CHAPTER THIRTEEN

PERSONAL INJURY

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Introduction

PERSONAL INJURY LAW, also known as tort law, is designed to protect you if you or your property is injured or harmed because of someone else's act or failure to act. In a successful tort action based on one of three theories -negligence, strict liability or intentional misconduct--the one who caused the injury or harm compensates the one who suffered the losses.

Automobile accidents, the area in which the majority of personal injury actions arise, provide a good example of how the tort system works. You have a negligence claim in a "fault" state if you are injured by a driver who failed to exercise reasonable care, because drivers have a duty to exercise reasonable care anytime they are on the road. When they breach that duty and your injury results, personal injury law says you can recoup your losses. (Note, though, that the system may be very different in states that have passed no-fault laws.)

Negligence reaches far beyond claims stemming from car accidents. It is the basis for liability in the majority of personal injury lawsuits, including medical malpractice.

An important and growing area of tort law is strict liability, which holds designers and manufacturers strictly liable for injuries from defective products. In these cases, the injured person does not have to establish negligence of the manufacturer. Rather, you need to show that the product was designed or manufactured in a manner that made it unreasonably dangerous when used as intended. Strict liability standards also apply in other areas of personal injury, such as workplace accidents. (Workplace injuries are further explained later in this chapter, as well as in the chapter on "Law and the Workplace.")

Finally, although they are not as frequently brought, claims for intentional acts that invade a legally protected interest of yours may be the basis for holding someone liable to you in tort. If someone hits you, for example, even as a practical joke, you may be able to win a suit for battery. Or if a store detective wrongly detains you for shoplifting, you may be able to win a suit for false imprisonment. While perpetrators of some of the intentional torts -- assault and battery, for example -- can be held criminally liable for their actions, a tort case is a civil proceeding in court brought by an individual or entity and remains totally separate from any criminal charges brought by the government.

Every tort claim, regardless of its basis, whether intentional, negligence, or strict liability, has two basic issues -- liability and damages. Was the defendant liable for the damages you sustained, and, if so, what is the nature and extent of your damages? If you can prove liability and damages, our system of justice will award you compensation for your loss.

PERSONAL INJURY CLAIMS

Q. How do I know if I have a personal injury case?

A. First and foremost you must have suffered an injury to your person or property. Second, was your injury the result of someone else's fault? It is not always necessary to have a physical injury to bring a personal injury lawsuit, however. Suits may be based on a variety of nonphysical losses and harms. In the intentional tort of assault, for example, you do not need to show that a person's action caused you actual physical harm but only that it caused an expectation that some harm would come to you. (Assault is described in more detail later in this chapter.) You also may have an action if someone has attacked your reputation, invaded your privacy or negligently or intentionally inflicted emotional distress upon you.

Q. If I have suffered a personal injury and think I have a case, how do I go about finding a personal injury lawyer?

A. Contact a local bar association for referrals to lawyers who handle personal injury cases, talk with lawyers you know, or ask your friends about lawyers they know or have used. You can find the telephone number of the local bar association in your telephone directory. Most lawyers offer free consultations, so you are able to meet with as many as you like. Choose a lawyer you feel most confident about--and comfortable with--to handle your case.

Q. Should I bring any documents with me to the consultation?

A. Yes, you should supply any documents that might be potentially relevant to your case. Police reports, for example, contain eyewitness accounts and details about conditions surrounding auto accidents, fires, assaults and the like. Copies of medical reports from doctors and hospitals will describe your injuries. Information about the insurer of the person who caused the injury, is extremely helpful, as are any photographs you have of the accident or of your injury. The more information you are able to give your lawyer, the easier it will be for him or her to determine if your claim will be successful. If you haven't collected any documents at the time of your first meeting, don't worry. Your lawyer will be able to obtain them as well.

Q. What kind of legal fees should I expect in a personal injury case?

A. Personal injury lawyers generally charge their clients on a contingent fee basis. That means you pay your lawyer only if you win. Your lawyer is paid a percentage of the total amount recovered. You'll sign what is called a retainer agreement with the lawyer you choose to represent you, clarifying all fees and charges. Remember that even if you lose the case, you are likely to have to pay the expenses of investigating and litigating you case, such as court filing fees and payments to investigators, court reporters, and medical experts, as well as the expenses of securing medical records and reports.

Q. What can I expect after the first consultation?

A. If a lawyer believes your claim is one you can recover on-and you have signed the retainer-he or she will proceed with gathering information about your claim. In order to arrive at a figure for damages, your lawyer will need to determine the extent of your injuries, including pain and suffering, disability and disfigurement, the cost of medical treatment, and lost wages. Your lawyer then provides your damages figure to the insurer of the person who injured you. If the insurer considers it a valid claim, the case is likely to be resolved early on and won't have to be tried in court.

Q. If I am not happy with my lawyer, do I have to keep him or her?

A. No. You have a right to hire and fire any lawyer at any time.

Q. What does it mean to settle a case?

A. Settling a case means that you agree to accept money in return for dropping your action against the person who injured you. You'll actually sign a release absolving the other side of any further liability. To help you decide whether to accept the settlement offer, your lawyer will be able to provide a realistic assessment of whether a lawsuit based on your claim will be successful. (Settlement also can take place at any point in a lawsuit once it is filed, including before trial or even after a case has been tried but before a jury reaches a verdict.) The decision to accept a settlement offer is yours, not the lawyer's.

Q. What happens if I file a lawsuit?

A. You become the plaintiff in the case and the person who injured you becomes the defendant. Lawyers for each side (and for the insurer) typically begin gathering facts through exchange of documents, written questions (interrogatories) or depositions (questions that are asked in person and answered under oath). This process is called discovery. After discovery, many cases get settled before trial. Only a small percentage of personal injury actions ever go to trial. Of the cases that do go to trial, most plaintiffs ask for a jury to hear their case, but personal injury actions can be decided by judges as well. That is known as a bench trial, as opposed to a jury trial.

Q. What if more than one person has caused my injury?

A. You must bring an action against every person who causes your injury. The negligence of two drivers, for example, may have produced a collision in which you were injured. According to traditional legal principles, each one could be held 100 percent liable to you. In a more recent legal trend, however, many jurisdictions have abolished such "joint and several" liability and each defendant, known legally as a "joint tortfeasor," becomes responsible for only that portion of the harm he or she caused. This is the rule of comparative negligence, which exists in most states. (See the section titled "Automobile Accidents" for more on comparative negligence.)

Q. What will I get if I win my case?

A. If you win, a judge or jury awards you money, known as damages, for your injuries. That amount can include compensation for such expenses as medical bills and lost wages, as well as compensation for future wage losses. It also can compensate you for future lost wages and medical expenses and for physical pain and suffering. In addition, you may receive damages for any physical disfigurement or disability that resulted from your injury. The money is intended to restore your loss, is not considered as income, and is not taxable as income by the federal government or the states. Note that an award of damages does not necessarily translate into hard cash. You may have to take further legal steps to actually collect the money. If a defendant against whom you have won a judgment does not pay it, collection proceedings can be initiated. If the defendant owns property, for example, you may be able to foreclose on it. Another option would be to garnish the defendant's wages. Your personal injury lawyer-or any lawyer you contact-would be able to help you in this regard.

Q. Will the person who caused my injury get punished?

A. No. Punishment comes from criminal cases, not civil cases. Defendants in civil actions for personal injury do not receive jail terms or stiff fines as punishment. Those are criminal sentences and personal injury cases are civil disputes. But juries and courts can award what the law calls punitive damages when the defendant's intentional acts have injured you. These awards are rather rare. Courts use them to punish people (and more often large corporations) who have behaved recklessly or against the public's interest. Courts also hope that ordering the payment of punitive damages will discourage such defendants from engaging in the same kind of harmful behavior in the future.

Q. Does a personal injury lawsuit have to be filed within a certain amount of time?

A. Every state has certain time limits, called "statutes of limitations," that govern the period during which you must file a personal injury lawsuit. In some states, for example, you may have as little as one year to file a lawsuit from an automobile accident. If you miss the statutory deadline for filing a case, your case is thrown out of court. (As explained later in this chapter, limitations in medical malpractice cases are often calculated differently.) You see, then, why it is important to talk with a lawyer as soon as you receive or discover an injury.

Q. What if a person dies before bringing a personal injury lawsuit?

A. It depends on whether a person dies as a result of the injuries or from unrelated causes. If a person injured in an accident subsequently dies because of those injuries, that person's heirs may recover money through a lawsuit. Every state has some law permitting an action when someone causes the wrongful death of another. And if a person with a

claim dies from unrelated causes, the tort claim survives in most cases and may be brought by the executor or personal representative of the deceased person's estate.

NEGLIGENCE

Q. If someone causes an accident and I am hurt, on what basis will that person be responsible (liable)?

A. A person is liable if he or she was negligent in causing the accident. Persons who act negligently never set out (intend) to cause a result like an injury to another person. Rather, their liability stems from careless or thoughtless conduct or a failure to act when a reasonable person would have acted. Conduct becomes "negligent" when it falls below a legally recognized standard of taking reasonable care under the circumstances to protect others from harm.

Q. Negligence law seems so confusing. It uses words such as duty and causation. What do they mean?

A. Negligence law can be complex and confusing even for people who are familiar with it. To understand it better, forget all the legal jargon and go back to the car accident example. A driver has a duty to use reasonable care to avoid injuring anyone he or she meets on the road. If a driver fails to use reasonable care and as a result of that failure injures you, then the driver is responsible (liable) to you for those injuries.

Q. Who determines whether a defendant has acted reasonably?

A. After being presented evidence by your lawyer, a judge or jury will decide what an "ordinary" or "reasonable person" would have done in similar circumstances. In the example of an automobile accident, a judge or jury is likely to find a driver negligent if his or her conduct departed from what an ordinary reasonable person would have done in similar circumstances. An example would be failing to stop at a stoplight or stop sign.

AUTOMOBILE ACCIDENTS

Q. I was in a car accident, but I think I can prove it was not completely my fault. Will this make a difference with regard to what damages ultimately are awarded?

A. In the past the rule was that if you could prove the other driver contributed in any way to the accident, he or she could be totally barred from recovering anything from you. But now most states have rejected such harsh results and instead look at the comparative fault of the drivers. If a jury finds that you were negligent and that your negligence, proportionally, contributed 25 percent to cause the injury and that the defendant was 75 percent at fault, the defendant would only be responsible for 75 percent of your damages, or $75,000 if your damages totaled $100,000. In some states, a plaintiff

may recover even if he or she were more negligent than the defendant, that is, negligent in the amount of 51 percent or more. (See the "Automobiles" chapter for more on standards of negligence for car accidents.)

Q. A neighbor who rides with me to work was injured when I got into a car accident. Do I have to pay her medical bills?

A. In many states today, no-fault automobile insurance would protect you--and often passengers in your car--by compensating those injured up to a specified level, regardless of who was at fault in the accident. About half of the states currently have no-fault insurance. Though there is a strong trend away from them, some states still have automobile "guest statutes" that make drivers liable for injuries to nonpaying-or guest--passengers only if the drivers were "grossly negligent" by failing to use even slight care in their driving. In a guest statute state, if your neighbor can prove she was not a guest passenger--that both of you agreed to share expenses--then she possibly could recover from you under ordinary negligence principles. Cases have also held a driver liable for the negligent operation of a car and for harm caused by known defects, but not for injuries caused by defects in the vehicle about which the driver had no knowledge.

Q. I received an injury when the bus I ride to work was involved in an accident. Is the bus company at fault?

A. It's likely. "Common carriers"--bus lines, airlines and railroads--transport people for a fee, owe their passengers "the highest degree of care" and are held to have a special responsibility to their passengers. Common carriers must exercise extra caution in protecting their riders and do everything they can to keep them safe. Whether you win your case will depend on the circumstances of the accident. Did the driver pull out in front of a car and have to slam on the brakes? What were the road conditions? A jury will have to consider those factual circumstances to determine if your driver acted negligently. But as an employee of a common carrier, the driver must provide you with a high degree of care. (If the bus were hit by another car, the other driver may also be liable for your injuries.)

Q. My car sustained damage when it hit a pothole on a city street. Can I recover from the city?

A. Some cities have pothole ordinances, a form of immunity that releases them from any liability for pothole accidents, except where they had prior notice. Whether you can recover will depend on your city's law controlling liability and its immunities against suits.

Q. I was in a car accident during my pregnancy and my baby was born with a deformity as a result of injuries from the accident. Does my child have any legal recourse?

A. Many states today will permit an action by a child for the consequences of such prenatal (before birth) injuries. (In states with no-fault automobile insurance, your right to sue often is limited.) Most courts also will allow a wrongful death action if the baby dies from the injuries after birth.

Q. Someone recently stole my car and then wrecked it, injuring passengers in another vehicle. Now one of those passengers is trying to sue me. Can they win? Am I responsible?

A. Probably not, since the thief did not have your permission to use the car, although a lot would depend on the law in your state. Suppose you left your car unlocked with the keys in it, making it easy for the thief to steal. This could be negligence. Even then, most courts generally will not hold you liable if the thief later injures someone by negligent driving. That is because courts hold that you could not foresee that your actions ultimately would result in such injuries. In a few cases, though, courts have looked at whether your actions caused an unreasonable risk of harm to someone else. If you left your car parked with the engine running, for example, you might be liable if the car thief then injures children playing nearby. In a no-fault state, on the other hand, it might be difficult--if not impossible--for the passenger to sue you.

Q. I was hit by a car driven by a drunk driver who was going home after a night out. What can I do, in addition to suing the drunk driver?

A. If you live in a state that has a Dram Shop Act, you may be able to recover from the tavern owner where the drunk driver was served the liquor. Such acts usually come into play when intoxicated people served by the bar later injure somebody while driving. Some of those laws also make tavern owners liable when drunk customers injure others on or off the premises. But some courts say a tavern owner will not be liable unless the sale of the liquor itself was illegal.

Q. My wife was injured when her car was hit by one being driven by some kids who had been drinking at the home of our neighbor. May I take any action against the neighbor, who supplied the liquor to the youths?

A. Possibly. Courts have imposed liability against such neighbors or parents when they have served liquor to minors. Parents can be liable for negligent supervision of their children. But as a general rule, courts have said that social hosts are not responsible for the conduct of their guests, unless the hosts routinely allow guests to drink too much--or take illegal drugs-and then put them into their cars and send them out on the highway.

Q. I was injured when my automobile collided with a truck driven by a delivery person. Can I recover damages from the driver or the employer?

A. You may be able to recover from both. Under a form of strict liability, known as vicarious liability, you probably can recover from the deliveryperson employer. Under the law, employers may be held liable to third persons for acts committed by employees

within the scope of their job. Although the employer was not negligent, it becomes indirectly liable for the negligence of its employee. Was the employee making a delivery when the accident occurred? If so, the employer is liable, since deliveries clearly is part of the driver's job. But if the employee first stopped at a restaurant for drinks and dinner with friends, the employer may be able to escape liability.

Q. A car ran over my dog. Can I recover from the driver?

A. Yes, you might win a lawsuit. A dog is property, and you have suffered property damage. You will have to show that the driver was negligent.

Injuries at Your Home and on Your Property

Under traditional legal principles, your liability to people injured on your property changed according to the reason they came onto your property. Were they there to visit, to sell, to solicit, to fix something, or to trespass? A more recent trend, however, holds land or property owners to a general duty of care to prevent injury to anyone coming onto their property, unless the dangerous condition was open and obvious.

Q. A furniture delivery person was injured when he tripped over an electrical extension cord in my living room. Can he recover damages from me?

A. He could sue, though it is not certain that he would win. As noted above, until recently your liability for someone's personal injuries while at your home hinged on why he or she was there. If people were doing work for you, the law held that you had a special duty to make your home reasonably safe. In those situations, a court would have asked if the cord were dangerous to anyone who came into your living room, or was it only dangerous if someone moved your furniture? Did you warn the deliveryperson to watch out for the cord? Courts would need the answers to such questions to decide if you are liable to the deliveryperson. A growing trend would make you liable for the injury only if you failed to exercise a general duty of care. By the way, homeowner's insurance policies generally protect homeowners in cases such as these.

Q. A door-to-door salesperson tripped on our front steps, injuring himself. May he hold me responsible?

A. Perhaps. A door-to door salesperson may expect that you will warn him about dangerous conditions on your property that may not be obvious. If your steps were in perfect condition and he merely lost his footing, a court would not hold you responsible. However, if he tripped because one of the stairs was wobbly and you knew about it, you should have repaired it or posted a warning sign.

Q. What if a salesperson, or another passerby, falls on an icy sidewalk in front of my house?

A. In some places, ordinances say that landowners whose property is next to a public sidewalk are responsible for keeping the sidewalk in repair and clear of ice and snow. But elsewhere owners have no duty to remove natural accumulations of ice and snow that have collected on adjacent public sidewalks. In fact, they may be liable for negligence if they undertake such a job and do not make the sidewalks safe. If landowners fail to take reasonable action to correct a dangerous condition on the sidewalk, other than a natural accumulation of ice or snow, that they knew or should have known about, however, they can be held liable.

Q. Would I be liable if a trespasser gets injured on my property?

A. You generally are not liable for any injury to a trespasser on your property. Suppose, however, that you know certain people continually trespass on your property, perhaps using it as a shortcut. Then a court might find that you should have notified these regular trespassers about any hidden artificial conditions of which you were aware could seriously injure them.

Q. A group of eight-year-old children has been playing in a vacant lot that I own. Could I be liable if one of them gets injured?

A. Yes, the law generally places a greater burden on landowners when injuries involve children. The reason is that children are too young to understand or appreciate danger in certain situations. Under a legal theory known as the attractive nuisance doctrine, owners who knew or should know about potentially dangerous artificial conditions on their lot must warn children who are playing there, or must take reasonable precautions to protect them. If, for example, there is machinery or other equipment on your vacant lot that could present an unreasonable risk to children, you should remove it. If you don't, you could very well be liable to the children for any injuries they suffer, even if they were trespassing. In some jurisdictions, the attractive nuisance doctrine is being replaced by a duty of reasonable care under the circumstances.

Q. Our children's friends often come to swim in our backyard pool, even though we are not always able to be there. What if one of them gets hurt?

A. You are liable because you have a legal duty to protect children from possible harm should they decide to play around a dangerous place on your property. You should make sure an adult is present when children are swimming, though this will not necessarily avoid liability. And warning the children that they should not swim without an adult present may not be enough to avoid liability if one of them gets injured. Also check with your state or city to find out its requirements for residential swimming pools. Under them, you may have a legal duty to erect barriers or such other protective features as an automatic pool cover, a tall fence with a good lock that you keep locked or an alarm on the sliding glass door from your home to the pool.

Injuries on Others' Property

If You Get Injured in a Store…

Suppose you tripped and fell on a spilled can of paint in a hardware store where you were shopping, injuring your foot. Can you recover damages from the store? It depends on the facts of the case. Storeowners must keep their premises reasonably safe for customers, inspecting and discovering any dangerous conditions. They also must keep all aisles clear and properly maintained. A judge or jury will look at whether the owner was aware that the paint can was in the aisle and how long it had been there. But a judge or jury also might find that you discovered the spilled paint and proceeded to walk right through it. Then the judge or jury might deny you damage or find you're comparatively at fault, thus reducing your recovery.

Q. What if I get injured while at the home of my neighbor, who invited me there for a party?

A. As a social guest, you might be able to recover from your neighbor, depending on how your injuries happened. Homeowners must tell their guests about--or make safe--any dangerous conditions that the guests are unlikely to recognize. Suppose, for example, that your injury was caused when you tripped on a throw rug. You may be able to recover if you can prove that your neighbor knew other people had tripped over it and you were unlikely to realize its danger. Your neighbor probably should have warned you about it, removed it during the party, or secured it to the floor with tape or tacks.

Q. I was walking on a public sidewalk next to a construction site when I tripped and fell on a brick from the site, spraining my ankle. May I recover damages from the construction company?

A. In some circumstances, you will be able to recover damages from the construction company, which has a duty to take reasonable steps to keep sidewalks near its construction sites free from bricks and other debris. If the company fails to remove such obstructions and you trip and fall, the company may be liable for your injuries. Construction companies should tell pedestrians that they could get injured if they stray from the sidewalk. But posting a sign is not enough. If a company fails to place barriers or warning lamps by a building pit, for example, it may be responsible if anyone falls into it and gets injured.

Q. I fell on a broken piece of a city sidewalk and injured my ankle. Do I have a case against the city?

A. In many states, municipal immunity statutes prohibit recovery in many kinds of cases against a city or town. If there is not such a statute or ordinance, however, you may have a case. Municipalities have a duty to keep streets and sidewalks in repair. You might have a successful case against the city if you can show that it failed to maintain the sidewalk properly.

Landlord Liability

In recent years many states have required landlords to maintain residential property in "habitable" condition by imposing a warranty of habitability. A violation of that warranty could result in your suing the landlord for failing to maintain the property and thus violating the warranty. But negligence claims are also possible. If guests are injured when a back porch that is part of a unit collapses during a party, the landlord probably would be held liable, especially if he or she had been warned that the porch was sagging or was infested with termites but had not repaired it. Of course, the landlord may be able to argue that the porch collapsed because there were too many people on it.

Landlords also must maintain any "common area" of the building--including stairs, corridors and walkways--for both tenants and guests of the building. If a guest is injured when she trips over some loose carpeting in a corridor, for example, the landlord generally would be liable.

If you are a landlord, there are ways to reduce your chances of liability. Consider having your insurance company inspect the premises and then promptly repair any safety problems the inspector uncovers. If you inspect the premises yourself, look for unsafe wiring, loose railings, poor lighting or similar flaws. You might also write tenants a letter each year asking them to point out hazards or needed repairs they may have noticed. If a tenant who lives in the building every day fails to notice a hazard, it is hard to argue that the landlord should know about it. But that still may not protect you in a suit by someone who is injured while visiting.

Q. My son received an injury during basic training in the U.S. Army. May he recover damages from the federal government?

A. No. People in the armed services who receive injuries during the course of their duties are not permitted to recover for their injuries. But the Federal Tort Claims Act of 1946 waives U.S. immunity for a "negligent or wrongful act or omission." So it would permit, under certain conditions, recovery in personal injury lawsuits against the United States government for torts committed by its employees. These actions are brought in the U.S. Claims Court (see the "How the Legal System Works" chapter). Some states have their own courts of claim. In other states, claims actions can be brought through other courts.

Q. My son and his friends went snow-mobiling on a nearby farm. When the vehicle ran into a fence, one of them got hurt. The farmer now says he is not liable. Is that true?

A. If landowners know that others are using their land for snowmobiling, most states say they must warn snowmobiles about hidden dangerous conditions or remove them. Was the fence visible? Did the farmer recently build it? A few states, such as Michigan, have laws specifically dealing with liability when someone uses property for

recreational purposes without permission. In those states, the farmer probably would not be liable if he did not authorize the boys to be on his land and did not act recklessly. You might want to ask a lawyer about your state's law.

Q. I got injured on a ski lift. May I recover against the ski resort?

A. Possibly. Can you prove that the resort was negligent? Remember that some states have laws limiting the liability of resorts, saying there are certain risks that a person assumes when skiing. However, some states hold that ski lifts are common carriers, like buses. They have higher duties than others, so in one of these states you might have an excellent case.

Liability at Sporting Events

Suppose you went to a baseball game, and a ball that a player hit into the stands injured you. What can you do? Spectators at a baseball game know they may be injured by a flying ball. That is why courts generally say that spectators assume the risk of being hurt by a ball. The same usually holds true if a golf ball hits you while you are watching a golf match. Likewise, if a wheel from a car in an automobile race flies into the stands, you assume the risk of getting hurt. The legal term for this doctrine is assumption of the risk. It means that you agreed to face a known danger. But if there is a hole in a screen intended to protect spectators at the baseball park, you then probably could argue that it was negligence not to have it repaired.

Q. My daughter, who plays on the local park's basketball team, brought home a note asking us to sign a form saying we won't hold the park district responsible for injuries. What is that?

A. You are talking about a so-called waiver of liability that is intended to contractually release the organization of any liability should an injury occur. Your signature doesn't necessarily mean that you've signed away all of your rights. If you must either sign such a form or deprive your child of the chance to participate in the activity, a court may hold that your waiver is not really voluntary and thus not valid. And even in those states that recognize waivers, the waiver might not mean that you are giving up your right to sue entirely. If an injury results because of intentional or reckless behavior, you probably will be able to seek damages.

Q. I was staying at a motel when there was a fire, but there was no water sprinkler system and no escape route posted in the room. Doesn't the hotel have to have those safety precautions?

A. The motel management probably should have exercised reasonable care about the fire alarms and fire escapes. And they should have helped you escape. As in the case of the common carrier above, the law generally says that innkeepers, who have a special relationship with their guests, have a higher duty of care.

Q. Someone attacked my daughter on the campus of the college she attends. May she hold the school responsible for this attack?

A. Your daughter might have a negligence action against the college. In a developing area of law known as premises liability, courts have found such entities as universities, motels, convenience stores and shopping malls liable for attacks because they did not exercise reasonable care in preventing victims from being harmed by a third person. In a case that drew headlines in the 1970s, for example, a court awarded $2.5 million to singer Connie Francis for an attack at a Howard Johnson's Motor Lodge. The court found that the motel did not take proper and reasonable steps to prevent the attack. In general, a hotel must provide adequate security and not permit people to loiter. In your daughter's case, a court would look at the facts and ask whether similar attacks had occurred previously in the same area. If so, the court would ask what security precautions the college had taken.

Q. I was attacked after withdrawing money from an automated teller machine (ATM). What can I do?

A. Under the tort theory of premise liability, discussed above, customers have sued banks for failing to protect them from assault at ATMs. While there used to be no common law duty to provide security against such crimes, a duty has been recognized in recent years. In such a case, a judge or jury would determine if there were past occurrences and if a likelihood of a crime was foreseeable. If so, they may hold that the bank had a duty to protect people using that machine and that the bank was liable.

Q. Is there anything else victims may do?

A. Yes. Most states have laws compensating victims of violent crimes for lost wages, counseling, and medical expenses. There also are several victim assistance programs. Check with your local prosecutor's office (possibly called the office of the state's attorney or district attorney).

If You Get Injured at Work

Workers' compensation laws, currently in place in all fifty states and the District of Columbia, cover most workers injured on the job. Under these laws, employers compensate you for your injuries, including medical expenses, lost wages (temporary disability) and permanent or temporary disability, regardless of who was at fault. All you have to do is file notice with your employer and a claim with the state's worker's compensation commission, or board. (See the "Law and the Workplace" chapter for more details.)

Legislatures created the laws because they thought that liability for workplace accidents should be placed on the one most able to bear the loss--the employer. The statutes fall under strict liability principles, discussed below, so no employer or employee negligence or fault need be shown. In fact, the statutes prohibit employees from filing tort claims

against their employers for conditions covered by the law. Instead, an employee gets paid according to a fixed schedule of benefits, regardless of who was at fault.

It is extremely rare that an employee is not covered by such a law, but if you are not, you may be able to recover from your employer on a negligence claim. To do so, you must show that your employer failed to exercise reasonable care in providing you with safe working conditions or that your employer failed to warn you of unsafe conditions that you were unlikely to discover. Other possible suits against your employer might include an action alleging an intentional injury or an intentional disregard of your safety. Or your spouse might sue for loss of consortium. (See the "Family Law" chapter for more details.)

Q. I think my colleagues' smoking at work is making me sick. Since I'm a non-smoker, do I have any recourse?

A. In a growing area of interest, a recent Environmental Protection Agency report has linked "passive" tobacco smoke to lung cancer and other ailments. Some non-smokers have filed workers' compensation claims saying they became ill in a smoke-filled workplace. Damage suits also have been filed against the employers, for allowing smoking, and directly against tobacco companies. The non-smoker would have to show that the presence of smoke caused his or her illness.

Negligent Infliction of Emotional Distress

Q. We recently got a call from the hospital where someone had taken my mother. The hospital told us that she had died of a heart attack. However, it was not true. The hospital's false report devastated us. What can we do?

A. The circumstances you describe are rare. Nonetheless, you may be able to recover from the hospital for the negligent infliction of emotional distress. That is, you may be able to sue the hospital successfully for negligently causing you to endure emotional pain. Courts generally have maintained that a person must have physical injuries to recover in such cases. But courts in some states have allowed recovery when there are no physical injuries. Other successful emotional distress suits have involved bystanders For example, a court allowed a mother who saw her child fatally hit by a car to recover money damages.

Q. The store where I bought my wedding gown failed to deliver it in time for the ceremony. What can I do?

A. Although you no doubt suffered some distress, it is unlikely that you have a personal injury case. The store was negligent in failing to get your dress to you on time. Although it may have been traumatic for you, generally you would have to show a physical consequence of the injury. You may, however, have a case for breach of contract.

Medical Malpractice

Q. What is medical malpractice?

A. Medical malpractice is negligence committed by a professional health care provider--a doctor, nurse, dentist, technician, hospital or hospital worker-whose performance of duties departs from a standard of practice of those with similar training and experience, resulting in harm to a patient or patients. Most medical malpractice actions are filed against doctors who have failed to use reasonable care to treat you. The profession itself sets the standard for malpractice by its own custom and practice. Historically under the so-called "locality rule," a doctor was required only to possess and apply the knowledge and use the skill and care that is ordinarily used by reasonably well-qualified physicians in the locality, or similar localities, in which he or she practiced. But today the trend is toward abolishing such a rule in favor of a national standard of practice.

Q. Hasn't there been talk about changing the way that malpractice cases are handled?

A. Yes. Especially in the 1980s, doctors and members of the insurance industry said there was a "malpractice crisis," with spiraling insurance premiums and unreasonably high jury verdicts. As a response to that, some states passed laws capping damage awards, limiting attorneys' fees and shortening the time period in which plaintiffs could bring malpractice suits. Some states instituted no-fault liability for malpractice claims, or developed arbitration panels to hear medical malpractice claims before they could be filed in court to be determined by a judge or jury

Other "tort reforms" are often discussed, including reducing recovery for "pain and suffering" in malpractice lawsuits and reducing damages to take into account payments from insurance and workers' compensation.

Q. What do I do if a think I have a medical malpractice claim?

A. Talk to a lawyer who specializes in such work. Tell the attorney exactly what happened to you, from the first time you visited your doctor through your last contact with him or her. What were the circumstances surrounding your illness or injury? How did your doctor treat it? What did your doctor tell you about your treatment? Did you follow your doctor's instructions? What happened to you? Answers to these and other relevant questions become important if you think your doctor may have committed malpractice. Like other personal injury claims, the case will either be settled or go to trial, usually before a jury.

Q. How does a jury determine if a doctor's actions were within the standards of good medical practice?

A. A jury will consider testimony by experts--usually other doctors, who will testify whether they believe your physician's actions followed standard medical practice or fell below the accepted standard of care. In deciding whether your heart surgeon was negligent, for example, a jury will be told to rely on expert testimony to determine what a

competent heart surgeon would have done under the same or similar circumstances. A specialist, like a heart surgeon, is held to a higher standard of care--that of a specialist--than would be expected of a non-specialist.

Should You Stop and Help Someone in an Emergency?

Generally you do not have a duty to stop and help someone in an emergency. The law says that if you did not cause the problem and if you and the victim have no special relationship you need not try to rescue a person. But states have passed so-called Good Samaritan laws that excuse doctors--and sometimes other helpers--from liability for negligence for coming to the aid of someone in an emergency. In some states, if you injure someone while driving, you must help that injured person, regardless of who was at fault. Some courts look at the circumstances of the rescue. They say that if you know someone is in extreme danger that could be avoided with little inconvenience on your part, you must provide reasonable care to the victim. Of course, you always are free to go voluntarily to the aid of someone in trouble. But if you abandon your rescue efforts after starting them, you may be liable if you leave a victim in worse condition than you found him or her.

Q. I signed a consent form before my doctor performed surgery. What did it really mean?

A. It is common practice in hospitals for patients to sign a form giving the doctor their consent, or approval, to perform surgery. In the form, the patient usually consents to the specific surgery as well as to any other procedures that might become necessary. Before you sign it, your doctor should give you a full description of the surgery and the risks involved, and the ramifications of not getting such treatment. If you can prove that your physician misrepresented or failed to adequately inform you of the risks and benefits before surgery, your consent may be invalid. The only time the law excuses doctors from providing such information is in emergencies or when it would be harmful to a patient. But even if your doctor should have secured your consent and did not, you still may not automatically recover. You may still have to prove that, if adequately informed, a reasonable person would not have consented to the surgery.

Q. If the consent form is considered valid, can I recover any damages in a malpractice action against my doctor?

A. Yes, you still may be able to recover damages. A consent form does not release from liability a physician who did not perform the operation following established procedures or who was otherwise negligent. You may also have a claim that the surgery the physician performed went beyond the consent you gave. Then the doctor might even be liable for battery.

Q. What if I'm just not satisfied with the results of my surgery? Do I have a malpractice case?

A. In general, there are no guarantees of medical results. You would have to show an injury or damages that resulted from the doctor's deviation from the appropriate standard of care for your condition.

Q. I got pregnant even though my husband had a vasectomy. Can we recover damages?

A. Yes, you may be able to win a case. A number of negligence cases have been permitted against physicians for performing unsuccessful vasectomies or other methods of sterilization that resulted in unwanted children. Courts increasingly allow a suit to be filed by the parents of a child born as a result of wrongful conception or wrongful pregnancy. Damages generally are limited to those associated with the pregnancy and birth and do not extend to support of the child.

Q. I don't think it was necessary for me to have a cesarean section when I delivered my daughter. Is there anything I can do about it?

A. Although most malpractice cases involving cesarean sections are brought against doctors who did not perform them when they should have, with resulting injuries to the mother or child, it is possible for a woman to win damages against her doctors for unnecessarily delivering her child by cesarean section. An expert would still be necessary to state that in doing the cesarean section, the delivering doctor deviated from the appropriate standard of care.

Q. My doctor prescribed a drug for treatment but failed to tell me it was part of an experimental program. What can I do?

A. This is quite a rare circumstance, but your physician had a duty to tell you that the drug was part of an experimental program. You had the right to refuse to participate in it. You now may have grounds for an action against your doctor.

Q. May I recover medical and hospital bills from someone who caused an injury to me even though my insurance company has paid the bill?

A. Yes. However, if you do recover payment from the person who injured you for those bills, some states require you to reimburse your insurance company. In those states, the law does not allow you to get a double recovery. Often the insurance policy contains a subrogation clause that does not permit double recovery.

Q. My aunt discovered that a sponge left in her during an operation years ago was the source of stomach trouble. May she still sue?

A. Like other personal injury cases, medical malpractice lawsuits are subject to specific statutes of limitations (discussed earlier in this chapter). Until recently, your aunt's suit may have been thrown out of court. In many statutes, time limits on filing began when the injury occurred--on the day of the operation. To alleviate such a

harsh--and final--result, many states today have altered their laws, and the clock for filing a case does not begin to toll until people discover that they have suffered an injury, or should have discovered it. Even with the discovery rule, there are time limits, known as statutes of repose, which limit the time within which to file suit before or after discovery of the injury.

Q. My father's job exposed him to asbestos. Now he has lung disease. Is it too late to file a claim?

A. It may not be too late. Many people who suffered injuries from toxic substances such as asbestos did not know at the time of exposure that the compounds were harmful. As a result, some states have enacted laws allowing people to file lawsuits for a certain amount of time from the date when the lung impairment or cancer begins, rather than from the date of exposure. A lawyer can tell you whether your father still has time within the statutes of limitations applicable in your state. In general, the area of workplace illnesses is covered by workers' compensation (discussed earlier in this chapter and in the "Law and the Workplace" chapter).

Q. What about malpractice actions against professionals such as lawyers? I recently hired a lawyer seemed inexperienced and was unhappy with the outcome of the case.

A. Like doctors, lawyers and other professionals must possess and apply the knowledge and the skills of other reasonably well qualified professionals. Not only must they exercise reasonable care in handling your case, they also must possess a minimum degree of special knowledge and ability. That means that they will be liable to you if their skills do not meet the accepted standard of practice. You must also prove that the case your lawyer mishandled was likely to succeed. Lawyer malpractice usually results in property damage only. You cannot recover for the emotional distress of hiring a negligent lawyer. In your case, you may have a malpractice action against the attorney if he or she was negligent in representing you. You'll have to show more than dissatisfaction with the outcome of the case. Did he or she fail to meet a deadline for filing for a court proceeding? Were all the crucial legal elements of the case fully explored? If you are unsure about a basis for a malpractice case, check with the state agency that regulates lawyers in your state. Your state bar association will be able to tell you the name of the agency is.

Strict Liability

Q. Is there any other basis for liability besides negligence?

A. Courts hold some persons or companies strictly liable for certain activities that harm others, even when they have not acted negligently or with wrongful intent, a concept that will be discussed later in this chapter. Persons or companies engaged in blasting, storing dangerous, toxic substances or keeping dangerous animals, for example, can be strictly liable for harm caused to others. The theory behind imposing strict liability on the part of those conducting such activities is that these activities pose an undue risk of

harm to members of the community. Thus, anyone who conducts that activity does so at his own risk and is liable when something goes wrong--even innocently--and someone is harmed. The people who posed the risk are in the best position to pay for it. Holding manufacturers liable for injuries their products cause is a good example of strict liability.

Q. I was opening a soft drink bottle when it exploded in my face and flying glass cut me. Was somebody at fault?

A. Yes, someone was at fault, since bottles ordinarily do not explode in a person's face. Courts often decide such cases under principles of strict liability, meaning that instead of having to prove that someone was negligent, a plaintiff would only have to prove that the bottle exploded and that he or she was injured by it. Some courts continue to decide such cases under negligence principles, however. If the bottler sealed the bottle and it was handled carefully between the time it left the bottler's possession and the time of the explosion, some courts assume--or consider it circumstantial evidence--that bottler was negligent.

Q. We live near a site where a gasoline company stores its flammable liquids and worry about the possibility that an accident may occur. Would we be able to recover damages if an accident was to occur?

A. Probably. Courts have found such storage to be an inherently dangerous activity. This means that the act is hazardous by its very nature, whether it is done well or badly. Courts normally are likely to impose strict liability against the company for injuries that an accident may cause. Courts still might look at the location of the storage, however. If storage in the middle of a large city poses unusual and unacceptable risks, then courts might impose strict liability. The same holds true when a factory emits smoke, dust or noxious gases in the middle of a town. But a company may not be held strictly liable if it conducts such activities in a remote rural area and is not doing the activity in any unusual manner.

Q. What is the legal responsibility of a person who keeps wild animals?

A. Most states impose strict liability against keepers of such wild animals as bears, lions, wolves and monkeys, reasoning that merely keeping them exposes people to abnormal risks. If an injury occurs on the owner's premises and is caused by a confined or restrained animal, however, courts tend to deny strict liability. The courts reason that you assumed a risk by going there.

Visiting a Zoo

Zoos go to great extremes to protect visitors from the risks posed by their animals. Generally they restrain or confine the animals. For that reason, courts usually do not impose strict liability when a visitor to a zoo gets injured. Instead, the visitor must show that the zoo was somehow negligent in how it kept the animal.

Q. What if one of my animals escapes from our fenced-in yard and goes onto our neighbor's property?

A. In most jurisdictions, keepers of all animals, including domesticated ones, are strictly liable for damages resulting from the trespass of their animals on another person's property. But courts make exceptions for the owners of dogs and cats, saying they are not strictly liable for trespasses, absent negligence, except where strict liability is imposed by statute or ordinance.

Q. Am I automatically liable if my dog, normally a friendly and playful pet, turns on my neighbor and bites her?

A. It may depend on where you live. A number of jurisdictions have enacted dog bite statutes, which hold owners strictly liable for injuries inflicted by their animals. If there is no such law in your town, you still can be found liable under a common law negligence claim if you knew the animal was likely to cause that kind of injury and failed to exercise due care in controlling the pet. If, on the other hand, you did not know or have any reason to suspect that your dog had such a dangerous trait, courts have said owners generally are not liable. It is important that you contact your local animal control department to find out about any regulations in your area.

Q. Our neighbors have a vicious watchdog. We are scared to death that the dog will bite one of our children, who often wander into the neighbor's yard. What can we do?

A. The situation you pose is a common one and, as in the example above, is precisely the reason a number of municipalities regulate dog ownership, especially of vicious dogs, through ordinances. A great deal would depend on the ordinance where you live. Unless your neighbor posts adequate warnings, he may be strictly liable for injuries caused by a vicious watchdog. (And there is a question of whether written warnings are sufficient if a child is injured.) Even if the dog never bit before, such liability is imposed because of the mere fact that the dog is known to be vicious--or has certain dangerous traits.

Product Liability

Strict product liability, now the law in nearly every state, allows an action against a manufacturer that sells any defective product resulting in injury to a buyer or anyone who uses it. If you are injured by a defective product, you do not need to prove that a manufacturer was negligent, but only that the product was defective. A strict liability action can be brought against the parties that designed, manufactured, sold or furnished the product. It is possible for plaintiffs to recover punitive damages in strict product liability actions, though such cases are relatively rare and usually deal with outrageous conduct. Punitive damages are money awards, which go beyond an award for other damages. Punitive damages are intended to set an example and punish wrongdoers for intentional and outrageous conduct with evil intent. Liability actions against

manufacturers for products that injure consumers also may be based on negligence, a contractual breach of warranty or, sometimes, a manufacturer's intentional wrongful conduct.

Q. Our brand-new power mower backfired and injured me. From whom may I recover damages?

A. This is a typical product liability case. You may be able to prove that the manufacturer of the lawn mower made a defective product. Most courts today hold companies responsible for a defective product strictly liable to consumers and users for injuries caused by the defect. The product may have had a design flaw or a manufacturing defect. Another possibility may be that the producer or assembler failed to provide adequate warning of a risk or hazard or failed to provide adequate directions for a product's use.

Q. A disclaimer that came with the lawn mower said the manufacturer did not warrant it in any way. Will that defeat our claim?

A. While limited warranties are sometimes enforced by courts, full disclaimers often are not. Courts find such warranties invalid because you, as the consumer, are not in an equal bargaining position. They also rule that such clauses are unconscionable (grossly unfair) and contrary to public policy. (See the discussion of "contracts of adhesion" and unconscionability in the chapter "Contracts and Consumer Law.") Most courts limit the effect of limited warranties to repairs. A limited warranty is not a waiver of liability for injuries.

Q. A toy my grandson was playing with came apart, and he put one of the pieces in his mouth and started choking. Do we have any redress against the toy manufacturer?

A. The manufacturers of toys are closely monitored by the federal Consumer Product Safety Commission (CPSC), but lawsuits against them are abundant as well. Like others that put products into commerce, toy manufacturers have a duty to consider any foreseeable misuse of their products. As in any strict liability action, several questions would need to be answered to determine the manufacturer's culpability. Did it have a duty to warn of the danger of the toy falling apart? If so, what was the likelihood that it would break into small parts that could be dangerous to a small child? Did it make a difference how the child was playing with the toy? Because toy manufacturers outside of the U.S. can be difficult to sue, you also might want to consider suing other parties in the toy's chain of distribution--the toy store, for example, or perhaps a fast-food chain that distributed the toy as part of a promotion. Such retailers also can be liable for injuries.

Q. I suffered a severe allergic reaction from some cosmetics I used and needed medical treatment. May I recover from the manufacturer?

A. Perhaps. Did the manufacturer warn you that the cosmetic could cause such a reaction? Some courts normally will not hold the manufacturer liable for failing to warn you of the risk of an adverse reaction unless you can prove that an ingredient in the product would give a number of people an adverse reaction. You also must prove that the manufacturer knew or should have known this and that your reaction was because you were in that group of sensitive people, and not because you are hypersensitive. In addition, courts will determine whether you used the product according to the directions provided with it. Misuse is a defense recognized in strict liability. If the court does not find strict liability, you still might recover on a negligence claim.

Q. My little boy contracted Reye's Syndrome after I gave him children's aspirin for a respiratory ailment. Can we recover?

A. Because of the known danger of contracting Reye's Syndrome when a child takes aspirin, children's aspirin bottles contain warnings. But in one California case, an appellate court said a jury should decide whether a manufacturer was negligent in failing to supply a Spanish-language warning of the hazards associated with aspirins. The child's mother could only speak Spanish and was unable to read the warning in English on the aspirin bottle. The case is now before the California Supreme Court.

Q. I got hepatitis from a blood transfusion. Is someone liable?

A. In many states, laws protect suppliers against strict liability when people who receive blood transfusions contract an illness from contaminated blood. However, you may recover if you can show negligence by the supplier.

Breast Implant Litigation

There have been literally thousands of lawsuits filed by women who have undergone breast implantation and now allege that the implants contributed to a wide range of health problems, ranging from cancer and autoimmune diseases to joint pains and interference with cancer detection. In addition to saying that both silicone breast implants and other artificial implants were responsible for adverse-health effects in them, women have alleged that the implants also caused miscarriage and harmful effects in their children, some of them because they were breastfed. The suits generally say that the manufacturers were negligent and that they knew the product was defective. Because this is a new area of tort law, it is important to contact a personal injury lawyer if you think you may have a claim.

Q. I was injured because of a brake defect in a used car I bought. May I recover from the dealer?

A. At least one used car dealer has been subject to a negligence action for failing to inspect or discover such defects. But courts are split on whether dealers in used goods should be subject to strict liability. Holding them strictly liable appears to be a minority position.

What You Should Do If You Are Injured By a Product

Keep the evidence. If a heating fixture ruptures and injures someone in your family, keep as may pieces of the equipment as you can find and disturb the site as little as you can. Make note of the name of the manufacturer, model and serial number. Keep any packaging or instructions. Keep any receipts showing when and where the product was purchased. Take pictures of the site and of the injury. Make a record of exactly when the incident occurred and under what circumstances. Be sure you have accurate names and addresses for all doctors and hospitals treating the injured victim.

Intentional Wrongs

Q. Is a civil lawsuit based on liability for an intentional tort different from a lawsuit based on negligence or strict liability?

A. Not really. You may claim the same types of damages, but you must prove different elements. A person who is found liable for an intentional tort does more than just act carelessly, which might make him or her liable for negligence. The person committing the former tort is said to intend the consequences of his or her action. If you pick up a realistic model of an AK-47 and point it at another person out of the window of your car, you are going to scare that person. Under the law of intentional torts, you may be liable for an assault.

You do not have to intend to harm that person to be liable for an intentional tort, either; you even may be attempting to help that person. In one reported case, for example, a defendant was found liable for an intentional tort when, despite her protests, he proceeded to set the broken arm of a woman who had fallen. Unlike a negligence action, a plaintiff alleging an intentional tort does not need to show actual damages to recover.

Q. I got a black eye in a fistfight with a man whose car accidentally bumped into mine while we sat at a red light. I would love to get even with him. Can I recover if I sue him?

A. Normally you could recover damages in a civil battery case against someone who hits you. But a court might hold that two people who get into a fistfight in effect agree to being hit by one another. If so, a battery case probably would fail. A lot would depend on the facts of the case. Who started the fight? Were you simply trying to defend yourself from his aggression? Were there witnesses? What would their testimony be?

Q. Isn't battery a crime?

A. Yes, battery can be a crime but as a personal injury action it is a civil claim, as are all tort actions. The law considers torts to be wrongs against an individual, allowing the individual to sue for money damages. (For more on criminal assaults and batteries see the "Criminal Justice" chapter.) As a tort, a battery is a harmful or offensive touching of

one person by another. Anyone who touches you or comes into contact with some part of you-even your purse-when you do not agree to it may be liable to you for battery. The law does not require any harm or damage. You do not even have to know a battery is occurring at the time in order to bring a battery claim. The person committing the battery may have meant no hatred or ill will. In one case, for example, a plaintiff successfully recovered damages for an unwanted kiss. In another case, a court found a defendant liable for spitting at someone's face. Also, a court found a battery when a person forcibly removed a women's hat. However, damages for technical batteries are small. After all, you were not actually hurt, so how much should you get?

Q. What is the tort of assault?

A. An assault is a reasonable apprehension (expectation) of some harm that may come to you. Unlike a battery, you must know that an assault is occurring at the time it takes place. A court will look at what happened. A great deal will depend on the reasonableness of your own feelings when threatened. The court will consider whether the closeness of the physical threat should have subjectively upset, frightened, or humiliated you. Words alone usually are not enough to bring a case for assault.

Q. My neighbor fired his shotgun to scare a solicitor whom he did not want coming to his door. The bullet grazed a passerby. Will my neighbor be liable?

A. Under a legal doctrine known as transferred intent, your neighbor could be liable for a battery to the passerby. This is true even though the passerby was an unexpected victim whom your neighbor did not intend to harm. The solicitor also is likely to win an assault case against your neighbor. The firing of the gun placed the solicitor in reasonable apprehension of a battery, which is the legal definition of an assault.

Q. A security guard in a store suspected me of shoplifting and detained me. I have heard about something called false imprisonment. Do I have an action for that?

A. If the security guard was acting in good faith, most courts will allow the guard to detain you briefly on the store premises. A number of states by law have given shopkeepers a limited privilege to stop suspected shoplifters for a reasonable amount of time to investigate. Nonetheless, you may be able to recover damages for false imprisonment. Suppose the security guard genuinely restrained you against your will, intending to confine you. Damages for such an action generally include compensation for loss of time and any inconvenience, physical discomfort or injuries. If the guard acted maliciously, you also may be able to receive punitive damages.

Q. Someone broke into my house in the middle of the night and attacked me. It was dark and I could not see the intruder well. I chased and knocked down a teenager running down the street because I thought he was the culprit, but I was wrong. Will I be liable to him?

A. If you reasonably believe someone broke into your house and attacked you, you have the right to defend yourself by injuring him, even though it turns out that the one you injured is not the same person who broke into your house. If you believe someone is about to inflict bodily harm, you may use non-deadly force to defend yourself. In this particular case, if the teenager already was running down the street, courts may say that there no longer was danger to you or your property. Then, outrageous as it sounds, you might well be liable. In situations where you believe an intruder is about to inflict death or serious bodily harm, courts allow you to use deadly force. The question then becomes whether the force you used was reasonable under the circumstances.

Q. We got behind on our bills and a bill collector has been stopping by and calling us day and night. The bill collector intimidates us, calls us names and threatens to destroy our credit record. We are nervous wrecks. What may we do?

A. You may be able to make a case that the collector's conduct is a tort, the intentional infliction of mental distress. Courts recently have begun to recognize such actions as extreme and outrageous conduct that someone else intentionally inflicts on you. For you to recover damages, you must show more than hurt feelings. Without aggravating (intensifying) circumstances, most courts have not allowed recovery if the collector was merely profane, obscene, abusive, threatening or insulting. The collector would need to have used outrageous and extreme high-pressure methods for a period of time. If the collector touched you offensively without your consent, you might even want to consider adding claims for two other intentional torts-assault and battery. You also might want to consider a case against the collector's employer. Just as employers are vicariously (indirectly) liable for the negligent acts of an employee, employers can be liable for the intentional acts of an employee. (See the "Consumer Credit" chapter for other legal protection against debt collectors.) A court would need to determine whether the collector's particular conduct fell within the scope of his or her job.

Forms of Defamation

Defamation involves your reputation. If something is said or shown to a third person and is understood by that person to lower your reputation, or keep others from associating with you, you may have a defamation claim. Libel and slander are two types of defamation. To recover for defamation, you have to prove that the information is false--truth is a defense. Plaintiff's consent to the publication of defamatory matter concerning him is a complete defense as well.

Defamation generally is easier to prove if you are a private person. Courts treat public officials and figures differently from private persons in deciding whether someone has defamed them. Public figures must show that the speaker or publisher either knew the words were false or was negligent in saying them. Courts have established certain constitutional protections for statements about public officials. That is why they must show that the speaker or publisher made the statement knowing it was false--or seriously doubting its truth.

Q. What is the difference between slander and libel?

A. A defamation action for slander rests on an oral communication made to another that is understood to lower your reputation or keep others from associating with you. Libel generally is considered written or printed defamation that does the same thing. Radio and television broadcasts of defamatory material today are nearly universally considered libel.

Q. My late grandfather, who owned a textile factory, was called "unfair to labor" in a recent book about the industry. Is that libelous?

A. While it can be libelous to write that someone is unfair to labor--or is a crook, a drunk, or an anarchist--no defamation action can be brought for someone who is dead. If your family still owns the factory and the same accusation made against your grandfather was made against one of you, a defamatory action could be brought.

Q. I have a tax-return preparation business, and a neighbor recently told a potential client that I did not know a thing about tax law. Isn't that slander?

A. You might have a case. If someone says something that affects you in your business, trade, or profession, you can recover in a slander action even without showing actual harm to your reputation or other damages. You can do the same in three other situations--if someone says that you committed a crime, that you have a loathsome disease, or that a specific female is unchaste (impure).

Of course, you can recover in other slander cases, but in those you must show that you were actually damaged.

Q. Are there defenses to defamation?

A. There are several defenses that will defeat a defamation claim. As mentioned above, consent is one; truth is another. And certain persons and proceedings (such as a judge in his or her courtroom, witnesses testifying about a relevant issue in a case, and certain communications by legislators) are said to be privileged. They are protected from defamation claims.

Where to Get More Information

Tort law covers a broad spectrum of potential injuries to persons and property, but nearly all the cases involve insurable interests--your life, your health, your home, your property, and your car. For that reason, qualified insurance representatives might be the best place to start to get information about the insurance you would need to protect you if a claim were brought against you. Should a claim on your own behalf arise, you probably will need to contact a qualified personal injury attorney, following some of the suggestions set out earlier in this chapter.

There are several agencies that also might help you with certain kinds of claims. The federal Consumer Product Safety Commission (CPSC)—www.cpsc.gov—for example, regulates many products put into commerce, including toys, and could be helpful if you believe a product is defective. The federal Food and Drug Administration (FDA)—www.fda.gov—regulates drugs and other items, like breast implants, that have been subject to recent litigation.

In addition to making a tort claim, you might want to pursue other methods of complaint. Consumer protection agencies can be found in every state. State attorney generals' offices offer information and accept complaints. You also can contact state boards that regulate the conduct of lawyers, doctors, veterinarians, and even barbers. Check the government listings in your telephone directory for the numbers of these agencies.

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