

# CHAPTER 6

## Personal Injury Laws

### Lessons

**6-1** Offenses Against Individuals

**6-2** Intentional Torts, Negligence,  
and Strict Liability

**6-3** Civil Procedure

**LESSON 6-1**

# Offenses Against Individuals

## GOALS

- Distinguish a crime from a tort
- Discuss the elements of a tort
- Explain when a person is responsible for another's tort

# HOT DEBATE




Your neighbor Shana is using a multipurpose woodcutting machine in her basement hobby shop.

Suddenly, because of a defect in the two-year-old machine, a metal clamp from the machine breaks. The metal strikes Shana's left eye, badly injuring it. The manufacturer had provided a one-year warranty against defects on the machine.




**Do you think the manufacturer should be responsible for Shana's medical expenses?**




If the machine was defectively  
manufactured or designed →  
Manufacturer is strictly liable for injuries

Warranty expired → does not matter,  
manufacturer still liable



**What defense(s) does the manufacturer have against a suit for damages for her injury?**



If Shana had made “**material**”  
modifications to the machinery, the  
manufacturer may be successful

# HOW DO CRIMES AND TORTS DIFFER?

- A **crime** is an offense against society—a public wrong.
- A **tort** is a private or civil wrong—an offense against an individual
  - injured can sue for money damages (compensate for the injury)
  - acts can be torts and crime



# ELEMENTS OF A TORT

- Duty - to respect the rights of others
  - Not to injure others
  - Not to interfere with the property rights of others (trespassing)
  - Not to interfere with the economic rights of others (contracts)

Whether or not a duty exists is determined by a judge.





# ELEMENTS OF A TORT

- Violation of the duty — must be proved before the injured can collect (jury decides)
- Injury — no injury; no tort
- Causation — breach of duty caused injury
- Strict Liability - liability is imposed even though intent & carelessness may be lacking

# RESPONSIBILITY FOR THE TORTS OF ANOTHER

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- In general, all persons are responsible for their conduct and therefore liable for their torts.
- Vicarious liability is when one person is liable for the torts of another.

# Offenses Against Individuals

- A tort is considered to be an offense against society
- TRUE / FALSE

# Offenses Against Individuals

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- F A L S E

# Offenses Against Individuals

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- A single act can be both a tort and a crime.
- TRUE / FALSE

# Offenses Against Individuals

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- TRUE

# Offenses Against Individuals

- Degree of causation of a tort great enough to be recognized by law is called
  - a) proximate cause
  - b) intimate cause
  - c) incidental cause
  - d) none of the above



# Offenses Against Individuals

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- A - proximate cause

# Offenses Against Individuals

- In order to establish liability for a tort, all of the following must be proved except:
- a) duty
- b) breach of duty
- c) harm recognized by law
- d) vicarious liability

# Offenses Against Individuals

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- D - vicarious liability

# Offenses Against Individuals

- An insane person cannot be held liable for a tort.
- TRUE / FALSE

# Offenses Against Individuals

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- F A L S E

# Offenses Against Individuals

- When one party is held responsible for the tort of another, the liability is called \_\_\_\_\_ liability

# Offenses Against Individuals

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- vicarious

# Offenses Against Individuals

- Which of the following types of torts are based on carelessness?
- A) intentional torts
- B) strict liability torts
- C) negligence
- D) none of the above



# Offenses Against Individuals

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- C - negligence

# Offenses Against Individuals

- If you act recklessly, but do not harm anyone, there is usually no tort
- TRUE / FALSE

# Offenses Against Individuals

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- TRUE

# Offenses Against Individuals

- Parents generally are held liable for the torts of their children
- TRUE / FALSE

# Offenses Against Individuals

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- FALSE

**LESSON 6-2**

# Intentional Torts, Negligence, and Strict Liability

## GOALS

- Identify nine common intentional torts
- Define negligence and strict liability

# COMMON INTENTIONAL TORTS

**Intentional torts - torts for which the defendant intended either the injury or the act**

- Assault
- Battery
- False imprisonment
- Defamation
- Invasion of privacy
- Trespass to land
- Conversion
- Interference with contractual relations
- Fraud

# ASSAULT



The tort of **assault** occurs when one person intentionally threatens to physically or offensively injure another.



# BATTERY



An intentional breach of the duty to refrain from harmful or offensive touching of another is **battery**.

# FALSE IMPRISONMENT

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**False imprisonment** is depriving a person of freedom of movement without the person's consent and without privilege.

# DEFAMATION

If a false statement injures a person's reputation, it may constitute the tort of **defamation**. To be legally defamatory, the statement must be false, be communicated to a third person, and bring the victim into disrepute, contempt, or ridicule by others.

- If defamation is spoken, it is slander.
- If the defamation is written or printed, it is libel.

# INVASION OF PRIVACY

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**Invasion of privacy** is defined as the unwelcome and unlawful intrusion into one's private life so as to cause outrage, mental suffering, or humiliation.

# TRESPASS TO LAND

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- The tort of **trespass to land** is entry onto the property of another without the owner's consent.
- Trespass may consist of other forms of interference with the possession of property.

# CONVERSION

- **Conversion** occurs when someone's right to control the possession and use of personal property are violated.
- Conversion occurs if the property is stolen, destroyed, or used in a manner inconsistent with the owner's rights.
- A thief is always a converter.
- Conversion occurs even when the converter does not know that there is a conversion.

# INTERFERENCE WITH CONTRACTUAL RELATIONS

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**Interference with contractual relations** occurs when a third party entices or encourages a breach of contract.

# FRAUD

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- **Fraud** occurs when there is an intentional misrepresentation of an existing important fact.
- The misrepresentation must be relied on and cause financial injury.



# WHAT IS NEGLIGENCE?

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- Duty and negligence
- Breach of duty in negligence
- Causation and injury in negligence
- Defenses to negligence

# WHAT IS STRICT LIABILITY?

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- **Strict liability** means holding a defendant liable without a showing of negligence.
- Strict liability makes the defendant liable if he or she engaged in a particular activity that resulted in injury.

**LESSON 6-3**

# Civil Procedure

## GOALS

- Discuss what damages are available to victims of torts
- Explain the various stages of a civil suit

# WHAT CAN A TORT VICTIM COLLECT?

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- An injunction may be issued to prevent a tort.
- The usual remedy for a tort is damages.

# DAMAGES

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- **Damages** are a monetary award to the injured party to compensate for loss.
- Actual or compensatory damages are intended to compensate the plaintiff for loss.
- Punitive damages are intended to punish the defendant.

# HOW IS A CIVIL CASE TRIED?

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- Judges always decide issues of law.
- Juries decide issues of fact.

# KEY TERMS USED IN A CIVIL CASE

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- Evidence
- Testimony
- Witness
- Subpoena
- Verdict
- Judgment

# HOW IS A JUDGMENT SATISFIED?

- Ordinarily, when a civil judgment for the plaintiff becomes final, the defendant will pay the judgment.
- If the defendant does not pay, the plaintiff may obtain a writ of execution.



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# Offenses Against Individuals

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- C) negligence
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# Offenses Against Individuals

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# Offenses Against Individuals

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# Offenses Against Individuals

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**LESSON 6-2**

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- Conversion
- Interference with contractual relations
- Fraud

# ASSAULT

The tort of **assault** occurs when one person intentionally threatens to physically or offensively injure another.



→ threat must be believable & person must have ability to carry it out

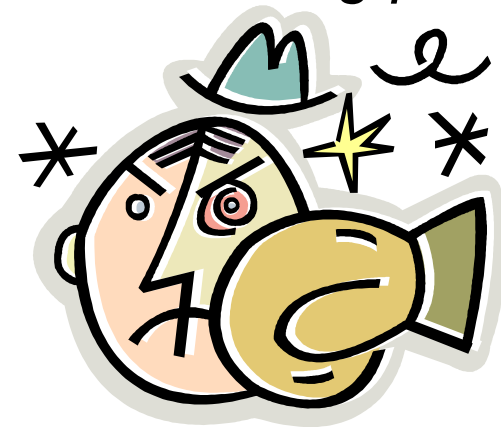
**Just pointing the gun at someone is assault**

# BATTERY

An intentional breach of the duty to refrain from harmful or offensive touching of another is **battery**.

*(shooting / pushing in anger / spitting on / throwing pie in face)*

- self defense is not battery
- consenting to contact (sports)





# FALSE IMPRISONMENT

**False imprisonment** is depriving a person of freedom of movement without the person's consent and without privilege.

Probable cause – privileged to imprison

Merchants allowed to detain (reasonable basis for believing person shoplifted)

# DEFAMATION

---

If a false statement injures a person's reputation, it may constitute the tort of **defamation**. To be legally defamatory, the statement must be false, be communicated to a third person, and bring the victim into disrepute, contempt, or ridicule by others.

- If defamation is spoken, it is slander.
- If the defamation is written or printed, it is libel.

# DEFAMATION

- Exception: statements about public officials or prominent personalities
  - No liability unless statement is made with malice (known to be false when made)
  - Judges, lawyers, jurors, witnesses & other parties in judicial proceedings are also immune for statements made during the trial/hearing
- Truth is a defense to a defamation charge

# INVASION OF PRIVACY

**Invasion of privacy** is defined as the unwelcome and unlawful intrusion into one's private life so as to cause outrage, mental suffering, or humiliation.

two-way mirrors (violates expectation of privacy)

Politicians, actors & people in the news give up much of their right to privacy when they step into the public domain

# TRESPASS TO LAND

- The tort of **trespass to land** is entry onto the property of another without the owner's consent.
- Trespass may consist of other forms of interference with the possession of property.
  - Dumping rubbish on someone else's property
  - Breaking someone's window
- Intent is required to commit the tort of trespass



# Trespass Case



# CONVERSION

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- **Conversion** occurs when someone's right to control the possession and use of personal property are violated.
- Conversion occurs if the property is stolen, destroyed, or used in a manner inconsistent with the owner's rights.
- A thief is always a **converter**.
- Conversion occurs even when the converter does not know that there is a conversion.

# INTERFERENCE WITH CONTRACTUAL RELATIONS

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**Interference with contractual relations**  
occurs when a third party entices or  
encourages a breach of contract.

# FRAUD

---

- **Fraud** occurs when there is an intentional misrepresentation of an existing important fact.
- The misrepresentation must be relied on and cause financial injury.

→ Not personal opinions/views

# WHAT IS NEGLIGENCE?

- Duty and negligence -- intent to injure someone is NOT necessary
- Reasonable- person standard – act with care, prudence and good judgment
  - Standard is different for certain individuals
    - Under age 7 – incapable of negligence
    - If child undertakes “adult activity” – held to adult standard
    - Professionals & Tradespeople – held to higher standard
- Negligence (most common tort); various degrees

# WHAT IS NEGLIGENCE?



- Breach of duty in negligence – the reasonable person standard defines the duty
- Causation and injury in negligence – proximate cause (violation of duty must have caused injury)

# WHAT IS NEGLIGENCE?



Defenses to negligence – contributory negligence (cannot recover); comparative negligence (partial recovery)

- Assumption of Risk – aware of danger, but decides to subject themselves to the risk

# WHAT IS STRICT LIABILITY?

- **Strict liability** means holding a defendant liable without a showing of negligence.
- Strict liability makes the defendant liable if he or she engaged in a particular activity that resulted in injury.
  - Target practice / blasting / crop dusting with dangerous chemicals / storing flammable liquids



# STRICT LIABILITY

- Ownership of dangerous animals also subjects you to strict liability
  - Bears
  - Tigers
  - Snakes
  - Elephants
  - Monkeys
- Sale of goods that are unreasonably dangerous (seller & manufacturer of defective goods are responsible)

**LESSON 6-3**

# Civil Procedure

## GOALS

- Discuss what damages are available to victims of torts
- Explain the various stages of a civil suit

# WHAT CAN A TORT VICTIM COLLECT?

- Two types of remedies generally available for civil lawsuits:
- An **injunction** (court order) may be issued to prevent a tort or stop it from continuing.
- The usual remedy for a tort is **damages**

# DAMAGES

- **Damages** are a monetary award to the injured party to compensate for loss.
- **Actual or compensatory** damages are intended to compensate the plaintiff for loss.
- **Punitive** damages are intended to punish the defendant. – jury decides

# Attorney Fees

- Contingency Fee Basis – lawyer takes a percentage of the recovery
  - 25% - if settled before trial
  - 33% - if won at trial
  - 40% - if won on appeal

# What's Your Verdict?

- Horsley, the owner of a dry cleaning store, lived next door to Eardly, who was editor of a small newspaper in their town. The two quarreled frequently and became enemies. As a consequence, when Eardly published a story on the drug problem in the town, he identified Horsley as a “drug dealer.” This statement was untrue and defamatory.
- What kind of damages could Horsley collect from Eardly in a lawsuit?

# What's Your Verdict?

- If Horsley could prove injury to her business → damages
- If Horsley could prove Eardly acted with malice → punitive damages
- → usually available where intentional torts are committed (not contract law or other torts)

# HOW IS A CIVIL CASE TRIED?

- Judges always decide issues of law.
- Juries decide issues of fact.
- 1) Jury selected
- 2) Opening statements – what each party will attempt to prove
- 3) Evidence presented – documents, charts, sobriety test results, photos, etc.



# HOW IS A CIVIL CASE TRIED?

- 4) Closing arguments and instructions to jury
- 5) Jury deliberation
- 6) Verdict - Jury
- 7) Judgment - Judge

# KEY TERMS USED IN A CIVIL CASE

- Evidence – materials to prove/disprove alleged facts
- Testimony – *most common form of evidence* – statements by witnesses under oath
- Witness – personal knowledge
- Subpoena – written court order
- Verdict – jury's decision
- Judgment – final result of trial

# HOW IS A JUDGMENT SATISFIED?

- Ordinarily, when a civil judgment for the plaintiff becomes final, the defendant will pay the judgment.
- If the defendant does not pay, the plaintiff may obtain a writ of execution.