Chapter
4

The Law of Torts

After the football game, some of the Franklin High students drive to The Front Room, a local teen hangout. As usual, on a Friday night, the place is crowded and noisy, with music and loud conversation spilling out onto the parking lot.

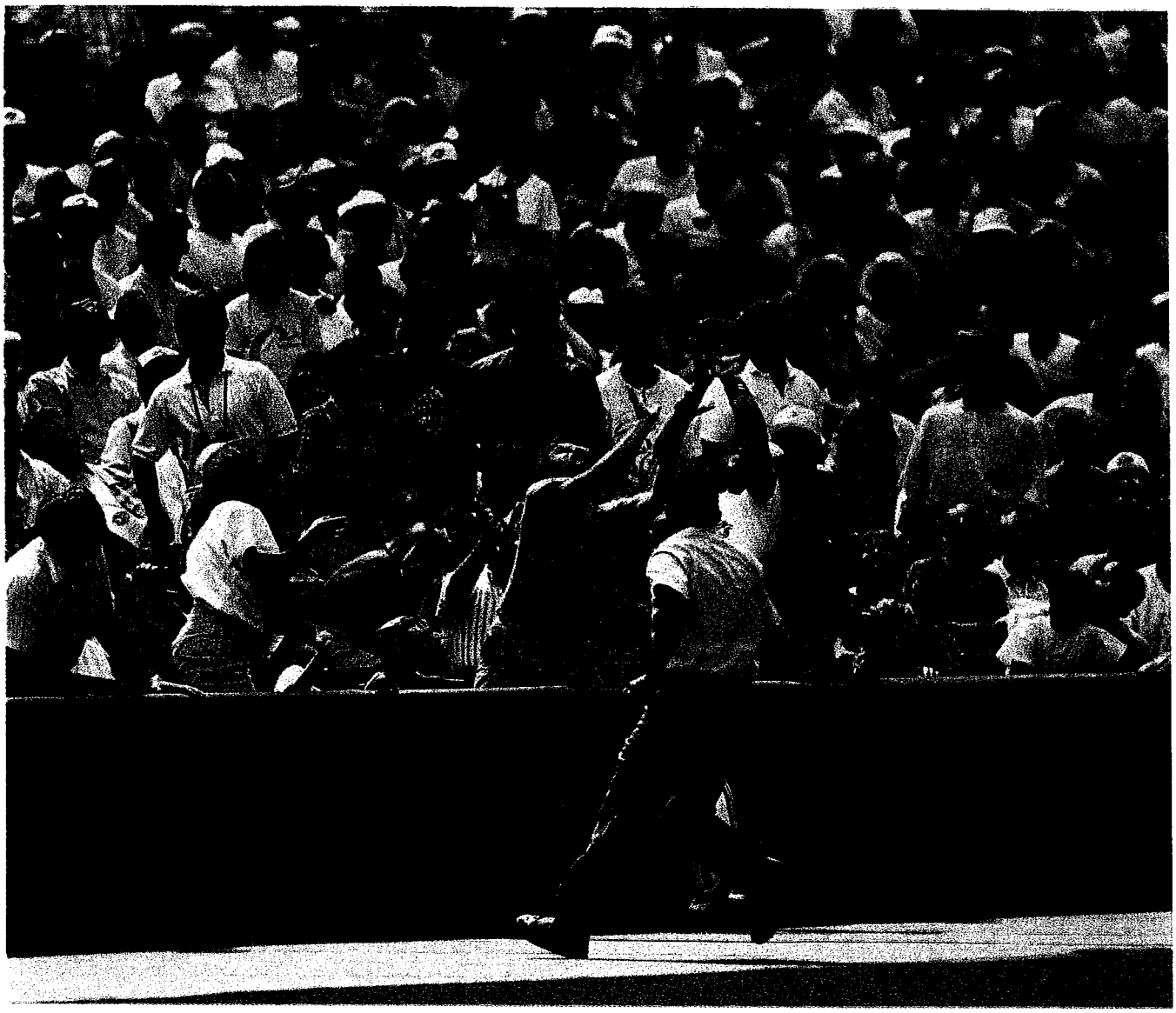
Grace: *You drive like a maniac! The way you took that last corner could have caused an accident.*
Jim: *Nag, nag, nag! You didn't have to come with me. You could have walked.*
Grace: *How could I have walked five miles?*
Jim: *Well then I guess you just "assumed the risk," as Mrs. Martin would say.*
Becky: *Well, I didn't "assume the risk" when the school let that new kid, Reed, transfer into my homeroom. He's bad news with a capital "N."*
Jim: *A capital "N." What does she mean with a capital "N?"*
Clark: *You better not spread any rumors about him. You might be sued for slander.*
Jim: *Listen to Mr. Editor of the school paper here.*
Grace: *Don't pay any attention to him, Clark. By the way, I really liked that editorial you wrote about The Front Room.*
Liz: *I agree. I just can't believe the city council wants to shut this place down, just because some people claim it's a public nuisance.*
Ben: *Well, if they shut down The Front Room, they'll have a real nuisance on their hands because we won't have any place to go.*
Grace: *They might even declare us a public nuisance.*
Jim: *What?*
Grace: *If you paid attention in law class, Jim, you might accidentally learn something.*
Jim: *(Gesturing.) I don't have to go to law class to know a deputy sheriff when I see one.*

A deputy sheriff enters The Front Room and walks over to Mr. Front, the owner and operator of the hangout. After handing him an envelope, the deputy leaves.

Clark: *What's going on, Mr. Front?*
Mr. Front: *I'm being sued for $10,000 by the mayor for invasion of privacy.*
Grace: *I'll bet he's suing you because you used his photograph in that advertisement you ran in the newspaper last week.*
Mr. Front: *That's right. He claims I used it without his permission.*
Liz: *Well, did you?*
Mr. Front: *I guess so. But what I wrote in the advertisement was true. He really did say my pizza is the best in town.*
Jim: *Sounds like malicious prosecution to me. Don't worry, Mr. Front. I'll help you out. I know all about the law. Come on guys. Let's get to the bottom of this.*
Grace: *Not me. After the negligent way you drove over here, I'm not going with you.*
Ben: *He wasn't negligent. You can't be negligent unless somebody is hurt.*
Jim: *Thanks, Ben.*
Ben: *Stupid, yes. But negligent, no.*

New Terms

tort, p. 50
intentional tort, p. 51
trespass, p. 52
nuisance, p. 52
defamation, p. 53
negligence, p. 54
breach of duty, p. 55
proximate cause, p. 56
strict liability, p. 57
injunction, p. 58



Learning Objectives

1. Identify and define a variety of intentional torts.
2. Explain what constitutes negligence and contrast the various defenses to negligence.
3. Determine when the doctrine of strict liability applies.
4. Differentiate between survival and wrongful death statutes.
5. Outline the remedies available to the victim of a tort.

The Spirit of the Law

One of the primary purposes of the law is to protect people from the wrongful acts of others. This protection is given, first, by preventing or discouraging people from doing wrongful acts that might cause injury. Second, protection is given by providing those people who have been injured a remedy in the law. The remedy usually provided is the right to recover what the innocent victim has lost as a result of the injury.

Legal Issues:

1. Can the spreading of rumors result in a libel suit?
2. Does a legal wrong take place when an establishment disturbs a neighborhood?
3. Is someone's privacy violated if a photograph of them is printed without their permission?
4. If someone's carelessness does not result in an injury has that person still been negligent?

The Law of Torts

The law of torts is grounded in the concept of rights. Under the law, all people are entitled to certain rights. Some of these rights all people hold simply because they are members of our society. These rights include, among others, (1) the right to be free from bodily harm, (2) the right to enjoy a good reputation, (3) the right to conduct business without unwarranted interference, and (4) the right to have one's property free from damage or trespass. Other rights arise under special circumstances. For example, patients who enter a hospital have the right to expect competent care from the health care providers assigned to their cases.

Since all people have these rights, other people have the duty to avoid violating those rights in any way. Stated more positively, the law imposes a duty on all people to respect the rights given to others. Tort law governs this interplay between rights and duties. The word tort, from the Latin word *tortus* meaning "twisted," is a wrong against an individual. A tort is different from a crime, which is a wrong against the public at large.

A **tort** may be defined as one person's interference with another's rights, either through intent, negligence, or strict liability. A person who commits a tort is called a *tortfeasor*. Tort lawsuits are brought against tortfeasors by the injured persons themselves to recover money as compensation for the loss or injury suffered. Criminal prosecutions, in contrast, are brought by the state to punish wrongdoers and to protect the public. In some situations, a wrong is both a tort and a crime.

> ***Example 1.*** Dr. John Boyle was prosecuted, tried, and convicted of the strangulation death of his wife, Noreen. This criminal action for aggravated murder was followed by a wrongful death suit in tort brought on the behalf of Noreen's two minor children. The single action of killing his wife involved Dr. Boyle in two court actions—one

brought by the state and one brought on behalf of the children. The law gave the children the right to recover money from Boyle for the death of their mother. In addition, the law punished Boyle by sentencing him to life imprisonment for the murder of his wife.

Intentional Torts

Torts are classified as being intentional or unintentional. An **intentional tort** is a wrong that occurs when a person knows and desires the consequences of his or her act. Conversely an unintentional tort lacks this determination of mind. The most common intentional torts are listed and defined in Figure 4-1. Let's take a closer look at some of the kinds of intentional torts and selected situations to which they apply.

Assault and Battery

Assault and battery are two separate torts that may or may not be committed together. The tort of assault occurs when one person deliberately frightens another person into the reasonable belief that he or she is about to be injured. Coming at someone with a raised knife and shouting at the same time, "I'm going to cut you to ribbons!" would constitute an assault—even if the victim is never touched. The assault occurs because the victim fears immediate bodily harm. The tort of battery involves the unlawful,

Intentional Torts

Tort	Description
Assault	Threatening to strike or harm with a weapon or physical movement, resulting in fear.
Battery	Unlawful, unprivileged touching of another person.
Trespass	Wrongful injury or interference with the property of another.
Nuisance	Anything that interferes with the enjoyment of life or property.
Interference with contractual relations	Intentionally causing one person not to enter or to break a contract with another.
Deceit	False statement or deceptive practice done with intent to injure another.
Conversion	Unauthorized taking or borrowing of personal property of another for the use of the taker.
False imprisonment (false arrest)	Unlawful restraint of a person, whether in prison or otherwise.
Defamation	Wrongful act of injuring another's reputation by making false statements.
Invasion of privacy	Interference with person's right to be left alone.
Misuse of legal procedure	Bringing of legal action with malice and without probable cause.
Infliction of emotional distress	Intentionally or recklessly causing emotional or mental suffering to others.

Figure 4-1 In criminal law when someone commits a wrong, it is called a crime. In civil law when someone commits a wrong, it is called a tort. Which of the torts listed do you think is the most serious?

unprivileged touching of another person. The touching does not have to be harmful. The essence of battery is the unwanted touch, regardless of whether the intent of the wrongdoer is to help or harm.

The tort of assault differs from the crime of assault. In the tort of assault, the victim must know that the tortfeasor has tried to harm him or her. Without that knowledge, the victim has not been frightened, and no harm has resulted. In criminal law, an assault is an attempted battery. It is not necessary for the intended victim to be aware of the attempt. This is because the purpose of criminal law is to protect the public and to punish wrongdoers, not to compensate victims. Therefore, in criminal assault, the fact that the intended victim knows nothing of the attack is of no consequence. A criminal assault can be carried out against an unconscious victim. The same is not true of the tort of assault.

Trespass

A **trespass** is a wrongful injury to or interference with the property of another. Property refers to everything people can own, including movable items such as cars, VCR's, or CD players, and nonmovable items such as real property. Real property includes land and things built on the land, growing on the land, or located within the land. Today the tort of trespass refers most commonly to real property.

> *Example* 2. Sorensen and some friends went hunting on Lashutka's private ranch without her permission. Entering Lashutka's property and hunting there without proper authority is trespass. Lashutka may bring a lawsuit for damages against Sorensen and the others.

Notice in Example 2 that Sorensen and the others did not actually harm Lashutka's property. This makes no difference in the commission of trespass, since the law of torts presumes an injury from someone's unwelcome presence on the property of another. Under common law, ownership of real property extended from the center of the earth to the highest point in the sky. A person owned not only a portion of the earth's crust, but also the ground under it and the airspace above it. Today, however, property owners do not own the airspace to the highest point in the sky. Under the laws of most states, they generally own the airspace to as high as they can effectively use it. It is trespass to enter another person's airspace without permission.

Nuisance

As listed in Figure 4–1, the tort of **nuisance** is anything that interferes with the enjoyment of life or property. Such things as loud noises at night, noxious odors, and smoke or fumes coming from a nearby house are examples of nuisance. A public nuisance is one that affects a large group of people, such as all the people in a neighborhood or community. A private nuisance, on the other hand, is one that affects one person only. A complaint by local residents about the noise at The Front Room in the opening vignette could make Mr. Front the target of a lawsuit for creating a public nuisance.

False Imprisonment

Law enforcement officers must have probable cause or a warrant to arrest someone. Consequently, they are subject to a lawsuit for false impris-

onment if they make an arrest without meeting these requirements. This unlawful physical restraint of a person is false imprisonment, often called false arrest. Shop owners and store detectives also must use good judgment in detaining shoplifters. However, because of the prevalence of shoplifting in our society today, most states have laws that allow store managers and detectives to detain suspected shoplifters. Owners or detectives must have reasonable grounds to suspect that a shoplifting incident has occurred and must detain the suspect in a reasonable manner and only for a reasonable length of time. However, determining what is "reasonable" can be difficult.

> *Example 3.* Betty Brandon, a store detective for the Brennan Department Store, thought she saw Gwen Forsythe place a lipstick in her purse. Betty apprehended Gwen and locked her in a storeroom for three hours. When Betty and the store manager were satisfied that Gwen was innocent, they released her. Gwen sued for false imprisonment. The court decided the store employees had acted unreasonably, and awarded Gwen a large sum of money as compensation for her humiliation and emotional suffering.

Defamation

The wrongful act of injuring another's reputation by making false statements is called **defamation**. It is divided into two categories—libel and slander. Libel is a false statement in written or printed form that injures another's reputation or reflects negatively on that person's character. Radio and television broadcasts, video and audio recordings, movies, photographs, signs, paintings, and statues may be subject to charges of libel. This is because in all these cases the false statement has been reduced to a permanent form. Slander is similar to libel except that the false statement is made orally to a third party.

Individuals can usually sue for libel as long as the permanent statement is damaging to their reputation, is false, and is communicated to at least one other person. People are allowed to speak the truth without being sued successfully for defamation as long as it is done without spite or ill will. In addition, statements made by senators and representatives on the floor of Congress and statements made in a court of law are *privileged*. This means that such statements are not the proper subject of a defamation lawsuit. Privileged speech protects the open debate of legislative and judicial matters.

Persons who are in the public limelight must prove more damage to their reputation than the average person to prevail in a defamation lawsuit. Falling into this category are public officials (politicians, judges, and the like) and public figures (such as entertainers, athletes, and others). Under guidelines set down by the U.S. Supreme Court, these individuals are also required to prove that the false statements were made with actual malice. Actual malice means that the statement was made either with the knowledge that it was false or with a reckless disregard for whether it was true or false.

Public officials and public figures are required to follow this higher standard because they have voluntarily chosen a lifestyle which, in a free society, will naturally expose them to close scrutiny by the press. Also, such individuals can generally report their side of the story by calling a news conference, appearing on a television talk show, buying newspaper space, purchasing air time on radio and television, or issuing news releases.

FYI

Whenever someone's honesty, character, or integrity has been attacked on the air, that person has the right to a defense, using free air time, within one week of the attack. This is known as the "Fairness Doctrine." It was set up by the Federal Communications Commission, which regulates the broadcast media.

Invasion of Privacy

Invasion of privacy is interfering with a person's right to be left alone. The right of privacy includes the right to be free from unwanted publicity and interference with private matters. In most states, the invasion of privacy is a tort. Some states, such as New York, have established this right by statute. The state of California, on the other hand, has established the right of privacy by amending the state constitution.

The Federal Privacy Act of 1974 provides safeguards for individuals against the invasion of privacy by agencies of the federal government. With some exceptions, the act requires federal agencies to allow individuals to determine what personal records will be kept by any agency. It also permits individuals to know what records concerning them are being kept. Individuals have a right to receive copies of such records and to correct errors in them. Agencies must get permission to use records for purposes other than those for which they were gathered. People in business who are entrusted with confidential records must take great efforts to ensure that those records are not made public. A failure to protect such confidential matters could result in an invasion of privacy lawsuit.

It is also invasion of privacy to use an individual's photograph, likeness, or name without permission for advertising, publicity, or publication purposes. In the opening vignette, Mr. Front used a photograph of the mayor in an advertisement for his business without first obtaining permission. In answer to Legal Issue 3, this conduct invaded the mayor's privacy and opened Mr. Front to a lawsuit.

Negligence

Negligence is an accidental or unintentional tort. It is the tort which occurs most often in society today. Negligence may be present, for example, when there is an automobile accident or when someone trips on a broken floorboard. **Negligence** is the failure to exercise the degree of care that a reasonable person would have exercised in the same circumstances.

Elements of Negligence

To succeed in a tort suit for negligence, the plaintiff must prove all of the following elements:

- The defendant owed the plaintiff a duty of care.
- The defendant failed to act as a reasonable person would have and, therefore, did not use the degree of care required under the circumstances. This is called a breach of duty.
- The breach of duty by the defendant was the proximate cause of the injury to the plaintiff.
- The plaintiff suffered some actual harm or injury.

Duty of Care

As noted earlier, the law of torts is grounded in the concept of rights. Because each of us in this society has certain rights, the rest of us have the duty not to violate those rights. This concept of duty of care is especially crucial in negligence. Usually, the existence of the defendant's duty of care is not in question. However, when it is called into question, the issue becomes very important to the plaintiff's case. If the plaintiff cannot

demonstrate that the defendant owed him or her a duty of care, then there is no need to look at the other elements.

> ***Example 4.*** While using the diving board at a public pool, Julia fell and was injured. The injury could have been avoided had the diving board had a guardrail. She later sued the state's Department of Health. She argued that the department had inspected the pool and had not done anything about the missing guardrail. The state supreme court ruled against Julia. It pointed to the state's sanitary code regulations which gave the Department of Health the duty to inspect water-related facilities for health problems. The department had no duty to inspect those facilities for safety problems and thus had no duty to Julia. Since the department had no duty in this case, there was no need to examine the other elements.

Breach of Duty

A person commits **breach of duty** to another person by not exercising the degree of care that a reasonable person would exercise in that same situation. This "reasonable person" test is an objective test. For this reason, the judge in a tort case must be very careful when giving instructions to the jury. The judge cannot alter the test by telling the jurors to determine what they would have done in this situation. Nor can the judge substitute words like "average person," "normal person," or even "logical person." The judge must tell the jury to determine what a "reasonable person" would have done in this situation.

Resolving Disputes

Negotiation

The courtroom image of Ben Matlock or Perry Mason shouting "Objection!" at a trial is a familiar one. In reality, though, only about five percent of cases ever get to the trial stage. Most can be settled in a variety of ways that keep disputing parties out of court.

One technique for settling disputes is negotiation. It involves only the people who have a dispute. There are usually at least two people and very often more in a dispute. Through negotiation, they communicate with one another to try to reach an agreement. That is, they become negotiators.

The most successful negotiation involves a "win-win" instead of a "win-lose" situation. The goal is to help all parties in a dispute meet their needs. This is especially helpful where negotiators will continue to deal with each other in the future.

First of all, the negotiators must be able to identify their own as well as the other party's interests. For example, if an employee asks the boss for a raise, is it because he or she needs the money or does the employee feel the boss is unfair?

The next part of the negotiation involves coming up with the choices for satisfying everyone's needs. For example, the home a couple is bickering over can be sold so that each has a downpayment for a new house. Agreement between the parties on the standards to use also makes negotiation easier. A neutral appraisal of the value of their property, for instance, could make it easier for the feuding couple to have a basis for agreement.

In addition, negotiators work within limits and can only agree to a settlement if they have full authority to do so. And, finally, negotiators must understand the alternatives to settlement.

1. Which parties does negotiation involve?
2. What are the steps in negotiation?

Proximate Cause

The third element of negligence is proximate cause. **Proximate cause** is something that produces a result, and without which, the result would not have occurred. Proximate cause is not the same as actual cause. An action by the defendant may actually cause the plaintiff's injury but still not be the proximate cause. In order to figure out whether the defendant's unreasonable conduct was the proximate cause of the plaintiff's injury, the court will apply the foreseeability test. This test asks "Was the injury to the plaintiff foreseeable at the time the defendant engaged in the unreasonable conduct?"

> ***Example 5.*** Mrs. Palsgraf was waiting for a train on the platform of the Long Island Railroad Company. As another train was pulling out of the station, a man carrying a package ran forward to catch it. One of the guards on the platform helped push the man forward while a guard who was on the train pulled the man upward. In this process of pushing and pulling, the man's package fell to the platform. The plainly wrapped package contained fire-works, which exploded on impact. The resulting explosion shook the platform and knocked over some scales, which hit Mrs. Palsgraf and caused extensive injuries. The court ruled that the guards could not reasonably foresee that pushing and pulling a man onto a train would injure a woman standing many feet away.

Actual Harm

Since the essence of any tort suit is a violation of a duty resulting in an injury to the plaintiff, that plaintiff must show that he or she suffered some sort of actual harm. That is, did the plaintiff suffer physical injuries, property damage, or financial loss? Without any actual harm, even the stupidest mistake or the most careless conduct will not result in liability for negligence.

> ***Example 6.*** In the opening vignette, Grace says that Jim's careless and foolhardy driving habits amount to negligence. Ben reminds her that actual harm must result before Jim's conduct would be negligent. In answer to Legal Issue 4, Ben is correct. However, he is also correct in pointing out that Jim's reckless driving is a very stupid thing to do.

Defenses to Negligence

People can defend themselves in a negligence suit by eliminating one of the four elements. They can argue that they owed no duty to the plaintiff, or that their conduct conformed to the reasonable person standard, or that their conduct was not the proximate cause of the plaintiff's injuries, or that the plaintiff suffered no injuries. There are, however, other ways to defend against a negligence suit. In cases in which defendants cannot attack one of the elements, they may try to use one of the following defenses: contributory negligence, comparative negligence, or assumption of risk.

Contributory Negligence

Contributory negligence is negligence on the part of the plaintiff that assisted in causing his or her injuries. Under the doctrine of contributory negligence, if the defendant can prove that the plaintiff's own negligence helped cause the injuries, then the plaintiff loses the lawsuit. This result follows no matter how slight the plaintiff's own negligence was. Many states no longer follow this doctrine because it is unfair to plaintiffs who may have been only slightly negligent. These states have adopted comparative negligence in its place.

Comparative Negligence

Under the doctrine of comparative negligence, the negligence of each party is compared. Then the amount of the plaintiff's recovery is reduced by the percent of his or her negligence.

> *Example 7.* Jason Cohen sued Mark Goodhue for damages suffered in an automobile accident. The jury found the damages to be $100,000. In addition, the jury found that Cohen was 10 percent negligent and that Goodhue was 90 percent negligent. Cohen recovered $90,000 from Goodhue instead of the full amount of damages.

Most states using comparative negligence follow the 50 percent rule. Under this rule the plaintiff is allowed to recover part of the award as long as his or her negligence was not greater than the defendant's. If the plaintiff's negligence exceeds 50 percent, he or she recovers nothing.

Assumption of Risk

If the defendant can show that the plaintiff knew of the risk involved and still took the chance of being injured, he or she may claim *assumption of risk* as a defense. This defense has been used successfully by baseball clubs when they have been sued by spectators injured when baseballs were hit into the stands.

Strict Liability

There are some activities that are so dangerous that the law will apply neither the principles of negligence nor the rules of intentional torts to them. Should these activities injure someone or damage property, then the people engaged in those activities will be held liable, regardless of how careful they were and regardless of their intent. This is known as the doctrine of **strict liability**. It applies only to ultrahazardous activities. These are activities that involve a great risk to people and property. The risk must be of such a nature that no amount of care will eliminate that risk. Using explosives, keeping wild animals, and storing highly inflammable liquids in densely populated areas have all been labeled as ultrahazardous.

In recent years, the doctrine of strict liability has also been applied in product liability cases. These are cases in which people are injured from defects in products they bought in the marketplace. The firm that manufactures a product is liable, regardless of fault, for injuries to users of the product if a defect in the product caused the injury.

Product liability does have its limits. Most courts have held that product liability does not apply if the seller of the defective product does not usually engage in the sale of such items. For example, a corporation which auctions off some of its machinery after one of its plants has been forced to close would be labeled an occasional seller. It would not be liable for an injury caused by a defect in one of those machines.

YOU And The LAW

What are the laws in your state concerning product liability? Can the consumer use the doctrine of strict liability to sue both the manufacturer and the seller?

Survival and Wrongful Death Statutes

Under common law, if someone died from another's wrongful act, then the right to bring a suit died also. This rule originated because, in Great Britain, the king or queen would execute the wrongdoer and would then take his or her property. As a result there was no property left for the

relatives of the deceased to recover in a tort suit. Many states have eliminated this rule by enacting survival statutes. Survival statutes allow a lawsuit to be brought even if both the plaintiff and the defendant are deceased. This is true no matter what caused the death or deaths. Most states allow such suits if the tort involves damage to personal or real property. Approximately half of the states also have survival statutes preserving the right to bring suit for personal injuries. All survival suits are brought or defended by the lawful representative of the estate of the deceased.

Wrongful death statutes preserve the rights of third parties affected by the death of a person to bring a lawsuit. Unlike survival statutes, wrongful death statutes preserve the right to bring a lawsuit only if the death is caused by the negligence or the intentional conduct of the defendant. The right to bring a wrongful death suit is generally limited to family members who have lost the support of the deceased. Usually, this group of family members is limited to husbands, wives, children, and parents.

Remedies for Torts

When a wrongdoer has injured another person by committing a tort, the victim can usually be compensated by receiving money damages. In some cases, however, money will not repay the injured party for the damages.

Example 8. Josephine Jones had a beautiful acacia tree on her lawn. Al Chambers, who lived next door, did not like the tree because it shaded his house. Chambers threatened to go on to Jones's property and cut down the tree. If Chambers did this, money damages would not properly restore Jones to her original position because a similar acacia tree cannot be grown in a normal lifetime.

If Chamber's threat seemed serious, Jones could go to court and ask the judge to order Chambers not to trespass on her property and not to remove her tree. An **injunction** is a court order issued by a judge ordering a person to do or not to do something. The remedy of injunction, however, is available only in special circumstances where money damages will not adequately repay the injured party. If Chambers violated the judge's order and cut down the tree, he would be guilty of contempt of court. He could be fined and sent to jail for his wrongdoing.

Reducing Legal Risks

If you must perform an action that may cause injury, notify others who may be affected by the nature of the action and its possible consequences. Be sure they do not object to your action. If you must act in self-defense, be sure the action you take is proportionate to the threat imposed. If the danger subsides, retreat.

Chapter 4 Review

Summary

Carefully read the summary below before completing the chapter review.

1. A tort is one person's interference with the rights of another person, either through intent, negligence, or strict liability.
2. An intentional tort is a wrong that occurs when a person knows and desires the consequences of his or her act.

3. The most common intentional torts include assault, battery, trespass, nuisance, interference with contractual relations, deceit, conversion, false imprisonment, defamation, invasion of privacy, misuse of legal procedure, and infliction of emotional distress.
4. Negligence is the failure to exercise the degree of care that a reasonable person would have exercised in the same circumstances.
5. A suit for negligence must prove four elements: duty of care, breach of duty, proximate cause, and actual harm or injury.
6. Defenses to negligence include contributory negligence, comparative negligence, and assumption of risk.
7. According to the doctrine of strict liability, people who engage in ultrahazardous activities will be held liable for any injury or damage that occurs because of that activity, regardless of care taken or intent.
8. Survival statutes allow a lawsuit to be brought even if both the plaintiff and the defendant are deceased.
9. Wrongful death statutes preserve the rights of third parties affected by a death to bring a lawsuit against the person who caused that death.
10. Tort remedies include money damages and injunctions.

Language of the Law

Choose the term from the list that best completes each sentence below. Then write the complete sentence on a separate sheet of paper.

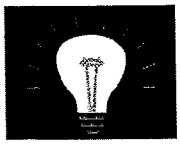
trespass	breach of duty	tort	negligence	strict liability
intentional tort	injunction	proximate cause	defamation	nuisance

1. One person's interference with another's rights is called a(n) _____.
2. The element of negligence that shows that the plaintiff's injury was a result of the defendant's action(s) is called_____.
3. A judge can issue a(n) _____ ordering a person to do or not do something.
4. A wrong committed by a person who knows and wants the resulting consequences is a(n) _____.
5. If you fail to exercise reasonable care in a situation and thereby cause injury or damage, you may be accused of _____.
6. The doctrine of _____states that people who are engaged in extremely dangerous activities may be held liable, even if there was no negligence or evil intent involved.
7. Today, the tort of _____ usually refers to wrongful injury or to interference with the real property of another.
8. The tort of _____ is anything that interferes with the enjoyment of life or property.
9. The wrongful act of injuring another's reputation by making false statements is called _____.
10. When the defendant fails to act as a reasonable person would have done in the same situation, a _____ takes place.

Questions for Review

Answer the following questions. Refer to the chapter for additional reinforcement.

1. How is an intentional tort different from an unintentional tort?
2. To what extent do property owners own the airspace above their land under today's laws?
3. What is the difference between a public nuisance and a private nuisance?
4. What are the four elements of negligence?
5. What is the essential difference between libel and slander?
6. In what ways may persons defend themselves in a negligence suit?
7. When does the doctrine of strict liability apply?
8. What is the difference between a survival statute and a wrongful death statute?
9. When is the remedy of injunction available?



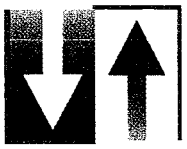
Applying Critical Thinking Skills

Apply your understanding of the chapter concepts by answering the questions below.

1. What tort may be present in an automobile accident? If an automobile is damaged but no one is injured, has a tort been committed?
2. Why do you think the common law concerning the ownership of airspace was changed?
3. Do you think it is difficult for someone to prove negligence? Why or why not?
4. Can a person be sued for invasion of privacy if he or she spreads the news of a friend's fatal illness?
5. Your neighbor is careless about putting plastic or rubber items with trash that is being burned. The odor keeps you from enjoying your patio. What tort, if any, is your neighbor committing? What legal steps can you take?

Applying Communication Skills

Becky Sharp and Alice Newman live next door to each other. They are good friends and have an understanding that they can borrow each other's things. One day Becky's lawnmower wouldn't start, so she got the lawnmower from Alice's garage. Alice had planned to mow her lawn at the same time, and became angry at Becky for taking the lawnmower without asking. She accused Becky of trespassing (entering her garage) and conversion (unauthorized removal of another's property). How could this fight have been prevented? What would you suggest that Becky and Alice do to improve their communication skills?



Cases in Point

For each of the following cases, give your decision and state a legal principle that applies:

1. A photographer took a photo of Maria Lao without permission while Maria was sunbathing by the pool in her own backyard. Maria later discovered that the photo had been used in an advertisement for suntan lotion. What tort, if any, has been committed?
2. Al asks to borrow Juanita's videocassette library. He likes several of the videocassettes so much he decides to keep them. Despite repeated requests from Juanita, Al refuses to return the cassettes he kept. What tort, if any, has been committed?
3. As she was about to leave a grocery store, Roberta Milner was stopped by the store detective and accused of shoplifting. She was detained for six hours, then released. Later, the detective learned that he had stopped the wrong person. What tort, if any, did the store detective commit?
4. An elderly woman was beaten and robbed by an unknown person. Emily Simpson told several people that Max Newmark was guilty of the crime. This was a false statement. Has Simpson committed a tort for which Newmark can recover damages?
5. Philip Carstairs kept a poisonous spider in his locker at school. He was very careful to keep it locked up so it would not harm anyone. One day, while Philip was in class, two students got the spider out of Philip's locker and let it loose in the girl's gymnasium. Judy Norton was bitten by the spider. Is Carstairs legally responsible for Norton's injuries? Explain.
6. Scott Milligan was killed in an industrial accident. He was survived by a wife and three children. Because of changes in the law, Milligan's widow and children have the right to bring a lawsuit. Identify and explain the two statutes that have created this right.

Cases to Judge

In each case that follows, you be the judge.

1. After a game between two amateur hockey teams ended, a fight broke out between Kadella and Overall, members of opposing teams. The fight soon became a general brawl, with players leaving both benches to participate. During the fight Kadella struck Overall, knocking him unconscious and fracturing the bones around his right eye. Overall brought suit against Kadella for assault and battery. Kadella claimed that Overall could not sue him for the injury because he had participated in the hockey game voluntarily. Is Kadella right? Explain. *Overall v. Kadella*, 361 N.W.2d 352 (Michigan)
2. Franklin Pork, Inc. constructed a pig feeding and breeding facility next to Ruth and Jack Cline's farm. According to the Clines, there was a "nauseating type of smell" that varied in intensity "from a slight hog smell to just absolutely horrid." The odor from the facility was so rank that they had to keep their doors and windows closed. They could not entertain friends or relatives. Flies were exterminated on their premises; 12,976 during one week in July and 14,900 during the following week. What type of tort was committed? What remedy might the Clines seek in this situation? Explain. *Cline v. Franklin Pork, Inc.*, 361 N.W.2d 566 (Nebraska)