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## High School Legal Curricula: Torts

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## TORTS

A *tort* is any wrong, other than a breach of contract, for which the law provides the injured party with a remedy. The wrong may be committed against a person or his property. Although one generally thinks of an injury as harm to a person's body, the law also treats any harm to property as an injury.

Bob throws a brick through Charlie's living room window. He has committed a tort against Charlie by damaging Charlie's property. If the brick had hit Charlie, Bob would have committed a tort against Charlie's person. In the former example, there is injury to property; in the latter, there is injury to person.

Charlie can seek a legal remedy for payment for the damaged window, or, in the case of personal injury, for any medical expenses (and for the pain and suffering that Charlie endured).

A tort is either *intentional* or *unintentional*. In this unit, the material is divided into these two groups. Definitions of the law are followed by examples, questions and discussions. It is hoped that through class analysis, students will learn to recognize the problems, pose possible solutions and give rational explanations why they believe such laws exist.

### INTENTIONAL TORTS

#### Battery

A *battery* may be a crime (criminal) as well as a tort (civil). Since

criminal battery and civil battery have many common features, both areas of the law will be treated simultaneously.

Civil battery, a tort, is the intentional and harmful or offensive touching of another without his consent. Criminal battery, a crime, is any willful or unlawful use of force or violence upon another person. (California Penal Code §242)

If the injured person sues for a tortious battery, the law allows him to recover from the person who committed the battery an amount that fully compensates him for his injury. The criminal penalty for battery is a \$1,000 fine, or six months in jail, or both. (California Penal Code §243)

To determine if the battery is a crime or a tort, one should ask whether the injured should be compensated for the injury, or whether the person who committed the battery should be punished by society for his act. If society should punish the wrongdoer, he has committed a crime. If the injured should be compensated, the wrongdoer has committed a tort.

The same act of battery can result in both a civil suit and a criminal prosecution.

Bob throws a brick at Charlie and hits his leg.

This is a crime for which the state would prosecute Bob for criminal battery and a tort for which Charlie could sue Bob for civil battery.

In the civil case, the injured person sues to recover for his injury. In the criminal case, the state sues for the benefit of the community as a whole, reasoning that punishing the wrongdoer will deter him from committing a similar act.

Why do both criminal and civil remedies exist?

Do you agree that a civil suit for battery affords the injured person a sufficient substitute for private revenge?

Do you feel that the state should prosecute an individual for the crime of battery, or should the only remedy against the wrongdoer be a civil suit brought by the injured person?

John sees an attractive girl, whom he does not know, seated near him in his class. He approaches her and kisses her on the cheek.

Is the kiss a battery?

Should it be a battery?

The kiss is "a touching of a person without her consent," but is it "harmful or offensive"?

Would the kiss constitute enough "force or violence" to be a criminal battery?

Do you feel that society should prosecute John?

Depending on the girl's reaction to John's kiss, he could have committed a civil battery. He intentionally touched her without her consent. If the touching is offensive, then he committed a civil battery. Since there was no force or violence accompanying the kiss, John did not commit a criminal battery.

Instead of kissing the girl, John taps her lightly on the shoulder in order to get her attention to introduce himself.

Is the touching a battery?

Should it be?

Max, a member of the school football team is injured when tackled with such force that the ligaments of his left knee are torn.

Has a battery been committed?

Applying the definitions of a battery, the answer is no. By playing football, Max *consents* to the touching necessary to play the game. The tackling is not a criminal battery since it is not *unlawful*.

Can you imagine situations in which Max would not consent to being tackled while playing football?

Assume that Max is tackled on his way to the huddle long after the whistle has blown.

Did Max consent to this type of touching?

This is beyond the scope of the consented touching. Max only agrees to that which normally occurs during official playing time and not to being tackled long after the whistle has blown.

If a person acting in self-defense, he is *privileged* to touch the attacker. He does not commit a battery when using force to restrain the person attacking him. However, one must only use enough force to prevent injury to oneself.

Jane is very angry and tries to slap Marie. Marie grabs Jane's arm just before it hits her.

Did Marie commit a battery on Jane?

Even though Marie has offensively touched Jane, she has not committed

a battery. Marie is privileged to prevent Jane from hitting her even though in doing so, she must grab Jane's arm. Marie would not be privileged to hit Jane with a baseball bat to stop Jane from slapping her. She can use only the minimum amount of force to prevent being slapped. Grabbing Jane's arm seems to be a reasonable force.

If a person acts in self-defense, but uses more force than is reasonable to protect himself, then he commits a battery on the person who originally touched him.

Jane slaps Marie and Marie returns the slap.

By returning the slap, Marie is not acting in self-defense, but has become the aggressor at least for an instant. Each has committed a battery on the other. Such confrontations usually do not end up in a court of law, whether in civil or criminal court, but they could. Even though every battery is not prosecuted criminally or brought to civil court, a battery has been committed when there is an offensive touching of another person.

Why do you think the girl John kissed would not sue him?

Consider the following: the expense of bringing the suit and the amount of recovery involved. With the number of more serious offenses, should the Court spend time with a kiss?

### False Imprisonment

False imprisonment is the act of intentionally confining a person.

The restraint of liberty must be substantially complete.

Don and his girl friend, Paula, are riding in his car. Don makes advances that Paula considers improper and that makes her angry. She demands that he stop the car and permit her to leave. Rather than stopping, Don speeds up and refuses to allow Paula to leave. Paula can get out only if she jumps from the rapidly moving car, risking serious injury.

Has there been false imprisonment?

Probably. The elements required to prove false imprisonment are present:

1. Paula was totally deprived of her liberty because she could not escape from Don's car without risk of injury;
2. Paula was restrained against her will;
3. She was conscious of the restraint;
4. Don intentionally restrained Paula (He sped up to prevent her from getting out of the car.); and
5. There was no legal justification for the restraint.

Paula can, therefore, sue Don for "keeping her prisoner in his car." Usually, such an action would be brought in conjunction with another tort, such as battery. If Don struck Paula in addition to restraining her from leaving his car, she could sue for battery and for false imprisonment against him. She can sue for damages for both torts.

Sharon answers a newspaper employment ad. While interviewing for the job, the interviewer locks his office door by pushing a button hidden under the desk. His

intention is to conduct an interview without interruption. At the conclusion of the interview, he unlocks the door by pushing the button under his desk and Sharon leaves. Much later, she is told that she had been locked in the office.

Has there been a false imprisonment?

Probably not. Sharon did not know of the restraint to her movement at the time of the interview, and only learned of it later. Applying the same elements as in the previous example:

1. Sharon's restraint was not total. The door was locked, but only against those attempting to enter. There is nothing in the given facts to indicate that she could not open the door from the inside had she so wished.
2. There are no facts indicating that the restraint was against her will. If she had known of the locked door and its purpose, would she have complained at that time?
3. Sharon was not conscious of the restraint until after she had left.

### Trespass

The owner of *real property* (land and structures attached to the land) has the right to exclusive possession of his property. This includes the area below and above the surface, determined by the exterior boundaries extended vertically upward and downward to a reasonably useable distance. Anyone who enters the imaginary domain of the land possessor without permission and thereby interferes with his exclusive



possession is liable for the tort of *trespass*. Any intended entry onto another's land is a trespass whether or not the trespassor knows that the land belongs to another person.

Bill walks to a public lake down a dirt path. He believes that he is on public property at all times, but the path is on land that belongs to Charlie.

Bill is a trespassor since he intended to use the path. It does not matter that he did not know the path was private property. Even though there was a trespass, there was no damage done to the land. Therefore, it is doubtful that the owner would sue the intruder for trespass. If the trespassor causes damage during the trespass, he is liable for that damage.

Jack is standing on a public roadway throwing rocks onto Phil's land. One of the rocks breaks a window in Phil's house.

Although Jack did not trespass himself, he caused the rocks to trespass and is, therefore, liable for any damage caused by the rocks.

Dan and Phil own adjoining land. There is no fence or other visible indication of the boundary line separating the properties. Dan, honestly believing he is on his own land, cuts down a tree. In fact, the tree is on Phil's side of the boundary.

Is Dan liable for trespass to Phil's land?

Probably. Dan intentionally stepped onto Phil's domain and cut down a tree that did not belong to him. He did not intend to trespass, but

his intentional act of entering Phil's land constituted a trespass.

Ralph has many signs posted on his land that read 'Do not trespass'. Rhoda, driving her car too fast, spins off the road and onto Ralph's land.

Is there trespass?

Probably not since Rhoda had no intention of entering Ralph's land. Her negligent driving forced her onto his land. She intended to stay on the road, and, therefore, there would be no trespass.

### Conversion

Conversion is the wrongful exercise of dominion over another's personal property. Usually, the wrongdoer takes control of the object and uses it, but if he destroys or damages the object, he is also usually guilty of conversion. There must be some actual interference with the owner's dominion (ownership) or right of property.

Phil has some lumber lying beside his house. His neighbor, Dan, believes that Phil would not care if he takes the lumber and uses it to build a fence between their properties. Dan does not intend to steal the lumber, but he does not have the owner's permission to use it.

Phil can probably recover the value of the lumber if he sues for conversion. Dan trespassed on Phil's land and exercised dominion of an owner over the lumber to which he had no right. Dan's act of taking the lumber, intending to keep it, was conversion.

Dale borrows Chuck's car and unknown to Chuck, he enters a demolition derby. The car is worthless after the contest, which Dale loses.

Dale is liable for conversion for the car. Although Dale had been given the right of possession of the car, he exercised dominion over it wrongfully. Chuck had no intention of lending the car to be destroyed. Therefore, Dale would be liable to Chuck for the value of the car.

Amy borrows Karen's car to use while Karen is in Europe. Karen changes her mind and tells Amy that she wants the car back to sell it. Amy refuses.

When the person entitled to possession demands it, the unjustified refusal to give it up is a conversion. Therefore, Karen could sue Amy to require her to return the car or to pay her the value of the car.

#### UNINTENTIONAL TORT

The preceding section dealt with acts that the perpetrator intended and thus were called *intentional* torts. The following material deals with *unintentional* acts that cause injury. Even though unintentional, the injured party may sue for compensation from the person causing the injury. However, not all unintentional acts that cause injury to another person give rise to liability. The law defines negligent conduct as doing an act that a reasonable and prudent man would not do or failing to act when a reasonable and prudent man would act.

If a reasonable man would not throw stones into a pond for fear of

hitting someone or of breaking something that belongs to someone, then an ordinary person who throws stones into the pond has committed a negligent act. If he injures someone or harms another's property, he is liable for the damage caused. The act is negligent only if it deviates from the standard of a reasonable man. In negligence, there must be a risk that injury may occur, but precautions need not be taken against every conceivable danger. In daily life, one must be alert to ensure that one's actions do not harm others. Each person has a *duty* to act with ordinary care to avoid causing injuries to other persons or the property of others. The amount of care that is necessary is determined by each particular activity.

Dale drives his car at 30 m.p.h., which is below the speed limit, in an area where children are playing by the side of the road. A child, chasing a ball, runs onto the road in front of Dale's car. Because of his speed, he cannot stop in time and hits the child.

Dale was aware that children were playing, and frequently played, by the roadside. Dale owed a duty to the child to drive in a reasonable manner to avoid injury to the child. Even though he was driving slower than the posted speed limit, he should have driven at a speed that would have permitted him to stop in time to avoid the accident.

Dale is driving at 30 m.p.h. on a country road. Suddenly, a child, chasing a ball, dashes onto the road. Dale is unable to stop in time and hits the child.

Dale is less likely to be liable to this child than in the previous example. He could not expect that a child or anyone else would suddenly

dash onto the road, and, therefore, his act of driving at 30 m.p.h. was not a negligent act.

Variations on these fact situations would cause greater difficulty in determining whether or not a person was negligent. At a civil trial, it is the responsibility of the jury to determine if the person acted negligently. If a duty of care is owed to someone and the breach of that duty causes injury, the act is a negligent act, although unintentional.

Pat lives within walking distance of school. Rather than walk to school, she likes to run. One morning she knocks down an elderly woman who is waiting on the sidewalk for a bus.

Pat owes a duty to people on the sidewalk not to run into them. If she does run into someone, she breaches this duty of care and is negligent for running on the sidewalk. A reasonable man would not run down the sidewalk when others are present.

If Pat walks down the sidewalk to school and is very attentive and alert and, for some reason, accidentally bumps into and knocks down the elderly lady, she probably would not be liable for the injuries to the woman since she had not breached the duty of due care. Pat is using the sidewalk as it is intended to be used; she is walking with care and yet still injures the woman. The only way that this particular accident can be avoided is for Pat to stay home. The law does not require her to avoid all possible injury to others by such drastic restrictions.

When circumstances require careful preparation for an act, or reasonable inspection of an instrument prior to use, *failure to prepare or inspect* constitutes negligence.

James is driving his car that has badly worn tires. As he is driving through a town, one of the tires blows out, causing the car to crash into a parked car.

James did not intend for the tire to blow out, but his failure to inspect the tire before driving is negligence. Therefore, he is liable for the damage caused to the parked car. It should be noted that the negligent act was not the tire blowing out, but was his *failure to inspect* the tire to prevent such an occurrence.

James, anxious to be on his way, puts his spare tire on in place of the flat tire, but does not tighten the nuts properly because he does not have a lug wrench with him. After driving a few miles, the wheel loosens causing his car to swerve and hit another parked car.

Rather than failing to inspect the car this time, James did not properly prepare the car for use. The *failure to prepare* is negligence and James is liable for the damage caused.

Another example of the negligent act of failing to prepare is the following hypothetical:

Frank parks his car on the top of a hill in San Francisco and does not set the brakes properly. A few minutes later, the car rolls down the hill into a store front a block away, causing substantial damage.

Since Frank did not fully engage the brakes while parked on a hill, he did not take the proper precautions to prevent the car from rolling. Therefore, he is negligent and must pay for the damage to the store. Had Frank parked his car on level ground so that the car could not roll, failure

to set the brakes with the same force as is required on a hill would not be negligence since the amount of force needed to keep the car from rolling on level ground is less than is needed on a steep hill.

Of course, Frank did not have to set his brakes at all on the hill if he had taken other precautions to ensure that the car would not roll. He could have placed some barrier in front of the car or turned the wheels towards the curb. But he failed to take these precautions or any others to adequately protect others from possible harm.

After Frank had refused to pay for the damage to the store, the store owner sued him. At trial, Frank argued that nobody he knows, and he knows many people, sets his brakes any harder than he did the day his car rolled. Therefore, he argued, he had complied with the standard of care followed by others in the community and was not negligent.

Evidence of custom or practice of others similarly situated is usually admissible on the issue of due care or negligence. However, when the people of a community or an industry perform negligently and it has become the custom to do so, a defendant will not be absolved from liability merely because he is following custom.

Thus Frank's argument would fail to relieve him of the duty to pay for the damage caused by his car. That others are negligent does not relieve him of his duty to take greater care than they take.

The standard of care required of a reasonable man may be prescribed by legislative enactment. When a statute provides that an act shall or shall not be done, any deviation from the standard set by the statute may be negligence.

Gary is driving over the speed limit and hits another car, causing substantial damage to both cars.

He is violating the law and, therefore, is committing a crime. He is also violating the duty of care he owes to others who may be injured by his act and is negligent. By setting a maximum speed limit, the legislature has established what duty of care drivers on the state roads owe to other drivers and to persons who are by the side of the road.

When the statute has been violated for a good reason, e.g., Gary was taking a sick person to the hospital, the court will not automatically find that, since he exceeded the speed limit, he is negligent. The court will ask the jury to determine what a reasonable man, who intended to comply with the statute, would do in a like situation. Would a reasonable man rushing someone to the hospital have exceeded the speed limit? If the jury concludes that a reasonable man would, in fact, exceed the speed limit, then Gary would not be negligent for the same act. In making this determination, the jurors can balance the *risk* of possible harm that the act could cause against the *utility* of doing the act in the manner it was done. Does the utility of the act committed and the way it was committed outweigh the risk of harm that occurred? If so, there is no negligence.

Dale is taking a friend to the hospital. He is driving faster than the posted speed limit through an area where children play. A child runs onto the road and Dale hits him.

Earlier it was established that Dale was negligent because he was driving at a speed that would not allow him to stop in time to avoid injuring a child. However, now another factor is added--he is taking an ill person



to the hospital. Applying a *risk versus utility* approach, a jury *could* find that the utility of getting the person to the hospital as quickly as possible outweighs the risk of hitting someone by driving at a faster speed than he normally would. In this instance, his act would not be negligent. A reasonable man would drive at the increased speed to reach the hospital quickly. Other facts, such as how ill the person was and how close to the road the children were playing, would have to be shown to help the jury reach a decision on whether or not Dale was negligent.

#### Defenses in Negligence Actions

In many law suits, the defendant will admit that his action, which caused the injury to the plaintiff, is negligent. He will argue, however, that because the plaintiff's own actions contributed to the injury, he should not be required to pay for the damage.

The general rule of law is that the plaintiff's negligence, which is a contributing cause of the injury, is a defense in a suit based on the negligence of the defendant. The plaintiff's acts must be negligent acts. The fact that the plaintiff contributed to his injuries will not relieve the defendant of his liability to pay for those injuries unless the plaintiff was negligent.

John is speeding as he drives through the country.  
Karen approaches the road on which John is driving,  
ignores a 'yield' sign and runs into John.

John was violating a statute (the speed limit), and Karen was also

violating a statute (disobeying a yield sign). Therefore, both were negligent. If John sued Karen for the damage to his car, she would defend in the action by showing that he was negligent and should not be able to recover when he too was wrong. Karen's argument would be upheld and John would be unable to collect from her for his injuries. Likewise, if Karen sued John, her negligence would be a defense, and he would not be required to pay for her damage. Each party would have to pay for his own injuries.

Another defense akin to the contributory negligence defense is the *assumption of the risk doctrine*. Under some circumstances, a person who voluntarily and knowingly exposes himself to obvious dangers is deemed to have assumed the risk that he may be injured. The defense requires two elements:

1. The injured plaintiff must actually know of and understand the risk he is incurring, and
2. His choice to incur the risk must be entirely free and voluntary. He must show in some manner that he has consented of his own accord to assume the risk.

A spectator who accepts an unscreened seat at a baseball game where he may be struck by batted balls presents an example of assumed risk.

Leonard is sitting in the stands behind third base and is hit in the head by a foul ball. The owners of the stadium could have installed screens to protect the spectators, but they failed to do so. Leonard, knowing that there were no screens, assumed the risk that he might be injured by a foul ball. Therefore, he would be unable to collect damages from the stadium owners for his injuries.

CONCLUSION

A discussion of *products liability* is absent from this unit. In the last decade, that area has had perhaps a greater impact on the public than any other area of the law. By omitting it, we do not intend to minimize its importance. But since the area is rapidly changing, the subject can best be taught by having a knowledgeable attorney address the class.

Torts is a very complex legal subject. This unit, only an introduction, was designed to help the student recognize what the law labels *tortious conduct*.