of the event, he has developed multiple phobias that keep him from sleeping soundly. He is also depressed because of the massive changes brought about in his life because of the accident.

Clearly, Larry is having a bad time. Is that because of Alesha's negligence? Let's go through it one step at a time.

1. *Did Alesha have a duty to Larry?*

Alesha was driving a car, and she had a duty to drive as a reasonable person would. A reasonable person would pay attention to the road and stop at a stop sign. It does not matter that Alesha had no reason to expect anyone on the road that morning. Her duty as a reasonable driver does not change just because of her particular set of experiences.

2. *Did Alesha breach her duty?*

Yes. Alesha breached her duty by failing to stop at the stop sign and by failing to focus on the road.

3. *Was Larry injured?*

Yes. Larry suffered physical injuries in the form of the broken leg and the blood transfusions he required because of his hemophilia. Even though Alesha did not cause Larry's hemophilia and could not have predicted that Larry might have a bleeding disorder, she is responsible for all injuries related to her breach of duty.

Larry also suffered mental anguish because he developed new phobias and could no longer enjoy a full night's sleep. Furthermore, he has to deal with depression now.

Larry's inability to work caused him to have financial damage, also, because of lost wages, and he had property damage because his car

was T-boned by Alesha's at the intersection. Finally, he had financial losses because of the medical bills incurred because of the accident.

4. *Were Larry's injuries caused by Alesha's breach of duty?*

Yes. If Alesha had treated the stop sign with the respect that a reasonable driver would, she would have stopped there and taken a look around. She would have realized that this was an unusual day after all because there was, for once, another car on the road! She would not have hit Larry. They both would have gone about their day. All it would have taken was the focus of a reasonable driver.

If Larry were to file a personal injury lawsuit, he could easily prove Alesha's negligence and recover compensation for his many injuries.

Chapter 4

The Most Common Types of Personal Injury Cases

1. Motor vehicle accidents

In 2023, people died in 35,766 motor vehicle accidents in the United States.¹ There were almost 1.6 million *other* crashes that caused injury to drivers, passengers and bystanders. Finally, another 3.6 million car accidents resulted in property damage. That adds up to more than 5.2 million accidents involving motor vehicles in just one year! So it's no surprise that motor vehicle accidents give rise to the most personal injury claims.

Motor vehicle accidents include collisions that involve automobiles, trucks, bicycles, motorcycles, and pedestrians. If you have been involved in a motor vehicle accident -- whether you were the driver, passenger, or just a person on the side of the road who got hurt -- you may be suffering because of the incident. Whether you are dealing with medical expenses, lost wages, or emotional and mental challenges, you may very well be entitled to compensation for your suffering. You shouldn't have to shoulder that burden on your own.

2. Medical malpractice

Even medical professionals and hospitals make mistakes. Whether you receive inadequate treatment, an improper diagnosis, or an

¹ <https://www.forbes.com/advisor/legal/car-accident-statistics/>

incorrect medication, you may be entitled to recover compensation for your injury or for the injury to a loved one.

Medical malpractice cases are complicated and challenging. Without a lawyer to advocate for you and navigate the system, you may encounter dead ends and small settlement offers, if any at all. Attorneys help clients cut through the red tape of the medical system to fight for compensation.

3. Slip-and-fall, also called premises liability

Business owners and homeowners are responsible for maintaining their property in a safe way, so that their guests don't hurt themselves. If you're injured on someone's property because of a dangerous or defective condition, you may be entitled to recover compensation.

This type of incident is often reported at job sites. In that case, it's important to distinguish between a workers' compensation case and a personal injury case. If the accident occurs because the employer failed to take proper precautions, then it may be a personal injury case. If the employee's injury happens because of the employee's own negligence, then this may be covered under workers' comp. Your attorney can help you sort out the differences and help you recover the highest possible compensation.

4. Products liability

When a company manufactures a product, it has a strict responsibility to make sure that product doesn't harm people. This responsibility covers everything from a faulty bike helmet to a toxic mascara to a dangerous pharmaceutical drug. Cases covering product liability often apply to multiple individuals across the country and may go to trial as class-action lawsuits by thousands of people suffering harm.

5. Wrongful death

In a wrongful death claim, the injured party is no longer alive to bring the personal injury lawsuit against the responsible party. Instead, the victim's survivors pursue the claim on the victim's behalf. In Texas, this type of claim may only be brought by specific parties: the surviving spouse, children, or parents of the deceased.

In a claim for wrongful death, you may recover compensation for three different types of damages: economic damages, noneconomic damages, and punitive damages.

Economic damages:

Economic damages are rather simple to prove. They are dollar amounts that equate to money lost or spent because of the victim's death. Economic damages may include medical expenses, loss of future earnings, loss of retirement benefits, loss of inheritance, and funeral costs.

Noneconomic damages:

Noneconomic damages are less tangible. They include such losses as the pain and suffering the victim endured before death, the emotional agony of the survivors, and the loss of companionship and/or consortium that inevitably follows the death of a family member or spouse. They're hard to prove exactly. It's hard to even contemplate a number that could compensate for a parent's psychological trauma after the loss of a child, for example. So noneconomic damages often spark arguments and require negotiation.

Punitive damages:

The word punitive comes from the word "punish," and that's exactly what these damages are meant to do. They are used to punish defendants for extremely bad behavior and to serve as a reminder to other people NOT to behave that way.

Punitive damages awards may be very high. For example, in 1993, a family was driving in a 1978 Ford Bronco when the SUV rolled over during the driver's attempt to pass another car on the highway. Although the driver and two other passengers survived the incident, the driver's parents and brother were killed. The family ultimately sued Ford Motor for wrongful death, claiming that Ford knew the Bronco was prone to rollovers and that its roof could collapse in such an event. The jury awarded the family \$6.2 million in compensatory damages (economic + noneconomic), plus \$290

million in punitive damages. This was an enormous victory, but the amount of punitive damages was so great that the Supreme Court refused to let it stand. In the end, the family received \$6.2 million in compensatory damages and about \$27 million in punitive damages -- still a large judgment, to be sure, but less than 10% of the original award.

It's always interesting to look at punitive damage awards because they're often bafflingly high. Ultimately, they almost always get reduced. But they're always a signal that a defendant has done something abnormally bad, something worth calling the world's attention to. If you've been injured, you most likely won't receive punitive damages, but if the defendant's conduct is bad enough to shock the conscience of society, then you very well may.

Chapter 5

Eliminating the He Said, She Said

When you call 911, the police will come and figure out who was at fault. They'll write a police report, which you can then use to prove that you weren't responsible for the accident. If you don't get a police report, you will have a lot of trouble getting your injuries covered and getting your car repaired.

In a personal example, Jessica's husband, Jamil, was in an accident at the intersection of Loop 610 North and T.C. Jester in Houston. It was an extremely windy day, so windy that power lines all over the city were knocked out. The lights at the intersection were blinking, and each lane was taking a turn to cross. Along with everyone else traveling in the same direction, Jamil went when it was his turn, but a lone woman on the cross street failed to stop, and she T-boned his car on the passenger side. They pulled over into the gas station at the corner, where the woman admitted her fault, and called the police. They waited and waited, but on that windy day, with so many power lines down, the police were backlogged. After several hours of waiting, they decided to leave and work directly with their insurance companies. Consequently, they never got a police report. At the time, we didn't think it would be an issue because it was so clear who was at fault. Boy, were we wrong!

Fast forward several weeks, and the woman told her insurance company a totally different story. They decided Jamil was at fault, while Jamil's insurance company declared the woman to be at fault. In the end, the

two insurance companies came to a deadlock, and each agreed to pay for its own insured's damages. Jamil will never be sure if his insurance premiums rose the next year out of natural cost increases or because of the incident, but what he does know is that a police report would have eliminated the back-and-forth because it would have set the story in stone, as it happened.

Fortunately, he didn't have any major injuries. Fortunately, he had a great insurance company (USAA). But unfortunately, there were many more headaches than there needed to be!

Chapter 6

America's Generous Personal Injury Law System

In many countries around the world, people can get compensated for their actual economic injuries (like their medical bills and lost wages), but their ability to recover for noneconomic pain and suffering is limited.

In America, plaintiffs may be compensated for both economic and noneconomic losses. For example, a wife may recover compensation for what's called the loss of consortium -- the loss of a husband's companionship. That compensation isn't fixed or limited; it depends on the given situation - how much longer the husband was expected to live, how intertwined their lives were, etc. However, in other countries, like Germany, a spouse can only recover up to a certain amount - less than \$25,000. That amount is fixed by the government. How terrible it would be to have the value of your spouse's life diminished to a set dollar amount, with no regard for your spouse's individual characteristics.

America may have its own problems, but our legal system does an excellent job (for the most part) of assessing people's injuries and attempting to put their lives back together. Here, every detail matters when calculating a person's losses. Each case is looked at on its own and valued for its unique merits. That's a wonderful way for a justice system to treat the people it was created to serve.

America's justice system is also different because of the way we treat corporations. In many other countries, people can only sue individuals, not

companies. That means it's difficult to make a company pay for its mistakes. And when you think about it, companies are often the entities truly responsible for many personal injury cases. If you can't sue Anheuser-Busch when a Budweiser truck hits you, how can you possibly be compensated properly? If you can't sue an airline after a loved one dies in a plane crash, how can you possibly get what you're owed? You can't.

In the United States, corporations are treated just like people. They are individuals for the purposes of law suits. There is no special allowance made for companies that fail to act responsibly.

It's this policy that allows for large settlements when pharmaceutical companies make drugs that injure consumers. It's this policy that has brought every industry into line -- from big tobacco to giant automakers.

Our country's policy of forcing companies to compensate consumers for injuries has another important consequence: it causes corporations to behave more responsibly than they would otherwise. They know they will have to pay the price if they aren't careful.

The long and short of it is: Americans enjoy great protections when it comes to injuries. You're not taking advantage of the system by seeking compensation for your injuries when someone hurts you. You are simply availing yourself of a system that was intentionally created to make people whole.