Introducing and Exploring Tort Law:

A tort is a wrong done to a person. The branch of civil law concerned with torts allows a plaintiff who has suffered a physical, psychological, or financial injury from another party to sue that party to get some form of financial compensation. Tort law is different from contract law because in a contract law dispute, the two parties have a previous agreement. In a tort case, the defendant has not broken a specific contract with the plaintiff, but has just not lived up to the basic principle of our society that a person's actions should not cause harm to others. There are two main types of torts: unintentional torts and intentional torts.

Unintentional Torts

The name of this type of tort says it all: the defendant did not mean to cause harm to the plaintiff, but because he failed to make sure that his actions would not cause harm, he can be held responsible for the injury.

1. Negligence:

To prove negligence, the plaintiff needs to prove that the defendant did not act as a reasonable person. The defendant would have to ensure that no harm would result from his actions. Specifically, the plaintiff has to prove that:

the defendant had a duty of care towards the plaintiff

the defendant failed to fulfill the duty of care

harm to the plaintiff resulted from that failure

For example, Susan has a dog named Rover. She is expected to take steps to ensure that her dog will not attack and bite other people. Rover is loose in the street, turns and chases Charles, and bites him. Susan has been negligent in her duty of care towards other people, and Charles can sue her for damages resulting from the dog bite.

1. Liability:

Liability means being held responsible for the results of your actions. In some cases, the ‘thin-skull rule' may mean that the damages you may have to take responsibility for are far more serious than the original act of negligence. The thin-skull rule gets its name from the following sort of scenario: Roger leaves a rake out on the sidewalk. Frank runs along the sidewalk, trips over the rake, and suffers a head injury. While an ordinary person might have had a minor concussion, however, Frank has a medical condition which has left him with an abnormally thin skull, and he suffers permanent brain damage. Even though Roger could not have foreseen such an outcome, he is still responsible for Frank's injuries.

It is possible for the liability to be divided between more than one party. For instance, look at the case of *Cempel v. Harrison Hot Springs Hotel Ltd.* [1998]. Cassandra Cempel climbed over a fence intended to keep her out of a pool with scalding hot water. The fence collapsed, and she fell in and suffered severe burns. She sued the hotel for damages. The court decided that she had been foolish in climbing the fence, but that the hotel was also responsible because the fence had not been strong enough to keep her out. As a result, she was found to be 40% responsible and the hotel was 60% responsible.

Defences to Unintentional Torts:

Contributory negligence means that the plaintiff’s actions helped to cause the harm. That was the argument used by the Harrison Hot Springs Hotel in the above example.

Voluntary assumption of risk means that the plaintiff knew that there were dangers involved with the activity in which they participated. For example, hockey players cannot sue other players for injuries that occur as a result of normal play in a game, because they knew that there were risks when they chose to play. Participants in sports often sign waivers stating that they know the risks and will not sue for any injuries that might occur.

An inevitable accident is one that the defendant could not avoid. For instance, if Sarah was driving along a road when she hits a patch of black ice, loses control of the vehicle, and hits another car, she could argue that she could not avoid the accident because of the road conditions. An Act of God is a similar defence.

Case History:

Childs v Desormeaux (2006)

Desormeaux was a guest at a B.Y.O.B. party hosted by Zimmerman and Courrier. He brought his own liquor and the only liquor served by the hosts was a bottle of champagne at midnight. He drank 12 beers and when he left the party was walked to his car by Courrier. Once in his car, he drove into oncoming traffic and struck another car, killing one passenger and injuring three others. He pleaded guilty and was sentenced to 10 years imprisonment. Zoe Childs was paralyzed from the waist down, and sued Desormeaux and his hosts.

Analysis Questions:

1. Would Zimmerman and Courrier's tort have been intentional or unintentional? Explain your choice.
2. From the facts given, what reason might the judges have had for finding the hosts not liable for Child's injuries?
3. For each of the required proofs for negligence (see below), prove that Desormeaux was liable for negligence:

The defendant had a duty of care towards the plaintiff

The defendant failed to fulfill the duty of care

Harm to the plaintiff resulted from that failure