

What is Law?

"The law must be stable, but it must not stand still."

—Rescoe Pound

The question "What is law?" has troubled people for many years. An entire field of study known as **jurisprudence** (the study of law and legal philosophy) is devoted to answering this question. Many definitions of law exist. For our purposes, however, law can be defined as the rules and regulations made and enforced by government that regulate the conduct of people within a society.

As a child, you learned about rules first at home and later at school. At home, adults made and enforced rules concerning issues like chores and bedtimes. Rules made and enforced by the government are called laws. The government makes laws that affect almost every aspect of daily life.

One thing is certain: Every society that has ever existed has recognized the need for laws. These laws may have been unwritten, but even pre-industrial societies had rules to regulate people's conduct. Without laws, there would be confusion and disorder. This does not mean that all laws are fair or even good, but imagine how people might take advantage of one another without a set of rules.

A democratic system of government cannot function effectively unless its laws are respected. In other words, society must be based on the "rule of law." This means that all members of society—average citizens and

government officials such as senators, judges,

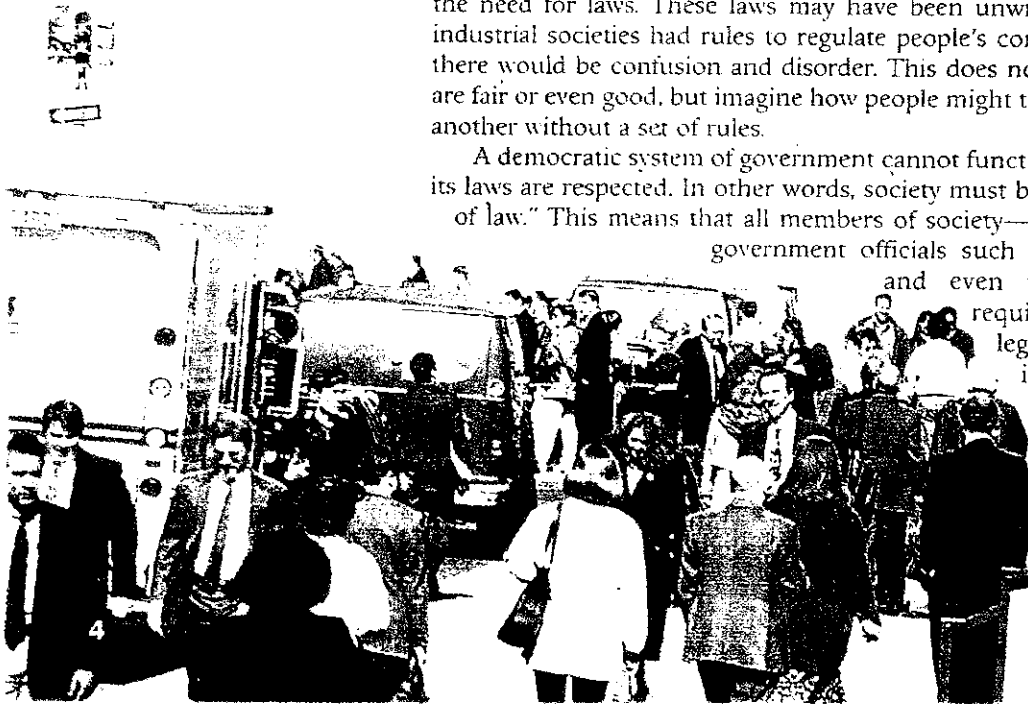
and even the president—are

required to support the

legal system and obey

its laws. No one is

above the law.



PROBLEM 1.1

List 10 of your daily activities (for example, waking up, eating, going to school). Next to each item, list any laws that affect that activity. What is the purpose of each law that you identified? Would you change any of these laws? Why?

LAW AND VALUES

Laws generally reflect and promote a society's values. Our legal system is influenced by our society's traditional ideas of right and wrong. For example, laws against murder reflect the moral belief that killing another person is wrong. Most people would condemn murder regardless of what the law said. However, not everything that is immoral is also illegal. For example, lying to a friend may be immoral but is seldom illegal.

We expect our legal system to achieve many goals. These include (1) protecting basic human rights, (2) promoting fairness, (3) helping resolve conflicts, (4) promoting order and stability, (5) promoting desirable social and economic behavior, (6) representing the will of the majority, and (7) protecting the rights of minorities.

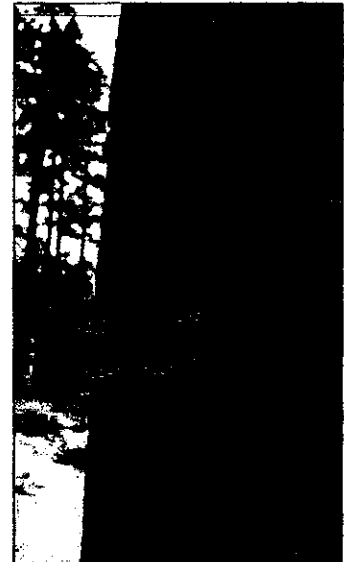
Many of society's most difficult problems involve conflicts among these goals. For example, some laws give preference to minorities over whites. Critics of these laws argue that they discriminate against whites and create racial conflict. Proponents of such laws, however, argue that they protect the rights of minorities, promote fairness by leveling an uneven playing field, and help reduce racial tension.

Laws must balance rights with responsibilities, the will of the majority with the rights of the minority, the need for order with the need for basic human rights. Reasonable people sometimes disagree over how the law can protect the rights of some without violating the rights of others.

Laws can be based on moral, economic, political, or social values. As values change, so can laws.

Moral values deal with fundamental questions of right and wrong. For example, laws against killing promote society's primary moral value—the protection of life. However, as already noted, some things that are considered immoral may not violate the law. In limited circumstances, such as in self-defense or during a time of war, even an intentional killing may be legal. One of society's most troubling issues—abortion—remains controversial precisely because the pro-life and pro-choice groups hold conflicting moral values regarding abortion.

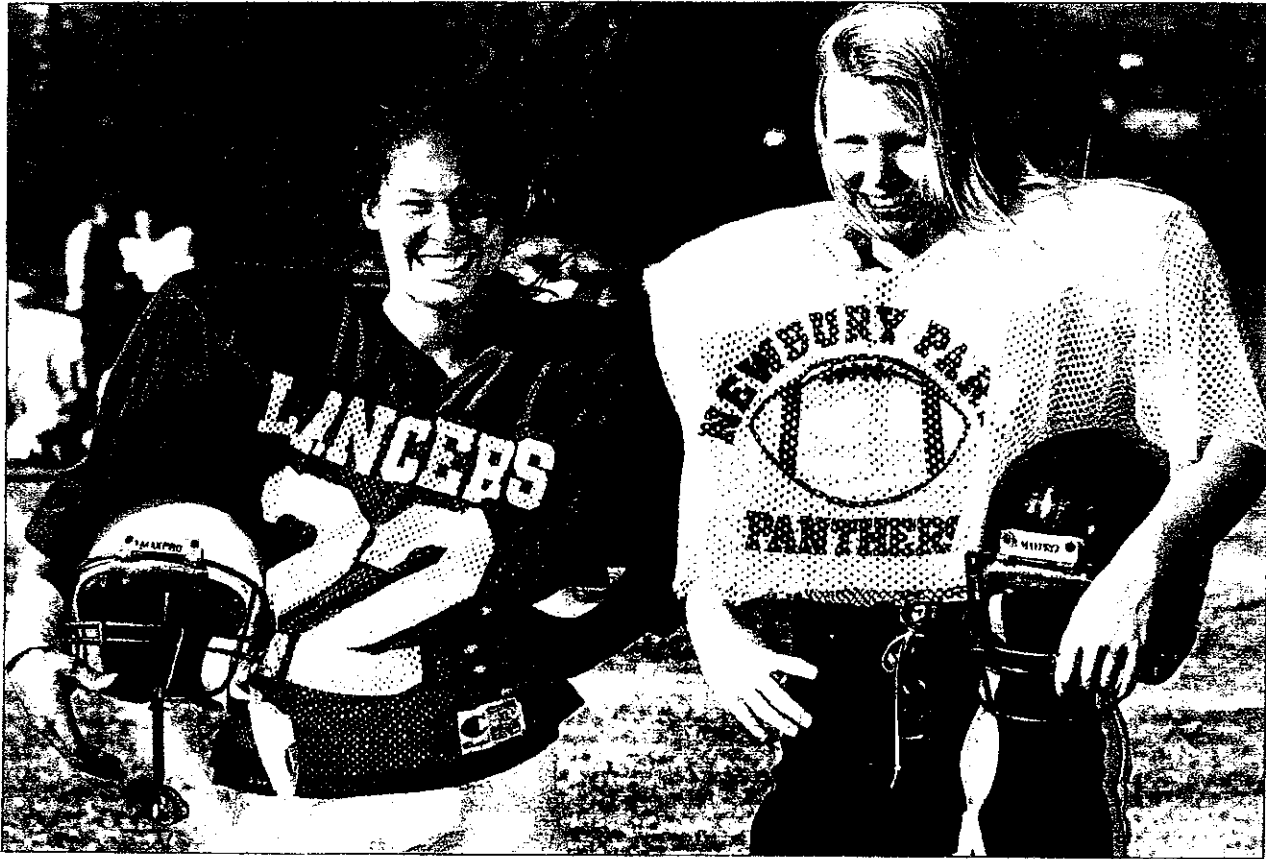
Economic values deal with the accumulation, preservation, use, and distribution of wealth. Many laws promote economic values by encouraging certain economic decisions and discouraging others. The law encourages



What values are placed in conflict by laws protecting the environment?

"Liberty means responsibility. That is why most men dread it."

—George Bernard Shaw—



How does this photo reflect society's changing laws and values?

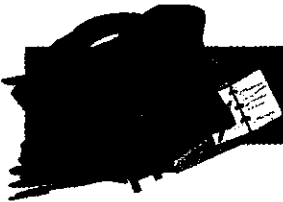
home ownership by giving tax benefits to people who borrow money to pay for a home, for example. Laws against shoplifting protect property and discourage stealing by providing a criminal penalty.

Political values reflect the relationship between government and individuals. Laws making it easier to vote promote citizen participation in the political process, a basic American political value.

Social values concern issues that are important to society. For example, it is an American social value that all students be provided with free public education through high school. Consequently, all states have laws providing such education. Like other values, social values can change. In the past, for example, society believed that school sports were not as important for girls as for boys. This value has changed. Today, laws require schools to provide females with sports opportunities similar to those offered to males.

Many laws combine moral, economic, political, and social values. For example, laws against theft deal with the moral issue of stealing, the economic issue of protection of property, the political issue of how government punishes those who violate criminal statutes, and the social issue of respecting the property of others.

Americans tend to think that laws can be passed to solve all of their problems. In 1919, the U.S. Constitution was amended to prohibit the manufacture and sale of alcoholic beverages in this country. This law was passed in response to a significant national problem. However, prohibition was extremely difficult to enforce, and 14 years later it was repealed by another



The Shipwrecked Sailors

Three sailors on an ocean-going freighter were cast adrift in a life raft after their ship sank during a storm in the Atlantic Ocean. The ship went down so suddenly that there was no time to send out an SOS. As far as the three sailors knew, they were the only survivors. In the raft, they had no food or water. They had no fishing gear or other equipment that might be used to get food from the ocean.

After recovering from the shock of the shipwreck, the three sailors began to discuss their situation. Dudley, the ship's navigator, figured that they were at least one thousand miles from land and that the storm had blown them far from where any ships would normally pass. Stephens, the ship's doctor, indicated that without food they could not live longer than thirty days. The only nourishment they could expect was from any rain that might fall from time to time. He noted, however, that if one of the three died before the others, the other two could live awhile longer by eating the body of the third.

On the twenty-fifth day, the third sailor, Brooks, who by this time was extremely weak, suggested that they all draw lots and that the loser be killed and eaten by the other two. Both Dudley and Stephens agreed. The next day, lots were drawn and Brooks lost. At this point, Brooks objected and refused to consent. However, Dudley and Stephens decided that Brooks would die soon anyway, so they might

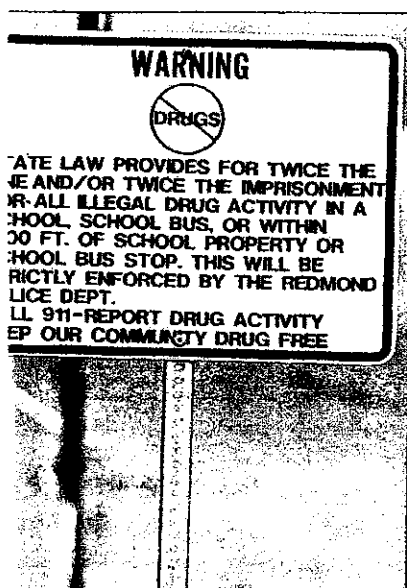
as well get it over with. After thus agreeing, they killed and ate Brooks.

Five days later, Dudley and Stephens were rescued by a passing ship and brought to port. They explained to authorities what had happened to Brooks. After recovering from their ordeal, they were placed on trial for murder.

The state in which they were tried had the following law: Any person who deliberately takes the life of another is guilty of murder.

PROBLEM 1.2

- a. Should Dudley and Stephens be tried for murder?
- b. As an attorney for Dudley and Stephens, what arguments would you make on their behalf? As an attorney for the state, what arguments would you make on the state's behalf?
- c. If they are convicted, what should their punishment be?
- d. What purpose would be served by convicting Dudley and Stephens?
- e. What is the relationship between law and morality in this case? Was it morally wrong for Dudley and Stephens to kill Brooks? Explain your answer.
- f. Can an act be legal but immoral? Can an act be morally right but unlawful? Explain.



What is the purpose of this law?
Will it achieve its goal?

constitutional amendment. Today, legislators try to deal with the nation's devastating drug problem by passing a wide variety of laws. People disagree on what role the law can play in solving this problem. We know from experience, however, that there is a limit to what laws can reasonably be expected to do.

PROBLEM 1.3

For each of the following laws, indicate whether moral, economic, political, or social values are involved. Explain your responses.

- All drivers must stop at stop signs.
- It is a crime to cheat on your tax return.
- All citizens may vote at age eighteen.
- Special government programs lend money to minority-owned businesses at low interest rates.
- Government officials may not accept gifts from people who want them to pass certain laws.
- Possession of marijuana is a crime.

HUMAN RIGHTS

Human rights are the rights all people have just because they are human beings. We violate human rights when we treat people as though they were not human beings. To advocate human rights is to demand that the dignity of all people be respected. Both government and private individuals can violate human rights. Human rights apply in people's homes, schools, and workplaces. In fact they apply everywhere. We have our human rights from the moment we are born until the moment we die.

PROBLEM 1.4

You have been selected to join a group of space pioneers who will establish a colony on a distant planet. In order to create the best possible society, you and your group decide to make a list of the human rights that all space colonists should have.

- List the three most important human rights that you believe should be guaranteed.
- Compare your list with those of others. Explain reasons for your selections.
- Why do you think some of the rights you listed are more important than others?
- Do any of the rights you listed conflict with one another? If so, which ones? Why?

"The people's good is the highest law."

—Cicero

- e. Compare your lists of rights with the rights listed in Appendix B, the Universal Declaration of Human Rights. Which ones did you include? Which ones did you not include?
- f. Are all the human rights you listed also legal rights? When does a human right become a legal right?

The Universal Declaration of Human Rights is a statement of human rights which has been agreed to by almost every country. First written and adopted by the United Nations in 1948 under the leadership of Eleanor Roosevelt, today every country that belongs to the United Nations agrees to promote, recognize, and observe these rights.

The Universal Declaration is not a binding treaty, but the United Nations has established a system of international treaties and other legal mechanisms to enforce human rights. These include two major treaties:

- the International Covenant on Civil and Political Rights (which protects rights such as freedoms of speech, religion, and press and the right to participate in government) and
- the International Covenant on Economic, Social, and Cultural Rights (which provides for rights such as the right to adequate education, food, housing, and health care).

The Covenant on Economic, Social, and Cultural Rights also provides for the right to a job, safe working conditions, an adequate salary, and the right to own property. Some believe the right to a clean environment should be added to the Covenants, while others are calling for a right to economic development for poor countries. The U.S. signed and ratified the Covenant on Civil and Political Rights, and has signed but not ratified the Covenant on Economic, Social, and Cultural Rights.

There are other important human rights treaties covering specific areas of human rights, including genocide, discrimination against women, and the rights of children. Some of these have been signed and ratified by the U.S. while others have not. Even when the U.S. signs and ratifies a human rights treaty, it often takes a reservation restricting its power in the U.S. For example, the U.S. has taken a reservation to treaties that outlaw the death penalty against juveniles. The U.S. often states that some of the issues covered in human rights treaties are issues for states, not the federal government, to decide.

Human rights are standards countries can use when writing laws. Sometimes human rights become law in a country when the government signs an international treaty guaranteeing such rights. Human rights also can become law if they are enshrined in a constitution or if the legislature of a country passes laws protecting or guaranteeing these rights. Even though they may not refer to them as human rights, there are many provisions that reflect human rights in our Constitution and Bill of Rights and in federal, state, and local laws.

Human Rights S

Many countries have more serious human rights violations than the U.S. This may be one reason why many people in the U.S. tend to use the phrase "human rights" only when referring to violations happening in other countries. However, human rights do apply to all people in all countries, including the U.S. Consequently, in each chapter of *Street Law* there is a feature called "Human Rights USA."

This will provide an opportunity to look at an aspect of human rights in the U.S. This activity will usually include some reference to Appendix B, the Universal Declaration of Human Rights (UDHR).

PROBLEM 1.5

Are these human rights violations?

- a. Assume the following take place in the U.S. Decide if each is a human rights violation. If it is, identify the article of the UDHR at issue.
 1. Before class starts, the teacher says, "you can't pray in school."
 2. A child in the family goes to sleep hungry because the parents have no money to buy food.
 3. A student receives a poor education in her high school and is rejected for every job she applies for.
 4. A burglar breaks into a house at night and steals a television.
 5. A man drives his car too fast and crashes into a guard rail.
 6. A Spanish-speaking student speaks Spanish to another student. The principal tells the students that only English may be spoken in the school.
 7. A woman is ill and is turned away from a hospital because she doesn't have health insurance or the money to pay her medical bill.
 8. A homeless man asks for money from people walking on the street, but people do not give him any money.
 9. A boy attends a public school that does not have enough books for all the students.
 10. A newspaper is not allowed to publish the method of making a bomb.
 11. An African American police officer arrests a white man, who physically resists arrest and yells racist words at him. The police officer handcuffs him and then hits him three times with his police baton.
- b. Did you find two or more human rights in conflict in any of the above examples? What should be done when this occurs?
- c. In which of the examples are there laws in the U.S. to protect the human right involved? In which are there no such laws? Should there always be a law to protect a human right?

BALANCING RIGHTS WITH RESPONSIBILITIES

The emphasis on rights in the United States has led some people to criticize America for being too concerned with citizens' rights, while neglecting their responsibilities. Some say that "with every right there goes a responsibility" and urge citizens to act more responsibly toward one another, their families, and their communities.

Critics cite America's emphasis on individual rights as evidence of "radical individualism," which has resulted in a self-centered focus and the loss of a sense of community. While individual rights are important, they must be matched by social responsibilities, these critics say. For example, if people wish to be tried by juries of their peers, they must be willing to serve on such juries. If they want to be governed by elected officials who respond to their values and needs, they must not only vote but also get involved in other ways: attend election forums, work for candidates, and run for positions on school boards, county councils, and community associations.

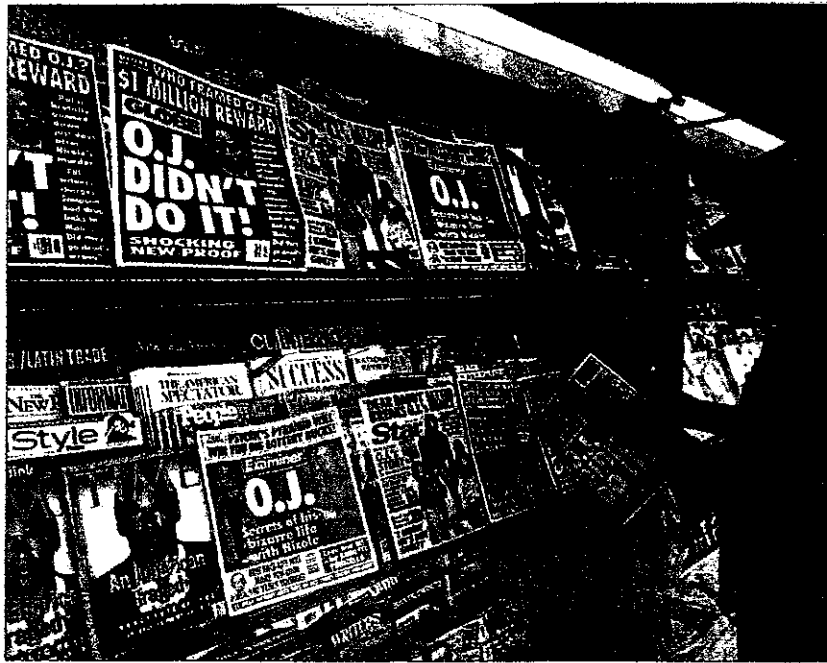
Americans justifiably have great respect for laws extending rights to citizens, including women, minorities, and persons with disabilities, who were previously excluded from full participation in society. Many laws, however, also require citizens to act responsibly. Parents must provide their children with adequate food, shelter, and clothing; drivers must obey traffic laws; and all workers must pay taxes.

Rights also imply responsibilities. For example, it is the responsibility of everyone not to violate the human rights of others. This means that people need to understand what human rights are, and then treat others with the dignity every human being deserves.

Other critics of the emphasis on rights in America point out that just "because you have a legal right to do (or not to do) something does not mean it is the right thing to do." For example, the First Amendment guarantee of freedom of speech sometimes gives people the right to say hateful and abusive things to others, but it does not make such speech "right." Summarizing the situation, one critic said, "Rights do not automatically make for rightness."

KINDS OF LAWS

Laws fall into two major groups: criminal and civil. **Criminal laws** regulate public conduct and set out duties owed to society. A criminal case is a legal action brought by the government against a person charged with committing a crime. Criminal laws have penalties, and offenders are imprisoned, fined, placed under supervision, or punished in some other way. Criminal offenses are divided into **felonies** and **misdemeanors**. The penalty for a felony is a term of more than one year in prison. For a misdemeanor, the penalty is a prison term of one year or less. Felonies are



Why did the Simpson trials attract so much media attention? Did the public understand the difference between civil and criminal law from these cases?

a case tried without a jury) has any reasonable doubts about the defendant's guilt, then it must vote not to convict. The jury verdict in Simpson's criminal case was not guilty.

Several months later, the parents of Ron Goldman brought a civil suit against O.J. Simpson to recover damages resulting from the wrongful death of their son. In a civil case, the plaintiff wins by convincing the jury (or the judge in a case without a jury) by a **preponderance of the evidence**. This is a lower requirement for proof than the beyond a reasonable doubt standard used in criminal cases. The reason for the different standards of proof is that a defendant loses money in a civil case, but can suffer lengthy imprisonment or even the death penalty as a result of a criminal conviction. The Goldmans won their civil case against O.J. Simpson. Because the public tends not to understand the difference between civil and criminal cases, there was much confusion about how a person could be found not guilty in a criminal case and then responsible in a civil suit for damages for the same act.

You will learn much more about criminal law in Unit Two of *Street Law* and much more about civil law in Units Three through Six.

PROBLEM 1.7

Matt and Luther decide to skip school. They take Luther's brother's car without telling him and drive to a local shopping center. Ignoring the sign *Parking for Handicapped Persons Only*, they leave the car and enter a radio and TV shop.

After looking around, they buy a portable AM-FM radio. Then they buy some sandwiches from a street vendor and walk to a nearby park. While eating, they discover that the radio does not work. In their hurry to return it, they leave their trash on the park bench.

When Matt and Luther get back to the shopping center, they notice a large dent in one side of their car. The dent appears to be the result of a driver's carelessly backing out of the next space. They also notice that the car has been broken into and that the tape deck has been removed.

They call the police to report the accident and theft. When the police arrive, they seize a small clear bag containing illegal drugs from behind the car's back seat. Matt and Luther are arrested.

- a. List what you think Matt and Luther did wrong.
- b. What laws are involved in this story?
- c. Which of these are criminal laws? Which are civil laws?

"Reason is the life of the law."

—Sir Edward Coke

OUR CONSTITUTIONAL FRAMEWORK

The U.S. Constitution is the highest law of the land. Drafted over two hundred years ago, this remarkable document is the longest-lasting written constitution in the world. It sets forth the basic framework of our government. It also lists the government's powers, the limits on those powers, and the people's freedoms that cannot be taken away by the government. (The text of the entire Constitution is given in Appendix A.)

Integral to the Constitution is the principle of **limited government**. Before the U.S. Constitution was written and ratified, the individual states were reluctant to give up power to the national government. After all, a revolution had just been fought against the government of the king of England to preserve individual liberty and the freedom to govern without interference. As a result, the Constitution created a national government of limited powers, with authority to pass laws only in the areas specifically listed in Article I of the Constitution. Those who criticize the power and reach of the federal government today often cite these historic reasons for limiting its power.

Perhaps nothing is more important in the Constitution than the division of lawmaking power among the three branches of government: the executive (the president and federal agencies), the legislative (Congress), and the judiciary (the courts). This division is known as the **separation of powers**. The executive branch is primarily responsible for enforcing the law. However, the executive branch often issues rules and executive orders

Introduction to Criminal Law

"Criminal law has to do with relations between the misbehaving individual and his government . . . Criminal law establishes rules of conduct; their breach, if prosecuted and conviction follows, results in punishment."

—Lawrence M. Friedman,
American Law

Almost all crimes require an act, accompanied by a guilty **state of mind**. The guilty state of mind usually means that the prohibited act must be done intentionally, knowingly, or willfully. In most cases, mere carelessness is not considered a guilty state of mind. For example, if Meredith accidentally forgot to turn the stove off before leaving for work and the whole apartment building caught fire as a result, she would not be guilty of arson, which is the malicious burning of another person's property. She committed the act (burning another person's property) but did not have the guilty state of mind (maliciousness).

State of mind is different from **motive**. While state of mind deals with the level of awareness of performing some act (whether it was done purposely, intentionally, recklessly, etc.), motive is the reason why the act is performed. For example, in murder, the motive is the reason a person kills someone (for revenge, to obtain money, etc.). Robin Hood may have had a good motive for stealing from the rich: to give to the poor. However, his state of mind in committing the theft was still intentional and knowing and, therefore, he would be guilty of a crime.

A few crimes are **strict liability** offenses. These crimes do not require a guilty state of mind. The act itself is criminal, regardless of the knowledge or intent of the person committing the act. For example, the law makes it a strict liability crime to sell alcoholic beverages to minors. This is true regardless of whether or not the seller knew the buyer was underage. Just because a crime does not specify a state of mind does not mean it is a strict liability offense. Courts will usually assume that some guilty state of mind is required unless the legislature specifically intended



Have you ever witnessed a crime scene investigation like this one in your town?

to pass a strict liability law. Most often, strict liability statutes are limited to crimes that don't carry severe penalties or to crimes that are part of a larger attempt to regulate some area of conduct.

GENERAL CONSIDERATIONS

Crimes are made up of **elements**. In addition to proving any guilty mental state that is required in order to convict someone, the prosecutor must prove beyond a reasonable doubt that every element of the crime was committed. For example, robbery is defined as the unlawful taking and carrying away of goods or money from someone's person by force or intimidation. Thus, the elements of robbery are (1) the taking and carrying away of goods or money, (2) the taking from someone's person, and (3) use of force or intimidation.

If someone breaks into your house when you are not home and takes your property, the person cannot be convicted of robbery. The person did not take the property from a person (no one was home) and did not use force or intimidation. However, the person could be guilty of burglary, because the elements of that crime do not require the taking from a person or the use of force.

A single act can be both a criminal and civil wrong. For example, if Paul purposely sets fire to Tamika's store, the state may file criminal charges against Paul for arson. Tamika may also bring a separate civil action (lawsuit) against Paul to recover for the damage to her store.

PROBLEM 8.1

Anton is a bully. One night while eating at a local drive-in, he notices Derek selecting a tune on the jukebox. To impress his girlfriend, Anton orders Derek to sing along with the record. When Derek refuses, Anton punches him in the face, breaking Derek's jaw. As a result of the injury, Derek misses several weeks of work and has to pay both medical and dental bills.

- a. Has Anton violated civil laws, criminal laws, or both?
- b. Who decides whether Anton should be charged criminally? Sued in a civil action?
- c. If Anton is charged with a crime and sued in a civil action, would the civil and criminal cases be tried together? Why or why not?
- d. Would procedures in a criminal trial be the same as those in a civil trial? Why or why not?
- e. Is going to court the only way to handle this problem? What alternatives are there, and which do you think would work best?

Read this sign regarding the sale of alcoholic beverages. Why does the law punish the buyer and the seller?



STATE AND FEDERAL CRIMES

There are both state and federal criminal laws. Some acts, such as simple assault, disorderly conduct, drunk driving, and shoplifting, can be prosecuted only in a state court unless they occur on federal property, such as a national park. Other acts, such as failure to pay federal taxes, mail fraud, espionage, and international smuggling, can be prosecuted only in a federal court. Certain crimes, such as illegal possession of dangerous drugs and bank robbery, can violate both state and federal law and can be prosecuted in either state or federal court.

CLASSES OF CRIMES

Crimes are classified as either felonies or misdemeanors. A **felony** is a crime for which the potential penalty is imprisonment for more than one year. Felonies are usually the more serious crimes. A **misdemeanor** is any crime for which the potential penalty is imprisonment for one year or less. Minor traffic violations are not considered crimes, although they are punishable by law. This chapter deals primarily with felonies and major misdemeanors.

PARTIES TO CRIMES

The person who commits a crime is called the **principal**. For example, the person who fires the gun in a murder is the principal. An **accomplice**

is someone who helps another person commit a crime. For example, the person who drives the getaway car during a bank robbery is an accomplice. An accomplice may be charged with and convicted of the same crime as the principal. A person who orders a crime or who helps the principal commit the crime but who is not present (for example, the underworld leader who hires a professional killer) is known as an **accessory before the fact**. This person can usually be charged with the same crime, and can receive the same punishment, as the principal. An **accessory after the fact** is a person who, knowing a crime has been committed, helps the principal or an accomplice avoid capture or escape. This person is not charged with the original crime but may be charged with harboring a fugitive, aiding the escape, or obstructing justice. Being an accessory after the fact has been made a separate crime by statute in many jurisdictions.

PROBLEM 8.2

Joe and Mary decide to burglarize Superior Jewelers. Their friend Carl, an employee at Superior, helps by telling them the location of the store vault. Mary drives a van to the store and keeps a lookout while Joe goes inside and cracks the safe. Joe later meets a friend, Fred, who was not involved beforehand. Fred is told about the burglary and helps Joe get a train out of town. David, a former classmate of Joe and Mary's, witnesses the crime but doesn't tell the police, even though he recognizes both Joe and Mary. How will each be charged?



Good Samaritan Laws

Are witnesses to crimes under any obligation to come to the aid of victims? Until recently, the legal answer, as opposed to the moral answer, was no. Most states have had "Good Samaritan" laws that relieve bystanders from most civil liability when they help people in danger, but they have not required bystanders to help. Now, however, several new state laws *require* witnesses to offer whatever help they can reasonably provide without endangering themselves. In the case of a violent crime, this simply means reporting the crime to the police. Does your state require witnesses to report violent crimes to police? Should it?



The Drowning Girl

Allen, Betty, Chin, and Doris see Jill drowning in a lake, but none of them takes steps to save her. Allen is the girl's father. Betty deliberately pushed

the girl into the lake by shoving Chin against Jill. Doris, a medal-winning swimmer, just stands and watches. Would any of the four be criminally liable for Jill's drowning? Should any of them be liable? Explain your answer.

CRIMES OF OMISSION

Most crimes occur when a person does something or performs some act in violation of a law. However, in a few cases, a person may be criminally liable for an omission or a failure to act. For example, it is a crime for a taxpayer to fail to file a tax return or for a motorist to fail to stop after involvement in an automobile accident. A person is guilty of a **crime of omission** when he or she fails to perform an act required by a criminal law, if he or she is physically able to perform the required act.

PRELIMINARY CRIMES

Certain types of behavior take place before the commission of a crime but are nevertheless complete crimes in themselves. These offenses—solicitation, attempt, and conspiracy—give the police the opportunity to prevent the intended crime. Each offense can be punished even if the harm intended never occurred.

Solicitation

A number of states make it a crime for a person to solicit (that is, ask, command, urge, or advise) another person to commit a crime. For example, Danny wishes to kill his wife, Jean. Lacking the nerve to do the job himself, he asks Wally to kill her. Even if Wally refuses, Danny has committed the crime of **solicitation**.

Attempt

In most states, an **attempt** to commit a crime is in itself a crime. To be guilty of the crime of attempt, the accused must have both intended to

commit a crime and taken some substantial step toward committing the crime. Mere preparation to commit a crime is not enough.

When someone performs all of the elements of a crime but fails to achieve the criminal result, an **attempt** has occurred. For example, when a person intends to shoot and kill someone but misses or merely wounds the intended victim, the person is guilty of attempted murder. Sometimes, the crime is foiled before all of the necessary steps are completed, such as when a person purchases a gun, intends to shoot another person, but is arrested on the way to the intended victim's house. Courts must then determine whether the actions of the accused were a substantial step toward the actual commission of the crime or mere acts of preparation.

PROBLEM 8.3

Examine the following situations and decide whether any of the individuals involved would be guilty of the crime of attempt.

- a. Howard, a bank teller, figures out a foolproof method of stealing money from the bank. It takes him some time to get up the nerve to steal any money. Finally, he makes up his mind and tells his girlfriend, Donna, that tomorrow he will steal the money. Donna goes to the police, and Howard is arrested an hour later.
- b. Gilbert, an accomplished thief, is caught while trying to pick Lewis's pocket. He pleads not guilty and says he can't possibly be convicted, because Lewis didn't have a penny on him.
- c. Rita and Anwar decide to rob a liquor store. They meet at a pub and talk over their plans. Rita leaves to buy a revolver, and Anwar leaves to steal a car for use in their getaway. Rita is arrested as she walks out of the gun shop with her new revolver. Anwar is arrested while trying to hot-wire a car.
- d. Amy decides to burn down her store to collect the insurance money. She spreads gasoline around the building. She is arrested while leaving the store to get a book of matches.

Conspiracy

A **conspiracy** is an agreement between two or more persons to commit a crime. The designation of conspiracy as a crime is meant to prevent other crimes and to strike against criminal activity by groups. It also allows police to arrest conspirators before they come dangerously close to completing the crime. However, it is sometimes criticized as a threat to freedom of speech and association. For example, during the Vietnam War, the government charged several people with conspiracy for speaking publicly to young men on how to avoid the draft. Many critics of conspiracy said the accused were being denied the freedom of speech.



Conspiracy and the Oklahoma City Bombing

On April 19, 1995, there was a tragic bombing of a large federal building in Oklahoma City, Oklahoma. Many employees (as well as children in a day care center located in the building) were killed.

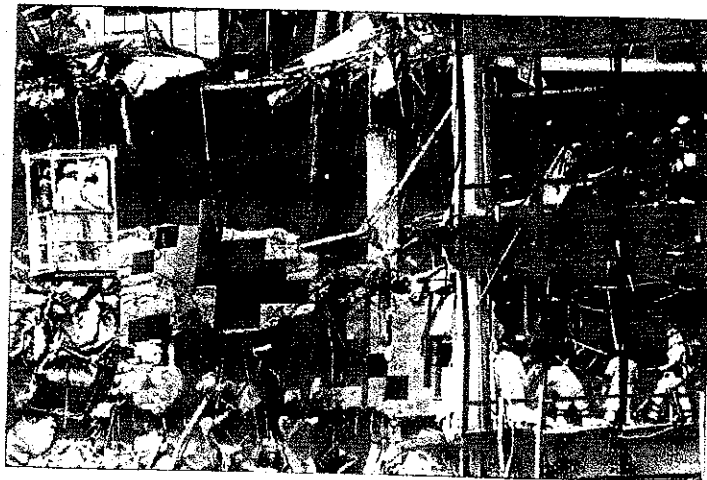
In addition to federal and state prosecutions of the individuals who allegedly committed the bombing, the federal government also prosecuted an individual who did not actually take part that day in the bombing. He was convicted of conspiracy to transport explosives across state lines *and* of failing to inform authorities about this illegal activity.

A federal law called **misprision of felony** makes it a felony, punishable by up to three years in prison, for a person with knowledge of the actual commission of a felony that violates federal law not to make this information (i.e., that he knew about the planned bombing) known as soon as possible to a judge or other official.

An example of criminal conspiracy is the situation in which Nick, a drug dealer, asks Sunny, his associate, to kill another dealer in his neighborhood. If Sunny agrees to Nick's request and then takes some step to commit the crime, both are guilty of conspiracy to commit murder, even if the murder is never attempted or accomplished.

In most states and in federal law, an **overt act**—that is, an act that is open to view—is required for conviction on a conspiracy charge. In the example of the draft evasion cases, speeches made at an antidraft rally were cited as the overt acts on which the conspiracy charges were based.

On April 19, 1995, a car bomb ripped through a federal office building in Oklahoma City, Oklahoma. Is terrorism a new problem?



Crimes Against the Person

Crimes against the person include homicide, assault, battery, and rape. All of those crimes are serious offenses. A defendant found guilty of one of them may receive a harsh sentence. However, the law also protects the defendant by defining various levels of these crimes and by considering the circumstances of each offense.

HOMICIDE

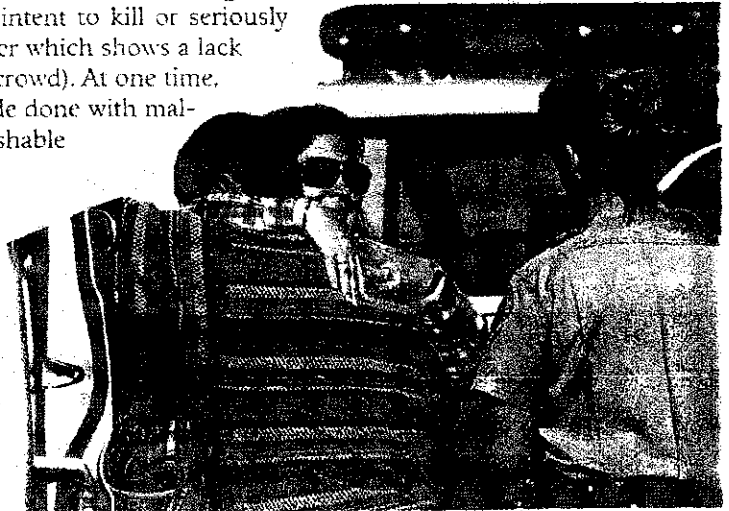
Homicide—the killing of one human being by another—is the most serious of all acts. Homicides may be either criminal or noncriminal.

Criminal Homicide

Murder, the most serious form of criminal homicide, is a killing that is done with **malice**. Malice means having the intent to kill or seriously harm or acting in an extremely reckless manner which shows a lack of regard for human life (e.g., shooting into a crowd). At one time, there were no degrees of murder. Any homicide done with malice was considered to be murder and was punishable by death. To reduce the punishment for less grievous homicides, most states now have statutes that classify murder according to the killer's state of mind or the circumstances surrounding the crime.

First-degree murder is usually defined as a killing that is premeditated (thought about beforehand).

Family members console each other in the wake of a gruesome multiple homicide.



deliberate, and done with malice (that is, with an intent to kill or cause severe bodily injury or with a depraved indifference to human life). Courts have often found that the premeditation and deliberation can occur very close to the time of the homicide.

Felony murder is any killing that takes place during the commission of certain felonies, such as arson, rape, robbery, or burglary. It is not necessary to prove intent to kill; malice is presumed because the homicide occurred during the felony, even if the killing was accidental. Most states consider felony murder to be first-degree murder even though malice, premeditation, and deliberation do not need to be proved.

Second-degree murder is a killing that is done with malice, but without premeditation or deliberation. That is, the intent to kill did not exist until the moment of the murder. Second-degree murder includes intentional but spontaneous killings that are unplanned.

Voluntary manslaughter is a killing that would otherwise be murder, but that occurs after the victim has done something to the killer that would cause a reasonable person to lose self-control or act rashly. Words alone, no matter how offensive, do not reduce the severity of a murder so that it becomes voluntary manslaughter. Also, the killing must occur just after the provocation so that the killer did not have an opportunity to "cool down." A typical example of voluntary manslaughter is when a man walks in on his spouse cheating on him with another man, flies into a rage, and kills the man. Voluntary manslaughter is punished somewhat less severely than murder as a concession to the frailty of human character.

Involuntary manslaughter is an unintentional killing resulting from conduct so reckless that it causes extreme danger of death or bodily injury. An example is a killing that results from playing with a gun known to be loaded.

Negligent homicide is the causing of death through criminal negligence. **Negligence** is the failure to exercise a reasonable or ordinary amount of care in a situation that causes harm to someone. Some states classify death by gross, or extreme, negligence as involuntary manslaughter. The most common form of negligent homicide is vehicular, or automobile, homicide. This is a killing that results from operating a motor vehicle in a reckless and grossly negligent manner. Any death that results from careless driving may lead to a civil suit for damages, but it is usually not considered a crime unless the death results from gross negligence.

Noncriminal Homicide

Some homicides are not crimes at all. Noncriminal homicide is a killing that is justifiable or excusable and for which the killer is deemed faultless. Examples of noncriminal homicide include the killing of an enemy soldier in wartime, the killing of a condemned criminal by an executioner, the killing by a police officer of a person who is committing a

serious crime and who poses a threat of death or serious harm, and a killing performed in self-defense or in defense of another.

PROBLEM 9.1

Walt decides to shoot Yolanda, whom he blames for all his troubles. As he is driving to her home to carry out the murder, Walt hits a jogger who has darted out from behind a tree. Stopping immediately, he rushes to help the jogger, who is already dead. Walt is upset until he discovers that the dead jogger is Yolanda. Assuming Walt was driving at a safe speed and the collision was unavoidable, is he guilty of murder?

PROBLEM 9.2

Belva is cheated when she buys a car from Fast Eddie's Car Mart. She attempts to return the car, but Eddie just laughs and tells her to go away. Every time Belva has to make a repair on the car, she gets angry. Finally, she decides to wreck Eddie's car to get even. Following Eddie home from work one evening, Belva tries to ram his car, hoping to bend the axle or frame. Instead of bending the frame, the collision smashes Eddie's gas tank, causes an explosion, and kills Eddie.

- Is Belva guilty of any degree of homicide? If so, which degree and for what reason?
- What was Belva's motive in acting as she did? Should the motive be considered at any stage in the criminal justice process? Why or why not?

SUICIDE

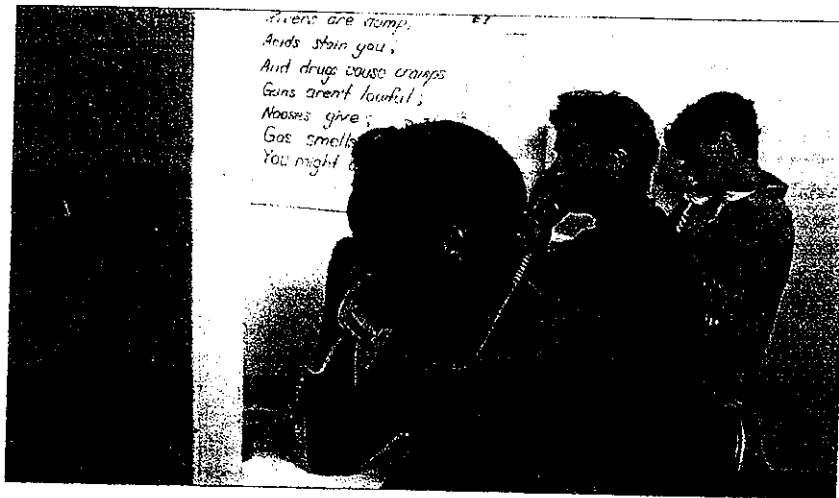
Suicide, the deliberate taking of one's own life, was once considered a crime. States regarding it as criminal today, however, prohibit only attempted suicide. Courts often treat suicide as a plea for help, requiring the person who attempted it to undergo a psychological examination and receive treatment. Someone who helps another commit suicide can, however, be found guilty of the crime of murder or manslaughter.

Suicide is one of the leading causes of death among teenagers. In a recent year, the Centers for Disease Control reported that 27 percent of teens in ninth through twelfth grade reported seriously considering suicide, that one million teens made an attempt, and that 274,000 required medical treatment. At least 6,000 teenagers take their own lives each year. However, the elderly commit more suicides than any other age group.



Is there a suicide hotline or other suicide prevention program in your area? If so, how does it operate? Are there specific programs for teens or the elderly?

How can hotlines help individuals considering suicide?



Although many people have suicidal thoughts at some point in their lives, most never attempt suicide. Many can be helped by suicide hotlines, medication, counseling, and other programs for those who may be considering suicide. Despairing individuals may need someone else to talk to who can help them see positive alternatives to suicide.

PROBLEM 9.3

- a. Why do you think so many teenagers consider committing suicide? What could be done to reduce this number? What would you do if your friend told you he or she was considering suicide? Suppose your friend asked you not to tell anyone. What would you do in that case?
- b. Why do you think the elderly commit suicide more often than any other age group? What could be done to reduce this number?

FOR YOUR INFORMATION

There are several national hotlines that may be helpful for teens considering suicide —

The National Crisis Helpline:
1-800-999-9999

The National Youth Crisis Hotline:
1-800-Hit-Home (448-4663)
and 1-800-442-Hope (4673)

The Dying Cancer Patient

Wilfred, age 75, has been suffering from cancer for 10 years, and the pain has become worse and worse. The doctors say there is no treatment to either slow down the cancer's growth or substantially reduce the pain. Wilfred asks his wife, Martha, to relieve him of the terrible pain by bringing him a bottle of pills that would help him end his life. Martha, who cannot stand watching Wilfred suffer anymore, gives him the pills. He swallows them all and dies.

PROBLEM 9.4

- Was Wilfred's request related to suicide? Explain.
- If you were the district attorney in the state where Martha lives, would you file criminal charges against her? Explain.
- If manslaughter charges were filed and you were on the jury, would you vote to convict Martha? Give your reasons.
- If Martha were convicted, what sentence should she receive? Why?
- If the bottle of pills had been given to Wilfred by a physician, instead of by his wife, would your answers have been different? Give your reasons.

ASSAULT AND BATTERY

Assault is any attempt or threat to carry out a physical attack upon another person. **Battery** is any unlawful physical contact inflicted by one person upon another without consent. Actual injury is not necessary. The only requirement is that the person intended to do bodily harm. Today, there is often not much difference in law or practice between the use of the words *assault* and *battery*.

Just as there are degrees of murder, there are also different classifications for assault and battery. Many states now have separate statutes for assault with intent to rob or assault with intent to murder. Aggravated battery is often defined by the harm inflicted, so that an unarmed assault that results in a serious physical injury is an aggravated battery rather than a simple assault.

Assaults typically result from arguments between people who knew each other. In such arguments, rage—often stimulated by alcohol or jealousy—leads to violence. Whether the violence leads to serious injury or death often depends on the presence of a weapon.

To deal with the growing problem of harassment, most states now have "anti-stalking" laws. **Stalking** occurs when a person repeatedly follows or



What are the classifications for assault and for battery in your state's criminal statutes?

harasses another person and makes threats, causing the victim to fear death or bodily injury. Women are the targets of most of the cases of stalking that occur each year.

RAPE

Traditionally, the law has recognized two types of **rape**. Forcible rape is the act of unlawful sexual intercourse committed by a man with a woman by force and without her consent. **Statutory rape** is sexual intercourse by a male with a female who has not yet reached the legal age of consent.

Under the common-law definition, a rape occurred only when there was sexual penetration of the female by the male. To constitute forcible rape, the intercourse must have occurred without the consent of the female. There is no consent if a woman submits as a result of force or threats of bodily harm. Likewise, there is no consent if a woman is unconscious or mentally incompetent or if her judgment is impaired by drugs or alcohol.

Traditionally, proving that a rape was without consent usually meant presenting some evidence that the victim resisted. There has been a movement in some states to rewrite rape statutes to focus entirely on the force or compulsion applied by the defendant rather than on the actions of the victim in displaying consent or lack of consent. Proponents of such a change in rape laws point out that we do not ask victims of other crimes, such as robbery or assault, to put up a struggle to show that they do not

Should all women participate in anti-rape, self-defense classes?



FYI

FYI

Date Rape Information

How to Protect Yourself

- When going on a date with someone you don't know well, try to get information on the person from others you know and trust. Plan to meet in a place where there are lots of people.
- Be sure to let your date know your limits in advance. Be assertive about how you feel and what you expect.
- Be prepared to find your own transportation home. Carry enough money to make a phone call or take a cab.
- Don't leave an event with someone you just met, and don't ride in a car with someone you don't know and trust.
- Don't get high on either drugs or alcohol, as this reduces your

ability to take care of yourself and make sensible decisions.

What If It Happens to You?

- Call the police. Date rape is a crime, and it may be more difficult to prosecute the person if the crime is not reported immediately.
- Don't shower or bathe before going to the hospital, and don't destroy any clothing you were wearing, as it may be important evidence. Get medical attention for any injuries, along with testing for venereal disease, AIDS, and pregnancy.
- Tell your parents, a school counselor, the family doctor, or any adult you trust. Consider calling your local rape hotline or rape crisis center. Seek counseling; don't bury your emotions.

consent to being robbed or assaulted. They argue that traditional rape laws impose a male-oriented standard of how victims should act and effectively put female rape victims rather than rapists on trial. Others argue that with the often unclear nature of male-female relationships, it is unrealistic to hold men responsible for rape unless the victim clearly expresses an unwillingness to have sex. This argument is based on the idea that unless there is some proof of resistance, a man could be convicted of rape when the act was actually consented to by the woman.

In statutory rape cases, consent is not an issue. Sexual intercourse with an underage female is rape *whether she consents or not*. A mistake by a male as to the female's age is not a defense, even if the male reasonably believed the female was over the age of consent.

The age at which a young person can legally agree to have sex varies by state from 11 to 18; most states, however, put it at 16. Only males can commit statutory rape. Contrary to popular belief, an underage male *can* be prosecuted for having sex with an underage female.

Crimes Against Property

The category of crimes against property includes crimes in which property is destroyed (such as **arson** and **vandalism**) and crimes in which property is stolen or otherwise taken against the will of the owner (such as **robbery** and **embezzlement**).

"The more laws, the more offenders."

-Anonymous

In recent years the number of property crimes has fallen, in part at least because Americans have developed better crime prevention behaviors. These behaviors include: security lighting, home and automobile alarm systems, steering wheel locks, greater attention to locking doors and windows, and a tendency to carry less cash due to the greater use of credit cards.

ARSON

Arson is the willful and malicious burning of another person's property. In most states, it is a crime to burn any building or structure, even if the person who burns the structure owns it. Moreover, burning property with the intent to defraud an insurance company is usually a separate crime, regardless of the type of property burned or who owned the property.

At various times arson has also been a form of racial violence. To help federal prosecutors deal with a rash of racially motivated church arsons, Congress passed the *Church Arson Prevention Act* in 1996.



Human Rights S

The preamble to the Universal Declaration of Human Rights (UDHR) reaffirms that the peoples of the world have "... faith in fundamental human rights [and] in the dignity and worth of the human person. ..." Consequently, discussions of human rights often refer to the importance of every person treating every other person with dignity. Closely related to this are the human rights to equality and for people not to be subjected to degrading treatment or discrimination. (See Appendix B, Universal Declaration of Human Rights, Articles 1, 2, 5, and 7.)

There is also a human right to own property and to not be deprived arbitrarily of it (see UDHR, Article 17).

Examine the facts of the case below from a human rights perspective.

The Case of the Teenagers and the Store Owner

Mr. Johnson, who is white, has owned "Smart Clothing," a clothing and shoe store in an urban area,

for over twenty years. The city used to be made up of a mostly (80 percent) white population, and most of Smart Clothing's customers were white. Crime—and in particular shoplifting—used to be very low, but the rate has risen in recent years. During those years more people of African American and Hispanic background have moved into the city, and they have become the principal (70 percent) customers of Smart Clothing.

During the past year, Mr. Johnson increased his security force in the store and even began to search some suspicious-looking customers as they left the store. He put up a highly visible sign for people as they entered the store. The sign reads: "Welcome to Smart Clothing. Because of an increase in shoplifting, all customers who shop here must agree to be subject to random searches as requested by the security guard. We apologize for the inconvenience, but reducing the incidence of shoplifting will result in lower prices for our law-abiding customers and enable us to stay in business."

During the past year there have been over 200 customers viewed as suspicious by the security guard and searched. In 50 cases, unpaid-for goods ranging from sneakers to jewelry to shirts and dresses have been discovered through these searches. In 40 of these 50 cases, the arrested shoplifters were

VANDALISM

Vandalism, also known as malicious mischief, is willful destruction of, or damage to, the property of another. Vandalism causes millions of dollars in damage each year. It includes such things as breaking windows, ripping down fences, flooding basements, and breaking off car aerials. Depending on the extent of the damage, vandalism can be either a felony or a misdemeanor.

PROBLEM 10.1

- Why do young people sometimes commit acts of vandalism?
- What, if anything, can be done to reduce vandalism?
- Should parents be criminally responsible for willful damage caused by their children? Why or why not?
- If you saw two youths throwing rocks through the windows of a school at night, would you report the youths to the police? Why or why not? Suppose you saw two friends throwing rocks through the windows of a neighbor's home. Would you report your friends to the police? Why or why not? Did you answer both questions the same way? If not, explain why.

Human Rights USA,*continued*

teenagers from 14 to 19 in age, and 90 percent of these were also either African American or Latino. Because of the high percentage of teenage and minority shoplifters, Mr. Johnson has instructed his security guards to "pay particular attention to these type people when they are in the store and to search them more often than white customers or adults."

Consequently, the security guards watch the African American and Latino teenagers very closely, sometimes walking right behind them the whole time they are in the store, and search them more frequently than white teenagers or adults.

Mr. Johnson and his security guards upset many African American and Latino teenagers and some of their parents by these actions. The parents believe the teenagers' human rights have been violated. Mr. Johnson says he is just trying to protect his own human rights and those of his other customers. He says the large increases in shoplifting have greatly

reduced his profits and that he may have to close the business if shoplifting continues at the same rate.

PROBLEM 10.3

- a. What human rights might the teenagers claim are being violated by the searches?
- b. What human rights might Mr. Johnson claim are being violated by the shoplifting?
- c. Whose human rights are more important in this situation? Explain.
- d. Role-play a meeting between Mr. Johnson, his security guards, and the teenagers. Also attending the meeting should be someone playing the role of a representative from a human rights council established by the local government to mediate tensions between people of different racial and ethnic groups in this community. Refer back to the steps for mediations on page 41 in Chapter 4.
- e. What other options might Mr. Johnson have for addressing the problem of shoplifting in his store? Were these or any other options discussed in the role-play?

LARCENY

Larceny is the unlawful taking and carrying away of the property of another with intent to steal it. In most states, larceny is divided into two classes, grand and petty, depending on the value of the stolen item. Grand larceny involves the theft of anything above a certain value (often \$100 or more) and is a felony. Petty larceny is the theft of anything of small value (usually less than \$100) and is a misdemeanor.

The crime of larceny also includes keeping lost property when a reasonable method exists for finding the owner. For example, if you find a wallet that contains the identification of its owner but nevertheless decide to keep it, you have committed larceny. Likewise, you may be guilty of larceny if you keep property delivered to you by mistake.

Shoplifting is a form of larceny. It is the crime of taking items from a store without paying or intending to pay for them. Some states have a separate crime called **concealment**. This is the crime of attempted shoplifting.

Defenses

For a conviction to occur in a criminal case, the prosecutor must establish beyond a reasonable doubt that the defendant committed the act in question with the required intent. The defendant is not required to present a defense but can instead simply force the government to prove its case. However, a number of possible defenses are available to defendants in criminal cases.

NO CRIME HAS BEEN COMMITTED

The defendant may present evidence to show either (1) that no crime was committed or (2) that there was no criminal intent. In the first case, a defendant might attempt to show that she was carrying a gun but had a valid license, or a defendant might attempt to show that he did not commit rape because the woman was of legal age and consented. In the second case, the defendant might attempt to show that he mistakenly took another person's coat when leaving a restaurant. The defendant is innocent of a charge of larceny if it was an honest and reasonable mistake.

DEFENDANT DID NOT COMMIT THE CRIME

Often, no doubt exists that a crime has been committed. In such cases, the question is, who committed it? In this situation, the defendant may present evidence of a mistake in identity or may offer an **alibi**, which is evidence that the defendant was somewhere else at the time the crime was committed.

Defense counsel summarizes the evidence presented at trial during the closing argument.



DEFENDANT COMMITTED A CRIMINAL ACT, BUT THE ACT WAS EXCUSABLE OR JUSTIFIED

Sometimes, a criminal act may be considered excusable or justified. Defenses in this category include self-defense and defense of property and others.

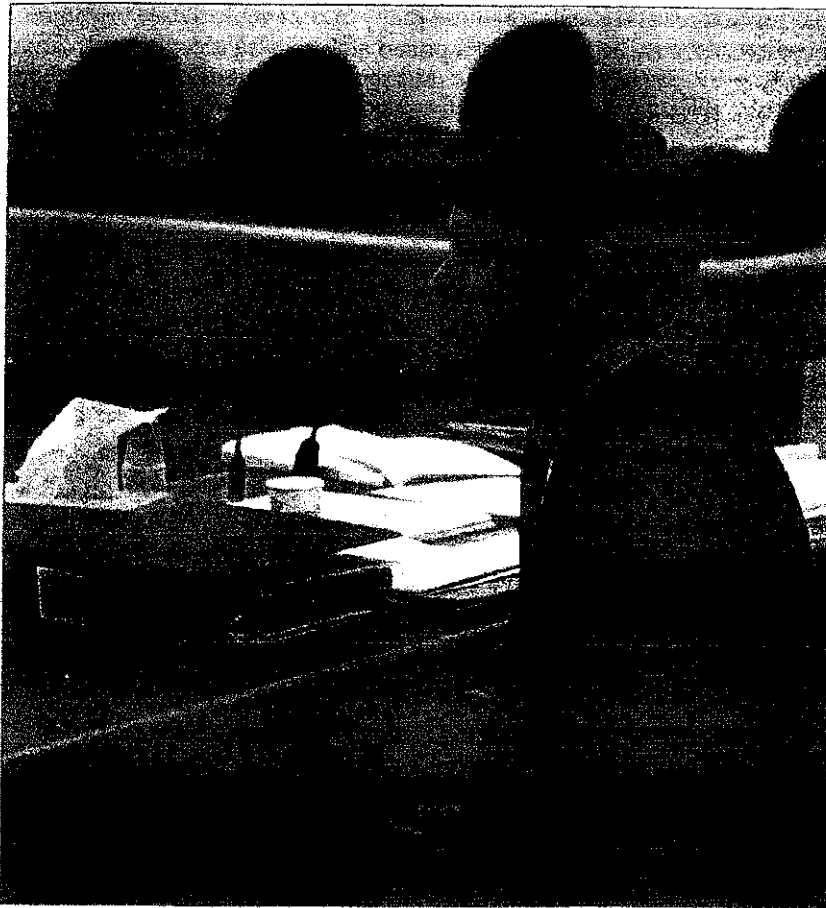
The law recognizes the right of a person unlawfully attacked to use reasonable force in self-defense. It also recognizes the right of one person to use reasonable force to defend another person from an attack that is about to occur. There are, however, a number of limitations to these defenses.

A person who *reasonably* believes there is imminent danger of bodily harm can use a reasonable amount of force in self-defense. However, a person cannot use more force than appears to be necessary. If, after stopping an attacker, the defender continues to use force, the roles reverse, and the defender can no longer claim self-defense. Deadly force can be used only by a person who reasonably believes that there is imminent danger of death or serious bodily harm. A person is also allowed to use deadly or nondeadly force to defend a third person if the person defended is entitled to claim self-defense.

Reasonable nondeadly force may be used to protect property. Some states have enacted controversial "make my day" laws, which give persons the right to use deadly force to defend their property against unwarranted intrusion.

PROBLEM 11.1

- a. Ms. Roe kept a pistol in her home as protection against intruders. One evening, she heard a noise in the den and went to investigate. Upon entering the room, she saw a man stealing her television. The burglar, seeing the gun, ran for the window, but Ms. Roe fired and killed him before he could escape. In a trial for manslaughter, Ms. Roe pleaded self-defense. Would you find her guilty? Why or why not?
- b. Mr. Peters has a legal handgun to protect his home against intruders and against the increasing crime in his neighborhood. One night, Takahiro, a 16-year-old Japanese exchange student, walks up Mr. Peters's driveway looking for a party. Takahiro thinks Mr. Peters is hosting the party and begins yelling and waving his arms. Mr. Peters gets scared, retrieves his handgun, and points it at Takahiro while yelling "Freeze!" Takahiro does not understand English and keeps walking toward Mr. Peters. Thinking he is an intruder, Mr. Peters shoots and kills Takahiro. Mr. Peters is charged with first-degree murder. Does he have a defense?
- c. The owner of a jewelry store spots a shoplifter stealing an expensive necklace. Can the owner use force to prevent the crime? If so, how much?



This lawyer was charged with possessing valuable artwork stolen from libraries, colleges, and museums. His defense was that he suffered from kleptomania and was, therefore, innocent by reason of insanity. Should this be a good defense for him?

(2) whether the defendant was sane at the time of the criminal act, and (3) whether the defendant is sane after the trial. The insanity defense applies only if the accused was insane at the time of the crime. Insanity at the time of trial may delay the proceedings until the accused can understand what is taking place. But insanity during or after the trial does not affect criminal liability.

In most states, there are three possible verdicts: guilty, innocent, or not guilty by reason of insanity. The last verdict results in automatic commitment to a mental institution in some states. In others, the judge or jury exercises discretion, sometimes in a separate hearing, to determine commitment of the accused. In recent years, a number of states have come up with a new verdict: guilty but mentally ill. About one-third of the states



How does the insanity defense work in your state? Is it difficult or easy for a defendant to raise the insanity defense and win in your state? Have there been recent changes? Are changes needed? If so, what are they?

have this verdict. Defendants found guilty but mentally ill can be sent to a hospital and later transferred to a prison after they've recovered.

To prove insanity, the defense must produce evidence of a mental disease or defect. Psychiatrists usually give testimony in this instance. Both the defense and the prosecution may have psychiatrists examine the defendant, and their testimony is often in conflict. The decision as to whether insanity is a valid defense rests with whoever—judge or jury—decides the facts of the case.

There is a great deal of controversy about the insanity defense. Three states—Montana, Idaho, and Utah—have abolished it entirely in their state courts. According to polling information, Americans believe (wrongly) that this defense has been successfully used by many heinous criminals. In fact, this defense is very seldom used. One eight-state study showed that it was used in about 1 percent of criminal cases. And when it was used, it was successful only about 25 percent of the time.

PROBLEM 11.2

- a. What is the insanity defense? How does it work?
- b. Should the insanity defense be kept as is, changed in some way, or abolished? Explain your answer.

Entrapment The entrapment defense applies when the defendant admits committing a criminal act but claims that he or she was induced, or

An underage investigative aide leaves this store after a salesclerk sold her alcohol without a valid ID. Should the police be able to use such undercover strategies?



persuaded, to commit the crime by a law enforcement officer. There is no entrapment when a police officer merely provides the defendant with an opportunity to commit a crime; rather, it must be shown that the defendant would not have committed the crime *but for* the inducement of the police officer. Entrapment is difficult to prove and cannot be claimed as a defense to crimes involving serious physical injury, such as rape or murder.

PROBLEM 11.3

Can entrapment be claimed as a valid defense in either of the following cases? Explain your answer.

- a. Mary, an undercover police officer masquerading as a prostitute, approaches John and tells him that she'll have sex with him in exchange for \$50. John hands over the money and is arrested.
- b. Marvin, a drug dealer, offers to sell drugs to Walter, an undercover police officer disguised as a drug addict. Walter buys the drugs, and Marvin is arrested.

Duress A person acts under **duress** when he or she does something as a result of coercion or a threat of immediate danger to life or personal safety. Under duress, an individual lacks the ability to exercise free will. For example, suppose someone points a gun at your head and demands that you steal money or be killed. You steal the money. Duress would be a good defense in this case if you were prosecuted for theft. Duress is not a defense to homicide, however.

Necessity An individual acts under **necessity** when he or she is compelled to react to a situation that is unavoidable in order to protect life. Suppose, for example, that a group of people is left adrift in a lifeboat and the lifeboat is so heavy with cargo that it is in danger of sinking. The group throws the cargo overboard to make the lifeboat lighter and more manageable. In this case, necessity would be a good defense to a charge of destruction of property. Necessity is not a defense to homicide.

Torts

When people think about the law, they often think about the police and about criminal law in general. As you already know, criminal law tells people what they cannot do and what punishment will be given out by the state if they are convicted of breaking the law. Most law, however, is not criminal. It is civil law. Civil law does not punish, but instead it protects people, helping them avoid problems and resolve disputes.

In this unit you will study torts—the largest area of civil law. Tort law encourages people to act responsibly by awarding money to victims who are harmed by wrongdoers. While tort law cases can be resolved by lawsuits, far more are settled without going to court. The mediation and negotiation skills you learned in Unit One are frequently used to settle tort cases.

Tort law will help you learn about

- your obligations as a babysitter;
- whether your younger brother or sister can be sued for pulling a chair out from under and injuring your friend;

- what kind of insurance (and how much) you need;
- what happens if you are injured on the job;
- whether you can recover money damages if you fall into a neighbor's unfenced swimming pool and are hurt;
- what steps you can take to protect your rights regarding a machine you invent or a song you write;
- whether you can recover money damages if you are bitten by the dog down the block; and
- what your rights are if you are injured by a consumer product.

Tort law also deals with some of society's most controversial issues. For example, should cigarette manufacturers who place a warning on cigarette packages be required to pay damages to a smoker who develops lung cancer as a result of smoking? Should gun manufacturers be required to pay damages to a youngster injured by a gun that didn't have a safety lock?

Torts: A Civil Wrong

"Torts is concerned with the allocation of losses resulting from the activities of people. It is an attempt to balance the utility of a particular type of conduct against the harm which it may cause, judged by the prevailing social and economic attitudes of the time."

—Legalines

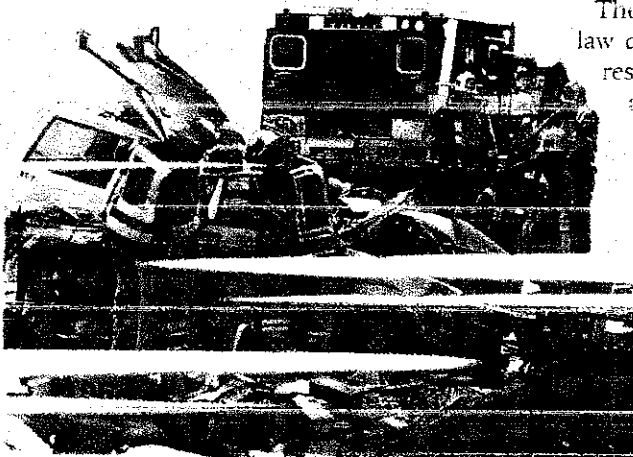
In criminal law, when someone commits a wrong, we call it a **crime**. In civil law, when a person commits a wrong, we call it a **tort**.

A crime is considered a wrong against all of society, even though there is usually a specific victim. The criminal is prosecuted and punished by the state. By contrast, civil law deals with wrongs against individuals. A harmed individual becomes the **plaintiff** in a civil law suit. The plaintiff seeks to win a **judgment** against the **defendant** (the wrongdoer). A defendant who loses the judgment in a civil case will not be punished with jail or other penalties associated with criminal law. Instead the defendant will be forced to compensate the plaintiff for injuries, usually by paying money **damages**.

Although a tort and a crime are two different things, the same activity can be both a crime and a tort. For example, a burglar who breaks into a house has committed a crime. A burglar who causes damage to the house or steals property has also committed a tort, and the victim may sue to recover damages.

THE IDEA OF LIABILITY

The rules that govern civil wrongs are called **tort law**. Tort law deals with basic questions such as (1) who should be responsible, or **liable**, for harm caused by human activities and (2) how much should the responsible person have to pay. Almost any activity—driving a car, operating a business, speaking, writing, or using property—can be a source of harm and therefore of tort liability.



Automobile crashes may result in civil lawsuits.

Knowledge of torts can help people resolve their conflicts, often without going to court.

For practical purposes, a tort occurs when one person causes injury to another person or to another's property or reputation. The injured party, the plaintiff, can take the alleged wrongdoer, the defendant, to court. Tort law provides the injured party with a **remedy**, something to make up for what was lost. This usually takes the form of money damages. For example, a person injured in an auto crash might receive \$5,000 in damages. Therefore, one purpose of tort law is to compensate people for their injuries. However, not all injuries result in compensation. A person may be injured in an accident through no fault of another person. In such cases, tort law generally provides no remedy.

Tort law also establishes standards of care that society expects from people. Simply put, the law requires us to act with reasonable care toward people and their property. Failure to exercise reasonable care may result in **legal liability**. The person harmed may sue the person who acted unreasonably for damages. Through the payment of damages, it is hoped that future injuries and losses will be prevented and that more reasonable behavior will be encouraged.



Who should pay for damages if this child falls?

PROBLEM 17.1

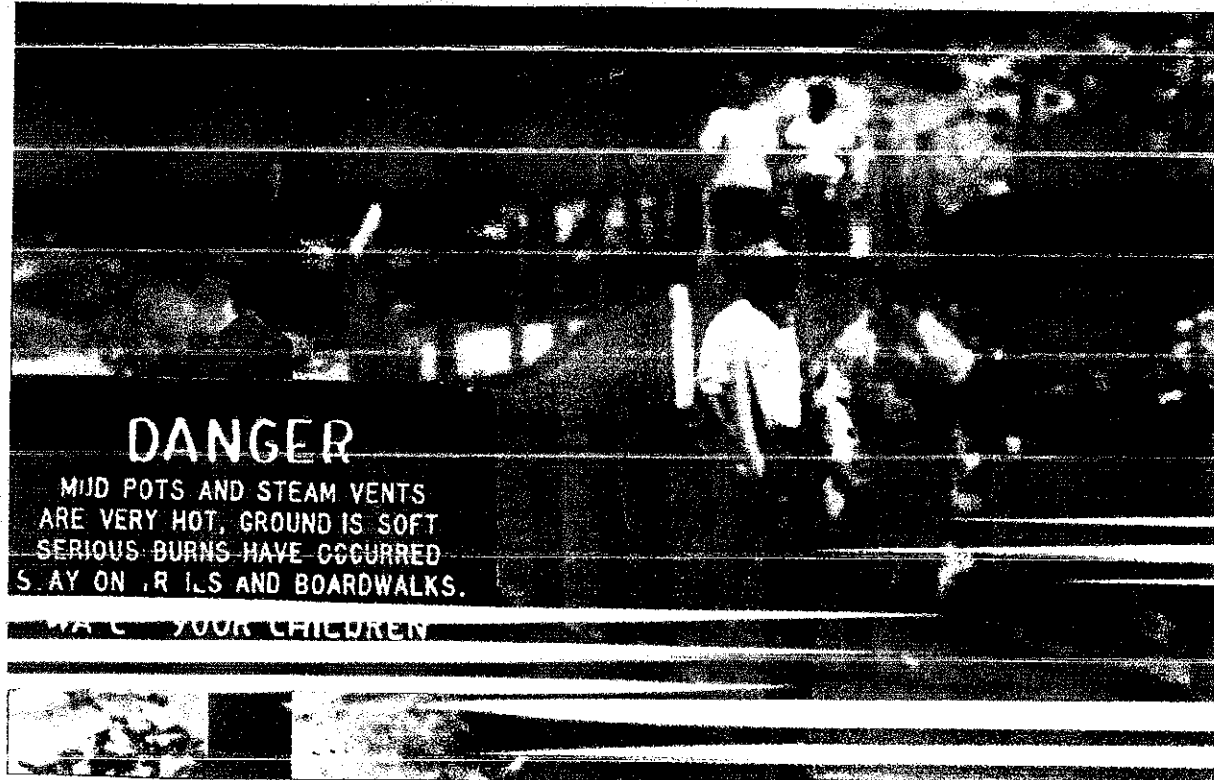
Read the following descriptions. Each case involves an injury. Assume that a civil suit is brought by the injured person. For each case (1) identify the plaintiff and the defendant or defendants and (2) determine whether the defendant should pay for the plaintiff's damages. Explain your answers.

- a. Fourteen-year-old Carrie is babysitting for four-year-old Jill. Carrie leaves Jill in the living room and goes into the kitchen to call her boyfriend. From the kitchen she can hear but not see Jill. While she is away, Jill falls off a chair and is hurt.
- b. Ben, a high-school football player, tackles a teammate in practice. When the teammate hits the ground, his shoulder is dislocated.
- c. Mr. Gundy owns a large apartment building. When his janitors wax the lobby floor, they place near the front door a 12-inch-square sign that reads: "Caution. Wet Floors." Mrs. Gonzalez is hurrying home from shopping carrying two large bags of groceries. She does not see the sign and slips and falls on the freshly waxed floor, injuring her knee and arm.
- d. Consuela leaves a sharp knife on the kitchen table after making a sandwich. A three-year-old neighbor who has been invited over to play with Consuela's daughter climbs up on a chair, grabs the knife, and seriously cuts his finger.
- e. Harry, a school bus driver, has a heart attack while driving the bus. The bus slams into a wall, injuring several students. One month earlier Harry's doctor had warned him of his heart condition.

- f. Matt and Sara are sitting in the upper deck behind first base at a major league baseball game. A foul ball hit by their team's star player bounces off a railing, smacking Matt in the head and giving him a concussion.
- g. Janet, an expert auto mechanic, continues to drive her car even though she knows that the brake linings are badly worn. Driving on a rain-slicked road at night, she skids into a bicyclist who is riding one foot away from the right curb.

Whenever a person is injured *someone* will bear the cost of the harm. Broken bones will create medical bills that must be paid. A hospitalized person will miss work and lose earnings. Damaged property will cost money to repair. Less tangible costs—such as emotional suffering—may also be a cost of an injury. Tort law is concerned with determining *who* will pay. When a person either purposely or through carelessness causes injury

Why has this warning been posted by the property owner?



to another, society usually thinks that the wrongdoer should bear the cost of the harm, rather than the victim. However, sometimes an injury is partially or entirely the fault of the victim, or nobody is at fault, as in the case of true accidents. In such cases, the victim will usually have to bear the costs of the injury.

Legal responsibility for harm (called **liability**) is not the same as moral responsibility. A person may be morally at fault for harming someone, but not civilly liable for the injuries. For example, assume you lie to a friend about the correct time, causing her to miss a job interview and not get a job. The lie would be morally wrong and would cause harm, but would not result in civil liability. Also, someone may be civilly liable for injuries to another without being morally at fault. For example, in strict liability cases (discussed later in this unit) the law makes certain parties bear the cost of injuries even though there is no proof of fault. However, moral fault is one of the many considerations that courts often look at in developing the law of torts and drawing the rules of who will pay for injuries people suffer.

Tort law provides a legal process for injured persons to recover money damages from wrongdoers who cause them harm. The two parties can simply meet and discuss how to compensate the injured person. The agreement they reach is called a **settlement**. If, however, they cannot agree on compensation, or if the noninjured person insists that he or she was acting reasonably when the injury occurred, then the injured party may decide to sue. In such instances, a trial may be conducted to decide the rights and liabilities of the parties.

Settlements are *much* more common than trials. Approximately 90 percent of tort cases filed in court are settled without a trial. For cases that do go to trial, there can be delays of a year or more between the time the case is filed in court and the trial.

The following example illustrates the tort law process. Sally claims that Martha shoved her, causing her to fall down a flight of stairs and break her leg. Sally wants \$5,000 from Martha to compensate for her injury. This dispute can be resolved in at least three different ways.

First, Martha could acknowledge that she acted unreasonably and agree to pay the \$5,000. This is called a settlement. However, a settlement does not have to be for the full amount demanded, and usually the amount is a compromise between the two parties. Besides negotiating a settlement, other forms of dispute resolution could allow Martha and Sally to avoid a civil trial (See Chapter 4).

Second, Martha could argue that she did not act unreasonably—that Sally ran past her, bumped into her, and then tripped down the stairs—and she could refuse to pay any money damages. If Sally wanted to recover the money, she would have to sue Martha in court.

In a third scenario, Martha might admit nudging Sally a bit but might claim that she should only have to pay \$4,000, because the \$5,000 Sally wants includes money for a subscription to cable television, a videocassette

recorder, and three movie cassettes that Sally bought when she was home in bed for two weeks. Here, the dispute is not about liability, but about the amount of damages. In this situation, Sally might accept Martha's \$4,000 offer, or she might sue for \$5,000. There is risk in not accepting the \$4,000, because if a court decides that Martha did not act unreasonably, Sally could recover nothing!

THE IDEA OF TORTS: YESTERDAY, TODAY, AND TOMORROW

The concept of a tort is not new. Judges in England were deciding tort cases in the 15th century. Tort law has always tried to balance the usefulness of certain conduct against the harm which that conduct might cause.

Tort law is generally based on **common law**. This is law made by judges through court decisions. These decisions become precedents used to decide future cases. Tort law may also be based on statutes. For example, in some states there is a law (statute) specifically providing that a person who is injured as a result of somebody furnishing alcohol to a minor may be awarded damages in civil court. The damages are paid by the person who served the alcohol to the minor. In other states, this same law exists as a result of an appellate court decision, rather than the passage of a statute.

There are a number of specific torts, which we will describe later in the chapter. There is also a saying that "for every interference with a recognized legal right, the law will provide a remedy." If you can convince a judge that you deserve compensation for some injury, you may occasionally be able to recover damages without fitting your case into an existing category of tort protection.

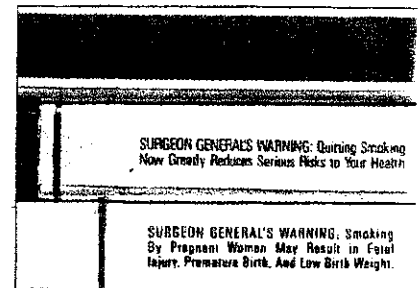
Tort law has evolved over time, reflecting changes in both technology and social values. Lawmakers must often decide whether a particular product is more useful than harmful to society. Imagine, for example, that a 19th century court was told that a new invention would carry six adults 60 miles in one hour (the usefulness of the machine). On the other hand, the machine would eventually cause thousands of deaths per year and would significantly harm the air we breathe (the harm caused by the machine). If producers of such a machine had been held liable for the many injuries they would surely cause, it might not have been profitable to build the machine. Would you have made the makers of this machine liable for damages they caused?

The machine, of course, is the automobile. Years ago, people might have considered automobiles more dangerous than useful. Technology and values change, however, and today the car—along with the many lawsuits it creates—is a permanent fixture in our lives.

Tort law today continues to balance usefulness against harm. For example, how safe must a drug be before the manufacturer is not considered legally responsible if the drug injures somebody? If a drug is discovered that saves the lives of many cancer patients but causes the deaths of some, should the drug manufacturer be liable for the deaths?

Tort law also tries to preserve individual choice. With a warning of the dangers of smoking prominently displayed on the package, adults are permitted to purchase cigarettes. This product may be more harmful than useful. However, some people argue that letting adults purchase cigarettes preserves their individual choice and that, in theory, the warning allows the individual to make an informed choice. Others criticize this government decision and argue that the sale of cigarettes should be restricted or banned.

Tort law is often at the forefront of public controversy and is closely related to economic and political, as well as legal policy decisions. As you will see throughout this chapter, tort cases involve a clash of values and interests. Arriving at fair solutions is rarely easy.



Should the government regulate the sale of cigarettes?

The Lung Cancer Death

Mrs. Garrett dies of lung cancer at the age of 42. Her family brings a civil suit against ABC Tobacco Company, the manufacturer of the cigarettes she had smoked daily for the previous 20 years. Her doctors say that cigarette smoking was the major factor leading to her death.

PROBLEM 17.2

- a. If you were the Garrett family's attorney, what arguments would you make at the trial? What evidence would you want to introduce?
- b. If you were ABC's attorney, what arguments would you make for the company? What evidence would you want to introduce?
- c. If you were the Garrett family's attorney, would you want a judge or a jury to decide this case? Why?
- d. Assume that each package of ABC cigarettes carries the following warning: "Caution: cigarette smoking can be harmful to your health." How should this case be decided? Give reasons for your decision.

TYPES OF TORTS

Tort liability exists for three major categories of conduct: intentional wrongs, negligence, and activities for which strict liability is imposed. An **intentional wrong** occurs when a person acts with the intent of injuring a person, his or her property, or both. For example, Jim is angry at Tom, so he intentionally smashes the windshield of Tom's car. Tom may sue Jim to recover the cost of damage to his windshield. Another example: Lucy writes a letter telling her friends that Andrew is a lazy drunk and a drug addict, when she knows this is not true. Andrew may recover damages from Lucy for harm to his reputation caused by her deliberate lie.

Intentional torts may also be crimes. In these cases, the defendant can be prosecuted by the state as well as sued by the plaintiff. However, punishing a criminal does not usually make up for the harm to the victim. A civil tort action is used to recover monetary damages.

The most common tort is negligence. **Negligence** is an unintentional tort. It occurs when a person's failure to use reasonable care causes harm. If a drunk driver accidentally hits a pedestrian, the driver is negligent. Although the driver did not intend to hurt the pedestrian, he acted unreasonably in driving drunk and will be liable for the harm caused to the pedestrian.

Strict liability differs from both negligence and intentional wrongs. It applies when the defendant is engaged in an activity so dangerous that

Why should customers carefully read the labels on medicines?



there is a serious risk of harm even if he or she acts with utmost care. In a strict liability case, there is no need to prove that the defendant was either negligent or intended to cause harm in order to recover damages. For example, suppose you are hit by a brick falling from a building being demolished. In this case, you do not have to prove that the contractor was careless in order to recover damages. Demolishing buildings is so dangerous that contractors are automatically responsible if a passerby is injured. Three groups of people face strict liability: (1) owners of dangerous animals, (2) people who engage in highly dangerous activities, and (3) manufacturers and sellers of defective consumer products.

Remember that not all injuries to you or your property will lead to a recovery under tort law. In some instances, harmful behavior may not be a tort. In other cases, the person causing the harm may have a legal defense to a tort action. In still other cases, the defendant may be liable, but may simply be too poor to pay for the harm to the plaintiff.

PROBLEM 17.3

Carefully examine each of the following situations and determine whether a tort has been committed. If there is a tort, do you think it is an intentional wrong, negligence, or an activity for which strict liability should be imposed? Give your reasons.

- a. José trips over his untied shoelace while running to catch a bus, breaking his ankle.
- b. Cheryl is caught smoking marijuana in school and is suspended by Ms. Miller, the vice-principal. Although Cheryl's mother knows her daughter sometimes uses this drug, she tells all the parents and teachers at the PTA meeting that Ms. Miller is a liar and a bad administrator.
- c. Mr. Garnett buys a strong pain killer at the drugstore and takes the capsules according to the directions on the package. He has an extremely bad reaction to the drug and has to be taken to the hospital.
- d. Meilei drinks too much alcohol at the office Christmas party. His supervisor, Ruth, advises him to take a taxi home, but he thinks he will be all right if he drives slowly. Not noticing a stop sign, he strikes and kills a pedestrian.
- e. After raking the leaves from their lawn, Skip and his father move the pile of leaves to an open area near the street and light it. A sudden gust of wind blows flaming leaves into a neighbor's garage and sets it on fire.
- f. Marsha's mother asks her to run to the corner store to buy a bottle of ginger ale that she needs to make a holiday punch for guests who will be arriving soon. Marsha buys the ginger ale and runs home. When her mother opens the bottle, the glass explodes, cutting her arm and face in several places.



How long is the delay between filing and trying a civil case in your local courts? What steps are being taken to reduce the delay where you live?

TAKING YOUR CASE TO COURT

Tort law is **civil law**. Civil law deals with disputes between individuals or groups of individuals. In a civil case, the injured party may sue the party who caused the damage. This differs from criminal law, in which the state brings charges against the accused. Criminal law deals with actions that are defined as crimes against the general public, even if there is an individual victim.

In some situations, an act can be both a tort and a crime. This may lead to two separate actions against the defendant. For example, Meilei (Problem 17.3 on page 203) may be sued for driving while intoxicated and killing a pedestrian. Meilei may also be charged with the crime of negligent homicide or manslaughter for his actions.

The criminal case will be brought by the state, which must prove that Meilei was guilty beyond a reasonable doubt. This is called the standard of proof.

The victim's family may also sue Meilei in civil court. In the civil case, the victim's family will attempt to recover damages for the wrongful death. The civil court will use "preponderance of the evidence" as the standard of proof. This standard requires that more than 50 percent of the weight of the evidence be in favor of the winning party. The civil standard is easier to meet than the criminal standard. This is appropriate, because the penalties for those found liable in a civil action are less severe than the penalties for those found guilty of a crime. A person does not go to jail for committing a tort, but instead pays damages to those injured.

Whom can a customer sue for food poisoning?



Who Can Be Sued?

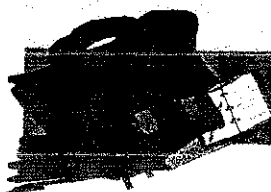
Almost anyone can be sued, including individuals, groups of individuals, organizations, businesses, and even units of government. Plaintiffs sometimes sue several different defendants at once. Typically, plaintiffs try to sue a defendant who has enough money to pay for the damages. This is called looking for a defendant with "deep pockets." For example, suppose you slip on a wet rag that the janitor left on the floor of a local restaurant. You break your leg as a result of the fall. You will probably sue the restaurant owner rather than the janitor because the owner will usually have "deeper pockets."

People can sue employers for torts committed by employees in the course of their employment. The reason for this rule is that the employer is in a better position than the employee to handle the cost of the suit. The employer may purchase liability insurance or raise prices, for example. In addition, imposing financial responsibility on the employer will encourage that person to be very careful when hiring, training, and supervising employees.

Children commit torts and may be sued for damages. To recover damages from a **minor**, you have to prove that the child acted unreasonably for a person of that age and experience. Because most children do not have very "deep pockets," plaintiffs also sue the child's parents. For example, assume a child leaves toys on the front step, injuring a visitor who trips on them. The visitor may sue the parents and try to prove that they were negligent in failing to supervise their child.



Are parents responsible for torts committed by their children in your state? Should they be?



The Airline Explosion

A bomb was smuggled onto an international flight from Frankfurt, Germany, to New York City. The flight carried 259 passengers, many of them students returning from a European trip, along with a crew of 11. The bomb exploded over a small town in Scotland, killing everyone on board.

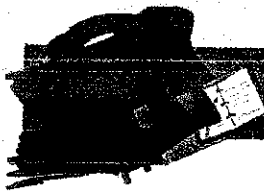
PROBLEM 17.4

- Could the families of those who died bring a class action? Explain.
- Who are the possible defendants in this case?
- Which defendant would have the "deepest pockets"?
- Which defendant, if any, should be held liable?

The president, federal judges, and members of Congress are totally immune from tort liability for acts carried out within the scope of their duties. However, in the 1997 case of *Jones v. Clinton*, the U.S. Supreme Court found that the president was not immune from being sued while in office for a tort he allegedly committed before he was president. Other high-ranking officials, including members of the cabinet and presidential aides, have qualified immunity, meaning that they can be sued only if they knew or should have known that their acts were violating the legal rights of another person.

Sometimes there can be more than one plaintiff or injured party. In some cases, hundreds of people may be injured by one action. When this happens, the injured parties may be able to form a "class" and bring their lawsuit together. This is called a **class action**. For example, if an entire town gets its drinking water from the same source and a company pollutes the water, the townspeople may get together and file a class action suit against the company. The settlement or damage award will be divided among the townspeople who bring the suit.

Individuals wishing to file a tort action should hire an attorney to handle the filing of the legal papers, the negotiations with the other side, and,



The Spilled Peanut Butter

Mr. Grant is in Foodland Supermarket doing the weekly grocery shopping. His four-year-old daughter Jenny is seated in the shopping cart. As they pass a large peanut butter display, Jenny reaches out and pulls a jar off the shelf. The display collapses, and a dozen jars come tumbling down. Some of the jars break, spreading peanut butter and glass all over the floor. Mr. Grant scolds Jenny severely as he wheels her down the aisle.

Ten minutes later, Mrs. Hightower slips and falls on the peanut butter. She breaks her hip in the fall and suffers several deep cuts from the broken glass.

Because she is elderly, the hip injury turns out to be quite complicated and may never heal properly.

PROBLEM 17.6

- Whom should Mrs. Hightower sue for damages? Why?
- Who, if anyone, was at fault in this case? Give your reasons.
- What methods other than a civil trial could the plaintiff use to deal with this situation? How would these methods work? (Refer back to the materials on mediation and negotiation on pages 39–44.)

CHAPTER 19

Negligence

"In all civil acts the law doth not so much regard the intent of the actor, as the loss and damage of the party suffering."

Lambert v. Bessey (1681)

We have already examined intentional torts and their defenses. Another type of tort is called **negligence**. Tort law establishes standards of care that society expects from people. Negligence is conduct that falls below the standard established by law for protecting others against unreasonable risks of harm. But what does this mean?

The word *negligence* comes from the root word *neglect*. This may lead us to think of negligence as forgetfulness, inattentiveness, or lack of care about others. But tort law requires us to analyze negligence as it relates to a person's *conduct*. Even a person who cares a great deal about others may be negligent if his or her conduct creates an *unreasonable risk of harm*. On the other hand, a person who is totally unconcerned about the safety of others may not be negligent if his or her conduct did not subject the plaintiff to an unreasonable risk of harm.

These are some examples of negligent conduct:

- Dr. D'Angelo, a surgeon, forgets to remove a clamp from a patient's body while operating and stitches the patient up.
- Monica leaves a loaded rifle on the floor where her younger brothers and sisters usually play. A child is shot.
- A city employee working in a manhole forgets to replace the cover when he goes to lunch and a pedestrian falls in and is injured.
- A drug company markets a birth control device for women without conducting adequate medical testing. It assumes the device is safe because people have used similar devices for years. A woman develops a serious illness from using the device.



What risks of harm can be created by public works projects?

ELEMENTS OF NEGLIGENCE

When we studied intentional torts, there were names for many of them (such as battery, assault, and false imprisonment). For the most part, negligence is a very broad term that deals with many kinds of wrongful conduct. While the different types of wrongful conduct may not have separate names, they do have something in common: for a plaintiff to win a negligence action against the defendant, each of the following **elements** must be proven by a preponderance of the evidence:

1. **Duty:** The defendant, or wrongdoer, owed a duty of care to the plaintiff, or injured person.
2. **Breach of duty:** That duty was violated, or **breached**, by the defendant's conduct.
3. **Causation:** The defendant's conduct caused the plaintiff's harm.
4. **Damages:** The plaintiff suffered actual **damages**.

All of these elements must be proven or the plaintiff will not prevail. For example, in the case of the drug company described above, the woman would have to prove each of the elements of negligence by a preponderance of the evidence against the company. Specifically, she would have to prove that the company had a duty of care to its customers to adequately test any new birth control product before selling it, that the company breached this duty through its failure to adequately test, and that this breach resulted in a defective product that caused actual damage to the woman bringing the lawsuit (ill health, hospital bills, and so on).

As in intentional torts, defendants in negligence cases sometimes have legal defenses. These defenses are different from those used in intentional torts. They are explained below.

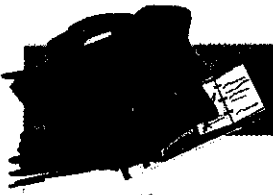
DUTY AND BREACH

Everyone has a general duty to exercise reasonable care toward other persons and their property. Negligence law is primarily concerned with compensating victims who are harmed by a wrongdoer's action or inaction that violates or **breaches** this standard of reasonable care. If a mechanic fixes the brakes on your car without using reasonable care and skill and this faulty repair causes you to have an accident, you can recover damages from the mechanic.

What if someone is harmed by another person's inaction? For example, Brian is drowning in a lake and Jennifer, an expert swimmer, is passing by in a boat. Does she have a legal duty to rescue Brian? While she may have a moral obligation to help, she generally does not have a legal duty to act unless there is some special relationship between them (for example, she is a lifeguard and he is drowning in an area she is supervising).



Is there a law in your state requiring a person to protect another from harm if it can be done safely? Should there be such a law?



The Spilled Coffee

In 1994, 79-year-old Stella Liebeck bought a cup of coffee from the drive-thru window at a fast food restaurant. While the car, driven by her grandson, was stopped to allow her to put cream and sugar in her coffee, she balanced the cup between her knees and attempted to remove the lid. The coffee spilled, causing third degree burns to over 6 percent of Liebeck's body and causing her to spend eight days in the hospital and undergo skin graft operations. Liebeck sued the restaurant for damages.

The restaurant was part of a large national chain that served its coffee at approximately 180 degrees, despite the fact that coffee at such a high temperature is too hot to drink. At the trial, the chain's quality control manager testified that the sale of any food over 140 degrees would create a burn hazard.

The restaurant argued that, according to its surveys, many of its customers bring coffee back home or to work with them and consume it there, so the higher holding temperature is necessary to assure that it is still hot when consumed. They also claimed that many of its customers chose this particular chain because their coffee was served so hot. Between 1982 and 1992 the chain was aware of 700 claims by people burned from their coffee.

The jury awarded Liebeck \$160,000 in compensatory damages (finding her 20% at fault for her own negligence) and \$2.7 million in punitive damages (the equivalent of two days of the chain's coffee

sales). The trial judge reduced the amount of punitive damages to \$480,000 and the parties eventually came to a secret settlement agreement for an undisclosed amount.

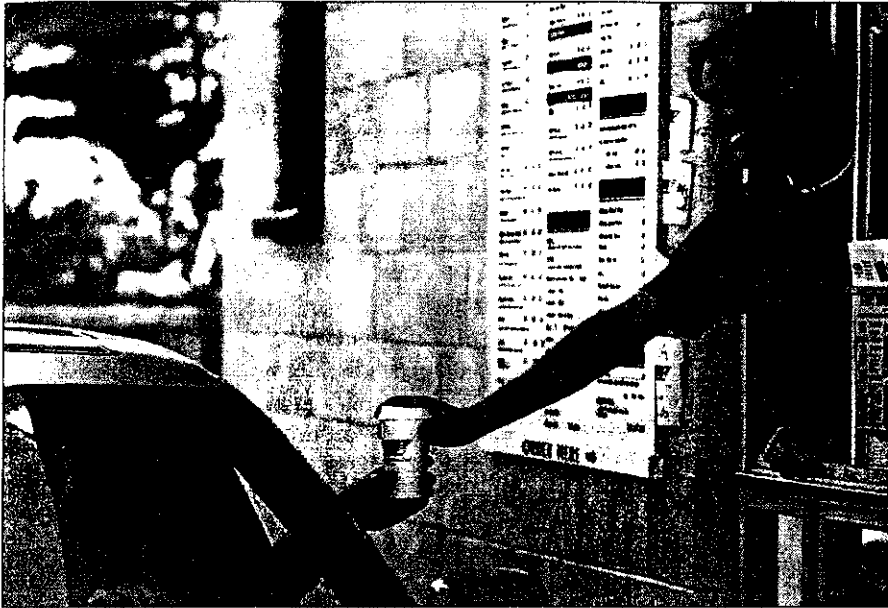
The case launched a public debate about the appropriateness of lawsuits with high damage awards in situations such as this one.

PROBLEM 19.1

- a. Who is the plaintiff in this case? Who is the defendant?
- b. What, if anything, did the defendant do wrong? What, if anything, did the plaintiff do wrong?
- c. Did the defendant cause her harm on purpose? Did the defendant's conduct in some way cause the harm suffered by the plaintiff?
- d. Do you agree or disagree with the outcome of this trial? Give your reasons.
- e. What are the arguments for and against the award of punitive damages in a case like this one?

The Reasonable Person Standard

Everyone has a duty toward everyone else in society: the duty to act reasonably. If you act unreasonably, then you have breached this duty. If the breach causes damage, then you will be liable for damages.



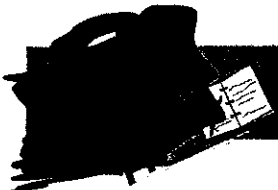
What duty does the seller have?
What duty does the buyer have?

To help judge whether certain conduct is negligent, the law has developed an imaginary creature—"the reasonable person of ordinary prudence or carefulness." The reasonably prudent person does not represent the typical, average individual. Rather, this is an idealized version of such a person. This person acts the way a community *expects* its members to act, not exactly as they do in fact act. However, this ordinary, reasonable person is human and therefore not perfect.

How does the reasonable person behave? The reasonable person considers how *likely* a certain harm is to occur, how *serious* the harm would be if it did occur, and the *burden* involved in avoiding the harm. The likelihood and seriousness of the harm are balanced against the burden of avoiding the harm.

For example, assume a pedestrian is about to cross a road where there is very little automobile traffic. The harm to be avoided, of course, is being hit by a vehicle. Our imaginary person asks: How likely is it that such an accident will occur? Not very likely. How serious would the harm be if it did occur? Very serious. How difficult would it be to avoid this harm? Not difficult at all: simply look both ways before crossing. Our reasonably prudent person looks both ways before crossing such a street.

In a second example, the walkway to a secluded home in the woods has a crack in it. The crack is large enough to allow a person to trip and fall. This is the harm to be avoided by the homeowner. In this instance, the likelihood of the harm is small, the harm is probably not very serious, and



Bartender Liability

Lance is a bartender at the local pub. He sees that Mike and Nancy, two regular customers, are clearly intoxicated. They ask him for one more round of drinks before they leave. Not wanting to offend them, he serves them, saying, "Let's make this the last round." Thirty minutes later the couple leaves the bar to go home. Just after Nancy pulls her car onto the highway, she swerves and hits another car head-on. Mike and the driver of the other car are seriously injured.

PROBLEM 19.2

- a. Who can sue whom in this situation?
- b. What duty did Lance have in this situation? Did he violate that duty?
- c. Now assume that Lance is hosting a private Christmas party in his home. During the party, Nancy and Mike have a little too much to drink. The rest of the facts are the same as above. Answer Questions a and b using this scenario.
- d. Is it fair to hold Lance responsible in either of the situations above? Give your reasons. Is anyone else responsible? If you were at the bar or the party and knew Mike and Nancy, what would you do?
- e. Some restaurants and bars have "designated driver" programs. Why have they done this? What else, if anything, should be done?

the cost of avoiding it (fixing the walkway) may be substantial. Even our reasonably prudent person may not have to fix this crack in the walk. However, it may be reasonable to post a sign warning of the danger, because the burden (cost) of the sign would be less than the burden of making the repair.

The law assumes that reasonable people do not break the law! Therefore, if somebody violates a law (such as a statute that prohibits people from going through a red traffic light), then they are automatically considered to have breached the duty to act reasonably. If the breach causes injury, then the wrongdoer is negligent. For example, a federal transportation regulation requires all manufacturers of automobiles to provide seat belts in every new car. If car makers do not provide seat belts, not only have they broken the law, but they have also automatically breached the duty to act reasonably. If this breach causes damage, the manufacturer may be held liable in civil court.

Certain professionals, such as doctors, plumbers, and pilots, are considered to have the abilities of reasonably skilled persons qualified to be members of their professions. For this reason, a plumber who repairs a kitchen sink that later leaks and damages the floor cannot defend against a tort action by claiming that he completed the job as skillfully as the ordinarily prudent person. The work must be at the level of the ordinarily prudent plumber!

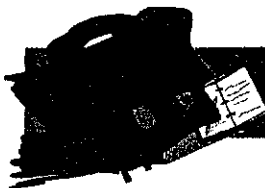
As you know, minors are liable for torts they commit. However, the standard used in negligence cases involving minors is not the same as it is for adults. Instead, the law compares the minor's conduct with reasonable conduct for others of the same age, intelligence, and experience. When a minor reaches the age of majority, the adult standard of care applies. There is one important exception to this rule: when minors engage in what is ordinarily considered an adult activity, such as driving a car, they are held to the adult standard of care.

CAUSATION

Once a plaintiff proves that the defendant owes him or her a duty and that this duty was violated, there must be proof that the defendant's acts caused the harm to the plaintiff. While it seems like common sense to



Professionals—like this plumber—are held to a standard of care that is higher than that of a reasonably prudent person. What is that standard of care?

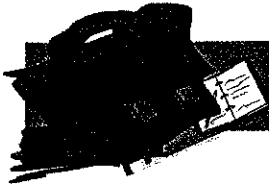


AIDS Liability

Jim is infected with HIV, the virus that causes AIDS. He is new in town and does not want anyone to know about his condition. He becomes romantically involved with Amy and has unprotected sex with her, but does not disclose his infection with HIV. Amy contracts the virus.

PROBLEM 19.3

- a. Did Jim have a duty to tell Amy about his condition? Explain.
- b. Would it make a difference if AIDS were curable?
- c. What, if anything, should Amy be able to recover in damages from Jim? Explain.
- d. Could Amy sue Jim if she did not contract the virus but was very upset when she learned that he had not told her about it?

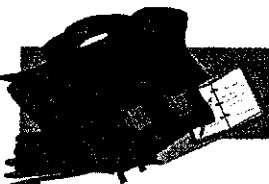


The Blood Transfusion

Highland Hospital has just acquired machinery that can test blood for HIV. Previously it relied on the honesty and knowledge of blood donors to ensure that the blood was safe. Mr. Laden is brought to the emergency room after an accident. He needs emergency surgery and has already lost a lot of blood. The doctors, believing that he will probably need a transfusion, request several units of his blood type, but they do not have time to test the blood with the new machine. Without immediate surgery, Mr. Laden may die.

PROBLEM 19.4

- a. Should the doctors proceed with the surgery even though the blood they need for the transfusion is untested?
- b. Assume they use the blood, Mr. Laden recovers from his injuries, and several months later he tests positive for HIV. As Mr. Laden's attorney, what arguments would you make?
- c. As the hospital's attorney, what arguments would you make?
- d. How should this case be decided? Give your reasons.



The Stolen Car

Alan, 17, lends his car to his friend Esther, 16, so that she can pick up her prom dress. Esther drives to a large shopping center on the outskirts of town. As she hurries into the store to pick up the dress, she leaves the keys in the car and the driver's side door unlocked. When she returns 10 minutes later, the car is gone. Esther calls Alan immediately, and he reports to the police that the car has been stolen. The car cannot be found.

PROBLEM 19.5

- a. Can Alan sue Esther for the value of the car? Give your reasons.
- b. Would it make a difference if Esther did not yet have a driver's license and Alan knew this? Explain your answer.



An artist's rendition of how the Great Chicago Fire started.

require a causal connection between the act complained of and the plaintiff's injury, the concept is sometimes troublesome to apply. For an interesting historical example, see the Case of the Great Chicago Fire on page 246.

When you think about the element of causation, you must consider two separate issues: **cause in fact** and **proximate cause**. Cause in fact is easy to understand. If the harm would not have occurred *without* the wrongful act, the act is the cause in fact. If Mrs. O'Leary had not placed the lantern too close to the cow, it would not have been kicked over, and the Great Chicago Fire would not have occurred. Her act was the cause in fact of the fire.

It is often hard to draw the line in proximate cause situations. The basic idea behind proximate cause is that there must be a close connection between the wrongful act and the harm caused. The harm caused must have been a foreseeable result of the act or acts. Negligence law does not hold people responsible for harm that was completely unforeseeable.

The more difficult part of causation is establishing proximate cause. Would it have been fair to make Mrs. O'Leary pay for all the damage caused in the Chicago fire? A certain amount of damage from her wrongful act was **foreseeable**. At some point, however, the damage to the city of Chicago was greater than what could have been foreseen when she negligently placed the lantern near the cow.

Intentional Torts

"Torts' more or less means 'wrongs' . . . One of my friends [in law school] said that Torts is the course which proves that your mother was right."

—Scott Turow, 1949—
(American lawyer and author)

There are two general types of intentional torts: those causing injury to persons and those causing harm to property.

Small children have a natural understanding of what it means to act **intentionally**. When a mother scolds her child for breaking something, the child may plead: "but it was an accident. I didn't do it on *purpose*!"

A person who wants to do a certain act and then does it is said to have acted with intent. A child who knocks a glass off the table on purpose does it intentionally. This is true even if the child genuinely hoped the glass would land softly on the rug unharmed, rather than shattering into a million pieces. In the law of torts, the required intent is to do the forbidden act (i.e., knocking the glass off the table), not a bad motive or a desire to cause harm (i.e., breaking the glass).

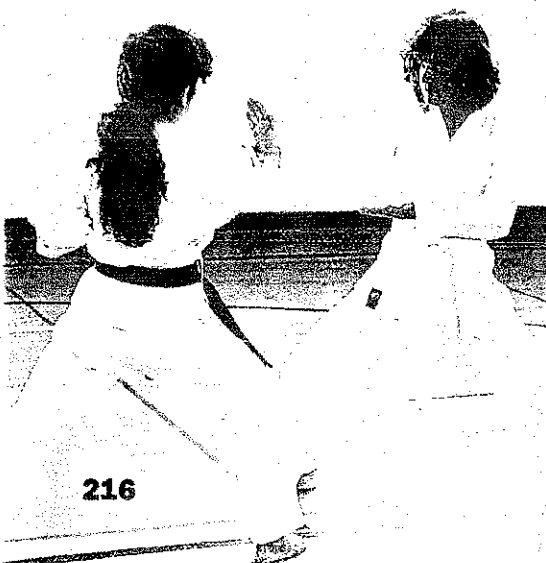
A person who proves that someone else committed an intentional tort against him or her can recover damages to make up for the harm caused.

TYPES OF DAMAGES

These are called **compensatory damages**, because the award compensates for harm caused by the defendant. For example, when Geri is punched by Stan, she receives damages of \$6,000 to cover her hospital bills. These are compensatory damages.

Compensatory damages can also include lost wages and pain and suffering. The plaintiff has to prove any future losses (such as medical bills, reduced or lost wages, and pain and suf-

If one of these women injures an attacker while defending herself, can the attacker recover damages from her?



The Mischievous Child

Dailey, a 5-year-old child, was playing in the backyard when an elderly woman, Garrett, went outside to sit down. The child pulled the lawn chair away just before Garrett sat down, and Garrett fell to the ground and fractured her hip.

Although Dailey did not want to hurt Garrett and did not believe she would be hurt, the child was aware that if he pulled the chair away as Garrett was sitting down she would almost certainly land on the ground.

PROBLEM 18.1

- a. Did Dailey act intentionally? Is a five-year-old too young to act intentionally or to understand the significance of his actions?
- b. Did Dailey cause Garrett's fall? Explain your answer.
- c. Can Dailey be sued by Garrett and forced to pay for her injuries? Can Dailey's parents be sued?
- d. Should it matter that Dailey honestly did not mean to hurt the woman?
- e. Would the legal outcome be different if the child had been running in the yard and tripped over the chair just as Garrett was sitting down, leading to the same injury to her? Explain your answer.

fering) with reasonable certainty. Juries decide how much money will fully compensate the injured person for pain and suffering.

In some cases, the plaintiff can recover **nominal damages** (that is, just a token amount, such as one dollar). These are symbolic awards of money. Nominal damages are awarded to recognize that the defendant was wrong even though he or she did not cause substantial injury or loss. For example, suppose Juan slapped José in an argument. In court, it is shown that even though Juan wrongfully slapped José, José suffered no injury. The court might award one dollar in nominal damages to José.

Punitive damages are amounts of money awarded to the plaintiff to punish the defendant for malicious, willful, or outrageous acts. Punitive damages serve as a warning to others not to engage in such conduct. Both nominal and punitive damages can be awarded for intentional torts.

It is possible for nominal and punitive damages to be awarded even where there is little or no actual harm that would justify compensatory damages. Suppose that Betty shoots a gun at Mark and misses him. This is

an intentional tort. The court could award both nominal damages (because there was no actual harm) and punitive damages (because Betty's act was so outrageous).

Sometimes people sued for intentional torts do not have to pay any damages at all, even though they did exactly what the plaintiff claims. In these instances, the defendant may have a **legal defense**.

TORTS THAT INJURE PERSONS

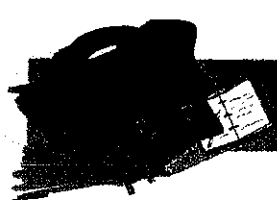
The following sections will explain the most common intentional torts.

Battery A battery occurs when a person intentionally causes a harmful or offensive contact with another person. The person who intentionally causes the harmful or offensive contact is liable for all resulting damages, regardless of whether he or she wanted or expected the contact to cause injury. For example, Elaine became angry at Jerry and shoved him toward the window. Although the shove was not hard, he fell back through an open window and suffered serious injuries. While Elaine did not want him to suffer such serious injury, she will be liable for damages if Jerry sues her for battery.

What is a harmful or offensive contact? Certainly a punch in the nose or a gunshot through the chest are harmful (and offensive) contacts. But what about an unwanted kiss on the cheek? The law considers offensive to be whatever would offend an average person in society. For example, because most people would not be offended by a light tap on the shoulder accompanied by a pleasant "excuse me, sir, do you have the time?" such a touch would not be a battery, even if it somehow led to an injury.

Assault The tort of assault occurs when a person intentionally puts someone in fear of an immediate harmful or offensive contact. For example, if Jeb throws a rotten tomato at Coby's head, Jeb has committed the tort of assault, even if Coby ducks at the last instant and does not get hit. If Coby fails to duck and the tomato does hit him, there has been an assault, and there has also been a battery. While battery requires a harmful or offensive contact, assault merely requires *fear* that a harmful or offensive contact is about to occur.

For assault to occur, the fear of harmful or offensive contact must be reasonable or well-founded. For example, assume Bill is stopped at a traffic light and Monica is crossing the street in the intersection in front of Bill's car. Monica suddenly becomes overwhelmed by a terrible feeling that Bill is going to step on the gas and run her over, and she has a heart attack. There is no assault, because Monica's fear was not reasonable. Also, Bill did not intend to cause her fear of an immediate harmful or offensive contact.



Fisher v. Carrousel Motor Hotel, Inc.

In 1967, an African American mathematician who worked for a government agency was attending a telemetry conference at the Carrousel Motor Hotel in Texas. While in line at the cafeteria waiting to pay for his lunch, an employee of the hotel snatched the tray from out of Fisher's hand and shouted that a "Negro could not be served in the club." Although Fisher was not physically harmed, he was shocked and embarrassed in front of his colleagues.

PROBLEM 18.2

- a. Did the employee cause a physical contact with Fisher? If so, was it an offensive contact? Would you feel differently if the employee had snatched the tray, said "Let me carry that for you, sir," and proceeded to bring the tray to Fisher's table?
- b. If Fisher was not physically injured in any way, should the law allow him to be awarded damages? Explain your answer.
- c. Why might a person bother to go to court to win damages in a case like this?
- d. In what ways does the definition of battery help protect people's dignity from being violated?

For an assault, the plaintiff can recover for mental disturbance, such as fright or embarrassment, along with any physical injury that directly results from the assault.

PROBLEM 18.3

- a. Lenny is a successful (i.e., rich) bank robber. He is also careful not to harm bank tellers. In fact, he always uses weapons without bullets. Unfortunately for Lenny he holds up one bank too many, and the police catch him. The day before he is caught he had stuck an unloaded gun into the face of Cynthia, the teller at the Last National Bank. Cynthia wants to bring a civil suit for assault against Lenny. Will she be successful?
- b. The tort of battery can be committed against someone who is asleep or unconscious, but the tort of assault cannot. Explain.

Infliction of Mental Distress A relatively new tort is intentional infliction of mental distress. Courts have only recognized it since about 1940. A person commits this tort by intentionally using words or actions that are meant to cause someone fright, extreme anxiety, or mental distress. Actual physical injury is not required for the plaintiff to recover. However, courts do require that the defendant's conduct be quite outrageous and that the plaintiff prove extreme distress. Mere insults are not enough to form the basis of a lawsuit for mental distress.

When the actions of bill collectors, insurance adjusters, and landlords have been truly outrageous and excessive, courts have sometimes allowed plaintiffs to recover damages. For example, a young man owed a debt to a store. The store tried to collect the debt from the youth's father by falsely accusing him of guaranteeing the son's debt, making late-night calls to the father and sending letters telling the father that his credit had been revoked. In this case, the court found that the store had intentionally caused the father severe emotional distress.

Extremely outrageous conduct by restaurants, hotels, or transportation companies can also sometimes form the basis for the tort of mental dis-



The Taunted Worker

Harris worked for General Motors under the direct supervision of Jones. Harris suffered from a severe speech impediment that caused him to stutter. He was very sensitive about his speech impediment. Over the course of five months, Jones approached Harris on thirty occasions to make fun of him, mockingly shaking his head up and down and stuttering as he insulted Harris.

Harris complained to his committeeman (an employee representative who dealt with grievances) to no avail, which only prompted Jones to further harass Harris for complaining to the "committeeman" as Jones mockingly put it. Harris became extremely nervous after months of abuse and his speech impediment got worse.

PROBLEM 18.4

- a. Did Jones "intend" to inflict emotional distress on Harris? Was his behavior "extreme and outrageous"?
- b. Did Harris suffer "severe" emotional distress?
- c. How should Harris' lawsuit for intentional infliction of emotional distress be decided?
- d. Why might Harris want to sue General Motors as well as Jones? Assume that Jones is liable. What are arguments for and against making the company (General Motors) financially responsible for paying damages?

trepreneur. These businesses, and certain others, have a special obligation to deal with the public in a courteous manner.

Recovery for this tort is sharply limited to keep the legal system from being flooded with lawsuits brought by persons suffering from unkind, inconsiderate acts. In addition, there is some value for a free society in letting angry people blow off steam without fear of being sued. Among the legal defenses that can be used are that the defendant's conduct was not outrageous, that the plaintiff is overly sensitive, and that a reasonable person would not suffer extreme distress as a result of the defendant's conduct.

PROBLEM 18.5

Give a specific example of a situation in which you believe someone should be able to recover for infliction of mental distress. Write the dialogue, showing exactly what was said and done by each party. Determine the amount of damages that should be awarded.

False Imprisonment Being able to sue for false imprisonment protects a person's interest in being free from unreasonable restraint. False imprisonment does not mean being kept in jail or even arrested by police. It occurs when someone intentionally and wrongfully confines another person against his or her will.

For example, assume that a restaurant manager tells an employee to get out of the walk-in refrigerator so she can lock up and go home. When the employee takes too long, the manager shuts the refrigerator door and leaves for the night. The restaurant manager has committed the tort of false imprisonment.

Suspected shoplifters sometimes sue shopkeepers who detain them. In balancing an individual's right to be free from confinement and a shopkeeper's right to protect his or her property from theft, the law recognizes a shopkeeper's privilege to temporarily detain a person suspected of shoplifting. However, shopkeepers must act reasonably, using no more restraint than is necessary to protect their property.

Torts Related to Defamation A person's reputation is protected by the law of defamation. There are two kinds of defamation. Oral statements that harm reputation are called **slander**; written defamation is called **libel**. Damages are often more difficult to prove for slander than for libel.

Defamation occurs when a person makes a false statement that is communicated to a third party (not just to the person defamed), causing harm to the plaintiff. A patient's telling his doctor "You're a drunken butcher" is not slander if no one else hears the statement. If the patient yells this false

The Captured Shoplifter

Kathleen, 17, is in a record store. As she passes a rack of compact discs, she quickly slips one under her jacket. Thinking that no one has noticed, she turns to leave the store. The store manager, however, was watching her on a closed-circuit television. As soon as she passes the cash register, he stops her, before she leaves the store.

PROBLEM 18.6

- a. The store manager has several options. Rank the following in order of most reasonable to least reasonable:
 1. The manager calls the police and keeps Kathleen in his office until they come.
 2. The manager tells an assistant manager to keep Kathleen in the back room until the police arrive. The assistant manager
 - is called away on another task, and he ties Kathleen's hands and feet together so she cannot run away.
 3. The manager yells "Stop, you thief" as he runs after Kathleen in the store, and he shouts at her as he walks her back to his office. Then he calls her parents and tells them he is taking her to the police station immediately.
 4. The manager locks Kathleen in the storage room for seven hours, until he is ready to close the shop for the evening. Then he takes her to the police station.
 5. The store manager tells his security guard to arrest Kathleen. The guard pulls a gun, takes her to the back of the store, and calls the police.
- b. Would any of these alternatives qualify as false imprisonment? If so, which ones and why? What should a shopkeeper do if he or she catches a shoplifter?

statement in the hospital hallway where others can hear it and the doctor's reputation is harmed, a tort has been committed.

Proving that the offensive statement is *true* is a complete defense to defamation. For example, Sid brings his car to a garage and yells at the mechanic "You ruined my transmission!" in front of other customers. This statement might be harmful to the mechanic. But if Sid can prove that the mechanic *did* ruin his transmission, he has a good defense to slander charges.

The law also protects opinion. Assume that a movie critic attends a new movie and, in her review, is particularly critical of one actor's performance. The movie review may harm the actor's reputation and economic interests, but the statements will usually be protected as opinion.

Shelter for Street People

In order to prevent homeless citizens from freezing during the winter, Big Town passes an ordinance. It requires its social-service workers to pick up homeless street people whenever the nighttime temperature is predicted to fall below 35 degrees. The homeless people are then taken to a city shelter and provided with food, clothing, and a bed. They are not allowed to leave until the next morning.

Mr. Stobbs, a homeless person, believes the shelter is dangerous and unsanitary. He also believes he has a right to live on the street. One night, he is taken to the shelter against his will. He later con-

vinces a public-interest law firm in Big Town to help him sue the city for false imprisonment.

PROBLEM 18.7

- What arguments can Mr. Stobbs make?
- What arguments can Big Town make?
- How would you decide this case? Explain how your decision best serves the public interest.
- Would your answer be different if Mr. Stobbs were mentally disturbed? What should happen then?

In the United States, freedom of speech and freedom of the press are very important. Therefore, courts balance a person's right to protect his or her reputation against the public's interest in receiving a wide range of information. For this reason, the U.S. Supreme Court has established rules making it difficult for public figures or public officials to win damage awards against the media. To win a defamation suit against the media, a public figure must prove not only that a statement was false and caused harm but also that the statement was made with actual **malice** (that is, with knowledge of its falsity or with a reckless disregard for whether the statement was true). These rules make it very difficult for famous people to sue the media and win. In a sense, famous people who step into the public's eye sacrifice some protection of their reputations.

TORTS THAT HARM PROPERTY

Tort law protects your property in two ways: (1) it protects against interference with the owner's exclusive use of the property, and (2) it protects against the property's being taken or damaged. Three kinds of property are protected: **real property** (land and the items attached to it, such as



Why does the law make it difficult for famous people to protect their reputations?

The Malicious Interview

Orange J and Ice Pop were both singers in the group Brain Death. After they argued violently about what to wear during a concert, they decided to pursue solo careers, and the band broke up.

A reporter from *Top Hits* magazine interviewed Orange J about the former band and particularly about Ice Pop's music. The reporter knew that Orange J knew Ice Pop very well. He also knew that Orange J was bitter about the breakup of Brain Death. Based on this interview, *Top Hits* published a story about Ice Pop describing him as a second-rate musician who steals other artists' music.

Although Ice Pop's music may sound similar to that of other performers, he claims that his songs

are all original compositions. He wants to sue the magazine.

PROBLEM 18.8

- Is Ice Pop a public figure?
- Should the reporter have relied on Orange J's information?
- What will Ice Pop have to prove to win a suit against *Top Hits*?
- What value will be protected if Ice Pop wins? What value will be protected if the magazine wins?
- How should this case be decided?

houses, crops, and fences), **personal property** (property that can be moved, such as cars, clothing, and appliances), and **intellectual property** (the ownership interest in creations of a person's mind).

Real Property

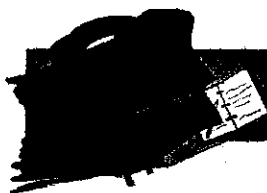
Everyone has seen signs that read "Private Property—Keep Out" or "No Trespassing." The tort of **trespass** occurs when a person goes onto another person's property without permission. The owner can recover damages from the trespasser even if there is no harm to the property, because the law protects the owner's *exclusive* right to the property.

In a technical sense, a trespass occurs every time you cut across a neighbor's lawn on the way to the store. Obviously, landowners rarely sue people who merely walk across their property. However, what would you do if someone committed a continuing trespass by going on your property without permission and erecting a sign advertising a nearby restaurant? Our legal system is very protective of private property rights.

In some cases, tort law protects against harm caused by someone who never *physically* enters your property. A **nuisance** occurs when there is an unreasonable interference with the use and enjoyment of your property. Courts will balance the usefulness of the activity complained of against the harm caused.

You do not have a right to be free from all interference with your property, only unreasonable interference. For example, Ari and Brenda are neighbors. One Sunday, Ari has a large barbecue in his backyard, and Brenda is unable to listen to the baseball game on the radio while lying on her hammock. This one-time event is not a nuisance. If Ari were to cut his lawn at six o'clock every Sunday morning, however, that would probably be a nuisance.

You can recover damages if you win a nuisance suit. In some cases, you may also be able to get a court order requiring the defendant to stop the activity complained of. This court order is called an **injunction**. An injunction requires that a person do, or not do, a specific act.



The Angry Father

On March 28, 1995, Hugh O'Connor committed suicide by shooting himself in the head while high on cocaine. Hugh's father, Carroll O'Connor, is a famous actor who used to play Archie Bunker in a hit television series. Carroll O'Connor blamed Harry Perzigian, the man he suspected of being Hugh O'Connor's drug dealer (and who was in fact convicted of furnishing cocaine to Hugh O'Connor and for possessing drugs), for his son's death.

An angry Carroll O'Connor verbally attacked Perzigian in highly publicized press appearances, calling Perzigian a "sleaze ball," stating that Perzigian "murdered" his son, alleging that Perzigian "was a partner in murder, not an accessory, a partner in murder," admitting that "I want to harm him in the worst way in the world . . . He deserves harm," and telling the public that "His name is Harry Perzigian, and he is as responsible for Hugh's death as anything in the world."

After the comments, Perzigian claimed he was inundated with hate mail and threatening phone calls and that he was distressed by constant fear of being harmed by O'Connor or one of his fans. Perzigian sued Carroll O'Connor for slander.

PROBLEM 18.9

- a. Were O'Connor's statements about Perzigian intended as facts or should they have been understood as exaggerated opinions?
- b. In what way was Perzigian's reputation harmed?
- c. Could O'Connor have successfully defended against the suit by arguing that what he said was the truth (or protected opinion)?
- d. How should this case be decided? Give your reasons.

**PROBLEM 18.10**

Read each case carefully. Identify the usefulness of the action complained of and the harm caused. Decide whether a nuisance exists. If it does, decide on a fair remedy. Give your reasons.

- a. Mr. Iwamoto works the 11:00 P.M. to 7:00 A.M. shift at the factory and then comes home to sleep. On his way to school Tommy Jones walks by Mr. Iwamoto's house every weekday at 8:30 A.M. with his "boom box" blaring. The loud music awakens Mr. Iwamoto.
- b. An oil tanker runs aground, spilling more than a million barrels of oil. Some of the oil washes up on privately owned beachfront property. The property owners sue the oil company for damage to their beaches. They also ask the judge to prohibit oil tankers from using the port near their property in order to avoid harm from future accidents.
- c. Morgan owns a restaurant next to High Penn's oil refinery. The refinery occasionally emits gases and odors that make people feel sick. Morgan, believing that this hurts her restaurant business, brings a suit. High Penn argues that (1) the refinery was properly constructed, (2) there is no way to operate the refinery without these occasional odors, and (3) the refinery was in operation before Morgan opened her restaurant.
- d. Gomez owns a house with a view of the ocean. When he built the house, the county owned all the land between the house and the ocean. The land was completely undeveloped. Ten years later, the county rezoned the land and sold it to a seafood restaurant. As the construction started, Gomez sued. He argued that he would lose his unobstructed view of the ocean and that the value of his house would be greatly reduced.
- e. In order to earn money to send their children to college, Larry and Meg operate a small auto repair shop in their garage. After returning from their day jobs, they work on cars until 10:00 P.M. The noise produced when they rev up car engines disturbs their neighbors.
- f. Adriana Stein is a successful musician who travels extensively to give concerts. She buys a house in the countryside only five miles from the nearest airport. As the metropolitan area grows, traffic at the airport increases. Eventually, the airport needs another runway. Experts report that the runway can be built in only one location at the airport. Planes using this runway would descend directly over Stein's house. She organizes her neighbors into a citizen action group called RAMP (residents against more planes). It sues the airport, seeking an injunction to stop construction of the new runway.