

CIVIL LAW

In our society the law assumes that every person has certain basic rights and it seeks to protect these rights. Among them are the rights to:

personal security

health

safety

privacy

peace of mind

own & enjoy property

maintain a good reputation

move freely from place to place

Any violation of one of these rights may constitute a **TORT**. A tort is not considered a crime per se. However, if you commit a tort, the injured party can sue you. If one of these rights is violated, the injured party has a right to take legal action to sue for damages.

DAMAGES: relief (money or otherwise) granted by the courts dependent upon the seriousness of the wrongful act, its effect, the permanent injury to health, and/or the cost of repairing or replacing damaged property. The judge may award “**PUNITIVE DAMAGES**” to punish the defendant. Suing for punitive damages means that you are suing to punish the person or group who violated your rights.

In a TORT action, 3 things are necessary to prove:

1. The defendant (person being sued) must owe a duty to the plaintiff (person bringing the suit.)
2. The defendant must have violated that duty carelessly or intentionally.
3. The plaintiff must have suffered injury or damage as a direct result of the violation.

TORT: A CIVIL WRONG AGAINST A PERSON OR HIS PROPERTY (CIVIL LAW)

This is different from a crime...

CRIME: A WRONG AGAINST THE PUBLIC AT LARGE (CRIMINAL LAW)

It is possible to commit a crime and a tort at the same time. For example, drunk driving is a crime. If you hit a pedestrian while drunk driving, the police will arrest you and you can be prosecuted in a criminal court. You may serve prison time. At the same time, that person can sue you for damages against his person. You violated his right to safety.

EXAMPLES OF TORTS

ASSAULT: In Civil Law, an ASSAULT is an open threat or attempt to do physical harm to another person. An “assaulter” must have some ability to carry out the threat; otherwise, it cannot be taken seriously. An ASSAULT, then, involves no touching of any kind. It is a threat or an attempt to hurt the other person.

BATTERY: In Civil Law, a BATTERY is an actual and intentional causing of bodily harm. In fact, a BATTERY is held by the courts to be any unlawful touching of another person without his or her consent.

FALSE IMPRISONMENT: In Civil Law, FALSE IMPRISONMENT is an unlawful use of force that compels a person to be where he does not want to be. It is an act that takes away a person’s freedom of movement without having good reason or proper authority. The restraint must be complete with no escape possible. It can be committed by force or by threat. The person must know at the time that he or she is being detained.

NEGLIGENCE: This is the failure to use ordinary care: the kind of care that a reasonable person would use under similar circumstances. When you are negligent (careless) and, as a result, someone is hurt or someone’s property damaged, a lawsuit might be brought against you.

There are four requirements for a successful tort action in negligence. It must be established that:

1. The defendant owed a duty or responsibility to the plaintiff.
2. The defendant violated that duty.
3. This violation was the direct cause of injury.
4. The plaintiff suffered damage.

SLANDER: If somebody says something evil and false about you to others and thus injures your reputation, this is SLANDER. SLANDER is done by word of mouth.

LIBEL: Any such injury to your reputation through the sense of sight. If writing, printing, cartoons, or pictures are used, you may bring a LIBEL suit against the person who did the wrong to you.

The essentials for a lawsuit in a SLANDER or LIBEL case are degrading words spoken or written:

1. About the plaintiff
2. In the presence, hearing, and understanding of a third party
3. Falsely and with malice
4. Causing damage.

NUISANCE: Includes anything that unlawfully injures the health, offends the senses or interferes with the free enjoyment of life and property. A nuisance annoys, injures, or endangers people. It violates the basic right of every person to health, safety, comfort, and sense of decency. Examples: breaking windows, unlawfully pouring smoke out of a factory smokestack, channeling a stream of rainwater onto a neighbor's property, keeping a rooster in the middle of the city, etc. State statutes and local ordinances usually define nuisances.

There are 2 kinds of NUISANCE:

1. A public nuisance is one that affects a lot of people
2. A private nuisance is one that affects a single person or small group of people.

TRESPASS: This is the intentional interference with someone else's property. It is also going onto another person's land without permission. It does not matter whether any actual damage results. There is no trespass when permission has been granted.

Two different situations may arise...

1. The Trespasser has no right to be on your property. You don't want him there, and he is not supposed to be there. However, you must keep from willfully hurting him.
2. The Trespasser is on your land without invitation, but you do not throw him off. You just tolerate him. You owe him the duty to keep from setting or keeping a trap. You must warn him of any hidden danger on your property that you know about and he doesn't.

CONTRACT & SALES: A CONTRACT is an agreement between 2 or more people to do or not do something.

A legal contract requires 7 things:

1. One person must make an offer and the other person must accept it.
2. The parties involved must understand each other and the agreement (meeting of the minds.)
3. The parties to the contract must be competent (i.e. understand what they are doing.)
4. The agreement must not violate law.
5. There must be something of value passing between the parties.
6. The agreement must be a serious one. It must not be for a joke.
7. All contracts involving assets over \$500.00 must be in writing.

The law gives special treatment to children who make contracts. Because they don't have as much experience as adults, the law protects them. If a child discovers that he has made a mistake, the law usually allows him to return the goods and get his money back.



There are two court systems:

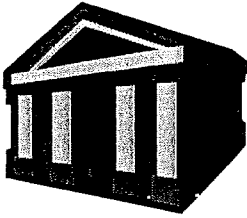
- 1. Federal Courts**
- 2. State Courts**



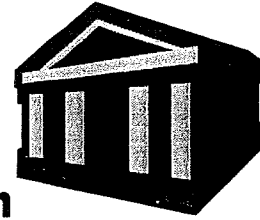
Jurisdiction – the authority to hear a particular case – a range of authority of a court. Federal and State Courts have jurisdiction over certain cases.

Exclusive Jurisdiction – The authority of the federal courts alone to hear and rule in certain cases.

Concurrent Jurisdiction – The authority to hear cases shared by federal and state courts.



Article III



The Federal Court System

Judicial Branch: Supreme Ct.
and lower courts.



What cases does the Federal court have exclusive jurisdiction over?

- 1. The U.S. Government and its officials**
- 2. Foreign ambassadors, ministers, or consuls**
- 3. Cases between two or more states**
- 4. Citizens of different states**
- 5. Cases involving the Constitution**
- 6. Cases involving the laws and treaties of the U.S.**

The Levels of the Federal Courts

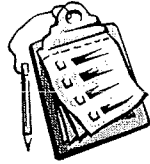
- 1. Federal District Courts**
- 2. Court of Appeals**
- 3. Supreme Court**



1. Federal District Courts

- **All federal cases begin in these courts**
- **Lowest level of the Federal Courts**
- **Hear 80% of all federal cases**

- 94 courts with one in at least each state
- The court may have between 2-28 judges



2. Court of Appeals

Only appellate Jurisdiction

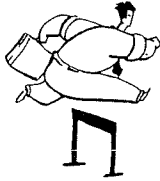
- Second level of the Federal Court system
- If you lose your case at the District level you can appeal your case to this court.
- 41,000 cases are heard at this level
- Divided into 11 circuits
- Each one has 4-22 judges
- 3 judge panel hears a case



3. Supreme Court

- Highest court in the land.
- They have original jurisdiction - Cases heard only by them. Usually they deal with federal questions such as conflicts between states and dealings with foreign ambassadors.
- They also have appellate jurisdiction - Cases that they may hear from a lower court.

- **If you lose in the lower courts you may appeal to the Supreme Court. You may also appeal from a state supreme court**



- **10 million cases a year in America, 5,000 are appealed, and the Supreme Court takes up only 150.**

Other Federal Courts

1. **Court of Military Appeals**



2. **Court of International Trade**



3. **The United States Claims Court**

4. **The courts of the District of Columbia**

5. **The Territorial Courts**

6. **Court of Veteran Appeals**



7. **The United States Tax Courts**





Federal Judges

- **Appointed by the President and approved by the Senate**
- **Usually they are over the age of 43**
- **They usually have very impressive backgrounds in practicing law or working in the government.**



The State Courts

- **Courts are established and structured differently. Usually follow this structure:**
 1. **General Trial Courts – Similar to Federal District Courts**
 2. **Courts of Appeals – Similar to the U.S. Court of Appeals**
 3. **State Supreme Court – Last stop at the state level. The Supreme Court can review decisions in these courts.**



The Supreme Court
*Makes final decisions in
interpreting Const.*



What is the role of the Supreme Court and the Judicial Branch?

To interpret the Laws

✓ How does the Judicial Branch check the other branches?

Legislative Branch: Declare Laws Unconstitutional

Executive Branch: Declare Acts Unconstitutional

How are members of the Supreme Court selected?

They are appointed by the President and approved by the Senate

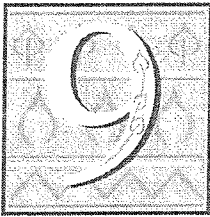
↓
Check legislative
over Judicial

↓
Check of executive branch
over Judicial Branch.



How long do Supreme Court Justices Serve?

For Life



Number of Members in the Supreme Court:

9

*Brown v. Board of Ed. of Topeka
Ended segregation in public
schools*



Why is the case Marbury v. Madison so important?

First Case that established Judicial Review

What is Judicial Review?

The power of the Supreme Court to check the other two branches: Declare acts or laws unconstitutional

The 1st Amendment: Freedom of the press and religion.

Due Process

Due Process: Requires the government to use fair procedures when investigating, trying, or punishing someone for a crime. It limits the procedures that may be used by government when interfering with life, liberty, or property. 4th-8th Amendments protect both the innocent and the guilty against possible abuses of official power.

↓ must follow

Directions: By using your *We the People Book* on page 157 list and explain each right found under the due process amendments.

Amendment 4

- Property cannot be searched or taken without a proper warrant
- Cannot be arrested without a proper warrant

Amendment 5

- A person cannot be tried for a capital crime unless first indicted by a grand jury
- Double Jeopardy - Cannot be tried for the same crime twice
- A person does not need to testify against themselves

- Life, liberty or property cannot be taken away without due process of law
- Private Property cannot be taken for public use without just compensation

Amendment 6

- In Criminal cases, the accused has the right to a speedy and public trial by jury
- The accused must be tried in the state and district where the crime was committed
- The prisoner must be informed of charges against him
- An accused must be faced by witnesses against him
- The accused must have the right to obtain witnesses in his favor.
- The accused is entitled to counsel (attorney) for his defense

part of Due process

Amendment 7

- The right of trial by jury exists in lawsuits involving more than \$20
- If a case is appealed to a higher court the facts stated in the decision must be accepted.

Amendment 8

- There shall be no excessive bails or fines
- There shall be no cruel or unusual punishment