

January 1973

Tort Law

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>



Part of the [Civil Law Commons](#), and the [Civil Procedure Commons](#)

Recommended Citation

, *Tort Law*, 3 Golden Gate U. L. Rev. (1973).

<http://digitalcommons.law.ggu.edu/ggulrev/vol3/iss1/6>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.



Tort Law

CIVIL WRONGS

A *tort* is a private or civil wrong other than a breach of contract, for which society provides the injured party with a *remedy* in a court of law. As the *common law* developed in old England, the primary aim of the legal system was punishing crime and developing laws dealing with property, as well as developing a fair system of **compensation** for injured because of other people's activities.

Assume you are a member of a very large family on a small farm. You have one cow which is absolutely essential to your family since it supplies you with milk for the children and butter and cheese for the entire family. A hunter from a distant village, hunting in the forest near your home, shoots an arrow at a deer which is standing between him and your cow. The deer moves and the arrow kills your cow. What would be your reaction? Remember there is no law to help you.

You might be a very peaceful person who would completely forgive the hunter. However, you might also react differently. In the absence of a legal system which provides remedies for personal or property injuries many people make their own law. Quite often throughout history self-made law has been in the manner of "an eye for an eye."

To help keep the peace by providing a substitute for primitive self-help and personal vengeance, English common law developed a system which allowed an injured party to be paid for his injury by the person who injured him. Compensation of injured persons is the primary function of tort law today.

In a simple tort suit there are two parties involved. The injured party is called the *plaintiff* and is the party who sues. The party being sued is called the *defendant*. The plaintiff wants the defendant to pay

for the injury and the defendant, of course, does not want to pay.

In a tort suit two fundamental questions are asked: (1) has the defendant harmed the plaintiff; (2) if so, is it fair to make the defendant pay the plaintiff? The first question involves proving that the plaintiff's version of the story is true. The second question involves deciding whether or not the defendant is at *fault*. If the defendant intentionally harmed the plaintiff it is easy to see that he is at fault and should pay. But what if the injury is unintentional or accidental? In such a situation fault has a special meaning. It is a departure from the *standard of care* which society, through its laws, has set up for the protection of its citizens from the risk of being harmed. If the defendant is at fault he will be required to compensate the plaintiff for the *harm* unless there is a legally recognized reason why he should not.

Of course these two questions are not the only ones which have to be answered during a tort suit. Many complicated rules of procedure, evidence and torts come into play before, during, and after the trial. However, the entire system seems to be summed up in those two simple questions: has the defendant harmed the plaintiff and if so, is it fair to make the defendant pay the plaintiff?

INTENTIONAL TORTS

The general principle upon which tort law is based is fault. Society through its laws believes that someone at fault for injuring another person or his property should pay the injured party for the harm done. With this in mind it's easy to see that a person is most at fault when the harm is done intentionally rather than accidentally. For that reason we will begin our discussion of tort law with the area of intentional torts. There are five intentional torts but we will deal with only one of them, battery.

BATTERY

Pete is walking down the street on his way to school. Mitzi sees him and decides to get even with him for beating her out for a part in their high school play. She picks up a brick and throws it at Pete's head. Luckily it only hits Pete on the shoulder but it still causes a very serious bruise.

Battery may be defined as an intentional harmful or offensive touching of another without his consent. Did Mitzi commit a battery on Pete? There are several requirements that must be met in order for a battery to take place. The first is a voluntary act by the defendant. In our example Mitzi clearly acted voluntarily. It is, of course, quite possible to touch someone involuntarily. Suppose Mitzi were sleeping and had a nightmare. While still asleep, she threw a clock out the window at the monster she dreamt was attacking her. If the clock hit Pete, who was passing under the window, would we want to hold Mitzi *liable* for a battery? Most people would probably say that to do so would be very unfair. The rule is that the act causing an injury must be a voluntary one.

The second requirement of an intentional tort is intent. The party who performs the act must intend to bring about the result. In our example of throwing the brick Mitzi obviously intended to hurt Pete. A difficult problem arises when the person touched is not the intended victim. When Mitzi threw the brick at Pete she obviously committed a battery. If she missed Pete and hit Tom, who was walking with Pete, is that a battery against Tom?

This type of problem is dealt with by the transfer of intent rule. Even though Mitzi did not intend to hit Tom, she did intend to hit Pete. The law asks, "Did the person intend to bring about the result". Now can you solve the problem? This rule also applies in a case of mistaken identity. If Mitzi had seen Tom and had thrown the brick at him thinking he was Pete, Mitzi's intent to hit Pete would make her liable for the battery to Tom even though she didn't really intend to hit Tom.

The third requirement of a battery is that the touching must be harmful or offensive. A touching is harmful when it causes a pain or injury to a person's body. When a touching is not harmful but only offensive it is sometimes difficult to decide if a battery has taken place. To be offensive it must be the touching of a person or something closely associated with a person which would offend a reasonable person's sense of dignity.

If a Sam walks up to a Judy and kisses her, there is no harm. But is it offensive? The answer would depend on the circumstances. If they are complete strangers, it might very well be an offensive touching and thus a battery. What if Sam sees Judy and decides he really wants to meet her? He walks over and touches her shoulder to get her attention so that he can introduce himself. Should that touching be considered a battery? What about a situation where a person touches a fellow bus passenger in order to get him to move out of the way so that he can get off at the next bust stop? Is there a battery in that situation? Can you see any possible differences between the two situations?

A fourth requirement of an intentional tort is called *causation*. The harmful or offensive touching must be legally caused by the defendant's act or something which his act sets in motion. To understand how the requirement is satisfied consider these two situations.

Mary is very angry at Sue and wants to hurt her. She throws one of her books at Sue but misses her and hits Joe's bicycle, which falls over, hits Sue and causes a sprained ankle.

Dave is chasing Billy in order to beat him up. Billy, while trying to avoid Dave, hits Joe's bicycle, and sprains his ankle.

In which of these two situations would you say a battery has been committed? The law would say that in the first situation Mary's act was a substantial factor in causing Sue's injury. Mary wanted to physically injure Sue which is what happened. Therefor Mary has committed a battery on Sue. The second situation is slightly different. Dave's action did not cause the bicycle to hit Billy. Billy wouldn't have hit the bike if Dave had not been chasing him but that is not enough to make Dave liable for a battery. He might be liable for the unintentional tort of negligence.

DEFENSES

Even if all of the above requirements are met, there is no battery if the injured person had consented to the touching. If Martha kisses George there can be no battery if George wanted to be kissed. Consider the following example:

Jack, the star halfback of the high school football team is going for touchdown. He is tackled on the one-yard line by one of the defensive players and his arm is broken when he falls.

An important point to remember is that consent is **not** always expressed in words, but may be implied from the circumstances. Would you say a battery had been committed? Did Jack consent to being tackled and thus to any injuries he might suffer as a result? When playing football or participating in any activity involving physical contact the participants consent to the touching necessary to the activity. Can you imagine a situation where Jack would not consent to being tackled? What if he were tackled and while he was down a defensive player purposely broke his arm? Does playing football involve consenting to unnecessary violence? Should the fact that the other team gets a fifteen yard penalty for a personal foul and the offending player is kicked out of the game make a difference as to whether a tort has been committed?

Other defenses which apply to all intentional torts but particularly to battery are self-defense and the defense of other people or property. If a person is attacked or sees someone else being attacked, force may be used to repel the attack. However, the force must be reasonable, and proportionate to the initial force used or threatened. If property is being protected one is generally never justified in using deadly force.

Should a defendant have to pay damages to a plaintiff who had no expenses as a result of the harm done? Do you think that the existence of a legal remedy for intentional tort really provides a substitute for

personal vengeance? Should tort law try to punish people, or is that job better left to criminal law?

There are other intentional torts but in general they are governed by the same rules we have just discussed. Whenever you think you have been intentionally wronged, substantially harmed either physically or mentally, or your property has been harmed, you may have the basis for a lawsuit.

NEGLIGENCE

Before the Industrial Revolution *negligence* was not regarded as a very important reason for making people pay for injuries caused by their actions. Why was that so? The answer may be in the basic differences between an agricultural and an industrial society.

In an agricultural society accidental injuries occur less frequently than in an industrial society. However, as an agricultural society develops into an industrial society, population increases, large cities develop, use of machines becomes common, and the tempo of life is greatly increased. Such changes greatly increase the scope and frequency of harmful accidents. How people can possibly be protected from all the injuries possible in modern industrial society is a very serious problem. Your answer will probably depend on how you feel about modern society. You might decide that you'd like to return to a more simple life. Such a decision has led many people in recent years to establish communes. It might be too late for many people to follow their example and, in fact, many people would not want to give up the comforts of modern living. Therefore we need to answer the very basic question of how people can be protected from accidental injury and the economic losses that result from accidents.

THE STANDARD OF CARE

The law has answered this question in various ways. One of the most important ways is the development of negligence as a basis of liability for injuries. Negligence may be defined as the creation of an unreasonable risk of harm to other people or property.

When Butch, the neighborhood bully, gives Stanley a black eye we now know that Butch is guilty of a battery. But suppose Stanley is walking along the sidewalk and Butch comes barreling around the corner, can't stop, and knocks Stanley into the street. Stanley's fall results in a broken leg. Is there a legal reason why Butch should pay for Stanley's broken leg?

Although there is no battery, Butch must pay if he was negligent. Negligence is determined by asking whether he acted as a reasonable person. Everyone in our society must act in a way which does not endanger others. The law calls this general duty of care the standard of a "reasonable person." Probably most jurors would find that Butch had fallen below the standard and require him to pay Stanley unless additional facts provided Butch with a legally recognized excuse.

In deciding the issue of liability, the court does not ask what Butch would do in a particular situation but what the average reasonable person would have done in the same or similar circumstances. As you may have guessed, the application of this *standard of care* has led to a lot of argument about what is reasonable or unreasonable in a particular situation. Each situation must be judged on its own facts.

If Butch were being chased by a maniac with a meat cleaver, it would seem reasonable for him to run regardless of any people in his way. Similarly, if his baby sister were choking to death and the family phone was out of order, Butch might run to the nearest doctor regardless of what lay in his path. Should Butch pay for Stanley's injuries when Butch has good reasons for his behavior?

During a trial to decide if Butch was negligent, the jury is presented with all the facts in order to decide whether or not Butch's actions were reasonable. The jury also takes into account Butch's age so that if he is a minor he will not be judged as if he were an adult. His actions will be evaluated on the basis of what the average reasonable child of the same age, intelligence, and experience would have done under the circumstances. If it is decided that Butch acted reasonably under the circumstances, he will not have to pay for Stanley's injuries and Stanley will have to pay the bills. Is that fair? What other alternatives are there?

THE EFFECT OF A STATUTE ON THE STANDARD OF CARE

Let us assume there is a criminal law requiring anyone who drives a motorized vehicle on the sidewalk to pay a \$50 fine. While driving her go-kart on the sidewalk, Gloria strikes an elderly lady whose \$600 false

teeth fall from her mouth and are smashed on the concrete. The lady goes to court bring up the law against driving on the sidewalk, claiming it is intended to protect pedestrians. She argues that Gloria broke the law, is therefore negligent, and should pay for the false teeth. Gloria argues that the criminal law has nothing to do with the tort and that violation of the law does not make her negligent. This argument is crucial because if violation of the law is evidence of negligence, the elderly lady has the stronger case. Keep in mind, however, that even without the statute, Gloria may be negligent.

In order to decide this issue the court must determine whether the intent of the lawmakers was to protect pedestrians. If that is the case, proof of a violation of the law could help show negligence. If the intent of the lawmakers was merely to protect the sidewalks from damage, then this law might have no bearing at all on the issue of Gloria's negligence.

LEGAL CAUSATION

Bill and Joan are riding their new 10-speed bikes. Joan has been bragging about how stable her bike is and is demonstrating this by riding without holding the handlebars and by turning around and talking to Bill. Her bike is very stable and continues in a straight course but unfortunately heads directly for Karen who is crossing the street at the corner. As Karen is about to be hit by the bike she slips on a banana peel and breaks her ankle without being touched by the bike. Joan's behavior is clearly negligent, (she is unreasonably endangering others) but should she pay for Karen's broken ankle?

The law requires that people pay for injuries which are caused by their negligent acts. Negligent behavior does not lead to liability unless it actually results in injury to person or property. Should Joan have to pay if Karen saw the bike coming, jumped out of the way to avoid being hit and broke her ankle in the process? What reasons can you give for your answer?

Another problem arises when several people engage in a negligent activity

Two young men want to see who has the fastest hot-rod and stage a drag race to decide the matter. They have the race in a residential area where there is a large number of children. While they are racing down the street at 60 mph, one of the cars hits and seriously injures a 5 year old child. Who will have to pay?

Everyone will probably agree that the driver of the car which actual-

ly hit the child is liable, but what about the other driver? Will he also share the responsibility for paying for the accident? Whenever several people are engaged in an activity which causes an unreasonable risk of harm to others, they are all liable for any resulting injury, even though the injury was actually inflicted by an individual. In our bike riding example, what kinds of behavior by Bill would probably make him, as well as Joan, liable for Karen's broken ankle?

DAMAGES

Damages of some kind are essential to a tort case. Although a person cannot expect compensation for every small discomfort they experience, even though caused by someone else, an exception to this general rule is the area of intentional torts. The laws say no one has the right to impose unwanted contact and interference upon another person. Therefore no actual amount of damages has to be shown. The law will award the amount which reasonably compensates the victim for the undesired contact. In addition, *punitive damages* may be awarded when it appears that the defendant wanted not only to interfere with, but to hurt the injured person. Thus, the purpose of punitive damages is to punish the wrongdoer.

The purpose of awarding damages in a suit based on negligence or *strict liability* is compensation for injury, not punishment for negligence. The rationale behind this policy is the concept that a monetary value can be placed on everything. When people are harmed in any way society feels that the injuries can be adequately compensated by monetary awards. What do you think of such a rationale? Can you think of a better remedy?

There are two major types of *compensatory damages*. *General damages* cover results from the injury itself; pain and suffering, loss of an arm or leg, and any impairment or disability resulting from the injury. This type of damage is difficult to determine. To understand this difficulty, ask yourself how much money you would take for loss of a leg in an auto accident.

Special damages are those measurable expenses incurred by the plaintiff. They are often called "out of pocket" expenses, and can include medical expenses, loss of earnings, and the cost of replacing destroyed property or repairing damaged property.

In England the losing party must pay the winning party's attorney's fees. Most states in this country allow only a very small amount to be

awarded to cover the costs of the suit. What do you think of the argument that part of the injured party's damage is the cost of suing the defendant and therefore the defendant should pay the cost of the lawsuit?

DEFENSES

A defendant in a negligence action can deny the entire incident; he can say the incident happened but he wasn't negligent; or he can say that for one reason or another his negligence isn't the cause of the injury. He can also use special defenses which release him from any obligation to pay even if he is to blame. These defenses are known as *contributory negligence* and *assumption of risk*.

Susan is driving her car down Main Street and negligently fails to stop at the stop sign at the intersection of First and Main Streets. George is speeding down First Street and runs into Susan's car. Susan sues George.

Susan can prove that George was negligent and that his negligence caused the damage to her car. But George can prove that Susan was also negligent for failure to stop. Therefore, the court would agree that it would not be fair for George to pay for the accident. The same reasoning would apply if George sued Susan. In most states, if the injured party is also negligent and that negligence contributes to her own injury, she will not be able to collect from the other party. This is called *contributory negligence*, and each person will pay his own bills. A few states fail to agree with this rule and use a *comparative negligence* rule. When applying comparative negligence rules the judge or jury decides the percentage of each party's fault and divides the costs of the injuries between them. Applying comparative negligence to our example, George might have 60% and Susan 40% of the cost of the accident to pay. Think of arguments for and against each of the two rules. Which rule do you prefer?

Assumption of risk is a defense with more definite requirements than contributory or comparative negligence rules. In order for one to "assume the risk," that person must actually know of and understand the particular risk or danger. The risk must be freely and voluntarily encountered. There are basically two ways a person can assume a risk. The first is by agreement. Thus, if a person understands and signs a document claiming knowledge that a risk exists and voluntarily undertakes the activity anyway, he will probably be prevented from recovering for any injuries as a result of that activity.

The second way to assume the risk is by acting in such a way that it is obvious you are willing to incur whatever damage may result from

your actions. An example of this might be a situation where a person is a voluntary passenger in a vehicle driven by a drunk driver. If an accident occurs and the passenger is hurt, many people would say that the injury was deserved, meaning that accepting a ride with a driver known to be drunk at the time is an unwise decision. By making this decision the passenger is assuming the risk of being injured.

How many normal everyday activities can you think of which probably involve an assumption of some sort of risk? Remember that you must know and understand the particular risk and voluntarily choose to encounter it.

LIABILITY WITHOUT FAULT

Products liability deals with physical harm to a person or to his property caused by a product which is in some way defective. The area of products liability deals only with injuries involving a faulty product. A car whose brakes were improperly installed by the manufacturer is an example of a defective product.

As in the general area of negligence, products liability has developed and expanded tremendously with the change from a simple agrarian society to a modern industrial society. The diversity of products, their complexity, and their potential for harming people make it a matter of common sense that the innocent consumer must be protected from injury from items about which he has little knowledge.

The great complexity of modern methods of production often makes one or several people potentially responsible for a defect in a product. An injured party must choose a defendant or defendants from everyone who has handled the product, including the manufacturer, the maker of component parts, the assemblers of parts supplied by others, processors under contract with the maker, any dealer in such products (wholesale or retail) or second-hand dealers who recondition the product for sale (a used car dealer who rebuilds cars for sales), as well as anyone who puts his name on the label. Usually the injured party will try to sue the party who is most able to pay for the injury. Which of the parties in the list do you think would be most able to pay?

A products liability lawsuit may be based on one or more of four different theories. If the maker or supplier knows that the product is defective and dangerous and sells it without warning of the danger, he may be liable for *battery* to the person injured while using of the product

(see Intentional Torts). Battery is a very difficult case to prove and therefore is very rare. Another basis of liability is the breach of warranty theory, which is a contracts problem covered in the Contracts section.

Negligence is another basis of liability for defective products, and is subject to all the negligence rules and defenses. If it is clear to an average reasonable person that care has not been taken in the manufacture and distribution of a product, the maker or supplier must pay for injuries caused by that product. Consider the following example.

During the manufacture of a new car, one of the assembly line workers is busy talking to a friend and doesn't pay attention to the job. He connects the brake cable to the shock absorber instead of the brakes. The defect is easy to see if a mechanical inspection is made. "Honest Abe" the local car dealer is supposed to perform a pre-sale inspection of all the important parts of the car such as the steering, brakes, lights, etc. Abe is very busy and doesn't do this before selling the car to Dick Driver. Dick drives out of the showroom, can't stop, runs into Sally and both are seriously injured. Who can sue? Who can they sue?

Every state would allow Dick to sue and most states would also allow Sally to sue. They would be able to sue either the car dealer, the manufacturer, or both. They would, of course, have to prove the elements of a negligence case, or they could base their case on a fourth theory of products liability.

If the suit were based on *strict liability* in tort, there would be no need to prove negligence. All the injured party need prove is; (1) a defect was present in the product; (2) the defect existed when the product left the defendant's hands, and (3) the injury was caused by the defect. There are two very important reasons why courts adopt the doctrine of strict liability. The first reason is that consumers have no way to protect themselves against defective products, and must rely on the manufacturers to ensure their safety. Modern economic life is too complex for anyone to know very much about most of the products in daily use. The second reason is that manufacturers can be insured against injuries caused by their defective products. Insurance is a normal business expense and is relatively inexpensive to a business but is often beyond the budget of the great majority of ordinary consumers. The expense of the manufacturer's insurance is included in the price of the product and is passed on to the consumer.

Using our earlier example, in strict liability Dick could sue both the manufacturer and the dealer without having to prove negligence. He is a purchaser. However there is disagreement about Sally's right to sue.

Some states would allow her to sue, other states allow only the buyer or user of the product to sue in strict liability. These states would require that Sally prove negligence in order to win her lawsuit since she was not a user of the product.

An important point to remember is that both negligence and strict liability only cover injuries which happen while the product is in normal use, and only apply where the buyer does not use the product in some way that wasn't intended, obeys all directions and warnings, and does not alter the product in any way. Standing on a chair may be construed as a normal use, whereas anyone stirring soup with an electric hair curler, a seemingly unusual use, would have to pay for his own electrical burns.

Strict liability for defective products is often called "liability without fault." Do you agree with that statement? Is a defective product really not the "fault" of a manufacturer who was not negligent? Even if you think it does impose liability without fault do you think it is unfair to do so in modern society?

DEFAMATION AND INVASION OF PRIVACY

DEFAMATION

Suppose one of your school classrooms is fire-bombed. Nobody knows anything about who did it. The police can't find a clue. A classmate who doesn't like you starts a rumor that you are the guilty person. The statement is completely false and you can prove it, but some people believe the lie anyway. Your boss hears the story and fires you. Some of your friends won't talk to you and avoid sitting near you in class. Do you have the right to sue anyone for the harm you suffer because of this lie? If so, who can you sue?

The above situation involves the tort known as *defamation*. It involves two types of activities which might be familiar to you. *Slander* is defamation which is spoken, and *libel* is defamation which is written or otherwise put into some permanent form. Which type is the example?

In order for a statement or a writing to be classified as defamatory it must be false; it must be communicated to some third person; and it must expose a person to hatred, contempt or ridicule; cause him to be shunned or avoided; or it must have a tendency to injure him in his occupation. Society is attempting to protect which personal interests? Do you think these interests are important enough to involve the legal process?

With these factors in mind, do you think you could successfully sue your classmate for the lies spoken about you? Is it not fair to hold anyone who spreads lies liable for any harm caused by the lie? The law allows

you to sue anyone who spread the lie if they either knew it was false or should have known (i.e., they should have checked the truth of the story before retelling it).

Even if a statement meets all the requirements of defamation, the speaker will not have to pay if he is "privileged." There are several situations in which the law says a communication is absolutely privileged. An absolute privilege means that no other excuse is needed other than being in the privileged situation.

If the false statement were made in a trial by a judge, attorney, or witness and had something to do with the trial, the speaker would be absolutely privileged and would not be liable for defamatory statements. If the lie were voiced by a congressman in a speech before Congress, he could not be sued even if the lie had nothing to do with the subject discussed. A man or a woman cannot be sued for telling lies about someone else to a spouse. A radio station cannot be sued for repeating defamatory statements made by political candidates but must allow equal air time for the person defamed to answer. All Federal officials and many state officials are absolutely privileged as long as the defamatory statements have something to do with their government jobs. Anyone who consents to a slander or libel cannot sue if it harms him; he has "assumed the risk" of being harmed. Of course this privilege often involves a difficult decision by a jury as to whether or not the party actually consented.

In addition to the absolute privilege there are several **qualified** or **partial** privileges which excuse defamation only if various **additional** requirements are met. For example, a statement concerning a **matter of public interest** receives a qualified privilege. This means that the person making a false statement will not have to pay for a ruined reputation unless he knew the statement was false, or had evidence that it was false but recklessly made the statement anyway. Can you think of any other situations in which a qualified privilege would benefit society?

Defamation is designed to protect people's reputations from being harmed by falsehoods. There are criminal laws against libel and slander. Should this type of protection be limited to criminal penalties or do you think it is proper for tort law to provide compensation for harm to a person's reputation? Should the fact that harm to reputation is sometimes much harder to determine than physical harm to a person or property make a difference in the types of protection provided by tort law?

INVASION OF PRIVACY

Invasion of privacy is a tort which is similar to defamation in that both protect the intangible right to be left alone, the individual's right to privacy. The "peeping Tom" is a very simple example of invasion of privacy. This tort has been extended to cover unauthorized wire tapping by the police; "shadowing" by private detective to gather information for use in a divorce proceeding or other civil action; and other similar activities. Everyone has the right to a degree of privacy both in his public affairs and in his private life. Many types of intrusions into either of the two areas would be considered invasions of privacy.

Other types of invasion of privacy are more like defamation in that they involve a publication of facts to the public.

Suppose Acme Acne Cream Company prints hundreds of billboards featuring a picture of Joe Namath and the words "Joe doesn't worry about acne since he started using Acme."

Would it be fair to let Acme use Joe's name to make money by increasing sales? Your answer is probably no, and once again the law agrees with you. Joe would be able to sue Acme for using his name and reputation for their own commercial use without his consent.

The mere use of a name will not entitle someone to sue for invasion of privacy. It must be clear that a particular person's name is being used. The person must be able to show that his individual personality or characteristics are connected with the name. This type of action is usually brought by famous people whose names and reputations are being commercially exploited.

Another type of invasion of privacy involves holding a person up to a false light in the public eye. This type of activity would involve making public certain facts about a person which would create false impressions among the general public. If the local paper printed a story about a high school math teacher who was seen late one night in a local bar with one of his female students, the printed item might lead people to believe the teacher guilty of questionable behavior. If in fact the situation was a perfectly innocent one, but the paper had failed to print the explanation, the teacher might be able to sue for invasion of privacy. This type of invasion is very close to defamation and often a person will sue for both torts at the same time.

The final way of invading someone's privacy is by public disclosure of private facts. This involves revealing facts about someone which cause his reputation to be harmed. The damage done by public disclosure of

private facts is very similar to defamation, the difference being that the facts are true even though harmful.

When Fred Fingers was 20 years old he was convicted of robbing a liquor store and sent to prison for 10 years. Since his release he has gone to college, married, and had three children. He is a completely changed man. He has been living in town for 15 years, coaches a little league team, is treasurer of the PTA, and sings in the church choir. He is a very trusted employee of a local business. His boss knows about his prison record but doesn't even think about it any more. The local newspaper finds out about Fred's past and publishes a story about him. The result is a public outcry against Fred.

Does there seem to be any good reason for the newspaper to print such a story even though true? Is there anything newsworthy about Fred's past? Can Fred sue the paper for invasion of privacy?

It doesn't seem fair to allow the disclosure of harmful facts about a person's life without a good reason. That is the position the law takes. The court will balance the individual right to privacy with the public need to be given the news and decide who has the strongest right. Do you think Fred would win his suit against the newspaper? If you were on the court how would you decide?

NUISANCE

Harry Homeowner has lived in a very quiet neighborhood for many years. He works for the city public works department as a heavy equipment operator. His job requires him to be very alert. A few weeks ago new people moved in next door. They have a large dog with a very loud bark. The dog likes to bark from midnight to three o'clock in the morning. As a result of this noise, Harry is losing a lot of sleep and is in danger of losing his job. He has asked his neighbors to take their dog inside at night, but they claim the dog is needed to protect their garden from vandals. What can Harry do?

Harry could move away but that would certainly not be fair. He can sneak out one night and poison the neighbor's dog, but then he would be liable to the neighbor for the value of the dog. His third alternative is to sue his neighbor for creating a nuisance.

A nuisance is defined as an unreasonable and substantial interference with the use and enjoyment of property. Would you say that Harry is being unreasonably prevented from using and enjoying his home? Is Harry unreasonable in objecting to his neighbor's barking dog? Won't Harry be substantially harmed if he loses his job?

If Harry sues, he can get his neighbor to pay for his damages. But can one be compensated for loss of sleep? If Harry is fired, the defendant may be made to pay for his damages, but this will not get Harry his job back. Harry suffers what the law calls irreparable harm.

Realizing all these factors, the law has developed a remedy known as an injunction, which is an order to do or stop doing something. In deciding whether to issue an injunction, the court will first decide if a nuisance exists. In deciding this question the court must determine that

there has been a substantial interference with the use and enjoyment of property. The court must then determine that the interference is unreasonable. Unreasonableness is decided by balancing the reasons and justifications for the defendant's activity against the interests of the plaintiff. In Harry's case, would you consider the nuisance unreasonable if the dog were a seeing eye dog?

If it is decided that a nuisance exists but payment by the defendant adequately compensates the injured party, the court will require the defendant pay damages rather than issue an injunction. Another consideration would be whether an injunction will injure the defendant more than the nuisance has harmed the plaintiff.

In Harry's situation, it seems fair for the court to issue an injunction. Harry is being seriously harmed; money cannot adequately make up for the harm already caused and the future harm which will result, and his neighbor could easily comply with an injunction to keep his dog quiet. The court might also require the neighbor pay for damages caused up to the time of the trial.

There are many possible nuisances in everyday life but remember that to qualify as a legal nuisance, there must be an unreasonable and substantial interference with a use of property or the enjoyment of such property.

TORT IMMUNITY

A woman is driving her car along the highway. It's getting late and she is very sleepy. She should stop, stretch, have a cup of coffee and maybe a nap, but she insists on getting to her destination in record time, even though there is no special reason for doing so. Her twelve year old daughter, Judy, tells her to stop and rest but she doesn't listen. She falls asleep at the wheel, wrecks her car, and Judy is severely injured. Can Judy sue her own mother for a personal tort?

Even if Judy can prove negligence she will not be allowed to sue her parent. Such is the law in most of the states. This rule is the same for a parent suing a child. If a dispute arises over the ownership of certain property a parent and child can sue each other, but this is not the case with personal tort. Only a few states permit negligence suits between parent and child and the states that do allow such suits seem to reflect the modernization of ideas about the family.

The principal reason given for maintaining such a rule is to preserve family harmony. Yet lawsuits over property rights are allowed, do they not equally disrupt family harmony? Will family harmony be hurt by an uncompensated tort more than it would be by allowing a lawsuit? Most injuries which could result in a tort suit between a parent and child result from auto accidents. Doesn't the existence of automobile liability insurance insure that the family will not be disrupted, since the suit will really be against the insurance company?

Similarly, there is husband-wife immunity. The old rule held that neither husband nor wife could sue the other for torts. Most states now allow suits between spouses for torts concerning property. Some states have totally abolished the old rule and now allow suits between spouses

for personal injury torts. The growing recognition that marriage does not eliminate individuals is beginning to have an effect on this area of the law. What do you think is the most rational way to deal with intra-family tort suits?

The other major area of tort immunity is governmental immunity. In old England, the doctrine developed that “the King can do no wrong” and therefore nobody could sue the King. This old rule is law in the majority of states. However, a growing number of states have decided that governments should be liable under the same circumstances as their citizens and have abolished this rule. The Federal Government passed the Federal Tort Claims Act of 1946 abolishing its immunity in several areas. Do you think the government should be immune from suit by citizens? Who would pay if the government lost? Does that change your mind about government liability?

GLOSSARY

<i>assumption of risk</i>	a voluntary encountering of a known risk.
<i>causation</i>	a causal agency; anything producing an effect.
<i>common law</i>	the unwritten law of a country based on custom, usage, and the decisions of law courts as contrasted with statute law.
<i>comparative negligence</i>	a system of negligence in which costs are divided between the parties according to their proportion of fault.
<i>compensatory damages</i>	a payment solely for the cost of the injury or loss and nothing more.
<i>consent</i>	a voluntary decision either to do, comply with, or submit to something or someone.
<i>contributory negligence</i>	the creation of an unreasonable risk of harm to yourself.
<i>damages</i>	the money paid to a person because of an injury or loss of some kind.
<i>defamation</i>	the offense of injuring a person's character, fame, or reputation by false statements.
<i>defendant</i>	the defending party; person accused or sued in a lawsuit.
<i>fault</i>	a failure to do what is required in a specific situation.
<i>general damages</i>	damages which naturally and ordinarily result from a particular wrong.

<i>harm</i>	a hurt, injury, damage.
<i>immunity</i>	the freedom from being sued for a particular tort.
<i>injunction</i>	a legal order either requiring a person to do something, or prohibiting him from doing something.
<i>injury</i>	any wrong or damage done to another person, his rights, reputation or property.
<i>intent</i>	having something in mind as a plan after deliberation.
<i>invasion of privacy</i>	violation of a person's right to be left alone.
<i>liability</i>	the legal responsibility for something.
<i>libel</i>	a written defamation.
<i>negligence</i>	the creation of an unreasonable risk of harm to others.
<i>nuisance</i>	an unreasonable substantial interference with the use and/or enjoyment of property.
<i>ordinance</i>	a law enacted by a local government, e.g., city or county.
<i>plaintiff</i>	a person who brings a suit into a court of law; complainant.
<i>privilege</i>	a right, advantage, favor, or immunity granted to some person or class, and not enjoyed by others.
<i>products liability</i>	liability of manufacturers or dealers for injuries caused by defective products.

<i>remedy</i>	the means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.
<i>slander</i>	an oral defamation.
<i>special damages</i>	all damages other than pain and suffering and punitive damages.
<i>standard of care</i>	the standard established by law equal to that of a reasonable person in like circumstances.
<i>statute</i>	a law passed by a legislative body and set forth in a formal document.
<i>strict liability</i>	liability without fault.
<i>tort</i>	a private or civil wrong other than a breach of contract, for which society provides the injured party with a remedy in a court of law.