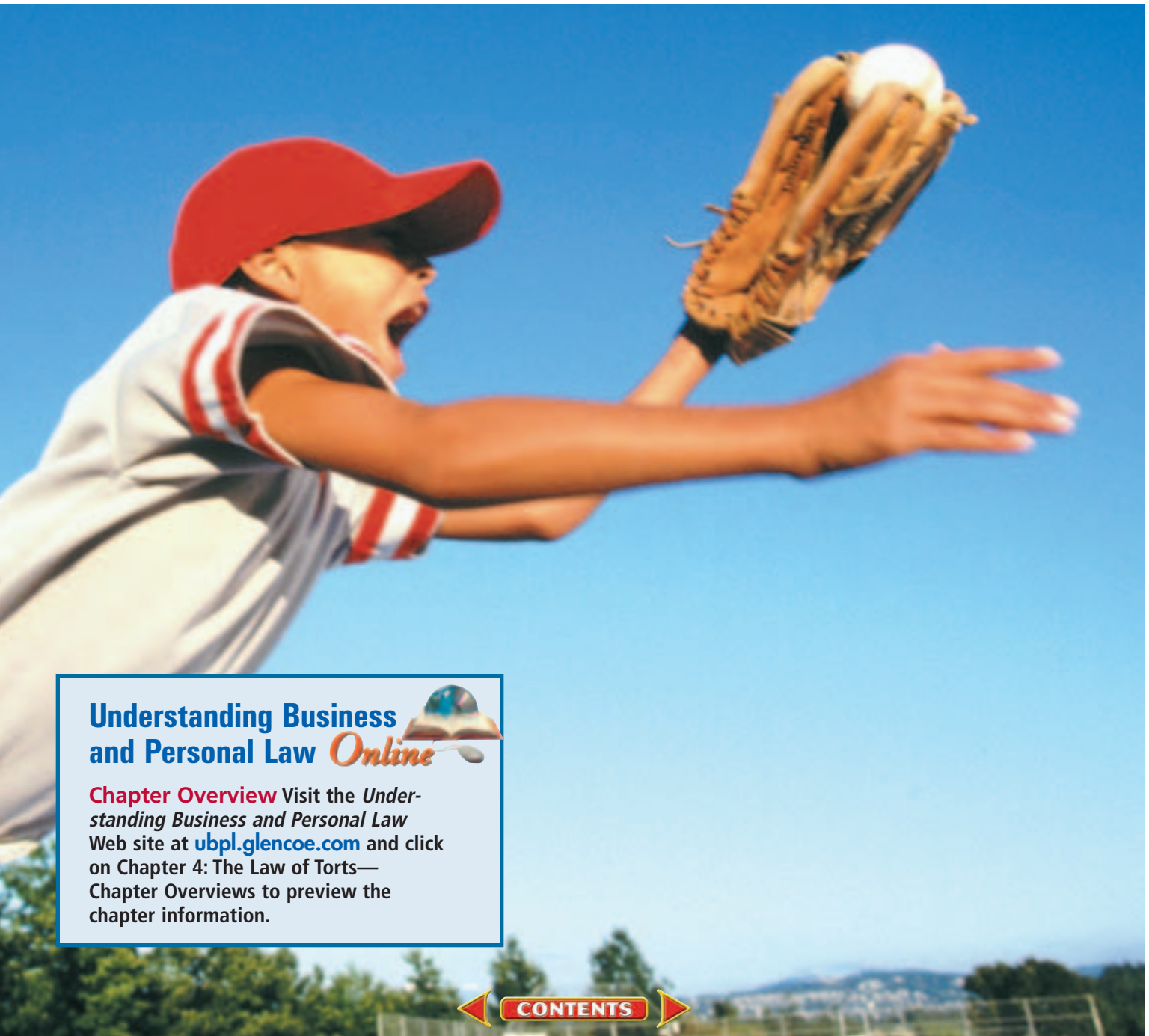


# The Law of Torts



## Understanding Business and Personal Law *Online*



**Chapter Overview** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 4: The Law of Torts—Chapter Overviews to preview the chapter information.

## The Opening Scene

After the football game, some New Hope High students arrive at The Corner Café, a local hangout popular with students.

### The Corner Café

**JAMILA:** You drive like a fool, Trai! The way you took that last corner could have caused an accident! It's too bad that Daniel's dad wouldn't let him drive. I'm never getting in a car with you again!

**TRAI:** You're not exactly a great driver either, Jamila. I don't know why you have to make such a big deal out of everything. If you don't like my driving, you can feel free to walk home tonight—I don't care!

**JAMILA:** Walk five miles? I don't think so. I guess I'll just have to deal with your driving for tonight.

**TRAI:** Well, then I guess you've assumed the risk, as Mrs. Martinez would say.

**DANIEL:** Yeah, just like that kid who was attacked by those tigers.

**TRAI:** Tigers? As usual, Daniel is miles away! What are you talking about?

**DANIEL:** I'm talking about the Tiger Zoo. Maybe you should try reading the paper sometime, Trai.

**TRAI:** The what?

**DANIEL:** The Tiger Zoo! It's located out on Route 229.

**PEGGY:** Danny's right, Trai. I took my little sisters there last month. The zoo has six or seven baby tigers, and you can pet them and everything. They're really cute!

**DANIEL:** You can't pet the tigers anymore. One of them bit a kid, and they shut the place down. It was all over the papers last week.

*(A waiter arrives and takes everyone's orders. Trai, Peggy, and Jamila order burgers and fries. Daniel orders only a soda.)*

**JAMILA:** Aren't you going to order some food, Danny? If you're short on money, I can lend you some.



**DANIEL:** A girl who ate here last week got really sick. There's no way I'm going to allow that to happen to me.

**TRAI:** You're full of good news tonight.

**PEGGY:** Once again, he's right. This girl ate some bad fish and got really sick. Now she's suing this place.

**TRAI:** Why? It was an accident. You can't sue somebody for an accident. Besides, what are the odds that it'll happen again? Order up, Danny boy.

**DANIEL:** No way. I don't believe in taking unnecessary risks.

**JAMILA:** Then you'd better not ride in a car that Trai's driving. He's the most negligent driver on earth.

**PEGGY:** You can't be negligent until you actually hurt somebody.

**TRAI:** Thanks, Peg.

**PEGGY:** Stupid, yes. Negligent, no.

### What Are the Legal Issues?

1. What is the difference between a crime and a tort?
2. What are some specific intentional torts in our legal system?
3. What is involved in the tort of negligence?
4. What defenses exist for negligence?
5. What is involved in the tort of strict liability?

# Intentional Torts

## What You'll Learn

- How to tell the difference between a crime and a tort
- How to explain the nature of tort law
- How various torts can be committed
- How to define various intentional torts

## Why It's Important

Learning the difference between a tort and a crime, as well as the types of intentional torts, will help you understand how the justice system protects people from injury.

## Legal Terms

- crime
- tort
- intentional tort
- tortfeasor
- trespass
- nuisance
- false imprisonment
- defamation
- invasion of privacy

## The Difference between Criminal Law and Tort Law

When people commit a **crime**, they harm not only specific individuals but also the general welfare. The role of government is to preserve the safety and well-being of the entire social structure. A crime is considered an offense against the public at large and is therefore punishable by the government.

In contrast, a **tort** is a private wrong committed by one person against another. It involves one person's interference with another person's rights. A tort will lead the wronged party to try and recover money as compensation for the loss or injury suffered. However, such an offense does not call upon the government to punish wrongdoers and to protect society.

In some situations, however, a single action can be both a tort and a crime.

**Example 1.** Dr. John Boyle was prosecuted, tried, and convicted of strangling his wife, Noreen. After being criminally prosecuted for aggravated murder, a wrongful death suit was brought under tort law on behalf of Noreen's two minor children. The single act of killing his wife involved Dr. Boyle in two court actions: one brought by the state for a crime and the other filed on behalf of the children for a tort offense. The law punished the defendant with a sentence of life imprisonment and also gave the children the right to recover money as compensation for the death of their mother.

The law of torts is grounded in the concept of rights. Under tort law, all people are entitled to certain rights simply because they are members of our society. These rights include, among others: the right to be free from bodily harm, the right to enjoy a good reputation, the right to conduct business without unwarranted interference, and the right to own property free from damage or trespass.

Other rights arise under special circumstances. For example, patients who enter a hospital have the right to expect competent care from the healthcare providers assigned to their cases.

The law imposes a duty on all of us to respect the rights of others. Tort law governs this interplay between rights and duties. The word

*tort*, from the Latin word *tortus*, meaning “twisted,” is used to refer to a wrong against an individual.

## Intentional Torts

Torts are classified as intentional or unintentional. An **intentional tort** occurs when a person knows and desires the consequences of his or her act. Conversely, the person who commits an unintentional tort does not have this mental determination. The most common intentional torts are listed and defined in Figure 4.1. Let’s take a closer look at some intentional torts and selected situations to which they apply.

### Assault and Battery

Assault and battery are two separate torts, which may or may not be committed together. The tort of assault occurs when one person deliberately leads another person to believe that he or she is about to be harmed. Rushing toward someone with a raised knife while shouting threats would constitute an assault, even if the victim is not touched. The assault occurs because the victim fears immediate bodily harm. The tort of

**Figure 4.1**

### Intentional Torts

Tort	Description
Assault	Threatening to strike or harm with a weapon or physical movement, resulting in fear.
Battery	Unlawful, unprivileged touching of another person.
Trespass	Wrongful injury or interference with the property of another.
Nuisance	Anything that intereferes with the enjoyment of life or property.
Interference with contractual relations	Intentionally causing one person to break or refrain from entering a contract with another.
Deceit	False statement or deceptive practice done with intent to injure another.
Conversion	Unauthorized taking or borrowing of personal property of another for the use of the taker.
False imprisonment (false arrest)	Unlawful restraint of a person, whether in prison or otherwise.
Defamation	Wrongful act of injuring another’s reputation by making false statements.
Invasion of privacy	Interference with a person’s right to be left alone.
Misuse of legal procedure	Bringing of legal action with malice and without probable cause.
Infliction of emotional distress	Intentionally or recklessly causing emotional or mental suffering to others.

#### INTENTIONAL TORTS

In criminal law when someone commits a wrong, the action is called a crime. In civil law when someone commits a wrong, the action is called a tort. *Which of the torts listed do you think is the most serious?*





battery involves the unlawful, unprivileged touching of another person, even if the physical contact is not harmful. The essence of battery is the unwanted touch, regardless of the intent of the wrongdoer.

The tort of assault is different from the crime of assault, which you learned about in Chapter 3. The essential difference between the two lies in the fact that the victim of a tort assault must know that the **tortfeasor**, or person who committed the tort, meant to commit harm. Otherwise, the victim has not been frightened, and no harm has resulted. In criminal law, however, an assault is an attempted battery, and the intended victim need not be aware of the attempt at all. For example, a criminal assault can be carried out against an unconscious victim. Trying an individual for the crime of assault is done on behalf of society as a whole. On the other hand, a person is tried for the tort of assault to compensate a victim for personal anguish or stress suffered.

### Trespass

A **trespass** is the wrongful damage to or interference with the property of another. Property refers to anything you may own, including movable items (cars, VCRs, CD players, purses, wallets) and non-movable items (real property). Real property includes land and things built on the land, growing on the land, or located within the land. The tort of trespass refers most commonly to real property.

*Example 2.* Sorensen and some friends went hunting on Lashutka's private ranch without her permission. This constituted the tort of trespass, and the landowner could bring a lawsuit against Sorensen and the others. Notice that Sorensen and his

#### ASSAULT

Physical touching is not necessary for a person to commit an assault. *Which of the two people in this photograph would you consider to be in the process of committing an assault?*



friends did not actually harm Lashutka's property. This makes no difference because the law of torts presumes injury merely from someone's unwelcome presence on the property of another.

Under common law, ownership of real property extended from the center of the earth to the highest point in the sky. A person owned not only a portion of the earth's crust but also the ground below and the airspace above. Today, however, most states have rewritten laws to limit a property owner's claim to the airspace far above his or her land. Doing so ensures that private ownership will not interfere with air travel.

## Nuisance

The tort of **nuisance** is anything that interferes with the enjoyment of life or property. Loud noises at night, noxious odors, or smoke or fumes coming from a nearby house are examples of nuisances. A public nuisance is one that affects many people. In contrast, a private nuisance affects only one person. A complaint by local residents about the noise at The Corner Café in The Opening Scene could make its owner the target of a lawsuit for creating a public nuisance.

## False Imprisonment

Law enforcement officers must have probable cause or a warrant to arrest someone. Consequently, they can be sued for **false imprisonment**, or false arrest, if they make an arrest without meeting

## Virtual Law

### Privacy in Cyberspace

Many companies that rely on the Internet are paying more attention to their privacy policies. Supporters of privacy rights say that some e-commerce companies violate consumer privacy. Laws are being considered to require companies to reveal how they gather and use information about consumers. As a result, many companies are hiring Chief Privacy Officers. These executives set up information-gathering policies and create programs that inform and educate employees on privacy policies. Chief Privacy Officers would also review privacy policies as they relate to new products and services. (Source: *New York Times*, p. A7, Feb. 12, 2001)

**Connect** Search several Web sites of corporations that do business online. Compare their privacy policies on sharing consumer information with other companies.

### Smashed Grapes and Slippery Floors

You're going to be late for soccer practice again! As you hurry through the produce department of the grocery store where you work, you notice some smashed grapes on the floor. Cleaning the floors is your job, but you've already clocked out and if you're late for soccer practice again, you'll get benched. You don't see anyone around immediately that you can tell. What do you do? *Are you ethically responsible for cleaning up the grapes? for taking time to notify someone? for being on time for soccer practice?*

### DEFAMATION

Freedom of the press and the right of individuals to bring a defamation suit often clash in this country. *How has the United States Supreme Court created safeguards to help preserve freedom of the press and the right to sue for defamation?*

these requirements. However, because of the prevalence of shoplifting in our society, most states now have laws that allow store managers and detectives to detain suspected shoplifters. Store personnel must have reasonable grounds to suspect that shoplifting has occurred, and they must detain the suspect in a reasonable manner for only a reasonable length of time. Determining what is "reasonable" can be difficult.

**Example 3.** Betty Brandon, a store detective for the Brennan Department Store, thought she saw customer Gwen Forsythe place lipstick in her purse. The detective apprehended the woman and locked her in a storeroom for questioning. However, Betty and the store manager became satisfied that Gwen was innocent and released her. Gwen sued for false imprisonment, and the court ruled that the store employees had acted unreasonably. Gwen won a large sum of money as compensation for her humiliation and emotional suffering.

### Defamation

The wrongful act of injuring another's reputation by making false statements is called **defamation**. Defamation is divided into two categories: libel and slander. Libel is a false statement in written or printed form that injures another's reputation or reflects negatively on that person's character. Radio and television broadcasts, newspaper stories, video and audio recordings, movies, photographs, signs, and even



paintings and statues may be subject to charges of libel. All such forms of communication reduce a false statement to a permanent form. In contrast, slander is a false statement that is made orally to a third party.

You can usually sue for libel if the permanent statement in question damages your reputation, is false, and is communicated to at least one other person. People are allowed to speak the truth, however, as long as it is done without spite or ill will. In addition, statements made by senators and representatives on the floor of Congress and statements made in a court of law are privileged. This means they are not vulnerable to a defamation lawsuit. The concept of privileged speech is intended to protect the open debate of legislative and judicial matters.

People in the public limelight also have more difficulty than the average person in proving damage to their reputations in defamation lawsuits. Public officials such as politicians and judges, as well as a variety of other public personalities including movie stars, pop singers,

## LAWS in Your Life

### Privacy on the Phone

Innovations in telephone technology have made communication much more convenient. Cordless, cellular, and digital phones allow varying degrees of mobility while talking on the telephone. When you use such phones, however, you are transmitting signals through the air that are similar to a radio broadcast. Anyone with a receiver tuned to the right frequency can overhear your conversation. Digital phones offer the most protection against eavesdropping, but special decoders can convert even digital transmissions into voice audio.

Federal laws offer some protection of telephone privacy. Although it is not unlawful to overhear a phone call, it is against the law to divulge the conversation or to use it for someone's benefit. The manufacture or sale of scanning devices that can intercept cellular or digital calls is also illegal. With some exceptions, the recording of telephone conversations without the knowledge or consent of both parties is a violation of federal and state law.

**Survey Your Class** How many people in your class use a cordless, cellular, or digital phone regularly? How many of your classmates are concerned that their conversations may not be private? Contact the Federal Communications Commission to obtain more information about laws protecting telephone use.



## Legal Briefs

Defamation is written or spoken injury to a person or organization's reputation. Libel is the written act of defamation, and slander is the oral act of defamation.

sports figures, and other entertainers, are considered people in the public limelight. Under guidelines established by the U.S. Supreme Court, these public figures must prove that false statements about them were made with actual malice. In other words, it must be proven that the offending statement was made with the knowledge that it was false or with a reckless disregard for whether it was true.

Public figures are held to a more difficult standard because they have voluntarily chosen a lifestyle that naturally exposes them to close scrutiny by the press. They can respond to damaging statements in a way the average person can't, such as by calling a news conference, appearing on a television talk show, buying newspaper space, buying air time on radio and television, or issuing a press release.

## Invasion of Privacy

**Invasion of privacy** is interfering with a person's right to be left alone, which includes the right to be free from unwanted publicity and interference with private matters. In most states, the invasion of privacy is a tort. Some states, such as New York, have established this right by statute. The state of California, on the other hand, has established the right of privacy by amending the state constitution.

The Federal Privacy Act of 1974 provides safeguards for individuals against the invasion of privacy by agencies of the federal government. With some exceptions, the act requires federal agencies to let you determine what personal records will be kept by any agency. You also have the right to know what records are being kept about you, to receive copies of any records, and to correct any errors. Agencies must get permission to use records for purposes other than those for which

### INVASION OF PRIVACY

Keeping personal records private is important to many people. The right to privacy may be invaded by people or businesses with access to computer records.

*How can people protect themselves against an invasion of their privacy by computer?*



they were gathered. People in business who are entrusted with confidential records must make great efforts to ensure that the records are not made public. Failure to protect such confidential matters could result in an invasion of privacy lawsuit.

Your right to privacy does not merely involve written records. It is also considered an invasion of privacy for any group or agency to use your photograph, likeness, or name without your permission for advertising, publicity, or publication purposes.

New privacy concerns have arisen with increased use of computers because computers store a great deal of information about an enormous number of people. For instance, the right to privacy is violated when unauthorized people use the computer to gain access to confidential information. Other invasions of privacy occur when unnecessary data is recorded and stored by an organization or business, inaccurate information is kept on file, and private information is revealed to the public without appropriate authorization.

Two important federal statutes designed to protect privacy include the Fair Credit Reporting Act and the Right to Financial Privacy Act. Under the Fair Credit Reporting Act, credit bureaus must, on request, inform you about information they have on file about you. The Right to Financial Privacy Act forbids financial institutions from opening your records, most of which are kept in computer files, to the government without appropriate authorization from you or without an official court order.

## Section 4.1 Assessment

### Reviewing What You Learned

1. What is the difference between a crime and a tort?
2. What concept is at the heart of tort law?
3. How can a tort be committed?
4. What are the most common intentional torts?

### Critical Thinking Activity

**Tort Law** If criminal law is responsible for dealing with individuals who commit wrongful acts, what purpose does tort law serve? Why do you need to understand the different intentional torts?

### Legal Skills in Action

**Computer Privacy** Many people, businesses, and government agencies today have increased access to computers. Although this access may be a great convenience, it is also a source of danger, especially to privacy. Write a research paper in which you trace the development of the computer along with the increased threat to privacy represented by its development.

# Negligence and Strict Liability

## What You'll Learn

- How to define negligence
- How to explain the elements of negligence
- How to define the major defenses to negligence
- How to define strict liability

## Why It's Important

Because any person is a potential victim and a perpetrator of negligence, understanding this vital area of tort law will help you protect yourself legally.

## Legal Terms

- negligence
- strict liability
- breach of duty
- proximate cause
- contributory negligence
- comparative negligence
- assumption of risk

## Unintentional Torts

A person can breach his or her duty in our society through other ways than by committing an intentional tort. For example, you may act in a careless manner and, as a result, cause injury to a person, damage to property, or both. Your participation in an activity that is considered very dangerous, such as keeping a tiger in your backyard, may also cause harm to others. Injury that is caused by a person's mere carelessness is known as **negligence**; injury caused by an individual's participation in ultrahazardous activity is known as **strict liability**.

## Negligence

Negligence is an accidental or unintentional tort and is the tort that occurs most often in society today. Negligence is the failure to exercise the degree of care that a reasonable person would have exercised in the same circumstances. Negligence may be present, for example, in an automobile accident or when someone trips on a broken floorboard.

## Elements of Negligence

The law has established specific standards to prevent people from suing innocent parties for negligence. To succeed in a tort suit for negligence, the plaintiff must prove all of the following elements:

- The defendant owed the plaintiff a duty of care. In other words, the defendant failed to act as a reasonable person would have acted.
- This failure to use the degree of care required under the circumstances is called a **breach of duty**.
- The breach of duty by the defendant was the proximate cause of the injury to the plaintiff.
- The plaintiff suffered some actual harm or injury.

## Duty of Care

As noted earlier, the law of torts is grounded in the concept of rights. Because every person has certain rights in our society, all of us have a duty to not violate those rights. This concept of duty of care is especially crucial in negligence lawsuits. If the plaintiff cannot demonstrate that the defendant owed him or her a duty of care, then there is no need to look at any other elements.



## Careers in Law

### Corporate Attorney

Kendall Meyer is a corporate and business law attorney for one of Chicago's oldest law firms. He's worked on his share of "big" cases, but nothing quite as big as Sue. "Sue" is the nickname of the largest Tyrannosaurus Rex skeleton ever found. Two years after Sue's 1990 discovery in South Dakota, a dispute arose about who actually owned the fossil. After a series of court cases, the landowner was allowed to sell the bones at auction. When Chicago's world-renowned Field Museum of Natural History decided it wanted to bid on the bones, museum directors asked for help from the museum's outside counsel, Kendall Meyer. Meyer first determined who owned legal title to the bones—much like an attorney would when a client wants to buy a house. "I just asked classic legal questions in a unique context," Meyer says.



As the museum's legal representative, Meyer was also involved in securing funds for the new acquisition. Corporations such as Walt Disney World Resorts and McDonald's offered financial assistance to the museum to buy the 65-million-year-old fossil skeleton. In the end, Sue was auctioned off in an eight-minute war of nerves between nine bidders. The winner—with an offer of \$8.36 million—was Meyer's client, the Field Museum of Natural History.

<b>Skills</b>	An understanding of basic business principles, research, negotiation
<b>Personality</b>	Sociable, outgoing, likable, enjoys working with business people
<b>Education</b>	Business, accounting, finance, contracts

For more information on corporate and business attorneys, visit [ubpl.glencoe.com](http://ubpl.glencoe.com) or your public library.

**Example 4.** While using the diving board at a public pool, Julia fell and was injured. The injury could have been avoided if the diving board had a guardrail. Julia later sued her state's Department of Health, arguing that the department had inspected the pool but did not do anything about the missing guardrail. The state supreme court ruled against Julia. The court said that the state's sanitary code gave the Department of Health the duty to inspect water-related facilities for health problems, but not a duty to inspect for safety problems. Because there was no need to examine the other elements, the Department of Health had no duty to Julia.





### Student Privacy

The searching of school lockers is a controversial issue. In some states, courts have ruled that a student's locker is school property, enabling the school to search it at anytime. However, in other states, school officials must have "reasonable suspicion" that a student is hiding something illegal before they can search the locker.

*What do you think constitutes "reasonable suspicion" for searching a student's locker?*

### Get Involved

Determine whether officials at your school require a "reasonable suspicion" to search your locker. Contact the American Civil Liberties Union at [www.aclu.org](http://www.aclu.org) to learn about your rights and civic responsibilities.

**Breach of Duty** You may commit breach of duty to another person by not exercising the degree of care that a reasonable person would exercise in that same situation. This "reasonable person" test is an objective test. As a result, the judge in a tort case must be careful when giving instructions to the jury. The use of the descriptive term *reasonable* is of particular importance. The judge cannot alter the test by telling jurors to determine what they would have done in this situation, nor can the judge substitute such words as "average person," "normal person," or even "logical person." The jury must be told to determine what a "reasonable person" would have done in this situation.

**Proximate Cause** The third element of negligence is **proximate cause**, which is the legal connection between unreasonable conduct and the resulting harm. Without proximate cause, the result would not have occurred. Proximate cause is not the same as actual cause. An action by the defendant may actually cause the plaintiff's injury but still not be the proximate cause. Courts apply the foreseeability test to determine proximate cause by asking: "Was the injury to the plaintiff foreseeable at the time that the defendant engaged in the unreasonable conduct?"

**Example 5.** Mrs. Palsgraf was waiting for a train on the platform of the Long Island Railroad Company. As another train was pulling out of the station, a man carrying a package ran to catch it. A railroad attendant on the platform helped push the man forward, and an attendant on the train pulled the man upward. In the process, the man's plainly wrapped package fell to the ground. It contained fireworks, and the resulting explosion shook the platform and knocked over some scales, which hit Mrs. Palsgraf and caused extensive injuries. To seek compensation for her injuries, Mrs. Palsgraf decided to sue the railroad for negligence. The court ruled that the railroad employees could not reasonably foresee that pushing and pulling a man onto a train would injure a woman standing many feet away.

**Actual Harm** Because the essence of any tort suit is a violation of a duty that results in injury to the plaintiff, a successful case must establish proof of actual harm. That is, did the plaintiff suffer physical injuries, property damage, or financial loss? Without actual harm, even the dumbest mistake or the most careless conduct will not result in liability for negligence.

**Example 6.** In The Opening Scene, Jamila says that Trai's foolish driving amounts to negligence. Peggy reminds her that actual harm must result before Trai's conduct would be negligent. She is

**Figure 4.2****The Elements of Negligence**

Element	Definition
Legal duty	A determination that legal duty exists between parties must be made to establish liability through negligence. This is solely a question of whether the tortfeasor should have reasonably foreseen a risk of harm to the injured party.
Breach of duty	The judge or the jury must determine whether the person accused of negligence has breached the duty owed to the victim. To determine if the alleged tortfeasor has met the appropriate standard of care, the court uses the reasonable person test.
Proximate cause	For the tortfeasor to be held liable, the unreasonable conduct must be the proximate cause of the victim's injuries. Proximate cause is the legal connection between the unreasonable conduct and the resulting harm.
Actual harm	The injured party in a lawsuit for negligence must show that actual harm was suffered.

**NEGLIGENCE**

Negligence is the failure to exercise the degree of care that a reasonable person would have exercised in the same circumstances. A suit for negligence must prove four elements: duty of care, breach of duty, proximate cause, and actual harm. *Which of the elements do you believe would be the most difficult to prove in a lawsuit?*

correct. However, she is also correct in pointing out that Trai's reckless driving is very stupid.

**Defenses to Negligence**

People can defend themselves in a negligence suit by eliminating one of the four elements (see Figure 4.2). Specifically, they can argue that they owed no duty to the plaintiff; their conduct conformed to the reasonable person standard; their conduct was not the proximate cause of the plaintiff's injuries; or that the plaintiff suffered no injuries. In cases in which the defendants cannot attack one of these elements, they may try to use one of the following defenses: contributory negligence, comparative negligence, or assumption of risk.



**Contributory Negligence** Behavior by the plaintiff that helps cause his or her injuries may fall under the doctrine of **contributory negligence**. If the defendant can prove that the plaintiff's own negligence helped cause the injuries, then the plaintiff loses the lawsuit. It does not matter how slight his or her negligence was. Many states

**DEFENSES TO NEGLIGENCE**

Many individuals engage in very risky sports as a matter of routine. *What defense might the defendant in such a negligence case have if one of the participants in a dangerous sport were injured?*

no longer follow this doctrine, however, because it is unfair to plaintiffs who may have been only slightly negligent. These states have adopted another standard called comparative negligence.

## Comparative Negligence

The negligence of each party is compared under the doctrine of **comparative negligence**, and the amount of the plaintiff's recovery is reduced by the percent of his or her negligence. Comparative negligence protects plaintiffs from realizing huge losses for comparatively minor acts of negligence.

*Example 7.* Jason Cohen sued Mark Goodhue for damages suffered in an automobile accident. The jury found the damages to be \$100,000, and also found that Jason was 10 percent negligent and Mark was 90 percent negligent. As a result, Jason recovered \$90,000 instead of the full amount of damages.

Most states that use comparative negligence follow the 50 percent rule. The plaintiff is allowed to recover part of the award as long as his or her negligence was not greater than that of the defendant. If the plaintiff's negligence exceeds 50 percent, he or she recovers nothing.

## Assumption of Risk

If the defendant can show the plaintiff knew of the risk involved and still took the chance of being injured, he or she may claim

### STRICT LIABILITY

Strict liability involves the performance of an ultrahazardous activity.

*What activities might you classify as ultrahazardous?*



**assumption of risk** as a defense. Baseball clubs have successfully used this defense when sued by spectators injured by baseballs hit into the stands. People who are injured while participating in extreme sports may also be unable to bring lawsuits for negligence because of the defense of assumption of risk.

## Strict Liability

Some activities are so dangerous that the law will apply neither the principles of negligence nor the rules of intentional torts to them. According to strict liability, if these activities injure someone or damage property, the people engaged in the activities will be held liable, regardless of how careful they were and regardless of their intent. This rule applies only to ultrahazardous activities that involve a great risk to people and property. The risk must be of such a nature that no amount of care will eliminate it. Using explosives, keeping wild animals, and storing highly flammable liquids in densely populated areas have all been labeled as ultrahazardous.

In recent years, the doctrine of strict liability has also been applied in product liability cases. When people are injured from defects in products that they bought in the marketplace, the firm that manufactures the products is liable for injuries, regardless of fault.

Product liability does have its limits. Most courts have held that product liability does not apply if the seller of the defective product does not usually engage in the sale of such items. For example, a corporation that auctions off some machinery after one of its plants closes would be labeled an occasional seller. The corporation would not be liable for an injury caused by a defect in one of the machines.



### Law & Academics

#### Social Studies

In the United States, a tort can be defined as a private wrong committed by one person against another. The legal systems in other countries use different terms. For example, Germans speak of *unlawful acts*, and the French use the expression *civil responsibility*. Since World War II, tort law has expanded everywhere, but especially in Europe.

#### Research Activity

Choose England, Germany, or France and research the tort law in that country. Then compare it to U.S. tort law.

## Section 4.2 Assessment

### Reviewing What You Learned

1. What is negligence?
2. What are the elements of negligence?
3. What are the major defenses to negligence?
4. What is strict liability?

### Critical Thinking Activity

**Defenses to Negligence** Which defense to negligence do you feel is the most effective?

### Legal Skills in Action

**Strict Liability** Historically, some activities that we take for granted today were originally considered ultrahazardous. One such activity is the flying of an airplane. Imagine you are a lawyer who wants to change the law in relation to strict liability. Research and write a report on strict liability in relation to airplanes, and demonstrate how the doctrine became obsolete in regard to that activity.



## Chapter Summary

**Section 4.1 Intentional Torts**

- A crime is an offense against the public at large. The role of the government is to preserve the safety and well-being of the entire social structure. As such, the government can punish the perpetrator of a crime. In contrast, a tort is a private wrong committed by one person against another. Such an offense does not call upon the government to punish wrongdoers and protect society. A tort, therefore, involves one person's interference with another person's rights. In some situations, a single action can be both a tort and a crime.
- The law of torts is grounded in rights. Under tort law, all people are entitled to certain rights simply because they are members of our society. The law imposes a duty on all of us to respect the rights of others. Some of the rights of members of our society include: the right to be free from bodily harm, the right to enjoy a good reputation, the right to conduct business without unwarranted interference, and the right to own property free from damage or trespass. Anyone who violates such rights has committed a wrongful act, and often this wrongful act can be classified as a tort.
- Torts can be committed intentionally and unintentionally. Unintentional torts can be further classified as negligence or strict liability.
- The major intentional torts are assault, battery, trespass, nuisance, false imprisonment, defamation, and invasion of privacy. Assault involves threatening to strike or harm another person with a weapon or physical movement. Battery is the unlawful, unprivileged touching of another person. Wrongful injury or interference with the property of another is known as trespass. Nuisance refers to anything, such as noise or unpleasant odors, that interferes with the enjoyment of life or property. False imprisonment occurs when a person is unlawfully restrained, whether in prison or otherwise. Defamation is the act of injuring

another's reputation by making false statements, and invasion of privacy is interference with a person's right to be left alone.

**Section 4.2 Negligence and Strict Liability**

- Negligence is an accidental or unintentional tort and is the tort that occurs most often in society today. Negligence is the failure to exercise the degree of care that a reasonable person would have exercised under the same set of circumstances.
- A suit for negligence must prove four elements: duty of care, breach of duty, proximate cause, and actual harm. To prove duty of care, the plaintiff must show that the defendant owed him or her a duty of care. The failure to use the degree of care required under the circumstances is breach of duty. Proximate cause requires that the plaintiff prove that the defendant's breach of duty caused the injury. The plaintiff must also prove that he or she suffered some actual harm or injury to succeed in a suit for negligence.
- People can defend themselves by finding flaws in one of the previously mentioned elements. If the defendant cannot find a flaw in one of the elements of negligence, he or she can still argue affirmative defenses to negligence, which include contributory negligence, comparative negligence, and assumption of risk.
- According to the doctrine of strict liability, those who engage in ultrahazardous activities will be held liable for any injury or damage that occurs because of that activity, regardless of intent or care. The doctrine of strict liability has also been applied in product liability cases. When people are injured from defects in products that they bought in the marketplace, the firm that manufactures the products is liable for injuries, regardless of fault.

## Using Legal Language

Consider the key terms in the list below. Then use these terms to complete the following exercises.

tort

intentional tort

assault

battery

trespass

nuisance

false imprisonment

defamation

invasion of privacy

negligence

breach of duty

proximate cause

strict liability

contributory negligence

comparative negligence

assumption of risk

1. In groups of two, define each term in the vocabulary.
2. Create an infomercial, in which one student has completed Chapter 4 and is trying to convince another student to study the chapter material. The first student will explain what he has learned using the terms above.
3. Present your infomercials to the class.
4. As a class, vote to choose the best infomercial.
5. In a paragraph, explain the strengths of the infomercial that you chose. How could you have improved your infomercial?

## The Law Review

Answer the following questions. Refer to the chapter for additional reinforcement.

6. How is an intentional tort different from an unintentional tort?
7. Under today's laws, to what extent do property owners own the airspace above their land?
8. What does the Federal Privacy Act of 1974 require federal agencies to do?
9. What defenses can you use if you are faced with a negligence suit?
10. Explain the difference between contributory negligence and comparative negligence.
11. Explain how the tort of assault differs from the crime of assault.
12. What types of people have a difficult time proving damage to their reputation as part of defamation lawsuits?
13. Why have some states started using the standard of comparative negligence?
14. Under what circumstances may a defendant to a negligence suit claim the assumption of risk defense?

## Understanding Business and Personal Law

Online 

**Self-Check Quiz** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 4: The Law of Torts—Self-Check Quizzes to prepare for the chapter exam.

### Linking School to Work

#### Working with Technology

Eric Rolfe Greenberg of the American Management Association estimates that 45 percent of large U.S. companies monitor electronic communications, including e-mail, voicemail, and fax machines.

15. If you are employed, find out whether your employer monitors the electronic communications at your place of business.
16. If you are not employed, find out whether the teachers' and students' e-mail is monitored at your school.
17. Share your findings with the class.

As a class, debate the issue of whether electronic monitoring is an invasion of privacy.

### Let's Debate

#### Trespassing and Conversion

Friends often have an understanding that they can borrow each other's things. One day, Becky's lawnmower wouldn't start, so she took the lawnmower from Alice's garage. Alice had planned to mow her lawn at the same time and became angry with Becky for taking the lawnmower without asking. She accused Becky of trespassing (entering her garage) and conversion (unauthorized removal of another's property).

#### Debate

18. Was this a crime or a tort?
19. How could this fight have been prevented?
20. What could Becky and Alice do to improve their communication skills?

### Grasping Case Issues

For the following cases, give your decision and state a legal principle that applies.

21. Jake Richards decided to play a practical joke on Ursula Brakestone. As Ursula prepared to sit down at her table in the cafeteria, Jake pulled the chair out from under her. Ursula fell to the hardwood floor and fractured her hip. Jake says he committed neither assault nor battery. Is Jake correct on either count? Why or why not?
22. A photographer took a photo of Maria Lao without permission while Maria was sunbathing by the pool in her own backyard. Maria later discovered that the photo had been used in an advertisement for suntan lotion. What tort, if any, has been committed?
23. Al asks to borrow Juanita's videocassette library. He likes several of the videocassettes so much that he decides to keep them. Despite repeated requests from Juanita, Al refuses to return the cassettes he borrowed. What tort, if any, has been committed?
24. Philip Carstairs kept a poisonous spider in his locker at school. He was very careful to keep it locked up so that it would not harm anyone. One day, while Philip was in class, two students got the spider out of Philip's locker and let the spider loose in the girl's gymnasium. Judy Norton was bitten by the spider. Is Philip legally responsible for Judy's injuries? Explain your answer.
25. An elderly woman was beaten and robbed by an unknown person. Emily Simpson told several people that Max Newmark was guilty of the crime. This was a false statement. Has Emily committed a tort for which Max can recover damages?



## Analyzing Real Cases

In each case that follows, you be the judge.

### 26. Duty of Care

Ramona Booker entered a drugstore by pushing her way through one door and then through a second. She had to use two hands to push the heavy doors open. As a result, she dropped her cane, which caught on the exposed coil of a security device and caused her to fall and hurt herself. Ramona brought suit against Revco DS, Inc. to recover for her injuries. *Did the drugstore owe a duty to its customers to provide an establishment that was safe? Why or why not? Is this lawsuit based on an intentional tort or negligence? What test would be used to judge whether the drugstore owners should be held liable for Ramona's injuries? Explain your answer.*

*Booker v. Revco DS, Inc.* 681 N.E.2d. 499 (OH).

### 27. Negligence

Myers slipped and fell and was injured on ice on the front walkway of the Canton Centre Mall. The mall was owned and run by Forest City Enterprises. Certain employees from Forest City were supposed to keep the walkways clear of ice. They had cleared the ice from the walkway a short time before Myers fell. One of the employees guessed that after they had cleaned the walk, passing cars may have splashed water on it, which froze. *Was Forest City negligent in failing to keep the walk clear of ice at all times? Why or why not? What test would be used to judge Forest City's conduct? Explain your answer.*

*Myers v. Forest City Enterprises, Inc.* 635 N. E. 2d 1268 (OH).

## Legal Link

### State Laws and Computer Crime

State governments are creating legislation to address the problems of computer crime, fraud, and abuse. States are also adopting existing laws and passing new legislation to protect consumer privacy, particularly when it involves online business transactions and other private issues.

### Connect

Using a variety of search engines, research the current Internet-related legislation under discussion by some of the state governments. Report on the following:

28. Current and pending legislation surrounding computer crime, fraud, and abuse.
29. Steps taken by state governments to protect computer users' privacy.



30. **Predict** Why do you think we have tort law? Would life be less complicated if we only had criminal law?
31. **Connect** Can you think of a case that has been both a tort and a crime? If not, create an example.
32. **Question** Do you think it is fair that people in the public limelight must prove more damage to their reputations than the average person when involved in a defamation lawsuit? Explain your answer.
33. **Respond** Why do you think the doctrine of strict liability exists?



# Law Workshop: *Using Legal Tools*



## How Would You Conduct a Jury Trial?

You have learned about the court system, trial procedures, and how criminal law differs from civil law. By completing this workshop, you will have the opportunity to put your knowledge into action.

### Step A: Preparation



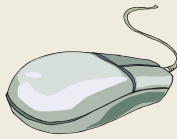
**Problem:** *How would you organize and conduct a jury trial?*

**Objectives:** In this workshop, you will work with a team to perform a mock jury trial for your class.

- **Research** legal issues that you find interesting.
- **Analyze** data associated with the trial, and organize the data meaningfully.
- **Research** court procedures.
- **Conduct** a trial that mimics how a real court case might be handled.
- **Evaluate** the classroom verdict.



## Step B: Procedure



1. Form a team of five or six students.
2. Research interesting or controversial legal issues that have been covered recently in local or national publications.
3. As a team, choose a legal topic around which to build a court case. Read as much as you can about your topic, and organize the information so that both sides of the issue can be presented to the class as a trial.
4. Assign each team member a role in the trial. Your team should include a defending attorney, prosecuting attorney, judge, and several witnesses, including a plaintiff and a defendant. (Witnesses can play several parts.)



5. Write a script for a mock trial based on the steps for a jury trial presented in Chapter 2. (Create imaginary evidence if necessary.) Your script should not include a verdict; a jury will determine the verdict. The rest of the class will serve as the jury. The judge should direct the jury to select a foreman to act as a spokesperson. Follow your state's law regarding the minimum number of jurors who must agree for a jury verdict to be considered valid.
6. Perform your mock trial for the class. Have the foreman deliver the jury's verdict and explain its decision.

## Step C: Create a Model to Analyze the Verdict



7. After hearing the jury's verdict and its reasons for the decision, prepare a chart that organizes this information. You should categorize the jury's reasons. For example, if the jury votes in favor of the plaintiff, you might use a two-column table with the labels "For the Plaintiff" and "Against the Defendant." List several reasons in each column.

## Step D: Workshop Analysis Report



Consider the chart your team created and answer the questions below.

8. What was the verdict?
9. How did the jury reach this verdict?
10. Do you agree with the jury's verdict? Why or why not?
11. How might the mock trial have been conducted differently to reach a different verdict?



## Cipollone v. Liggett Group, Inc.

United States Supreme Court

505 U.S. 504 (1992)

**Issue** Does a federal law requiring warning labels on cigarette packages preempt a smoker's state law tort claims against cigarette manufacturers?

**Facts** After 42 years of smoking, Rose Cipollone died of lung cancer. During the last 15 years of her life, cigarette packages contained the following label: "WARNING: THE SURGEON GENERAL HAS DETERMINED THAT CIGARETTE SMOKING IS DANGEROUS TO YOUR HEALTH."<sup>1</sup>

Rose and her husband brought suit in federal court against three cigarette manufacturers. They blamed the cigarette makers for Rose's cancer and sought compensation based upon New Jersey tort law.

The manufacturers held they were not liable for state law tort claims arising before 1966. They further argued that the Federal Cigarette Labeling and Advertising Act of 1965 and the Public Health Cigarette Smoking Act of 1969 preempted such claims.

Rose died before trial. The jury ruled in favor of the manufacturers, stating that Rose had voluntarily assumed the risks of smoking. However, the jury did award Rose's husband \$400,000 as compensation for his losses, holding that Liggett, a cigarette manufacturer, had breached its express warranties that smoking was not hazardous. Both sides appealed.

**Opinion** In 1965, Congress passed the Federal Cigarette Labeling and Advertising Act, which required cigarette packages to contain the following label: "CAUTION: CIGARETTE SMOKING MAY BE HAZARDOUS TO YOUR HEALTH." Congress later passed the Public Health Cigarette Smoking Act of 1969, which required a stronger label to be placed on cigarette packages: "WARNING: THE SURGEON GENERAL HAS DETERMINED THAT CIGARETTE SMOKING IS DANGEROUS TO YOUR HEALTH."

### **The Petitioner's Complaint**

The petitioner's complaint alleged that the cigarette makers were responsible for Rose's illness on the following grounds:

- **Design Defect** The cigarette manufacturers didn't use a safer alternative design, and the dangers created by cigarettes outweighed their social value.
- **Failure to Warn** There was no adequate warning about the health dangers of cigarettes, and manufacturers were negligent when "they tested, researched, sold, promoted and advertised" cigarette products.
- **Express Warranty** The cigarette makers expressly warranted that their cigarettes did not pose serious health dangers.

- **Fraudulent Misrepresentation** The cigarette manufacturers tried to negate federal health warning labels and ignored scientific evidence demonstrating the hazards of smoking.
- **Conspiracy to Defraud** The cigarette makers tried to deny scientific evidence about the hazards of smoking.

### The Defendant's Reply

The cigarette manufacturers replied that federal laws preempt New Jersey's tort laws. According to the supremacy clause of the U.S. Constitution, if a state law conflicts with a federal law, the federal law overrules the state law. The petitioner claimed that state tort law should apply in this case because, unlike the 1969 Act, state tort claims for damages do not impose "requirement[s] or prohibition[s]" by statutes or regulations. Instead, the petitioner seeks compensation based upon prior court decisions (common law).

### The Relationship of Federal and State Law

In its opinion, the Court rejected the petitioner's argument. It held that state common law tort actions are based on the existence of a legal duty, which imposes "requirements and prohibitions." The Court also cited an earlier case in which it said that "[state] regulation can be effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." Consequently, the Court rejected the petitioner's claim that common law tort

claims brought by individuals do not constitute matters of state law, and therefore ruled that they could be overruled by federal law.

After clarifying the applicable law, the Court examined each of the petitioner's claims to determine if it was preempted by the federal law. To determine whether a state law is preempted, the Court said that it must look to the intent of Congress. It ruled that federal law does not preempt state law unless it is "the clear and manifest purpose of Congress" that a federal law supersede a state law.

**Holding** The Court held that the 1965 Act did not preempt state tort claims because Congress did not intend that result. The Court further held that, although the 1969 Act preempted state claims based on failure to warn, it did not preempt claims based upon express warranty, intentional fraud and misrepresentation, or conspiracy.

<sup>1</sup>In 1984, Congress amended the law to require four different warning labels to appear on cigarette packages on a rotating basis.



### Questions for Analysis

1. On what New Jersey tort law theories did the Cipollones base their claims against the cigarette manufactures?
2. What five specific grounds for recovery were stated in the Cipollones' complaint?
3. Why did the jury deny Rose Cipollone's claim for compensation?
4. What defense did the cigarette manufacturers raise in this case?
5. Describe the general provisions of the Public Health Cigarette Smoking Act of 1969.
6. What is the effect of the supremacy clause in the U.S. Constitution?
7. When does federal law preempt state law?

### Web Resources

Go to the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) for information about how to access online resources for the Landmark Cases.