

1-1 Our Laws and Legal System

Hot Debate: Donna Estes was driving south on National. She was doing 60 mph in a 50 mph zone. Wilma Sexton was driving north on the same street at the same time. She had been drinking and was weaving back and forth in her lane. Suddenly, Wilma noticed she was about to miss her turn. Signaling for a brief second, she made an abrupt left in front of Donna's vehicle. The cars collided. Both women received lacerations and broken bones. Both cars were totaled. Who was at "fault"? What arguments would Donna's attorney present at the civil trial to determine who was negligent? What arguments would Wilma's attorney present?

What is Law?

The **laws**, or enforceable rules of conduct in a society, reflect the culture and circumstances that create them. Laws may be grouped into an organized form called a **code**. When we compare one civilization's code with the codes of other civilizations, we see many similarities. For example, the law code set down about four thousand years ago by Hammurabi, King of Babylon, had sections on criminal law, property law, business law, family law, personal injury law, labor law, and others. Such coverage is similar to that found in our country's law codes today.

Stages in the Growth of Law

Most societies go through four distinct stages in forming their legal systems: (1) Individuals take revenge for wrongs done to them; (2) Awards of money or goods are substituted for revenge; (3) Court systems are formed; and (4) A central authority figure intervenes to prevent and punish wrongs.

In the first stage, injuries inflicted on one human being by another are matters for personal revenge. Those who are wronged feel that justice can be done only through punishing the wrongdoers. Gang-related shootings in our inner cities often are a result of this type of attitude. Whether they occur in our cities or in a developing society, such incidents usually disrupt the normal routine of the people and result in harm to innocent bystanders. The situation often leads to one individual seizing power and exerting control to bring peace to the society. This individual (who we will call the sovereign) then brings about the second stage in the evolution of law. The sovereign awards money or goods as a substitute for revenge. The sovereign then enters into the third stage by forming courts. Elders or priests generally preside over the courts. (For the most important matters the sovereign presides.) The sovereign's subjects can go to the courts to be heard when they are injured by another in some way. Finally, the sovereign uses the courts to prevent problems from arising. The sovereign also issues laws to punish behaviors that injure others in certain ways. This is the fourth, and generally last, stage in the evolution of law.

Common Law v. Positive Law

Laws reflect the wisdom – or lack thereof – of their creators. In any society, laws should be both predictable and flexible. A system of laws that is not predictable will not produce a stable society. Chaos, unrest, and the replacement of the system by one that can exercise control will follow. A legal system that is too controlling and too rigid to change with the wants and needs of the people also will be overthrown. The best system of laws always gradually evolves towards a form that is most appropriate to the current standards of the people. Law based on the current standards or customs of the people is called **common law**. Common law usually is pronounced by judges who use it to settle people's disputes. However, as noted earlier, some laws are set down by a sovereign or other central authority to prevent disputes and wrongs from occurring in the first place. Law dictated from above in this fashion is called **positive law**.

What's Your Verdict? The labor strike is in its fifth bitter week. The strikers are tense and angry. The workers who remain on the job are both angry and fearful about the situation. For several days nearly a thousand picketers gather at the company's main gate. They are chanting slogans and jeering those who enter the plant. The crowd begins to throw rocks at the workers who cross the picket line. Then a company truck is set on fire and destroyed. What powers do the courts have that would be useful in this situation?

The world's two great systems of law are the English common law and the Roman civil law. Countries with systems patterned after the civil law have adopted written, well-organized, comprehensive sets of statutes in code form. Only one state in the United States – Louisiana – has law based on a civil law system. The legal system used in the other 49 states is based on the English common law. English colonists transported this system of law to this continent. To understand how the common law works, we must look at how it developed.

Equity as an Alternative

The English common law courts carefully followed **precedent**. This means the courts used prior cases as a guide for deciding similar new cases. Following precedent helped to provide stability in the law. However, following precedent also had its disadvantages. First of all, it resulted in a rigid adherence to proper form. A misplaced period or misspelled word would nullify

the effect of a document. Another disadvantage was that the courts of law were limited to granting the remedy of money damages. This meant that the common law courts had to wait until the harm actually occurred before they could take action.

For example, if a farmer decided to dam up the stream that watered his neighbors crops and animals, the courts of law had to wait until the harm had occurred and then award the neighbor damages for what the farmer did. The courts of law could not order the farmer to stop building the dam. This would be a waste of resources from the perspective of the country as a whole. However, if the neighbor were a noble, he might be able to get around the courts and directly petition the king for help. The king would refer the matter to his chancellor, who was usually a high clergyman respected for his equity, or fairness. The chancellor would conduct a hearing under rules different from those of a common law court. There would be no jury, for example, and the remedies the chancellor could impose in the king's name were different from those available to the law courts. The chancellor might order a decree to compel that something be done. Or, he might issue an **injunction** which ordinarily prohibits something from being done. For example, the chancellor could issue an injunction to stop the dam from being built. If the neighbor were not a noble, he would have no recourse to the king. The harm would be allowed to occur. Eventually the king sensed a need for access to equitable remedies for all citizens. He created a system of equity courts and placed them under the chancellor's control. These courts were given the power to issue injunctions or to compel specific actions.

In the United States today, law courts and equity courts generally are merged. Most American courts can provide the help common law courts gave. In *What's Your Verdict?* at the beginning of this lesson, the judge might grant the company a money award for the loss of the truck. The court also could issue an injunction to limit the number of picketers at the plant's entrance. Strikers who violate the injunction risk a jail sentence for contempt of court. Four states in the United States administer law and equity separately. In Arkansas, Delaware, and Mississippi equity is administered in chancery courts; in Tennessee equity is administered in law-equity courts.

Think Critically About Evidence

1. You are on your daily jog when a car negligently pulls out in front of you. Unable to stop, you run into it and injure yourself. Should you be able to recover damages for the harm done to you?
2. The driver of the car in the above question becomes abusive towards you after your recovery. The driver follows you on your jogs and yells threats at you. He has recently taken to driving very close to you as you jog. What can you do legally to make him stay away from you?
3. Cracked Mirror, a locally well-known rock group, contracts to play for your high school prom. A week before the dance, the group cancels its appearance. A teacher finds out that the band took the opportunity to perform in a concert that will pay them \$800 more. The class president's mother is an attorney and offers her services to the school. If you sue the band for damages, what would be an appropriate amount and why?
4. In the question above, could you fashion an equitable remedy that might prompt Cracked Mirror to decide to keep its commitment to play at your prom? (Certain remedies that may come to mind could violate portions of the U.S. Constitution and therefore could not be pursued.)

1-2 Types of Laws

What Are The Sources Of Our Laws?

Laws in this country are created at all three levels of government – federal, state, and local. The laws at each level consist mainly of constitutions, statutes, administrative agencies, and case law.

What's Your Verdict? Congress requires cigarette makers to print these words on every cigarette package: "Warning: the Surgeon General has determined that cigarette smoking is dangerous to your health." Do you think they are correct? What type of law requires this?

Constitutions

A constitution is a document that sets forth the framework of a government and its relationship to the people it governs. When constitutions are adopted or amended, or when courts interpret constitutions, **constitutional law** is made. You are governed by both the Constitution of the United States and the constitution of your state. The Supreme Court of the United States is the final interpreter of the federal Constitution. Each state supreme court is the final authority on the meaning of its state constitution.

Federal and state constitutions are concerned primarily with defining and allocating certain powers in our society. Constitutions allocate powers (1) between the people and their governments, (2) between state governments and the federal government, and (3) among the branches of the government.

Allocation Of Power Between People And Government. The federal Constitution is the main instrument for allocating powers between people and their governments. It does this with its first ten amendments, called the Bill of Rights. The Bill of Rights protects people from actions of their governments. Among the personal rights granted in the Bill of Rights are freedom of religion, freedom of speech, and the right to remain silent if accused of a crime. The personal rights granted in the Bill of Rights will be discussed in detail later.

Allocation Of Power Between Federal And State Governments. The federal Constitution also allocates powers between the federal and state governments. For example, many governmental powers over business are divided between state governments and the federal government on the basis of commerce. In general, the Constitution gives the federal government the power to regulate both foreign and interstate commerce. (Interstate commerce occurs between two or more states.) The power to regulate intrastate commerce (which occurs within one state) is left with that state.

Allocation Of Power Among The Branches Of Government. State and federal constitutions also allocate governmental powers among the three branches of government: executive, legislative, and judicial. Constitutions allocate power to create a system of checks and balances among the branches of government. This ensures that no branch of government becomes too powerful. For example, the Constitution gives the courts, not Congress, the authority to conduct trials.

Statutes

The federal Constitution created the Congress of the United States. State constitutions created the state legislatures. These state and federal legislatures are composed of elected representatives of the people. Acting for their citizens, these legislatures enact laws called **statutes**. The law requiring cigarette warnings as discussed in What's Your Verdict? is a statute enacted by the U.S. Congress.

All states delegate some legislative authority to local governments. Thus, towns, cities, and counties can legislate on matters over which the state has given them authority. These laws are effective only within the boundary of the local governments that enacted them. Such legislation is created by a town or city councilor by a county board or commission. Legislation at the local level usually is called an **ordinance**.

Administrative Agencies

Federal, state, and local legislatures all create administrative agencies. **Administrative agencies** are governmental bodies formed to carry out particular laws. The federal Social Security Administration, your state's division of motor vehicles, and your county's zoning commission are examples of administrative agencies. Although created by legislatures, administrative agencies usually are controlled by the executive branch of government. Thus, the President, governor, or mayor will supervise the agency's activities.

Legislatures sometimes give administrative agencies legislative powers and limited judicial powers. Legislative power means the agency is authorized to create administrative laws, also called rules and regulations. For example, the federal Social Security Administration might establish rules for determining when a student is a dependent and qualified to receive social security payments.

If an agency has judicial power, it can hold hearings, make determinations of fact, and apply the law to particular cases. The Social Security Administration might, for example, hold a hearing that decides whether a particular student is in fact a dependent.

Case Law

The judicial branch of governments creates **case law**. Case law usually is made after a trial has ended and one of the parties has appealed the result to a higher court. This appeal will be based on legal rulings made by the lower court in deciding the case. When the appellate court publishes its opinion on a case, that opinion may state new rules to be used in deciding the case and others like it. This process creates case law. Federal courts establish federal case law. Similarly, each state creates case law through its state courts.

The effectiveness of case law arises out of the doctrine of **stare decisis**. This is Latin for “to adhere to decided cases.” This doctrine requires that lower courts must follow established case law in deciding similar cases. The doctrine of stare decisis generally does not bind supreme courts. Generally, however, case law doctrines are carefully established and seldom revoked.

In This Case: Carol borrowed her stepfather’s car without his express permission. The police stopped her, discovered the car was not registered in her name, then phoned her stepfather. When he said he did not know where his car was, Carol was arrested. At her trial, Carol and her stepfather testified that she had his permission to use the car without asking each time. The trial judge nevertheless found Carol guilty of auto theft, which, the judge stated, occurs when one person takes the car of another without express permission. Carol appealed to the state supreme court. The appellate court issued an opinion stating implied permission is enough, and therefore, Carol was innocent. This rule then became state case law. The same supreme court could rule in a later but similar case that implied permission is not enough, but a lower court could not.

What Happens When Laws Conflict?

Sometimes laws created by different levels of government conflict. For example, a city ordinance may conflict with a state statute on speed limits. Different types of laws created by the same level of government also may conflict. A federal administrative regulation may conflict with a federal court decision. In these situations, the legal rules for determining supremacy establish which law is valid and should therefore be enforced.

What’s Your Verdict? When adopted, the U.S. Constitution provided that there could be no income tax. So when Congress levied a 2% income tax in 1894, the U.S. Supreme Court declared it unconstitutional. Many people wanted the federal government to raise money by taxing incomes because the burden imposed would be based on one’s ability to pay. Could the people do anything to change the effect of the Supreme Court decision?

Constitutions and Validity. Constitutions are the highest sources of law, and the federal Constitution is “the supreme law of the land.” This means that any federal, state, or local law is not valid if it conflicts with the federal Constitution. Similarly, within each state, the state constitution is supreme to all other state laws. When a law is invalid because it conflicts with a constitution, it is called **unconstitutional**. The appropriate supreme court determines whether a law is unconstitutional.

Statutes and Validity. Statutes or ordinances must be constitutional to be valid. Ordinances must not exceed the powers delegated to local governments by the states. Courts determine the constitutionality of statutes and ordinances. Courts also determine whether particular ordinances exceed the scope of powers delegated. For example, a city enacted a law making it illegal to sell gasoline for more than \$1 per gallon. It enacted another law making the death penalty mandatory for persons who commit murder within the city limits. Both ordinances were challenged in court. The first was invalidated because it conflicted with the federal Constitution, which gives the power to regulate commerce to the federal government. The second was invalidated because only the state has the power to set penalties for murder.

Administrative Regulations and Validity. Administrative regulations also can be reviewed by courts to determine whether they are constitutional. The courts may invalidate a rule or regulation if it is outside the scope of powers delegated to the agency by the legislature that created it.

Case Law and Validity. Courts are not the final authority on the effect of statutes. A legislative body has the power to nullify a court’s interpretation of a statute or ordinance by abolishing or rewriting it. Administrative agencies also can revise their regulations when challenged. Even when interpreting constitutions, courts are not the ultimate authority. The people, through votes for their representatives, have the power to amend constitutions if they disagree with the courts’ interpretations.

In answer to What’s Your Verdict? the 16th Amendment to the Constitution, adopted in 1913, gave Congress the power to lay and collect an income tax. This in effect nullified the U.S. Supreme Court decision.

What Are The Main Types Of Laws?

Laws may be classified in various ways. Common types of laws are civil laws, criminal laws, procedural laws, substantive laws, and business law.

What’s Your Verdict? Worthington was driving down the road well within the speed limit. At a stop sign he slowed to about 15 miles per hour, but he did not stop. As a result, he smashed into the side of bates’ Mercedes, causing \$12,000 in damage. Did Worthington violate civil or criminal law?

Criminal v. Civil Laws

When the private legal rights of an individual are violated, the matter is governed by civil law. The use of the term civil law within the common law system refers to the group of laws that redress wrongs against individual persons. Civil law applies whenever one person has a right to sue another person. For example when a tenant fails to pay rent, the landlord has the right to sue the tenant. The police do not take action in civil conflicts. If a defendant loses a civil case, the defendant is liable, meaning that they must pay money to the plaintiff. This is the main help that courts grant in civil matters. A crime is an offense against society. It disrupts the stable environment that we all depend upon to make civilization work. So, when the citizens' right to live in peace is violated by such activity, the offense is governed by criminal law. Acting in the name of all the people, the government investigates an alleged wrongdoing. If a crime is committed and the person responsible can be found, the government will prosecute. Conviction of a crime can result in a fine, imprisonment, and in some states, execution. Usually when a crime occurs, private rights of the victim are violated also. A violation may be both a crime and a civil offense. Thus, the civil law may also apply. The victim of the crime may sue the wrongdoer. In *What's Your Verdict?* Worthington committed both a crime and a civil offense. Driving through the stop sign was a crime. Worthington could be arrested, convicted in a criminal trial, and fined. In addition, Worthington committed a civil offense when he carelessly smashed into the side of Bates' Mercedes. Bates could probably win a separate civil trial and recover the \$12,000.

Procedural v. Substantive Laws

Procedural law deals with methods of enforcing legal rights and duties. Laws that specify how and when police can make arrests and what methods can be used in a trial are procedural laws. Procedural laws determine whether equitable remedies, such as an injunction, are available. The doctrine of stare decisis is a procedural law. Rules for determining the supremacy of conflicting laws are procedural laws. In contrast, **substantive law** defines rights and duties. It is concerned with all rules of conduct except those involved in enforcement. Substantive laws define offenses, such as murder, theft, vehicular homicide, breach of contract, and negligence. There are two types of procedural law: civil procedure and criminal procedure. Criminal procedure defines the process for enforcing the law when someone is charged with a crime. Civil procedure is used when a civil law has been violated. Civil law is concerned only with private offenses. When a civil law is violated the injured party is entitled to protect his or her rights. Police and public prosecutors generally do not involve themselves in the dispute.

Business Law

Business law covers rules that apply to business situations and transactions. Business law is important for all students – not just those planning careers in business or law. Most business transactions involve a merchant and a consumer. As you study business law, you will gain legal knowledge that will make you a better consumer. Business law is largely concerned with civil law, especially contracts. The area of the law pertaining to torts is another category of business law. Torts are private wrongs (civil offenses) against people or organizations. For example, torts may occur when manufacturers make defective products that injure users. Business activities are also governed by criminal law at times. For example, criminal law would punish a firm that conspires with competitors to fix prices or an employee who steals company tools. Laws of our various states do not have to be alike as long as they are constitutionally valid. However, with the growth of interstate commerce and large business firms, more uniformity among states of laws governing business and commercial transactions is important. A set of business laws was adopted by states, called the Uniform Commercial Code, which cover such areas as sales, certain credit transactions, and business forms.

Think Critically About Evidence

1. Suppose the principal of your public school required all students to recite a prayer at the start of each school day. What level of government (federal, state, local) is most likely to rule against such action?
2. In the question above, what type of law (constitutional, statutory, administrative, or case) requires such a ruling?
3. Sonoma County passed a law making it legal to drive 65 mph on freeways inside the county. A state law limited all vehicles anywhere in the state to 55 mph. What is the valid speed limit on freeways inside this county?
4. In 1896, the U.S. Supreme Court held in *Plessy v. Ferguson*, 163 U.S. 537, that equal treatment of different races is provided when public and semipublic facilities, even though separate, are substantially equal in quality. For years, railroad cars, buses, schools, and other facilities had separate and supposedly equal facilities for blacks. In 1954 black plaintiffs in Delaware, Kansas, South Carolina, and Virginia sought admission for their children to public schools on the basis of non-segregation. Does the doctrine of stare decisis bar the U.S. Supreme Court from changing the law declared in *Plessy v. Ferguson*? (*Brown v. Board of Education*, 347 U.S. 483)
5. On a two-week vacation in a neighboring state, you buy several large firecrackers and take them home. A police officer notices them in your car on a routine traffic stop. She cites you for possession of an illegal explosive device, which is a felony in your state. Will the fact that possession of fireworks in the neighboring state is not even a crime be a defense for you?

1-3 Ethics & Ethical Reasoning

What's Your Verdict? While working in the school office, Jane discovered a copy of the exam to be given in one of her classes. She thought she could take it home with little chance of being caught. In thinking about whether to take the test home, she considered how helpful an "A" on the test would be and how important grades are to her. After she stole the test she told a friend, "It just felt so good to know that I wouldn't need to spend all that time studying to get an "A." Has Jane made an ethical decision?

Ethics Defined

Ethics is deciding what is right or wrong in a reasoned, impartial manner. Consider the three important elements in this definition: (1) decision about a right or wrong action; (2) decision is reasoned; and (3) decision is impartial. The following sections discuss each of these important elements. The lesson concludes with how we can apply the study of ethics to making ethical business decisions.

Decision About a Right or Wrong Action. Many of your decisions have little effect on other persons or yourself. For example, your decision to buy blue jeans with wide instead of narrow pant legs has no ethical component. On the other hand, your decision to discontinue medical support for an unconscious, terminally ill relative is an intensely ethical decision. To involve ethics, a decision must affect you or others in some significant way.

Reasoned Decisions. We often act in response to our emotions. For example, after watching a movie, we recommend it to friends with such words as, "It really made me feel good." Or when someone asks us why we made a particular comment, we respond, "I don't really know, I just felt like it." What we mean is that our emotions guided these decisions. Our feelings directed our actions. But to make ethical decisions, we must usually base our decisions on reason, not on emotion. In *What's Your Verdict?* Jane made a decision based on emotion when she thought, "it just felt so good..." Often people reason about right and wrong by referring to a written authority that provides consistency. The law is such an authority. So are religious texts such as the Torah, the Bible, the Koran, and the Bhagavad Gita. For example, a person might reason, "I believe that God is the source of the Bible and the Bible tells me not to lie. Therefore, it would be wrong, or unethical, for me to lie."

Impartial Decisions. **Impartiality** is the idea that the same ethical standards are applied to everyone. If it is wrong for you to engage in a certain action, then in the same circumstance it is also wrong for me. So, by definition, ethics does not value one person or group of persons more than any other does. Men are not more valuable than women. Caucasians are not entitled to more respect than people of other races. Each person is an individual and should receive equal respect and consideration from others. Impartiality requires that in making ethical decisions, we balance our self-interest with the interest of others. To do this, we must learn to recognize the interests of others. Sometimes this is difficult. Our self-interest can cloud our perceptions and thus our ability to reason impartially.

Suppose you lose control of your car while backing out of your driveway. The next thing you know, you have struck and damaged your neighbor's station wagon, which is parked on the street. No one has seen you do this. You can't decide if you should tell your neighbor what you did. You might think, "I know my religion teaches me to tell the truth. But it would cost me more than \$100 if I admit that I ran into Mrs. Smith's vehicle. I can't afford that, but she can! So it must be OK to deny my beliefs in this situation. I'm not going to tell her." If you come to this conclusion, you are not being impartial.

In This Case: Gabe decided to walk to school instead of riding the bus because it was a nice day. On the way, he found a wallet containing \$300 in cash and a driver's license. When he saw how much money there was, he felt elated. He could almost feel the fun he could have with it. Gabe also asked himself how much injury the loss of \$300 might cause someone such as the owner of the wallet. At first he thought he would get much more pleasure from the money than anyone else could. In the end, he decided that he would want his wallet and money returned if he lost them, so he called the owner. When he returned the wallet the owner gave Gabe a \$40 reward. Gabe's decision to walk to school did not have an ethical dimension to it because it didn't really affect anyone seriously. His decision about whether to return the wallet did have an ethical component (it would affect both Gabe and the owner of the wallet).

Basic Forms Of Ethical Reasoning

Ethical reasoning about right and wrong takes two basic forms. One form is based on consequences. In this style of ethical reasoning, rightness or wrongness is based only on the results of the action. Particular acts have no ethical, or moral, character. An act that produces good consequences is good. An act that produces bad consequences is bad.

Rule-based reasoning is based on **moral rights** or religious beliefs (think: the "Golden Rule"). In this style of reasoning, acts are either right or wrong. For example, telling the truth is always right, and lying is always wrong. In rule-based ethics, good

consequences do not justify wrong or bad acts. For example, in rule-based ethics, you cannot justify lying by showing that it produces good consequences.

For almost all ethical decisions, these two forms of reasoning reach the same conclusion. In the decision of whether to lie or to tell the truth, for example, both forms usually conclude that one should not lie. Consequence-based reasoning recognizes that lying usually produces bad consequences. Rule-based reasoning says that lying is always wrong.

What's Your Verdict? Tab inherited his grandparents' home. He built a garage for his car in the yard between his house and his neighbors' property line. Later, when he decided to build a fence on the border, he discovered that the garage was too close to the property line. So, he built the fence one foot onto the neighbors' property. Tab lived alone and three people lived on the neighboring property. How can Tab evaluate the ethical character of his action?

Consequence-Based Reasoning

Consequence-based reasoning looks at whether the end result of a decision is ethical. First, it looks for alternative ways to alter the current situation. Then it attempts to forecast the consequences that will arise from each alternative. Finally, it evaluates those possible consequences to select the alternative that will generate the greatest good.

Describe Alternative Actions. First, alternative actions that would improve things should be described. Two of the many alternatives Tab might consider are (1) building the fence on the neighbors' property without telling them, or (2) offering to buy a one-foot strip of the neighbors' property. In order to decide what is the best action to take, he must describe his alternatives in order to then evaluate them.

Forecast Consequences. Second, the consequences flowing from each alternative must be described. This requires skill in predicting the future. It requires an ability to see things such as, "If I build the fence one foot inside my neighbors' property, they probably won't notice." Or "If they discover that the fence was built on their property, they will probably make me pay for the one-foot strip of property instead of making me tear it down."

Evaluate Consequences. Third, the consequences for each alternative must be evaluated. There are two elements to the evaluation process: (1) selecting the standard for judging consequences as right or wrong; and (2) counting the persons affected.

In *What's Your Verdict?* Tab must choose a goal with which to evaluate the alternative actions. Let's assume Tab chooses pleasure (from use of the land). In consequence-based reasoning, the standard is judged by the greatest good for the greatest number of people. Thus, for each alternative we must determine how many people will be positively and negatively affected. If Tab builds the fence on the neighbors' land without their consent, only his pleasure is increased. The pleasure of his three neighbors is decreased. Tab receives the benefit while his three neighbors bear the cost. So this alternative is ethically wrong in reasoning based on consequences where the good is pleasure.

To evaluate the consequences of buying the strip of land, we compare both the costs and the benefits for each person. For Tab, essentially the cost is the price paid for the land and the benefit is the ability to use the strip of land for his fence. For his neighbors, the cost is the loss of the land and the benefit is the money they receive for it. For the parties to agree voluntarily, Tab must prefer the land to the money and the neighbors must prefer the money to the land. If the sale can be voluntarily completed, four parties are positively benefited. Thus, in reasoning based on consequences where the good is pleasure, this alternative would be ethically good.

Rule-Based Reasoning

With **rule-based reasoning**, the acts themselves are judged as right or wrong. The standard for judging usually comes from one of two sources – a recognized authority or human reasoning.

Recognized Authority. An authority, such as the law or a religious text, can say that stealing is wrong. When an accepted authority has a rule on an issue, the rule tells the follower of that law or religion what is right and wrong. All religious authorities and all legal systems would condemn the act of building a fence on a neighbor's property without permission as a form of stealing. The act itself is basically wrong. In rule-based reasoning, the act is wrong even if it benefits more people than it injures. So building the fence on the neighbor's property without permission could not be justified by benefiting 10 people living on your property or by the neighbor being very rich.

Human Reasoning. In addition to an authority, human reasoning also can show that some things are basically wrong. A test has been devised to determine whether an action is right or wrong. It involves picturing in your mind's eye everyone in the world doing the action. This is called **universalizing** the action. As you picture everyone doing the action, then ask, "Is this irrational, illogical, or self-defeating?" If it is any of the three, the action is inconsistent with reason and therefore ethically wrong. We can apply the test to lying by imagining a world where everyone lies. Such a world would be illogical. There would be no point in lying, because no one would believe anyone. Similarly, if we imagine a world where everyone takes her or his neighbor's land, there would be no point in taking the land because another neighbor would promptly take it away from you. These pictures help us see that the actions of lying and stealing are inconsistent with human reason. Accordingly, in rule-based reasoning, they are basically wrong.

Think Critically About Evidence

1. Gil received a scholarship offer to go to a top-ranked private college. Because the scholarship would cover only half his expenses, his parents would need to contribute more money for him to go there than they would if he went to the state university. That would probably leave less money to support his sister who was a year younger. The private college is farther away and most of Gil's friends are going to the state university. Does Gil's decision about which college to attend affect other people? Does it affect any of them significantly? Can you rank the people affected based on how significant the decision may be for them? Is this an ethical decision?
2. Voters faced two proposals on the ballot. One would build a new football stadium. Another would build new prisons. There is only enough money available to do one. Are voters being asked to make an ethical decision? Who is affected?
3. As Juanita was trying to decide how to allocate her monthly paycheck, she thought of the many ways she could spend it. (1) She could treat herself to a makeover at the beauty salon because it would make her feel good. (2) She could repay money owed her sister because she would want to be repaid if anyone ever borrowed money from her. (3) She could get ahead on her monthly bills so she wouldn't worry so much. (4) She could enjoy the thrill of spending it all on lotto tickets. Which of these thoughts are reason-based and which are emotional reactions?
4. Susan was driving friends to a concert. It was 8 P.M. and the concert began at 8:30 P.M. Because her friends still needed to pick their tickets up at the will call window, they started pressuring her to drive faster than the speed limit. She refused and said, "I just don't want to take a chance on getting a ticket." Is Susan using consequential reasoning or reasoning based on ethical rules here? Why?
5. In a trash basket she was emptying after school, Carol found a copy of the answer key for an exam she was scheduled to take the next day. Instead of using it, she returned it to the teacher, explaining how she found it. When the teacher asked why she did not use it to cheat. Carol said, "I just think it is wrong to cheat. When I take tests I am telling the teacher how much I really know. If I cheated it would be a form of lying. I believe lying is wrong. I won't lie even if it might help me." Is Carol using reasoning based on consequences or ethical rules here? Why?
6. Rosanna was trying to decide whether to share part of her lunch with Sheila and Fran, who had forgotten theirs. She decided not to, saying, "I just don't like Sheila, so I won't share with anyone." Has Rosanna made any errors in reasoning? If so, which errors?

1-4 How Is Ethics Expressed In Our Laws?

What's Your Verdict? In a coastal city of California, residents often could not sleep because people would drive late at night with their car windows down and their stereos playing full blast. On weekends and holidays, people put large home stereos in the back of their pickup trucks and played them as loud as possible. In response, the city council enacted a law making it illegal to generate noise in public above a certain decibel level. Is there an ethical justification for this law?

Our Laws Reflect Ethics Based On Consequences. In our country, the people – directly or indirectly – determine the laws that bind them. They do this by electing representatives to lawmaking bodies, such as city councils, state legislatures, and the Congress of the United States. In these elections and in the legislative bodies, **majority rule** prevails. The elected representatives must vote for laws acceptable to the majority of people they represent if they expect to be reelected. Because this system is grounded on majority rule, it uses many of the features of consequences-based ethics. In this system, laws are judged to be right or good when they affect the majority of the people positively. Laws are judged to be wrong when they affect the majority negatively. The Constitution of the United States seeks to ensure that our federal lawmaking system reflects the desires of our citizens. Our legislative structure promotes ethical reasoning based on consequences.

What's Your Verdict? Almost everyone in a small community belonged to the same church. When members of a different denomination were considering buying land to erect a church, the city conducted a referendum (a direct vote by all the citizens on a proposed law). The referendum was on a zoning law that made it illegal to use any land in the city for any purpose other than residential housing. The law was enacted by majority vote. The effect of the law was to prohibit the construction of the proposed church in that city. Is such a law ethically justified? Is such a law legal?

Our Laws Reflect Rule-Based Ethics. While most laws reflect the desires of the people governed, the laws desired by the majority sometimes conflict with moral rights. Stated another way, the majority may sometimes benefit from unjust laws. For example, the wealth of the majority of persons in a country might increase if it were to enslave a small percentage of the population. These people could be forced to work for free. Then the benefits of their free labor could be distributed to the majority. Historically, many countries adopted such laws. While these laws might benefit the majority, they violate the moral rights of the minority that is enslaved. The majority would be treating the minority in a manner inconsistent with their status as human beings.

Under the U.S. Constitution, the courts would declare such laws invalid because they deny “equal protection of the law” to the minority. We use other concepts of natural rights to protect political minorities from exploitation by those who make up the political majority. For example, the Fifth Amendment to the U.S. Constitution declares: “No person shall be . . . deprived of life, liberty, or property, without due process of law.” The United States of America is a country that recognizes and supports human rights. Other countries vary dramatically in the extent to which they do so. **Civil rights** (or civil liberties) generally are personal, human rights recognized and guaranteed by our Constitution. Among the civil rights recognized are freedom of religion, speech, and the press; freedom from unreasonable searches and seizures; the right to a speedy and impartial trial; the right to vote; and a host of others.

Our legal system primarily advances the will of the majority. It does this through the legislative process. But in this country we recognize that there are limits to majority rule. When the will of the majority conflicts with basic human rights, our legal system, particularly the judiciary, protects individual rights.

What’s Your Verdict? Smyth was stopped for suspicion of drunk driving. The breathalyzer tests showed a blood alcohol level of 0.079 percent. State law defines drunkenness at 0.080 percent, so Smyth was not charged. Brown was stopped ten minutes later at the same location. Her test showed 0.081 percent blood level and she was arrested, tried, and found guilty. Her driver’s license was revoked for one year. Is there any ethical justification for treating Smyth and Brown so differently?

Other Ethical Goals Reflected In Our Law. Often, matters simply need a consistent rule to assure order and predictability. The rule need not be based on majority rule or on moral rights. Sometimes this means that the rule or law is arbitrary. For example, teachers are required to award grades on exams and for courses. Assume that the cutoff point between an “A” and a “B” is a 90-percent average. A student who has an 89-percent average and therefore receives a “B” may argue that the grade is unfair because it is arbitrary. After all, the student who receives an “A” for a 90-percent average has not done substantially better work. Yet the letter grades indicate a substantial difference. If the grade for the student with an 89-percent average is changed to an “A” then the argument for the student with the 88-percent average must be addressed and resolved the same way. In the end, everyone would receive the same grade.

What’s Your Verdict? During December vacation, Clementine worked as a part-time clerk in the jewelry department of a large department store. There was a watch that she wanted very much but could not afford. It was a busy time of the year and there were many opportunities for her to put a watch in her purse without being detected. She was convinced that the store management had not treated her fairly in the past. Should Clementine take the watch if she thinks there is no chance of being caught?

Why Are We Obligated To Obey Laws?

We are obligated to obey the law for three main reasons: because ethical reasoning demands it, because we have agreed to obey it, and because by obeying it we avoid punishment.

- Ethics Demands That We Obey (rule-based)
- We Consent to Be Governed by Laws (rule-based)
- We Want to Avoid Punishment (consequence-based)

What’s Your Verdict? In the early 1960’s, Dr. Martin Luther King, Jr. wanted to lead a march into Birmingham, Alabama, to protest racial segregation in that city. When he applied for a parade permit, his request was denied. Dr. King, knowing that his conduct was illegal, led the nonviolent march anyway. He was at the front of the line and allowed himself to be arrested, although he could have easily escaped. He went to jail. Community leaders were highly critical of Dr. King because he had violated the law. In response and while in jail, he wrote a famous letter attacking segregation laws as inconsistent with consequential and rule based ethical reasoning. Is there an ethical justification for Dr. King’s violation of the law?

Are We Ever Justified In Violating The Law?

Some persons care passionately about human rights and justice. Their concern for justice sometimes compels them to violate what they consider to be an unjust law – a law they believe to be in conflict with ethical reasoning. They violate the law by

engaging in acts of civil disobedience. **Civil disobedience** is an open, peaceful, violation of a law to protest its alleged injustice. The goal of those who engage in civil disobedience is not to advance their self-interest but rather to make the legal system more just. The participants may be willing, or even eager, to be arrested in order to test the validity of the law in court.

In *What's Your Verdict?* Dr. Martin Luther King, Jr. engaged in civil disobedience. Dr. King believed that civil disobedience is justified only in extremely limited circumstances. He and others conclude that civil disobedience is ethical only when:

- a written law is in conflict with ethical reasoning
- no effective political methods are available to change the law
- the civil disobedience is nonviolent
- the civil disobedience does not advance one's immediate self-interest
- the civil disobedience is public and one willingly accepts the punishment for violating the law

As a result of Dr. King's efforts, many human rights were extended for the first time to several minority groups in this country. In contrast to Dr. King, some others are mere **scofflaws**. These are persons who do not respect the law. They simply assess the risk of being caught against the benefits they obtain by breaking the law. They think they are smart because they frequently violate valid laws without being caught. A scofflaw is never ethically justified in violating the law.

Think Critically About Evidence

1. If a legislature enacted a law that made it illegal to shout "fire" in a movie theater, what would be the dominant ethical character of the law, consequences-based or rule-based reasoning?
2. Jan was trying to decide whom to vote for in an upcoming election. After reviewing the candidates, she said, "I've decided to vote for Gary because I just feel better about him." Is Jan's decision based on ethics? If not, why?
3. Assume a state legislature enacted legislation which budgeted more money to educating rich children than to educating poor children. Also assume that the majority of children are rich. Would the dominant ethical character of this law be consequences-based or rule-based reasoning?
4. Your neighbor thought the tax system was corrupt. He thought it was far too complicated to be fair in the treatment of most people. So he refused to pay his taxes. He wrote the IRS expressing his views. When tax liens were filed against his property, he used the occasion to publicize the unfairness in the tax system. Is this civil disobedience? Why or why not?
5. Your uncle thought the tax system was unethical. As a result he failed to disclose some of his income to reduce the amount of tax he owed. In doing this he took great care to avoid being detected. Is this civil disobedience? Why or why not?

1-5 Structure of the Courts: Federal Court System

Different Levels of Courts

A court can be defined as a governmental forum that administers justice under the law. Courts decide civil disputes and criminal cases. A court may award damages in civil cases, impose punishment in criminal cases, or grant other appropriate relief. Courts follow impartial and thorough procedures to make decisions. Witnesses are in some cases compelled to give testimony. The accused party is allowed equal opportunity to argue her or his side of the case. The two levels of courts are trial courts and appellate courts.

Trial Courts

A **trial court** is the first court to hear a dispute. As such, it has **original jurisdiction** over a case. Witnesses testify and other information is presented to prove the alleged facts. A trial court consists not only of a judge but also of lawyers (who are officers of the court). Other jobs necessary for the court's operation include clerks, sheriffs or marshals, bailiffs, and jury members. Clerks enter cases on the court calendar, keep records of proceedings, and sometimes compute court costs. Sheriffs or their deputies (who serve as bailiffs) summon witnesses, keep order in court, and take steps to carry out judgments in the state court systems. Marshals have these duties in the federal court system. Juries are citizens sworn by a court to decide issues of fact in court cases.

Appellate Courts

An **appellate court** reviews decisions of lower courts when a party claims an error was made during the previous proceeding. **Appellate courts do not hear witnesses and generally do not accept new evidence.** Appellate courts are concerned with errors of law rather than questions of fact. Appellate courts are said to have **appellate jurisdiction** over cases. Appellate courts examine the transcript (a verbatim record of what went on at trial). They also read appellate briefs (written arguments on the issues of law) submitted by the opposing attorneys. Appellate courts listen to attorneys' oral arguments. They also may

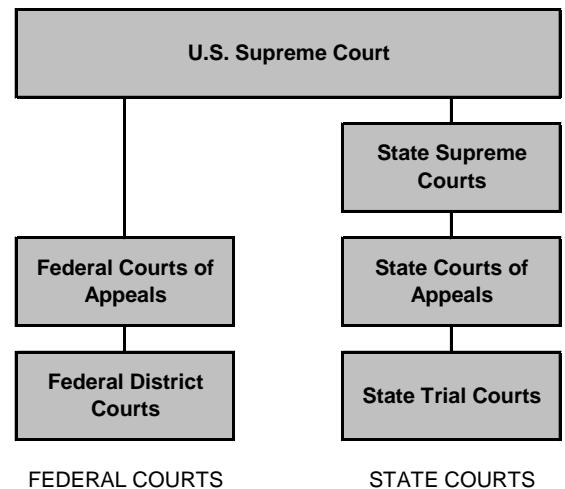
question attorneys about the case. Finally, appellate courts decide whether the decision of the lower court should be affirmed (upheld), reversed (overturned), amended (changed), or remanded (sent back to the trial court).

Two Separate Court Systems: Federal and State

The federal government and each state have separate court systems. The federal courts receive their power from the Constitution. Federal courts can have either general or specialized jurisdiction. The typical state court system is similar to the federal court system. Both the federal and state court systems have trial courts, appellate courts, and a supreme court.

Federal Court System

What's Your Verdict? Susan Bean, a citizen of Illinois, sued Wallis Turk, a citizen of the state of Colorado, for the breach of a construction contract on Beans new Chicago residence. More than \$600,000 was at stake. Bean filed the suit in Illinois state court. Turk fought to remove the case to the federal courts. Should the case be heard in federal or state court?



Jurisdiction of Federal Courts

Currently there are three levels of federal courts with **general jurisdiction**. These are federal district courts, federal courts of appeals, and the U.S. Supreme Court. A court with general jurisdiction can hear almost any kind of case. A court with **special jurisdiction** hears only one type of case.

Federal District Courts

The federal (or U.S.) district court is the lowest level of federal court with general jurisdiction. This is the trial court of the federal system (the first court to hear the dispute). It has the power to determine the facts of the matter and to make initial determinations of the law to use in deciding the case. In general, district courts have original jurisdiction over (a) federal questions, or cases that arise under the Constitution, U.S. law, and U.S. treaties; and (b) lawsuits between citizens of different states, between a U.S. citizen and a foreign nation, or between a U.S. citizen and a citizen of a foreign nation. These parties are said to have **diversity of citizenship**. More than \$75,000 must be in dispute in federal diversity of citizenship lawsuits. If the amount is less than \$75,000, the case should be litigated in a state court. The Bean v. Turk case in What's Your Verdict? should be tried in the federal courts.

Federal Courts of Appeals

The federal courts of appeals have appellate jurisdiction over the district courts, certain specialized federal courts, and many federal administrative agencies. Such power is exercised when the result of a case in a lower court is appealed by one or more of the parties to the case. Appellate courts do not accept any new evidence or call witnesses. Instead, they review the trial transcripts and the written and oral arguments of the attorneys to reach a decision. No appellate court, not even the U.S. Supreme Court, can change the factual determinations of a Jury. There are 13 federal courts of appeal. Twelve of these are circuit courts, each of which is responsible for an assigned geographic area. The thirteenth is dedicated to the "federal circuit." As such, it handles appeals from federal courts with special jurisdictions and from such bodies as the International Trade Commission.

United States Supreme Court

The U.S. Supreme Court (USSC) has both original and appellate jurisdiction. Its original jurisdiction, according to the Constitution, is over "cases affecting ambassadors, other public ministers and consuls and those in which a state shall be party." The most important function of the U.S. Supreme Court, however, is the exercise of its appellate jurisdiction. This jurisdiction is exercised over cases on appeal from the U.S. Courts of Appeals or from the highest courts of the various states. If the Supreme Court believes that a case contains a constitutional issue sufficiently important to be decided by it, the Supreme Court will issue to the last court that heard the case a **writ of certiorari**. This writ (order) compels the state court to turn over the record of the case to the Supreme Court for review. Jurisdiction over state supreme court cases is limited to those in which a federal question has arisen. Such a question must be based on a federal law or on the U.S. Constitution. The decisions of the USSC that interpret or apply the Constitution are final and can only be overturned by the USSC itself or by a constitutional amendment.

Think Critically About Evidence

1. Ms. Tant of New York City recently sued Mr. Bloom, also of NYC. She claimed that he had run into and injured her while he was jogging. She asked for \$50,000 in damages. When she filed her suit in federal district court, Mr. Bloom's attorney immediately objected on two grounds. What were they?
2. Ms. Tant's case (see above) was thrown out of federal court. She later filed it in the New York state court solely as a case involving Mr. Bloom's negligent jogging. When she lost, she appealed all the way to the highest New York state court but still lost. She then sought to appeal to the U.S. Supreme Court. Will the Supreme Court hear her case?
3. Paul Stone sued his employer for assault and battery due to the actions of several of his female co-workers. While gathered around the coffee machine each morning, they would whistle at him, make sexual innuendoes, and touch and pinch him. When the case was dismissed from the state circuit court, Stone appealed. The intermediate court of appeals sustained the result in the lower court and Stone appealed to the state supreme court. When the state supreme court also sustained, Stone sought to appeal to the U.S. Supreme Court. Are there any federal issues in this case that would allow the USSC to take jurisdiction? What might prevent the nation's highest court from so doing?

1-6 Structure of the Courts: State Court System

What's Your Verdict? When Simon withheld the security deposit after Annie moved out of her apartment, Annie sued him in small claims court to get it refunded. When she lost, she told her friend that she would appeal it directly to the U.S. Supreme Court. Can she do so?

Structure of State Courts

The typical state legal system resembles the federal system. The state legislature makes the laws. The state executive branch enforces those laws in the courts of the state judicial branch. The courts of general jurisdiction of the judicial branch are organized into three tiers. In the bottom tier is a geographically based trial-court system. An appellate layer of courts is next. Trial and appellate courts are controlled and supervised by a state supreme court as the ultimate level of appeal. In *What's Your Verdict?* Annie could not take her appeal directly to the U.S. Supreme Court, much less the state supreme court.

State Trial Courts

In most states trial courts (with general original jurisdiction over both criminal and civil matters), are known as circuit courts. In some states, however, they may be called superior courts, district courts, or courts of common pleas. These are the courts of record in the state system. A court of record keeps an exact account of what goes on at trial. The accuracy of this account is vital, as any appeal taken depends on it. The "record" may include a transcript of what was said, the evidence that was submitted, statements and determinations of the court officials, and the judgment of the court. State trial courts also review the decisions of – or handle appeals from – courts of more specialized jurisdiction under them. In most cases, however, state trial courts actually retry the cases to make a proper record for the purpose of potential appeals. A state trial court (or court of record) has original jurisdiction over cases before it. It therefore makes determinations of the facts in the case by using a jury. If a jury is not requested for the case, the presiding judge will determine the facts. Then the court of record will select and apply the law to the facts to reach a verdict in the case.

State Courts of Appeals

Typically, an appeal in a court of record is reviewed by a panel of judges in a state court of appeals. The panel of judges from the state court of appeals usually consists of no more than three judges. The panel evaluates the record of the case and then considers the attorneys' oral and written arguments. No new evidence can be introduced at this level. Evidence can only be introduced at the lower trial-court level, so that the facts remain unchanged. The judges at the appellate level instead check to be sure that the right law was used in the case. If the court of appeals judges conclude that the trial court used the incorrect law, they may enter a judgment using what they consider to be the correct law. Sometimes the use of the wrong law interferes with the trial court's determination of facts or conduct of the trial. If this happens, the appellate court may send the case back down for a new trial. Or, the judges may conclude that the lower court used the correct law in the proper way. In this case, the lower court's judgment would stand.

State Supreme Courts

Generally, in whatever legal issue we confront, we are all entitled to a trial and to one appeal, if filed in a timely manner and in the proper form. In states with the intermediate level of courts of appeals, only cases that involve the most complex legal issues are taken to the justices of the state supreme court. (Justice is the title given to judges who sit on state supreme courts and the federal Supreme Court.) At the state supreme court level a panel of three or more justices reviews the legal issues and

listens to the attorneys' oral arguments. State supreme courts issue the final decision on matters of law appealed to them unless the U.S. Constitution or other federal issues are involved. If there is a U.S. Constitutional or other federal issue, a further appeal can go to the U.S. Supreme Court.

What's Your Verdict? Reid, age 15, was detained by the police for shoplifting and was referred to juvenile court. Will Reid be treated differently in juvenile court than in an adult criminal court?

State Courts with Specialized Jurisdiction.

Below the circuit court level in most states are the courts that take care of specialized or relatively minor jurisdiction. These courts include the municipal, small claims, juvenile, and probate courts.

City or Municipal Courts. Cities typically have courts that administer their ordinances. These municipal courts are usually divided into traffic and criminal divisions. As city ordinances often overlap with or duplicate state laws, less serious violations occurring within city limits are brought before such municipal courts for their first trial. The result can then be appealed to the circuit court level if necessary. (Although the penalties for violating ordinances can be as severe, ordinances are not considered criminal laws. Only state and federal governments can make an act criminal.)

Small Claims Courts. Minor individual suits would not often be heard if not for the small claims courts. These courts handle disputes in which small amounts, generally \$2,500 or less, are involved. Attorneys generally are not allowed in small claims courts. The judge hears the case without a jury or formal rules of evidence. Decisions of small claims court can be appealed to the circuit court.

Juvenile Courts. Our society typically believes that juveniles should not be held as responsible as adults for their criminal acts. To carry out this policy, special courts have been set up. In these courts the juvenile is entitled to his/her full constitutional rights, including the right to be represented by an attorney. If the juvenile is found guilty of the charges brought, the court has wide powers in determining what should be done. However, the emphasis for juveniles generally is on rehabilitation, not punishment. These courts ensure that most of the criminal cases involving juveniles do not become public knowledge. The courtroom is closed while an informal hearing into the charges is conducted. Any records made on juvenile cases are not open to the public. If rehabilitation fails or is shown to be impossible, the young offender can be tried and punished as an adult. This occurs only in cases in which a very serious offense was allegedly committed by the juvenile.

Probate Courts. Courts that administer wills and estates are called probate courts. When individuals die, their property and other interests must be divided according to their wishes and the appropriate laws. The procedure to accomplish this is formal and complex.

Think Critically About Evidence

1. Gwendolyn Hunt was driving while intoxicated when she hit and killed Felicia Meyers, a seven-year-old, in a school crosswalk. Gwendolyn was 16 years old at the time. However, she was on probation from a reduced sentence for driving 62 in a 35 mph residential speed zone. Should Gwendolyn be tried as an adult for vehicular manslaughter?
 2. You are driving along a residential city street when you are stopped by a city police cruiser for speeding. You are given a citation and a summons to appear before a particular court. What court would that most likely be and why?
 3. After a long illness, your uncle dies. He leaves a sizeable estate but no will is found for several weeks. Finally, one of his ex-wives appears with a document she claims to be a valid will. It shows her and her children by him receiving most of his property. Your parents and the deceased's other children contest the will. Should the federal or state courts handle this case? Why? Which court in which system is most likely to hear it?
 4. George Matthews lives in the South. He ordered a \$2,950 garden cultivator from a company in the Midwest. George paid for the cultivator C.O.D. (cash on delivery). After trying to use the cultivator, George found that the tines were made of a cheap, thin metal that was not adequate for use even on fairly loose soil. The company refused to refund George's money. Should George sue? What court would be available to him?
 5. June lost her case in trial court. She thought that the plaintiff, Sid, had lied during the trial. On appeal, she requested that she be allowed to appear and explain why she thought Sid had lied. Will her request be granted?
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1-7 Criminal Law

What Are Crimes?

The most fundamental characteristic of a **crime** is that it is a punishable offense against society. When a crime occurs, society – acting through police and prosecutors – attempts to identify, arrest, prosecute, and punish the criminal. These efforts are designed to protect society rather than to aid the victim of the crime. Crimes contrast with civil offenses, which are offenses against just the victim, not society. For almost all crimes, the victim can sue identified criminals for civil damages. However, victims seldom do so because few criminals have the ability to pay judgments. Crimes are defined by statute (laws enacted by state or federal legislatures). Statutes tell us what conduct is prohibited, so that we can conform our conduct to the law.

Elements of a Crime

Before anyone can be convicted of a crime, three elements usually must be proved at the trial. They are: (1) a duty to do or not to do a certain thing; (2) an act or omission in violation of that duty; and (3) criminal intent.

Duty. State statutes prohibiting certain conduct usually describe duty. Less frequently, federal statutes or city ordinances identify criminal behavior. To establish duty in a trial, the prosecutor cites a statute to the judge.

Breach. The breach of duty – the specific conduct that violates the statute – is the criminal act. For example, all states have statutes that make battery a crime. These statutes often define criminal battery as “the intentional causing of bodily harm to another person.” A breach of this duty could be proved in a trial by the testimony of a witness who saw the defendant punch the victim.

Criminal Intent. The third element, criminal intent, must be proved in most cases. **Criminal intent** generally means that the defendant (1) intended to commit the act and (2) intended to do evil. If in a basketball game you deliberately punch an opposing player, you display criminal intent. You have committed a crime. On the other hand, if you lose your balance, and while flailing your arms hit the nose of a bystander, there would be no crime. You did not intend the act nor did you intend to do evil. Criminal intent also is related to age. Statutes in most states fix the age of criminal liability at 18, but the figure ranges from 16 to 19. State statutes provide that minors as young as 7 may be tried and punished as adults if they are accused of serious crimes such as murder. Generally, however, what is a crime for an adult is juvenile delinquency for a minor.

To have criminal intent, one must have sufficient mental capacity to know the difference between right and wrong. Accordingly, insane persons are not held responsible for their criminal acts. Neither voluntary intoxication nor use of drugs relieves a person from criminal responsibility in most circumstances. Some crimes do not require the element of criminal intent. For the less serious crimes where being sentenced to jail is very unlikely, criminal intent is not required. Traffic offenses are an example. A speeding driver who did not intend to speed or intend evil has still committed a traffic offense. Another exception applies to actions involving extreme carelessness. Suppose you drive 80 mph through a residential neighborhood while drunk and kill a pedestrian. You may not have intended to speed or intended to do evil. However, your conduct was so careless that some courts treat it the same as criminal intent. You could be convicted of the crime of vehicular homicide.

Criminal Conduct

Criminal conduct may be categorized by who or what the crime is against:

- crimes against a person (assault and battery, kidnapping, rape, murder);
- crimes against property (theft, robbery, embezzlement);
- crimes against the government and administration of justice (treason, tax evasion, perjury);
- crimes against public peace and order (rioting, disorderly conduct, illegal speeding);
- crimes against realty (burglary, arson, criminal trespass); and
- crimes against decency (bigamy, obscenity, prostitution)

Classification of Crimes

Crimes are classified by the seriousness of the offense: (1) felonies; (2) misdemeanors; or (3) infractions. Certain crimes may also be classified as white-collar crimes.

Felony. A **felony** is a crime punishable by confinement for more than a year in a state prison or by a fine of more than \$1,000, or both – or even death. Murder, kidnapping, arson, rape, robbery, burglary, embezzlement, forgery, theft of large sums, and perjury are examples of felonies. People who lie under oath commit perjury; they may be imprisoned for 2 or 3 years.

Misdemeanor. A **misdemeanor** is a less serious crime. It is usually punishable by confinement in a county or city jail for less than one year, by fine, or both. Such crimes as disorderly conduct and speeding are usually misdemeanors.

Infractions. Some states classify lesser misdemeanors as **infractions**. Persons convicted of infractions can only be fined. Because there is no risk of being jailed, the defendant charged with an infraction is not entitled to a jury trial. Parking violations and littering are examples of infractions.

Criminal Procedure

Rights and Responsibilities. One of the major objectives of the Constitution of the United States is to protect individuals from certain actions of the federal government. These constitutional limitations now also apply to state and local governments. The authors of the Constitution believed it was better for our society to give individuals too much liberty than to allow the government too much power. Thus, in this country, people suspected or accused of criminal conduct have rights that are not available in many other countries.

Rights When Arrested. The constitutional right to due process requires fundamental fairness in governmental actions. It requires fair procedures during an investigation and in court. For example, criminal defendants may not be compelled to testify against themselves. They have the right to cross-examine witnesses. Perhaps the most important right is the right of the accused criminal to be represented by a lawyer. For a person who cannot afford to hire a lawyer, a public defender or a private lawyer is provided by the state. To convict a person of a crime, the evidence must establish guilt with proof beyond a reasonable doubt. This means the vast majority of the evidence (perhaps 90 percent) supports the guilty verdict. Defendants have a constitutional right to a trial by jury. There will be a jury if either the state prosecutor or the defendant requests one. In jury trials, the defendant is usually found guilty only if all the jurors vote to convict.

Responsibility for the Criminal Conduct of Others. A person who aids another in the commission of a crime is also guilty of criminal wrongdoing. For example, one who acts as a lookout to warn a burglar of the approach of the police is an accomplice in the burglary. Similarly, one who plans the crime, or otherwise intentionally helps, is guilty of the same crime. In most jurisdictions, if someone is killed during a felony, all accomplices are guilty of the homicide. Corporations can be held vicariously liable for the conduct of their employees. Also, officers of corporations may be criminally liable for their actions as managers.

Defenses to Criminal Charges

The state must prove that the defendant is guilty beyond a reasonable doubt. But even when it appears this has been done, the defendant may escape criminal liability by subsequently establishing a defense. A **defense** often allows the defendant to escape liability. The defendant must produce the evidence to support any defense. There are two types of defenses: (1) procedural and (2) substantive.

Procedural Defenses. Procedural defenses are based on problems with the way evidence is obtained or the way the accused person is arrested, questioned, tried, or punished. For example, a defendant who had confessed to a crime might assert the defense that she signed the confession only because she was threatened by the police. This would be a procedural defense. Ignorance of the law is not a defense. The legal system assumes that everyone knows the law. Thus, if you park in a no-parking area because you did not see the sign, you have no defense.

Substantive Defenses. Substantive defenses disprove, justify, or excuse the alleged crime. Most substantive defenses discredit the facts that the state sought to establish. For example, an eyewitness may have placed the defendant at the scene of the crime. The defendant may establish a substantive defense by showing that he was in the hospital at the time of the alleged crime (called an alibi). Self-defense, criminal insanity, and immunity are other examples of substantive defenses.

Punishments for Crimes

Any penalty provided by law and imposed by a court is called a punishment. The purpose is not to remedy the wrong but rather to discipline the wrongdoer. If reasonably swift and certain, punishment should also deter others from similar behavior. An accused person may agree to plead guilty to a less serious crime in exchange for having a more serious charge dropped. This is called plea bargaining. The accused voluntarily gives up the right to a public trial to avoid the risk of a greater penalty if convicted.

Think Critically About Evidence

1. Mary received a citation for failing to remove the snow from the sidewalk in front of her dress shop. The fine was \$60. Mary thought the citation was unfair because she did not have enough time to shovel the snow. She received the citation 5 hours after the snowstorm ended. In court she protested and asked for a jury trial. When she was told that the matter would be heard only by a judge, she said her constitutional rights to a trial by jury in criminal matters was being violated. Is she right?
2. Phillips developed a scheme to generate funds by sending bogus bills for a relatively small amount for District Sanitation Services to residents of certain affluent neighborhoods. Enough people paid these bills to make the practice quite profitable. Has Phillips committed a crime? If so, what crime?
3. Sharon spent the weekend with her friend Amelia. Amelia proposed a plan for shoplifting compact disks (CDs) from a local music store. Sharon was to go to the store clerk, say she felt very ill, then pretend to faint. This distraction would allow Amelia, at the other end of the store, to place CDs in her shopping bag without risk of being seen. At first Sharon said she could not do something like that because it is against the law. Amelia argued that Sharon would not be breaking the law, only Amelia would. Is Amelia right? If a person can think of a way to profit by violating the law without risk, what reasons are there for not breaking the law?
4. Ben and Eric have been friends for years. One day Ben asks Eric to participate in an armed robbery that Ben has been planning. Eric agrees. Ben confides he has robbed several convenience stores recently and has never been caught. Police arrive during the robbery and both men are caught. The prosecutor wants to try Ben for his previous criminal acts but needs Eric's testimony. How would you advise the prosecutor to assure Eric's testifying to convict Ben?
5. Rosa shot a burglar in her home when he was about to enter her bedroom with a knife in his hand. What would be a good defense for her?
6. Art is charged with kidnapping. After listening to all the evidence, 11 of the 12 jurors found him guilty. The twelfth juror voted he was not guilty. Has Art been convicted of the crime?
7. Bob was driving 70 mph when he was pulled over by the state highway patrol. The last speed limit sign Bob had seen said 70 mph. The patrolman admitted that a nearer sign indicating a 55 mph speed limit had been blown down recently. Nonetheless, he wrote Bob a ticket. Why?
8. There was nothing Lucy wanted more than a stereo sound system. When Harper, an older student, offered to sell her a practically new deluxe system for just \$100, Lucy agreed to buy. But then Lucy said, "Hey, how come so cheap?" Harper replied, "Had some happy hunting, and now I've got surplus stock." Later that day, the deal was completed. Has any crime been committed?

1-8 Civil Law

Hot Debate: Your neighbor Shana is using a multipurpose woodcutting machine in her basement workshop. Suddenly, because of a defect in the two-year-old machine, a metal clamp from the machine breaks. The metal strikes Shana's left eye, badly injuring it. The manufacturer had provided a one-year warranty against defects on the machine. Do you think the manufacturer should be responsible for paying Shana's medical expenses? What defense(s) does the manufacturer have against a suit for damages for her injury?

Offenses Against Individuals

How do crimes and torts differ? 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 money damages. The money is intended to compensate for the injury.

What's Your Verdict? After an exhausting day of skiing, Josephina was driving home near sunset. She dozed off momentarily and crossed the highway dividing lane. She then crashed head-on into John's panel truck. Both drivers were seriously injured, and their vehicles were "totaled." Although Josephina was asleep at the time, has she violated any rights of the other driver?

One act can be both a tort and a crime. In What's Your Verdict? Josephina committed an offense against society – the crime of reckless driving. Police will investigate the crime, then give her a ticket or possibly arrest her. A county or district attorney will prosecute her in a criminal trial. If convicted, she may be fined or jailed. Josephina also committed a tort by injuring John and his property. John may bring a civil suit against her. If John wins, he can obtain a judgment against her as compensation for his injuries. Thus, Josephina's reckless driving caused her to be liable both criminally and civilly. She is criminally liable because her offense was committed against society. For this she may incur a fine and/or a jail term. She is civilly liable for money damages to John for the injury she caused him and his property.

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?

Elements of 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 a tort are: Duty (a legal obligation to do or not to do something); Breach (a violation of the duty); Injury (a harm recognized by the law); and Causation (proof that the breach caused the injury).

Duty. By law, we all have certain rights. We also all have the duty to respect the rights of others. This principle has certain related duties. The following are the duties created by tort law:

- the duty not to injure another (including bodily injury, injury to someone's reputation, or invasion of someone's privacy);
- the duty not to interfere with the property rights of others, for example, by trespassing on their land; and
- 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 to decide. Many torts acknowledge a breach only when the defendant possesses a certain mental state at the time of the breach. Some torts require that the breach be intentional. These are classified as intentional torts. In other torts, intent is not required. It is enough if the breach occurred because someone was careless or negligent. These torts, based on carelessness, are classified as negligence. In still other torts, even carelessness is not required. Liability is imposed simply because a duty was violated 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 is usually no tort.

Causation. **Causation** means that breach of the duty caused the injury. There are degrees of causation. For example, one can 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.

Types of Torts

There are three main categories of torts: Intentional Torts; Negligence; and Strict Liability.

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. Was Hart guilty of a tort?

Intentional torts are torts for which the defendant intended either the injury or the act. These torts contrast with negligence and strict liability, where intent to engage in the act or to produce the injury is not required. Specific intentional torts are presented below.

Assault. The tort of assault occurs when one person intentionally threatens to physically or offensively injure another. The threat can be made with words or gestures. The threat must be believable, so there must be an ability to carry it out. 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 threatening 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. Thus, 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. 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 offensive touching.

False Imprisonment. False imprisonment is depriving a person of freedom of movement without the person's consent and without privilege. People may be deprived of freedom of movement in many ways. For example, they may be hand cuffed; locked in a room, car, or jail; told in a threatening way to stay in one place; or otherwise deprived of 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. If suspects are prevented from leaving when they want to, their consent evaporates. 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 one's reputation, 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 (one's reputation is not harmed if no other person hears or reads the lie), and (3) bring the victim into disrepute, contempt, or ridicule by others. An exception to the definition of defamation exists for statements about public officials or prominent personalities. There is no liability in such cases unless the statement was made with malice. That means the statement was known to be false when made. This exception is intended to encourage free discussion of issues of public concern. For the same reason, 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.

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 this right is the tort of invasion of privacy. This tort is defined as the unwelcome and unlawful intrusion into one's private life so as to cause outrage, mental suffering, or humiliation. This right includes freedom 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, we should be protected when we have a reasonable "expectation of privacy." Thus, two-way mirrors 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.

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 are also 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 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. Parties to a contract may be able to breach the contract if they pay for the injury suffered by the other party; that is, if they pay damages. But if a third party entices or encourages the breach, 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 misrepresentation of an existing important fact (that is, a lie). The misrepresentation must be relied on and cause financial injury. Ordinarily a misstatement of opinion is not considered fraudulent. This is because the hearer should recognize that the statement is the speaker's personal view.

Negligence

Negligence is the most common tort. Intent is not required for this tort, only carelessness. Like the other torts, negligence involves the elements of a duty, breach of the duty, causation, and injury.

What's Your Verdict? Britt was driving home late one rainy night after drinking alcohol all evening. With only one headlight, she raced down residential streets at speeds up to 50 miles per hour. Meanwhile, Yee was backing her station wagon out of her driveway, but failed to look both ways when she should have. Britt rammed into the right rear end of Yee's car. Yee's station wagon was badly damaged, and she was injured. Can Yee collect from Britt?

The general duty imposed by negligence law is the reasonable-person standard. This duty requires that we act with the care, prudence, and good judgment of a reasonable person so as not to cause injury to others. For certain individuals, a different degree of care is applied. For example, children under age seven are presumed incapable of negligence. Older children 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.

Possible defenses to negligence include being contributorily negligent (you were partly to blame) and assumption of risk (you were warned of the risk). A plaintiff cannot recover for loss caused by another's negligence if the plaintiff was contributorily negligent. This occurs when the plaintiff's own negligence was a partial cause of the injury. If plaintiffs are aware of a danger, but decide to subject themselves to the risk, that is a defense. Suppose you walk into a fast-food restaurant and see a sign stating "Danger! This floor is slippery due to mopping." Then, as you walk through the wet area, you slip, fall, and break your arm. The danger was created by the restaurant, but you assumed the risk after being informed of the danger. You could not recover in negligence because of the defense of assumption of the risk.

In This Case: Curtis tripped over an electric cord lying across a walkway in Emerson's Electric Shop. As a result of her fall, she suffered a broken hip. The cord was visible and Curtis would have noticed it if she had not been wearing sunglasses indoors. In a legal action, the jury found her damages to be \$50,000. But the jury concluded that because her dark glasses prevented her from seeing the cord, she contributed 40 percent of the total negligence. Therefore, the judge deducted \$20,000 and awarded Curtis judgment for \$30,000.

Strict Liability

Sometimes the law holds one liable in tort on the basis of absolute or strict liability. This is liability that exists even though the defendant was not negligent. In essence, strict liability makes the defendant liable if he or she engaged in a particular activity that resulted in injury. In strict liability, proof of both the activity and the injury substitutes for proof of a violation of a duty.

What's Your Verdict? Mrs. Lamm went to a grocery store and placed a carton of a carbonated soft drink in her shopping cart. One of the bottles exploded and the broken, glass cut her leg. Can she collect in tort from the grocery store or the bottler?

Engaging in abnormally dangerous activities, such as target practice, blasting, crop dusting with dangerous chemicals, or storing flammable liquids in large quantities, gives rise to strict liability. If you engage in activities of this type and someone is injured as a result, you will be liable. Ownership of dangerous animals also subjects one 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. The effect of strict liability is that the manufacturer held liable will increase the price and thus spread the cost to all consumers of the product. Without strict liability, the victim might receive no compensation because negligence may be difficult to prove. In *What's Your Verdict? Mrs. Lamm* could collect from either the store or the bottler under strict liability. The bottle was defective, and this defect made the product unreasonably dangerous.

Civil Procedure

What's Your Verdict? Horsley, the owner of a dry cleaning store, lived next door to Early, who was the editor of a small newspaper in their town. The two quarreled frequently and became enemies. As a consequence, when Early published a story on the drug problem in the town, he identified Horsley as "a drug dealer." This statement was untrue and defamatory. What can Horsley collect from Early?

Remedies. What can a tort victim collect? In some cases, an **injunction** (court order for a person to do or not do a particular act) may be issued to prevent a tort. However, the usual remedy for a tort is damages. **Damages** are a monetary award to the injured party to compensate for loss. The purpose of the award is to place the injured party in the same financial position as if the tort had not occurred. These damages are often referred to as actual or compensatory damages. However, in many cases, the loss may be difficult to measure. An example is where negligence causes bodily injury with ongoing pain and suffering or even death. Even so, a dollar value of the injury or loss must be set. This value is usually decided by a jury. When a jury decides the amount of compensatory or actual damages, it is usually requested to consider reimbursing the plaintiff for lost wages, medical bills, and pain and suffering. Punitive damages are always available where an intentional tort has been committed. The damage amount is meant to be set at a figure that would punish the defendant, not compensate the plaintiff.

What's Your Verdict? Hunt was taking riding lessons from Saddleback Stables. Patterson, the Saddleback instructor, was a skilled rider although only 17 years old. Nevertheless, Patterson negligently lost control of the horse that Hunt was riding. As a result, Hunt was thrown to the ground and injured. Who was liable for Hunt's injuries?

Responsibility for the Torts of Another. In general, all persons, including minors, are responsible for their conduct and are therefore liable for their torts. Thus, even children or insane persons may be held liable for injuring others. In *What's Your Verdict? Patterson* would be liable to Hunt even though Patterson was only 17 years of age. When one person is liable for the torts of another, the liability is called **vicarious liability**.

Think Critically About Evidence

1. 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?
2. Felicia carelessly left a campfire before it was completely extinguished. The fire spread through the woods and caused the destruction of the lodge. Is Felicia liable to the owners of the lodge for the building and the surrounding trees? 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?
3. Todd let his 10-year-old daughter, Julie, drive the family car. While she was driving, she turned her head to say something to her friend in the back seat, and swerved off the road. The car hit and destroyed a mailbox and damaged a fence. Who is liable for the damages to the property?
4. Monica kept a gun in her purse for self-defense because she had to travel through a dangerous section of the city on her way to work. One evening she carelessly left her purse where her son, age six, could reach it. While Monica was making dinner, she heard a shot and found that her son had fired the gun and hit a neighbor child in the leg. Who is liable? Why?
5. 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?
6. Every morning on the way to work, Sharon rides an elevator up 14 floors. Sometimes, when it is crowded, the elevator operator intentionally touches her in an offensive way. What can Sharon do legally?
7. Ham was a guest in Lane's home. While leaving the house, Ham was injured when she slipped on some ice that had formed on the steps leading from the door. Lane had cautioned Ham about the possibility of the steps being slippery, and Ham admitted seeing the ice. In a legal action claiming negligence, would Lane be liable?
8. 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?
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?