

Chapter 5

Civil Law and Procedure

5-1 Private Injuries vs. Public Offenses

5-2 Intentional Torts, Negligence, and Strict Liability

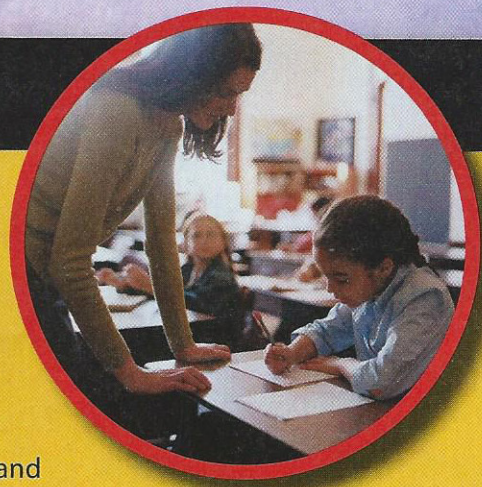
5-3 Civil Procedure

HOT DEBATE

Every time Chanelle's science teacher asked her a question during class, the teacher walked over to her desk, squatted down, and placed a hand on Chanelle's thigh. Chanelle found this behavior extremely offensive. Finally, in private, she politely asked the teacher to stop. Although the teacher seemingly agreed, the next time Chanelle raised her hand the teacher behaved the same way. However, this time when the teacher extended her hand to place it on Chanelle's leg, Chanelle twisted violently away and slammed her knee into the other side of her desk.

WHERE DO **YOU** STAND?

1. What corrective action could Chanelle take within the school structure?
2. Regardless of whether or not she tries to resolve the problem within the school's structure, has Chanelle received a personal injury for which she could bring suit in court?



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5-1 Private Injuries vs. Public Offenses

GOALS

- Distinguish a crime from a tort
- Identify the elements of torts
- Explain why one person may be responsible for another's tort

KEY TERMS

tort

damages

negligence

How Do Crimes and Torts Differ?

WHAT'S YOUR VERDICT?

When he applied for his license as a ferry pilot for the city, Jerone failed to tell the Coast Guard about his high blood pressure and prescription drug use. Some three years later, while operating the ferry, Jerone passed out at the controls. As a consequence, the ferry crashed into the dock killing 18 commuters and injuring dozens more. At the time Jerone was also taking two medications for back pain. Both the pain medications list drowsiness as a possible side effect.

Does Jerone's conduct represent a criminal or civil wrong or both?

One act can be both a tort and a crime. In *What's Your Verdict?* Jerone committed two crimes—the crime of manslaughter (18 counts) and the crime of failing to disclose his drug use and blood pressure status in applying for the position.

Jerone also committed a tort by his negligent conduct in piloting the ferry. Manslaughter is punishable in most states by up to 10 years in prison for each count. Damages for negligence will be awarded appropriate to the claims of the injured and the families and estates of the deceased passengers.

CHECKPOINT What is the difference between a crime and a tort?

A crime is an offense against society. It is a public wrong. A **tort**, in contrast, is a private or civil wrong. It is an offense against an individual. If someone commits a tort, the person injured as a result can sue and obtain a judgment for **damages**. This is a monetary award intended to compensate the injured party for the harm done to her or him. From society's standpoint, the money is meant to restrain the injured individual's desire to exact revenge by taking the law into her or his own hands. Doing so would cause chaos.



What is the purpose of an injured party's receiving money damages for a tort committed against him or her?

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Elements of a Tort

WHAT'S YOUR VERDICT?

On a windy autumn day, Mason was burning dry leaves in his backyard. When he went inside to answer a telephone call, flames from the fire leaped to the next-door neighbor's fence and then to a tool shed where a small can of gasoline exploded. Soon the neighbor's house was ablaze, and it burned to the ground.

Did Mason commit a tort?

Like criminal law, tort law is a broad legal category. Just as there are many specific crimes, there also are many specific torts. Certain elements are common to most torts. In a trial, these elements must be proved to establish liability (legal responsibility).

The elements of most torts include

1. duty (a legal obligation to do or not to do something)
2. breach (a violation of the duty)
3. injury (a harm that is recognized by the law)
4. causation (proof that the breach caused the injury)

DUTY By law, you have certain rights. You also have certain duties related to respecting the rights of others. The following are the duties created by tort law:

1. the duty not to injure another (including bodily injury, injury to someone's reputation, or invasion of someone's privacy)
2. the duty not to interfere with the property rights of others, for example, by trespassing on their land
3. the duty not to interfere with the economic rights of others, such as the right to contract

Whether or not a duty exists in a certain situation is

a question of law for the judge to decide. A judge will make this decision by consulting state case and statutory law and, on occasion, federal law.

VIOLATION OF THE DUTY A violation (or breach) of the duty must be proved before the injured party can collect damages. Whether a breach of a tort duty has occurred is almost always a question of fact for a jury or a judge, if no jury is requested, to decide.

Many torts acknowledge a breach only when the defendant actually intended to inflict harm by her or his action. These are classified as *intentional torts*. In other torts, the intent to inflict harm is not required. It is enough that the harm occurred as a result of the neglect or carelessness of the defendant. Such a tort is generally termed **negligence**.

In still other torts, even carelessness is not required. Liability is imposed simply because a person acted in a certain way, and this caused injury. The last classification, where neither intent nor carelessness is required, is classified as strict liability.

INJURY Generally, injury resulting from the breach of duty must be proved. Thus, if you act recklessly, but no one is injured, there usually is no tort.



Apply the elements of a tort to determine whether Mason in *What's Your Verdict?* committed a tort in allowing the fire to occur. Check your answer against the explanation on the next page.

CAUSATION Causation means that breach of the duty caused the injury. There are degrees of causation. For example, one could argue that the first people on earth are the ultimate cause of every injury that occurs in the world today. However, when the amount of causation is great enough for it to be recognized by the law, it is called *proximate cause*. Generally, proximate cause exists when it is reasonably foreseeable that a breach of duty will result in an injury.

Applying these elements to *What's Your Verdict?* Mason committed a tort because (1) he owed a duty to the neighbors not to injure their property; (2) he breached the duty when he left the fire unattended so it spread to the neighbor's property; (3) the injury occurred when the neighbor's house was burned; and (4) leaving the fire unattended was a proximate cause of the loss of the fence, the tool shed, and the house. Therefore, the neighbor can obtain a judgment against Mason for the value of the loss.

CHECKPOINT Name the four elements of a tort.

Responsibility for Another's Torts

WHAT'S YOUR VERDICT?

Hunt was taking riding lessons from Saddleback Stables. Patterson, the Saddleback instructor, was a skilled rider although only 15 years old. Nevertheless, during a lesson while leading the horse Hunt was riding, Patterson negligently dropped the bridle. As a result, the horse bolted and Hunt was thrown to the ground and injured.

Who was liable for Hunt's injuries?

With few exceptions, all persons, including minors, are personally responsible for their conduct and are therefore liable for their torts. Even children or insane persons may be held liable for injuring others. Certainly, in *What's Your Verdict?*

Patterson's negligence would result in his being liable to Hunt for Hunt's injuries. In addition, Saddleback Stables can be held liable for the negligence of its employee Patterson. In such cases, the injured party may sue both employer and employee.

When one person is liable for the torts of another, the liability is called *vicarious liability*. For example, parents may be liable if they give their children "dangerous instrumentalities," such as guns, without proper instruction. Similarly, parents may be liable for their children's continuing dangerous habits. For example, if a child continues to throw rocks at trains and vehicles, the parents may be liable if they fail to stop the child's behavior.

In some states parents are liable, by statute, up to a specified amount of money for property damage by their minor children. This is usually designed to cover vandalism and malicious destruction of school property. Most states also provide that parents are liable, up to the limits of financial responsibility laws, for damages negligently caused by their children while operating motor vehicles.

CHECKPOINT What parties might be held responsible for another person's tort?

IN THIS CASE

Bottomless Barges, Inc. (BBI), contracted with a coastal city to barge the city's untreated sewerage some 300 miles into the ocean and dump it. This activity was permitted by the federal government due to the city's lack of funds needed to build an adequate treatment facility. Ollee Facktory, an employee of BBI, dumped an afternoon run only 35 miles offshore in order to get back to land in time for a date. Various diseases, including minor cases of cholera, broke out in several coastal towns. As a result, BBI was sued by individual plaintiffs and the government and recovered against due to its vicarious liability for Facktory's actions.

THINK ABOUT LEGAL CONCEPTS

1. A single act can be both a tort and a crime. **True or False?**
2. The degree of causation of a tort great enough to be recognized by law is called
(a) proximate cause (b) intimate cause (c) incidental cause (d) none of the above
3. A tort is considered to be an offense against society. **True or False?**
4. In order to establish liability for a tort, all of the following must be proved except (a) duty
(b) breach of duty (c) harm recognized by law (d) vicarious liability
5. An insane person cannot be held liable for a tort. **True or False?**
6. When one party is held responsible for the tort of another, the liability is called _ ? _ liability.
7. The three classifications of torts are intentional torts, negligence, and _ ? _ . (a) manslaughter (b) strict liability (c) vicarious liability (d) none of the above

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

8. Philip drove a tractor-trailer rig onto a ferry boat. He left the rig in gear because of a problem with its brakes. Posted regulations prohibited the starting of engines before docking, but when the ferry was about 50 feet from the dock, Philip started his engine. That caused the tractor-trailer to jump forward and strike Herrick's car, which in turn hit Patton's car. Patton's car, at the head of the line, crashed through the ferry's barricades and plunged into the water. The car could not be recovered. What was the tort duty in this case? Where was the breach of the duty? What were the injuries? What was the proximate cause of the injury to Patton's car?
9. Felicia carelessly left a campfire before it was completely extinguished. The fire spread through the woods and caused the destruction of a nearby lodge. Is Felicia liable to the owners of the lodge for the building? Is she liable to the lodge owners for the loss of income until the lodge can be restored? Is she liable to the persons who had reservations for the lodge but whose trips are now ruined?
10. The driver of a rental car lost control while passing another vehicle. The car crossed the median of the four-lane highway and slammed head-on into Todd's truck. The truck then flipped over and caught fire. Todd suffered extensive burns and his son, who had been riding with him, suffered traumatic brain injuries. The dollar value set on their injuries was more than \$4 million. Against whom can they recover?
11. As a police officer, Maureen was authorized to carry her handgun with her. While darting into a store to pick up her dry cleaning, she left the gun in her car hidden under the seat. Her 9-year-old son found the pistol and accidentally shot his friend in the leg. Is Maureen liable for the injury?
12. Patrick borrowed his friend John's car to impress a young lady he was dating. It was a new luxury car that John had saved four years to purchase. The paint on the car turned colors under various climatic and light conditions. While on the date, Patrick drove the car down a public road that had just been repaved with hot oil and gravel. The result was streaks of hot oil glued to the sides of the car and several nicks in the paint from flying rocks. Patrick then parked in front of his favorite restaurant, a sports pub on the far side of town. While in the restaurant, Patrick heard a special weather report that a thunderstorm with large hail was sweeping across the area and would arrive over the restaurant in ten minutes. Unfortunately for John's car, the date was going too well to break off and move the car under cover. Consequently, the hail left a multitude of pock marks on the top of the car. Is Patrick legally responsible for the damage done by the gravel, oil, and hail? Why or why not?

5-2 Intentional Torts, Negligence, and Strict Liability

GOALS

- Identify common intentional torts
- Recognize the elements of negligence
- Explain the basis for strict liability

KEY TERMS

intentional torts	invasion of privacy
assault	trespass to land
battery	conversion
false imprisonment	fraud
defamation	strict liability

What Are the Most Common Intentional Torts?

WHAT'S YOUR VERDICT?

During deer-hunting season, Hart drove miles into the country in search of game.

He parked his pickup truck along a dirt road, climbed a fence, and hiked into the woods. Hart thought the land was part of a national forest. However, it actually belonged to Quincy, who had posted "No Trespassing" signs. Confronted by Quincy, Hart apologized for his mistake and left.

Had Hart committed an intentional tort?

Intentional torts are torts in which the defendant possessed the intent or purpose to inflict the resultant injury. These torts contrast with negligence and strict liability, where intent to produce the injury is not required. There are numerous intentional torts. The most common of these include assault, battery, false imprisonment, defamation, invasion of privacy, trespass to land, conversion, and fraud.

Assault

The tort of **assault** occurs when one person intentionally puts another in reasonable fear of an offensive or harmful bodily contact. An assault can be based on words or gestures. However conveyed, the threat must include a display of force indicating a present ability to carry it out. In addition, to be considered

IN THIS CASE

Spencer, elderly and totally blind, thought Wills had swindled him.

Spencer told Wills that he was going to "beat your face to a pulp." Because it was obvious that Spencer could not carry out his threat, there was no assault.

"reasonable" from the viewpoint of the potential victim, the threat must be believable. The threatened injury can be physical: a person may raise a fist threatening to punch you. Or the threatened injury can be offensive: a person might threaten unwanted sexual touching by attempting to kiss you.

Battery

A person has a duty to refrain from harmful or offensive touching of another. An intentional breach of the duty is a **battery**. Shooting, pushing in anger, spitting on, or throwing a pie in another's face are all batteries. An assault frequently precedes a battery.

Angrily raising a clenched fist and then striking someone in the face involves first an assault (the raised fist) and then a battery (the blow to the face). When the victim is hit without warning from behind, there is a battery without an assault.

Even though there is harmful or offensive touching, there may be no battery if the contact is not intentional. This could occur, for example, when someone sneezes and their spittle inadvertently strikes another. Also, the contact may be justified. For example, when you act in self-defense, you have not committed a battery. Further, there may be consent to the contact. Thus, in a boxing match, there is no battery because the boxers consent to the harmful touching.



Is the action in this photo an example of assault or battery? Justify your answer.

False Imprisonment

False imprisonment is the intentional confinement of a person against the person's will and without lawful privilege. People may be deprived of freedom of movement in many ways. For example, they may be handcuffed; locked in a room, car, or jail; told in a threatening way to stay in one place; or otherwise denied their liberty. Consent occurs when they agree to being confined. For example, when a burglary suspect sits voluntarily in a police car to describe his actions over the last hour, the suspect consents to being detained.

When the police have probable cause to arrest people, they are privileged to imprison them. Privilege justifies the imprisonment. But if the police mistake the identity of one person for another, they may commit false imprisonment in the course of the arrest. Merchants in many states have a privilege to detain a person if they have a reasonable basis for believing the person was shoplifting. If they detain persons against their will without a reasonable basis, they falsely imprison them.

Defamation

Statements about people can injure them. If a false statement injures a person's reputation or good name, it may constitute the tort of **defamation**. If the defamation is spoken, it is *slander*. If the defamation is written or printed, it is *libel*. To be legally defamatory, the statement must

1. be false (truth is a complete defense)
2. be communicated to a third person (your reputation is not harmed if no other person hears or reads the lie)
3. bring the victim into disrepute, contempt, or ridicule by others

In slander suits, you must show that you have suffered an actual physical loss, or damages, as a

CyberLAW

Defamatory statements published on Internet bulletin boards, e-mails, and the like, are considered libel due to the somewhat permanent nature of the medium. This often is vital to a successful suit for defamation as damages are presumed to exist in the case of libel and do not have to be proven to the court. The remaining question becomes who should be sued. This is the hard part. Sections of the Communications Decency Act of 1996 and several court decisions provide protections to Internet service providers and bulletin board operators. Such parties

generally are considered to be immune from suits brought to make up for the harm done by such statements. However, they may be held liable if it can be shown that they exercised editorial or full control of the material posted or transmitted or, at least, had knowledge of the specific defamatory contents. Such a showing has proven very difficult to accomplish.

THINK ABOUT IT

Why do you think it has been so difficult for people to win libel suits against Internet bulletin board operators or Internet service providers?

A Question of **ETHICS**

Agnozzi, who is deaf, purchased several items at a large chain discount store. One of the items was a large inflated doll for his daughter. Agnozzi went to a cash register near a store entrance to pay for his goods. The doll was so large that the sales clerk could not find a bag to hold it. With the doll under his arm and his other purchases in bags held in both hands, Agnozzi left the store. As he did so, a store employee stationed at the door to welcome people in and conduct security screens of those leaving, noticed the unbagged doll. The employee was instructed to stop and check the receipt of any party leaving the store with an unbagged item. As a consequence, she asked Agnozzi to stop. When he did not, she shouted at him to stop. Finally, she yelled, "Stop thief," and gave chase. Other store personnel joined in and threw Agnozzi down onto the asphalt in the parking lot. Agnozzi finally was able to make the store personnel understand he was deaf and that he had the receipt in his pocket. Upon seeing the receipt they let him go with apologies. Although he was embarrassed, his clothes torn, and his skin scraped, Agnozzi accepted the apologies and left. Now he is reconsidering. Would it be ethical for Agnozzi to bring suit against the discount store? Does Agnozzi owe a duty to bring suit? If so, to whom and for what?

result of the slanderous remark. Exceptions to this occur in cases where the oral statements are to the effect that the plaintiff committed a serious crime, has a loathsome disease, or injures someone in his or her profession or business. In libel cases, you are presumed to have suffered a loss, and so these damages do not have to be shown to the court.

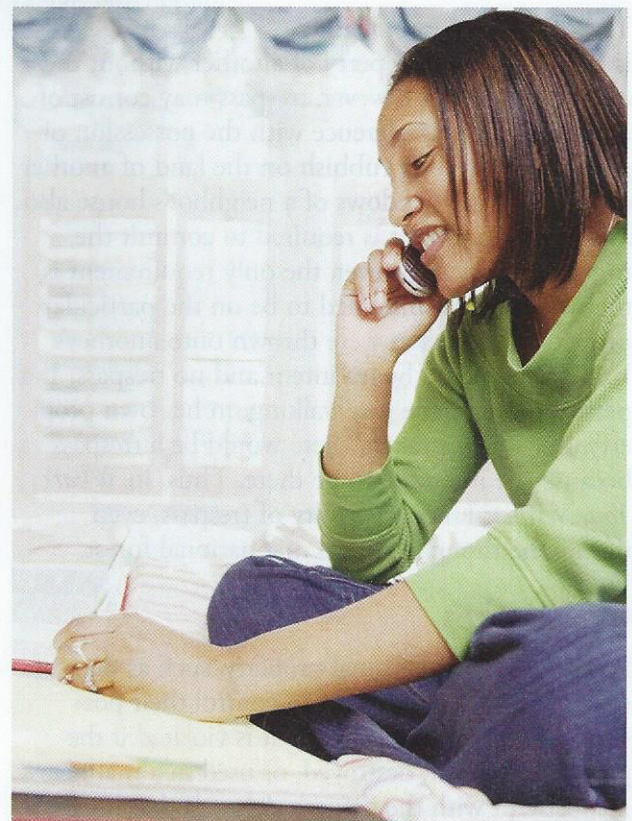
Exceptions are made to the law of defamation in order to encourage open discussion of issues of public concern. For example, legislators' statements, even those made with malice, are immune from liability if made during legislative meetings. Judges, lawyers, jurors, witnesses, and other parties in judicial proceedings are also immune from

liability for statements made during the actual trial or hearing. Similarly, liability for defamatory statements about public officials or prominent personalities does not exist unless the statements were made with malice. That means the statement when issued was known to be false or was made with a reckless disregard for its probable falsehood.

Invasion of Privacy

People are entitled to keep personal matters private. This is the right to privacy. Congress has stated that "the right of privacy is a personal and fundamental right protected by the Constitution of the United States." **Invasion of privacy** is a tort defined as the uninvited intrusion into an individual's personal relationships and activities in a way likely to cause shame or mental suffering in an ordinary person.

An invasion of privacy also can result from unnecessary publicity regarding personal matters. So, unlike the law regarding the tort of defamation, publication of even a true statement about someone may be an invasion of privacy. This is because, as the U.S. Supreme Court put it, you should be protected when you have a reasonable "expectation of privacy." Thus, two-way mirrors



What are some situations related to the right to privacy that affect your life?

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in the women's restroom of a gas station would constitute an invasion of privacy.

The right to privacy also includes freedom from commercial exploitation of one's name, picture, or endorsement without permission. The right to privacy bans illegal eavesdropping by any listening device, interference with telephone calls, and unauthorized opening of letters and telegrams. However, the right of privacy is not unlimited. For example, the police are permitted to tap telephone lines secretly if they have a warrant to do so. Also, public figures, such as politicians, actors, and people in the news, give up much of their right to privacy when they step into the public domain.

Trespass to Land

The tort of **trespass to land**

is entry onto the property of another without the owner's consent. However, trespass may consist of other forms of interference with the possession of property. Dumping rubbish on the land of another or breaking the windows of a neighbor's house also are trespasses. Intent is required to commit the tort of trespass. However, the only requirement is that the intruder intended to be on the particular property. If a person were thrown onto another's land, there would be no intent and no trespass. If a person thought she was walking on her own property, but was mistaken, there would be a trespass because she intended to be there. Thus, in *What's Your Verdict?* Hart was guilty of trespass, even though he thought he was in a national forest.

Conversion

People who own personal property, such as diamond rings, have the right to control their possession and their use. This right is violated if the property is stolen, destroyed, or used in a manner inconsistent with the owner's rights. If that happens, a **conversion** occurs. A thief is always a converter.

Conversion occurs even when the converter does not know that there is a conversion. So, the



In order for the tort of trespass to occur, what would have to be proven about the person who enters this property without the owner's permission?

innocent buyer of stolen goods is a converter. The party injured by the conversion can receive damages. Or the converter can, in effect, be compelled to purchase the converted goods from their owner.

Interference with Contractual Relations

Generally parties who breach a contract to which they are a party must pay damages under contract law for the injury suffered by the other party. However if a third party encourages the breaching party in any way, that third party may be liable in tort to the non-breaching party. This is called the tort of *interference with contractual relations*.

Fraud

Fraud occurs when there is an intentional or recklessly made misrepresentation of an existing important fact. The misrepresentation must be made with the intent of inducing someone to enter into a contract. Finally, the other party, relying on the misrepresentation, must actually enter into the contract.

To be able to recover damages in court for fraud, the person alleging it must not have been

able to check on the truth of the statement by exercising due diligence. In addition, ordinarily a statement of opinion is not considered fraudulent. This is because the hearer should recognize that the statement is the speaker's personal view.

CHECKPOINT Name at least six of the most common intentional torts.

What Constitutes Negligence?

WHAT'S YOUR VERDICT?

Britt was driving home late one rainy night after drinking alcohol all evening. With only one working headlight, she raced down residential streets at speeds up to 60 miles per hour. Meanwhile, Yee was slowly backing her station wagon out of her driveway, but she failed to look both ways when she should have. Britt rammed into the right rear end of Yee's car. Both Yee and Britt were injured in the collision and their vehicles severely damaged.

Who will have to pay damages for the injuries and property damage sustained in the accident?

Negligence is the most common tort. Intent to injure is not required for this tort. Only careless behavior is required for negligence. Negligence is proven in court by the showing of a duty of due care owed by the defendant to the plaintiff, a breach of that duty, causation, and injury.

Duty Imposed by Negligence

The general duty imposed by negligence law is defined by the reasonable-person standard. This standard requires that you act with the care, prudence, and good judgment of a reasonable person so as not to cause injury to others. In court, the trier of fact (typically a jury) is asked how the reasonable person would have behaved under the circumstances. The answer to this question sets the standard of due care against which the defendant's actions will be compared.

For certain individuals, a different degree of care is applied. For example, children under age seven are held to be incapable of negligent conduct. Children seven through fourteen are only required to act with the care that a reasonable child of like age, intelligence, and experience would act. If, however, a child undertakes an adult activity, such as driving a boat or a car, the child is held to the adult standard.

Professionals and skilled tradespersons are held to a higher degree of care in their work. These persons are required to work with the degree



If the driver of this aquacycle is ten years old, would she be negligent if she ran into a swimmer? Why or why not?

of care and skill that is normally possessed by members of the profession or trade. Thus, an attorney must act with the care and skill normally possessed by other attorneys in his or her community. Similarly, a plumber must perform work with the care and skill normally exercised by other plumbers in the community.

Breach of Duty

The “reasonable-person” standard defines the duty of due care in any specific case. A defendant’s actual conduct, such as Britt’s in *What’s Your Verdict?* is then compared with this specific duty to determine whether a violation of it has occurred. You could conclude that a reasonable person would drive a car only at a safe speed, only when sober, and at night only when the car’s lights work. Because Britt engaged in speeding, driving while intoxicated, and driving at night without proper lights, she clearly breached the duty of due care set by the reasonable-person standard.

Causation and Injury

As with other torts, the violation of the duty must be the proximate cause of the injury. In *What’s Your Verdict?* Britt’s speeding in an unsafe

vehicle while impaired was a breach of the duty, and it is reasonably foreseeable that speeding will cause injury. In fact, speeding was a partial cause of the property damage to the station wagon and the personal injury to Yee.

Defenses to Negligence

In several states a plaintiff cannot recover for loss caused by another’s negligence if the plaintiff also was negligent. This is the old common law defense of *contributory negligence*. For example, in *What’s Your Verdict?* Yee was also negligent because she backed into the street without looking left or right. That and Britt’s speeding were causes of the accident. So Yee was contributorily negligent. If she lived in a state that allows contributory negligence as a defense, she could not recover anything from Britt. Under this legal rule, it does not matter that one party, like Britt, was very negligent and primarily responsible for causing the collision while the other, like Yee, was only slightly negligent.

Most states have substituted comparative negligence for contributory negligence. *Comparative negligence* applies when a plaintiff in a negligence action is partially at fault. In such a case the plaintiff and defendant are awarded damages in proportion to their percentage of



Bart broke his leg while playing tennis at night on a dark city tennis court. Do you think he would win a judgment against the city for his injury? Why or why not?

LEGAL Research

A World Trade Organization (WTO) panel in March of 2004 held that U.S. laws prohibiting gambling on the Internet are an unfair trade barrier and should be overturned. Nonetheless, due to worries about minors gambling, Congress did not heed the warning. It instead passed the Unlawful Internet Gambling Enforcement Act in late 2006. The new law makes it illegal for U.S. banks and other financial institutions to transfer funds to Internet gambling sites. Research the current state of the Unlawful Internet Gambling Enforcement Act. Download a copy and review it for loopholes. Can you suggest improvements? Should it be repealed to satisfy the WTO? Why or why not?

responsibility for the accident. The percentages of responsibility are assigned by the trier of fact in the case. Some states do not allow a plaintiff whose negligence was greater than the defendant's to recover.

Assumption of the risk is another defense to negligence. If plaintiffs are aware of a danger, but decide to subject themselves to the risk, that is a defense. Suppose you take a shortcut across a suburban lot where a three-story house is being constructed. The perimeter of the lot is clearly marked with signs stating "Danger. No Trespassing. Construction Area." A sudden gust of wind blows a section of plywood off the top floor and into your back. You are seriously injured. The defense of assumption of risk could be raised against you in any later lawsuit that you might bring against the construction company and the property owner to recover for your injuries.

CHECKPOINT Name the four elements of the tort of negligence.

Why Is Strict Liability Necessary?

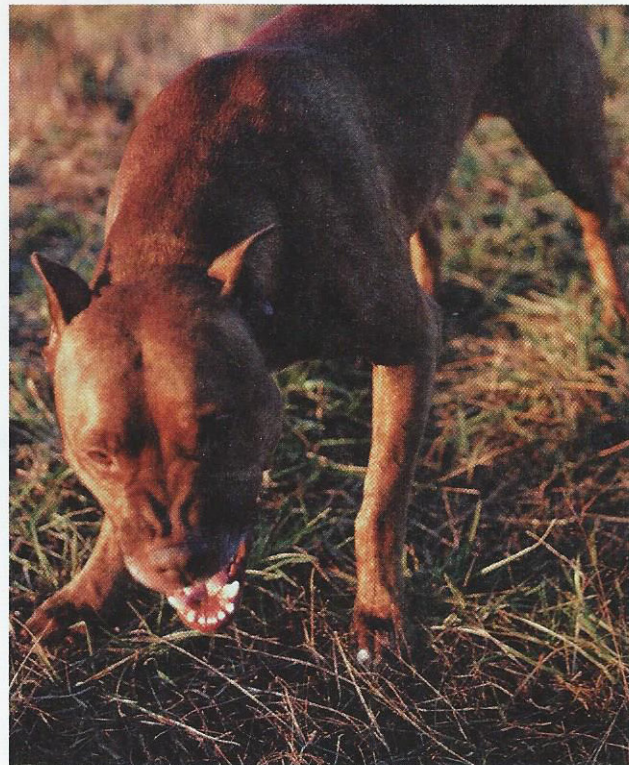
WHAT'S YOUR VERDICT?

While grocery shopping, Mrs. Lamm placed a large glass container of a new drain cleaner in her shopping cart. Later, when she set the container on the check-out counter, it exploded. The flying glass cut her in several places.

Can she collect in tort from the grocery store or the bottler?

Sometimes the law holds a party liable in tort on the basis of absolute or **strict liability**. Under the doctrine of strict liability a defendant can be held liable if he or she merely engaged in a particular activity that resulted in injury, regardless of whether or not he or she was negligent. In strict liability, proof of both the activity and the injury substitutes for proof of a violation of a duty.

Strict liability is only applied when someone has engaged in abnormally dangerous activities, such as target practice, blasting, crop dusting with



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Imagine you are the owner of this dog, and the dog just bit your young neighbor. Could you be held liable on the basis of strict liability? Why or why not?

dangerous chemicals, or storing flammable liquids in large quantities. If you engage in activities of this type and someone is injured as a result, you will be liable regardless of the precautions you take.

Ownership of dangerous animals also subjects you to strict liability. Domesticated animals (dogs, cats, cows, and horses) are not considered dangerous unless the owner knows that the particular animal has behaved in such a way. Bears, tigers, snakes, elephants, and monkeys are examples of wild or dangerous animals. If the dangerous animal causes injury, the owner is strictly liable.

A third strict liability activity is the sale of goods that are unreasonably dangerous. If the goods are defective, the defect makes them dangerous. If the defect causes an injury, any

merchant who sells those goods is strictly liable, as is the manufacturer. Under strict liability, the manufacturer and any sellers in the chain of distribution are liable to any buyer of the defective product who is injured by it.

Without strict liability, the victim might not receive any compensation because negligence may be difficult to prove. In *What's Your Verdict?* Mrs. Lamm could collect from either the store, the bottler, or both under strict liability. The bottle was defective, and this defect made the product unreasonably dangerous.

CHECKPOINT What is strict liability and why is it necessary?

5-2 Assessment

Xtra!
Study Tools

school.cengage.com/blaw/lawxtra

THINK ABOUT LEGAL CONCEPTS

1. An actual harmful or offensive touching must be shown to prove the tort of assault. **True or False?**
2. A person who has consented to be detained by another cannot recover for the tort of false imprisonment. **True or False?**
3. Spoken defamation is (a) libel (b) label (c) slander (d) none of the above
4. An uninvited intrusion into a person's personal relationships or activities in a way likely to cause shame or mental suffering in an ordinary person is the basis of the tort of _?_.
5. An innocent buyer of stolen goods cannot be liable for conversion because the buyer had no intent to keep the goods from their rightful owner. **True or False?**
6. Which of the following is not a defense to negligence? (a) contributory negligence (b) comparative negligence (c) violation of reasonable person standard (d) assumption of risk
7. Strict liability may exist even when a defendant is not negligent. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

8. Betty was at a baseball game seated one row behind a famous movie star. When Betty stood up to cheer, she was bumped by the person beside her. She lost her balance and fell into the lap of the movie star. He sued her for the tort of assault. Who prevails?
9. Every morning on the way to work, Sharon rides an elevator up 14 floors. Sometimes, when it is crowded, the elevator operator intentionally bumps into her in an offensive way. What can Sharon do legally? What would be a likely defense for the operator?
10. Ham asked to borrow Lane's car to go to a movie with his girlfriend. Lane gave him permission. After the movie, Ham decided to drive to a city some 50 miles away to see a friend. Has he committed the tort of conversion?
11. Ashleigh has a pet boa constrictor named Pauline. She keeps it in the most expensive, escape-proof cage she can find. Regardless, the boa escapes and kills the neighbor's famed show cat which was valued at more than \$5,000. Will Ashleigh be liable?

5-3 Civil Procedure

GOALS

- State the legal remedies that are available to a tort victim
- Describe the procedure used to try a civil case

KEY TERMS

injunction	subpoena
evidence	verdict
testimony	judgment
witness	

Remedies Available in a Civil Suit

WHAT'S YOUR VERDICT?

Horsley, the owner of a dry cleaning store, lived next door to Eardly, who ran a competing dry cleaning store in the same town. The two quarreled frequently and became enemies. One summer night Eardly composed, printed, and secretly posted around town a flyer accusing Horsley of dealing drugs out of Horsley's store. The accusation was untrue and defamatory. Several witnesses saw Eardly posting the flyers.

What kind of damages could Horsley collect from Eardly in a lawsuit?

Punitive damages are a type of damages generally only awarded in intentional tort cases. They are meant to punish the person who inflicted the injury. As a consequence, they are set by the trier of fact at an amount that would accomplish this objective. So, if a person is willfully injured by a large corporation, the punitive damage award can run into the millions of dollars.

Lawyers at times handle a civil lawsuit for a percentage of the recovery. This is referred to as taking the case on a *contingency fee* basis. Common percentages are 25 percent if the case is settled before a trial, 33 percent if the case is won at trial, and 40 percent or more if the case is won on appeal.

In *What's Your Verdict?* Horsley could recover both compensatory damages (for any provable loss of business) and punitive damages (to punish Eardly for his conduct).

Two types of remedies are generally available in a civil lawsuit for a tort, breach of contract, or other private injury. These two types are injunctions and damages. An **injunction** is a court order for a person to do or not do a particular act. An injunction may be issued to prevent a private injury, to stop it from continuing, or to undo it.

As discussed earlier, damages are a monetary award by the court to a person who has suffered loss or injury because of the act or omission of another. Generally damages fall into two categories, compensatory (also known as actual damages) and punitive (also known as exemplary damages). *Compensatory damages* are meant to place the injured party in the position he or she was in prior to the injury or loss. Under tort law these damages are the sum of the injured party's lost wages, doctor's fees, and a monetary amount to compensate for the injured party's pain and suffering. Damage amounts are usually determined by the trier of fact in each case.

IN THIS CASE

Grimshaw sued the manufacturer of his auto after being burned severely in a collision. He was able to show that the manufacturer willfully kept a defective gas tank in Grimshaw's model of car even after it knew of the problem. The jury awarded him nearly \$7 million in actual damages and another \$100 million in punitive damages. The punitive damage award was set so high because a smaller amount would not be enough to punish an auto maker making billions each year.

CHECKPOINT Name the two remedies available in a civil suit.

What Procedure Is Used to Try a Civil Case?

WHAT'S YOUR VERDICT?

When their cars collided at an intersection, Claxson and DaLucia sued each other.

Claxson claimed that DaLucia caused the accident by failing to stop for his stop sign. DaLucia claimed he had stopped and then moved through the intersection. He said he had not yet reached five miles per hour when Claxson ran his stop sign and slammed into him. Two witnesses saw the accident and could testify, but they have conflicting stories.

How can the court determine what really happened?

The procedure used to try a civil court case follows a set sequence.

Judge or Jury

First of all, if a jury is to be used, it is selected. Remember that judges and juries play different roles in trials. Judges always decide any issues of law. The issues of fact are left to the jury to decide, if a jury is sitting. By its Seventh Amendment, the U.S. Constitution provides for the right to a jury trial in civil cases involving more than \$20. However, the states generally do not have such a guarantee in their constitutions. Even when there is a right to a civil trial by jury, both the *plaintiff* (the party that initiates the lawsuit by filing a complaint) and the *defendant* (the party complained against in a criminal or civil proceeding) may decide to forgo this right. When there is no jury, the judge decides the issues of both law and fact. In *What's Your Verdict?* the trier of fact, be it judge or jury, would listen to the testimonies of Claxson, DaLucia, and any other witnesses, and evaluate them for truth and accuracy. The trier of fact also would weigh any other evidence such as sobriety tests, skid marks, and location of debris to determine what happened.

Civil juries are made up of 6 to 12 citizens who listen to witnesses, review physical evidence,

and reach their decisions. In most states, jury decisions in civil trials do not have to be unanimous.

Opening Statements and Testimony

After the jury for a specific case has been selected, the attorneys make opening statements. These statements briefly outline what the plaintiff and the defendant will try to prove. The evidence is then presented to the jury, first by the plaintiff and then by the defendant. **Evidence** includes anything that the judge allows to be presented to the jury that helps to prove or disprove the alleged facts. Evidence may consist of testimony, written documents, records, charts, sobriety test results, photographs of skid marks and debris location, and other relevant material.

Testimony is the most common form of evidence. **Testimony** consists of statements made by witnesses under oath. A **witness** is someone who has personal knowledge of the facts. Sometimes an *expert witness* will give an opinion. An expert witness possesses superior knowledge about important facts. For example, an engineer may be utilized as an expert witness to testify that skid marks indicate a car was going 70 miles per hour before a collision.

Witnesses often are summoned into court by subpoena. A **subpoena** is a written order by the judge commanding a person to appear, give testimony, and perhaps present other evidence.

LAW BRIEF

Expert witnesses generally are hired first as "consultants." Only after the lawyer feels comfortable with the potential of their testimony is the "consultant" designated to the court and the opposition in a case as an expert witness. All information and material provided to a potential expert witness while merely a consultant is confidential. However, after he or she is designated an expert witness, the other side in the case can find out everything the expert witness knows including everything disclosed to him or her while a consultant.

NETBookmark

Access school.cengage.com/blaw/lawxtra and click on the link for Chapter 5. Once in the Tennessee Bar Association web site, read the article "What is a Subpoena?" According to the article, what should you do if you are served with a subpoena? What happens if you ignore a subpoena? What two things should you keep in mind if you are served with a subpoena?

school.cengage.com/blaw/lawxtra

Willful, unexpected failure to appear after receipt of such an order is contempt of court. The judge can punish persons guilty of contempt of court by fine or jailing them without a trial.

Closing Arguments and Instructions to the Jury

Following the presentation of the evidence, the attorney for each side gives a closing argument. During closing arguments, each attorney summarizes the case, trying to persuade the judge (and the jury if there is one) to favor his or her side. After consultation with the attorneys, the judge then gives instructions to the jury. These instructions tell the jury what rules of law apply to the case. They also tell the jury what issues of fact they must decide.

Jury Deliberation and the Verdict

For example, in a civil case involving an auto accident, the judge might instruct the jury that exceeding the speed limit in bad weather is negligence (a rule of law). The judge also may tell the jury to decide if the weather was bad at the time of the accident (a question of fact) and whether the defendant was exceeding the speed limit at the time of the accident or driving faster than a reasonable speed given the weather (questions of fact). The jury then retires to the jury room for deliberation in secret to decide the case. In deciding, each juror

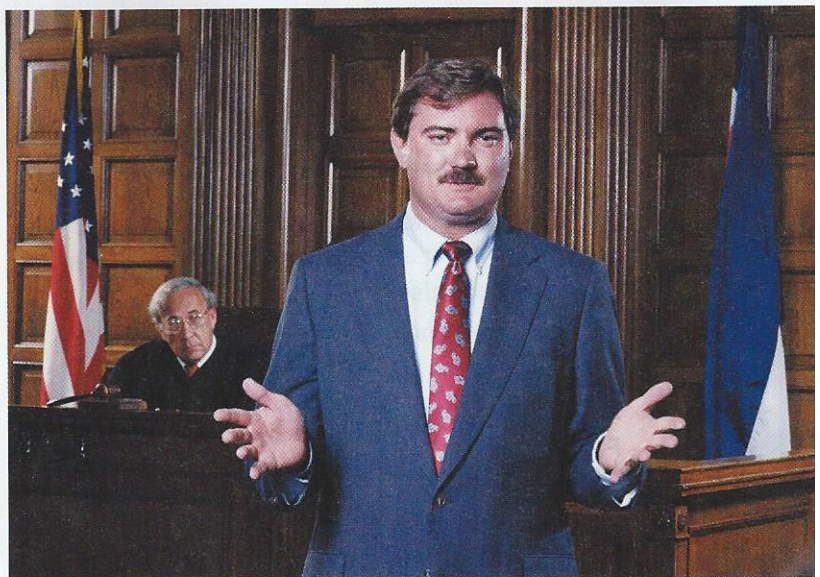
must determine whether a preponderance (superior weight) of the evidence supports the plaintiff's case. In a civil action, a unanimous vote of the jurors is not required. Usually, 10 out of 12 or, in a few states having smaller jury panels, 5 out of 6 voting for the plaintiff will be enough to find for the plaintiff. The jury's decision is called the **verdict**.

After the verdict has been returned, the judge renders a judgment. The **judgment** is the final result of the trial. It will normally be for a sum of money if the plaintiff wins. If the defendant wins, the judgment will merely be "judgment for the defendant." If either party believes the judge made a mistake of law in any part of the trial, an appeal may be made to a higher court.

Examples of judicial error include incorrect instructions to the jury, admission of evidence that should have been rejected, or exclusion of evidence that should have been admitted. When there has been an error, the appellate court may modify or reverse the judgment of the lower court. Or it may order a new trial. If there is no error in the record, the reviewing court will affirm the judgment of the lower court.

CHECKPOINT List the steps in the procedure used to try a civil case.

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What is this defense attorney trying to do with his closing argument to the jury?

How are Civil Damages Collected?

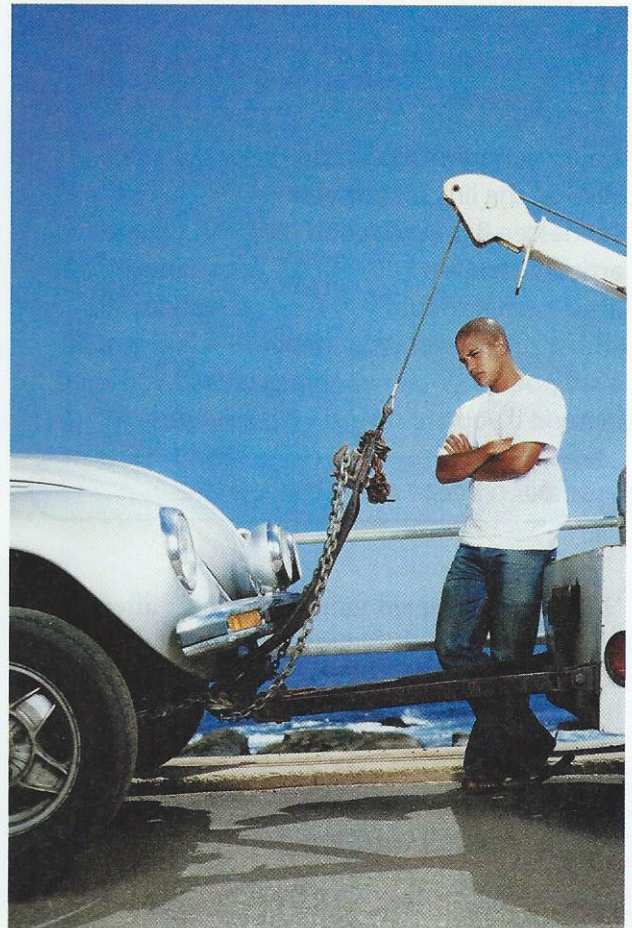
WHAT'S YOUR VERDICT?

Stevens won a judgment for \$35,000 in a civil suit against Alvarez. Alvarez objected, but did not appeal because her lawyer told her that there was no basis for appeal. Alvarez stubbornly refused to pay.

What steps could Stevens take to collect the judgment?

Ordinarily, when a civil judgment for the plaintiff becomes final, the defendant will pay the judgment. If the defendant does not pay, the plaintiff may obtain a *writ of execution*. Execution here means the process by which a judgment for money is enforced. The court directs that the defendant's property (for example, a savings account or car) be seized or sold. The proceeds, after deducting the costs of seizure and sale, are used to pay the judgment.

CHECKPOINT How does a plaintiff collect damages if the defendant refuses to pay?



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Would the possibility of losing a prize possession influence you to pay a judgment against you in a civil suit?

5-3 Assessment

Xtra!
Study Tools

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THINK ABOUT LEGAL CONCEPTS

1. Damages meant to punish the person who has committed a tort are called compensatory damages. **True or False?**
2. Compensatory damages are also referred to as ___?___ damages.
3. A jury never determines a matter of law. **True or False?**
4. In deciding the amount of compensatory or actual damages to pay a plaintiff, the jury decides on a figure that would equal lost wages and medical bills plus a more arbitrary amount for the plaintiff's ___?___.
5. A witness who was at the scene of the crime and who is very sure about what happened is referred to as an expert witness. **True or False?**
6. An order that a judge issues commanding a witness to appear and give testimony is called a(n) ___?___.
7. In a civil case, the judge renders a judgment after hearing the jury's (a) determination (b) resolution (c) verdict (d) none of the above
8. If a defendant refuses to pay a damage award, the court may issue a writ of ___?___ ordering the defendant's property be seized and/or sold to pay the amount due.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

9. Stone had secretly criticized the large chemical company she worked for over a span of several years. Her inside information had led to many accurate stories in the local papers about toxic releases into the environment. Finally, the company discovered what she was doing and hired two thugs to rough her up. They did a very thorough job, and she had to be hospitalized for several weeks. Because she immediately reported her beating to the police, the thugs were captured. In a plea bargain with the prosecutor, they confessed who had hired them. Stone brought suit against the chemical company. For what types of damages could she sue? Why?
10. Stone lost \$14,000 in salary and owed \$30,000 in medical bills as a result of the beating in exercise 9. She had sustained a concussion and had a broken leg with numerous lacerations and abrasions. Thereafter, she consistently walked with a limp. The chemical company averaged \$72 million in annual profits over the last five years. What damage award for each type of damages you selected in exercise 9 would be appropriate? Why?
11. Presume that the damage awards that you deemed appropriate in exercise 10 were awarded by the jury. If the company refused to pay, even after the appeals went against them, how could Stone go about collecting?
12. In preparing for the suit, Stone's attorney subpoenaed several witnesses. After they were served with the subpoenas, the company immediately assigned them to distant locations in the country. If they willfully fail to appear at the trial, what sanctions can the court utilize to punish them?
13. Presume that, because the evidence against it was overwhelming, the chemical company decided to settle the case out of court for \$16 million. Typically, what would be an attorney's contingency fee percentage share of this amount? If the case had to be won at trial and \$20 million was awarded by the jury, how much would Stone's attorneys receive under a typical fee arrangement? If the chemical company appealed but lost, what would be Stone's attorney's typical share of the \$20 million?



Online Research > Becky's Battle

It is early December and Becky is an 18-year-old high school senior trying to sign up for her final semester's courses. She comes from a poor family that did not own a car until a month ago, when Becky bought one with her savings from work. Because she did not have access to a car until a few weeks ago, Becky had not even considered taking the driver's education course offered by her school. Her auto insurance agent told her that her rates would be significantly reduced if she took such a course, so she is trying to enroll in it.

Unfortunately, her application has been rejected. Because of limited funding for the program and a large number of applicants, the school has a rule that it only allows 16 and 17 year olds to take the course. Becky claims this is a form of age discrimination prohibited by law.

THINK CRITICALLY

Does Becky's claim have merit? Does the school's position have legal support? Explain your answers to both questions. Is Becky likely to win if she sues to gain admission to the program?

GO TO FINDLAW.COM TO FIND THE ANSWERS

To find the material in FindLaw on this issue, go to Findlaw.com and click on the following sequence of hyperlinks: Civil Rights, Civil Rights: More Topics, Age Discrimination, Age Discrimination in Education. Read the material including the questions and answers.

Chapter 5 Assessment

Xtra! Quiz Prep

school.cengage.com/blaw/lawxtra

CONCEPTS IN BRIEF

5-1 Private Injuries vs. Public Offenses

1. A tort is an act that causes private injury to the person or property of another.
2. Torts may be broadly classified as intentional torts, negligence, or strict liability. The most common tort is negligence.
3. Generally every individual is personally responsible for damage resulting from any torts committed by him or her.
4. Employers are liable for the torts of their employees if the torts are committed within the scope of the employees' employment.

5-2 Intentional Torts, Negligence, and Strict Liability

5. With intentional torts, the defendant possesses the intent or purpose to inflict the resultant injury.
6. In some states, if the injured person was also negligent and the negligence contributed to the injury, the injured person may be barred from recovering damages. In many states today,

however, some recovery may even then be obtained by the plaintiff under the doctrine of comparative negligence.

5-3 Civil Procedure

7. A person injured by a tort is entitled to damages—monetary compensation for the loss or injury suffered. The amount of damages is typically determined by the trier of the fact in the case.
8. If a jury is present, it will determine the issues of fact in a civil trial. The issues of law will be determined by the judge.
9. For a civil case, lawyers can either be hired on an hourly basis or, if the case promises an adequate award to the client on a contingency fee basis, for a percentage of the prospective award. However, if the client's case is lost, the attorney working on a contingency fee basis receives nothing.

YOUR LEGAL VOCABULARY

Match each statement with the term that it best defines. Some terms may not be used.

1. Person who has personal knowledge of the facts in a case
2. Deprivation of freedom of movement without consent or privilege
3. Final result of a trial
4. Using property in a manner that is inconsistent with its owner's rights
5. Tort based on carelessness
6. False statement that injures a person's reputation
7. Intentionally made threat to physically or offensively injure another
8. Harmful or offensive touching
9. Written court order compelling a person to appear in court and to testify
10. Materials or statements presented in a trial to prove or disprove alleged facts
11. A monetary award by the court to a person who has suffered loss or injury because of the act or omission of another

- a. assault
- b. battery
- c. conversion
- d. damages
- e. defamation
- f. evidence
- g. false imprisonment
- h. fraud
- i. intentional tort
- j. invasion of privacy
- k. judgment
- l. negligence
- m. strict liability
- n. subpoena
- o. testimony
- p. tort
- q. trespass to land
- r. verdict
- s. witness

REVIEW LEGAL CONCEPTS

12. If certain acts are both crimes and torts, why couldn't you let the prosecutor both bring criminal charges against the defendant and bring suit for damages for the victim at the same time?
13. In most cases, in order to recover damages for emotional harm, a person also must show physical harm. Why would society want to establish an additional barrier to someone who has been harmed by the commission of a tort?
14. The Japanese have a popular belief that any defendant who risks his fate on the opinions of untrained laymen in a jury is almost certainly guilty. Do you agree with this contention? Why or why not?
15. Under the doctrine of strict liability, the manufacturer and any sellers in the chain of distribution are held liable for the injuries of a buyer of a defective product. Given the complexity of many modern products, is it fair to hold the sellers liable especially when the manufacturers have gone out of business and cannot pay?

WRITE ABOUT LEGAL CONCEPTS

16. Make an outline of what takes place in each of the main steps of a civil lawsuit from the filing of the complaint to the execution of the judgment. Is justice done when the process is halted by a settlement between the parties?
17. **HOT DEBATE** What parties would Chanelle likely sue over the assault? What type of relief would she likely seek?

MAKE ACADEMIC CONNECTIONS

18. **PSYCHOLOGY** The selection of favorable jury members by the parties to a lawsuit was once conducted according to near legendary rules. For example, clergy, school teachers, lawyers (and their spouses) were considered bad risks in the jury box because they were opinionated and could not be swayed by the lawyer's arguments. Good jury selections included retired businesspeople and reasonably well-educated laborers. Today, however, jury selection in important cases is done on a scientific basis utilizing psychological insights. Research and comment on the new methods and criteria for picking jurors.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

19. Martin asked Gabrielle on a date. They went to a movie and then drove around for a while. As he drove, Martin grabbed Gabrielle, pulled her to him, and tried to kiss her. After a moment she was able to break his grip and demanded he let her out of the car. Instead, Martin sped up and kept driving at a high rate of speed, saying he would only let her out if she would kiss him. What torts has Martin committed?
20. McDonald and Beck were sitting in a bar watching a professional football game. When she discovered McDonald was not rooting for her team, Beck hit McDonald in the face, breaking McDonald's glasses and nose. McDonald called the police, who arrested Beck. What legal causes of action does McDonald have against Beck? What type of damages can he recover?
21. Jackson was a lawyer, respected by his peers. He successfully represented several persons who were charged with income tax evasion. All three defendants were reputed to be leaders of an organized crime syndicate. The local newspaper then printed an editorial calling for the tightening of tax laws "to protect society against mobsters and shyster lawyers like Jackson who would sell their souls to the devil for 30 pieces of silver." Was this statement a tort?
22. Yardly and Whiple, ages 12 and 13, intentionally threw stones which smashed 57 windows in an old warehouse. The warehouse had been

standing vacant for nine months. Yardly and Whiple were caught and disciplined by the juvenile court. Then the owner of the warehouse sued them and their parents for damages. The

girls said they were "just having fun and not hurting anyone because the place was empty." Who, if anyone, is liable and why?

ANALYZE REAL CASES

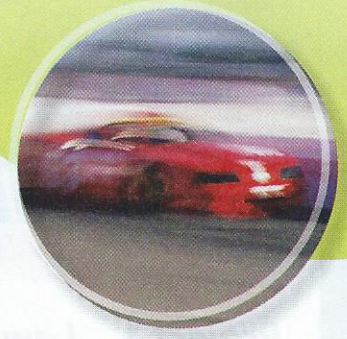
23. Town Finance Corporation (TFC) foreclosed on a mortgage following a dispute with Hughes as to whether a loan had been repaid. TFC had a locksmith remove the locks of Hughes' dwelling. When no one was home, TFC personnel then entered the house, seized household goods, and left the inside of the house in disarray. Hughes filed suit over the debt. The court held that the finance company had been paid and thus had no further right of action against Hughes. Hughes thereupon filed this action, which claimed malicious and willful trespass and asked both actual (compensatory) and punitive damages. Was Hughes entitled to judgment? (*Town Finance Corporation v. Hughes*, 214 S.E.2d 387)
24. Lewis, an undercover police officer carrying a concealed pistol, went shopping in a Dayton Hudson department store. There, a security officer became suspicious that he was a shoplifter. Lewis took some clothing into a fitting room, where there were signs stating, "This area is under surveillance by Hudson's personnel." In fact, the security guard observed Lewis from a grille in the ceiling. After he saw Lewis place the gun on a chair, he called the police. Eventually, Lewis was identified as an undercover officer. But he sued Dayton Hudson claiming that the spying in the fitting room was an invasion of his privacy. Will he recover? (*Lewis v. Dayton Hudson Corporation*, 128 Mich. App. 165)
25. A train stopped at the defendant's railroad platform. As it started up again, a man carrying a small package jumped aboard. He appeared unsteady and about to fall. Therefore a guard on the train, holding the door open, reached out to help him. Another guard, standing on the platform, pushed the man from behind. The man made it onto the train, but he dropped the package, which was about fifteen inches long. The package was wrapped in newspaper and contained fireworks that exploded when the package hit the rails. The shock of the explosion caused several scales at the other end of the platform, many feet away, to fall down. As they fell, they struck the plaintiff, injuring her. She sued the railroad, claiming the guards were negligent. Is the railroad liable? (*Palsgraf v. Long Island Railroad Company*, 162 N.E. 99, N.Y.)
26. David Allen, age two, was attacked and severely bitten in the face and ear by a dog owned by Whitehead. Whitehead admitted that the dog barked a lot, was large, looked mean, and chased cars. On the other hand, no one had ever complained about the dog, it had never bitten anyone before, and it frequently played with other children. Is Whitehead liable for the injuries to David? (*Allen v. Whitehead*, 423 So. 2d 835, Ala.)
27. When a statement appeared on its financial bulletin board claiming that individuals from a securities investment firm committed criminal and fraudulent acts during an initial public offering of a stock, Prodigy and the anonymous poster of the statement were sued for defamation. Prodigy had previously maintained that the content of its bulletin board was monitored and edited by Prodigy. Can Prodigy be held liable for the comments of the anonymous poster on its bulletin board? (*Stratton Oakmont, Inc. v. Prodigy Services Co.*, 5 Alb L J Sci & Tech 229, 237 [1996])

Sports & Entertainment Law

As The Wheel of Fortune Turns

WHITE V. SAMSUNG ELECTRONICS AM., INC.

971 F.2D 1395 (9TH CIR.)



BACKGROUND One category of invasion of privacy involves the misappropriation of a person's name, likeness, or other identifying features. These are looked upon by the law as having commercial value and labeled the "right to publicity." This right can be transferred only by proper licensing or other formal or informal assignment.

FACTS A landmark case defining the scope of this right occurred when the hostess of the very popular game show *Wheel of Fortune* sued Samsung Corporation for infringement because they had used her likeness in an advertisement without permission. The scene depicted in the ad was easily recognizable as a futuristic version of the *Wheel of Fortune* set. Vanna White's image was conveyed by a robot costumed in a wig, dress, and jewelry to resemble her and staged in White's characteristic stance. The caption for the ad read, "Longest-running game show, 2012 A.D." and conveyed the message that the Samsung products being promoted would still be in use at that time. The federal district court dismissed the case without trying it, and White appealed to the 9th circuit federal court of appeals.

THE LAW Prior to this case, the law had focused mainly on the appropriation of a plaintiff's name and likeness as grounds for a suit for a violation of the so-called "right of publicity." Samsung in its defense cited

previous restrictive rulings in cases involving Bette Midler, Clint Eastwood, and Johnny Carson.

THE ISSUE Should the "right to publicity" be expanded to protect more than just the name and likeness of a plaintiff?

HOLDING The court pointed out that the right of publicity was identified and developed to protect the commercial value of a celebrity's identity. Therefore, it was not important how the defendant has appropriated the identity of the plaintiff but whether the defendant had done so. Only by an analysis of the latter question can the right of publicity be utilized in the proper manner to defend the legitimate interests of plaintiffs in their very identity. Using this expanded logic, the court reversed the district court's holding and sent the case back down to the lower court to be tried.

PRACTICE JUDGING

1. What are the essential elements of a person's recognizable identity? Pick a celebrity and identify, if possible, what would convey his or her identity without using a name or likeness.
2. In what situations would being able to convey such a person's identity be of value?



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