UNIT 1

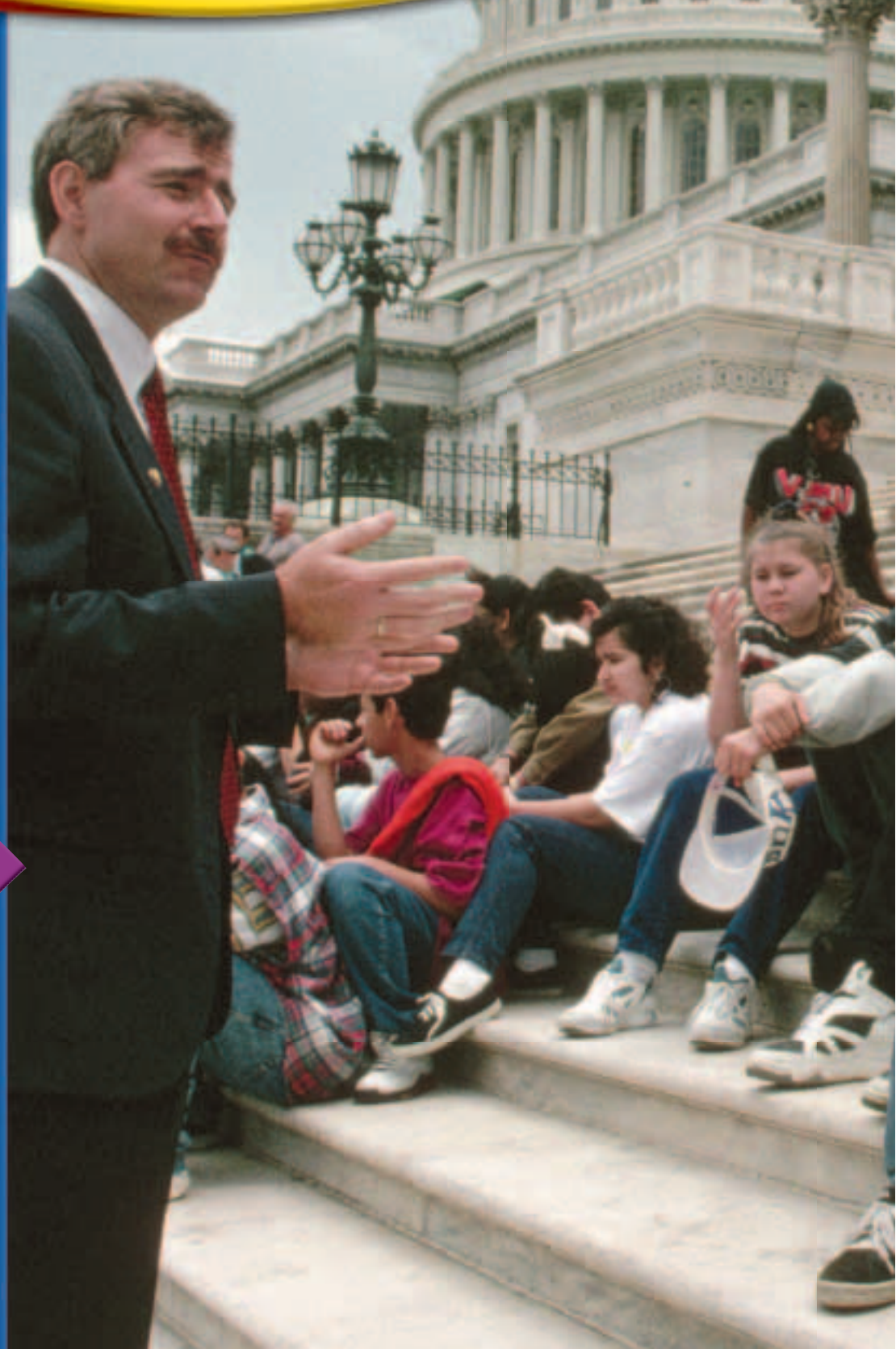
What Is Law?

In This Unit You Will Find:

Chapter 1
The Law and the Courts

Chapter 2
Criminal Law

Chapter 3
Tort Law



Separation of Powers
There are three branches of the U.S. government: the executive, the judicial, and the legislative. The executive branch is headed by the President and has the power to carry out the law. The judicial branch consists of the courts and has the power to interpret the law. *What is the legislative branch?*

Thematic Project Preview

Small Claims Suits

As you read this unit, use this checklist to prepare for the unit project:

- ✓ List terms and concepts commonly used in small claims court.
- ✓ Determine what type of preparation is needed for a small claims case.
- ✓ Evaluate whether the facts are sufficient enough to make a decision in the small claims case you create.

Legal Portfolio When you complete the Unit Thematic Project, you will have a guide for filing an action in your state's small claims court to add to your portfolio.

WebQuest

Small Claims
Small claims courts handle cases where a claim's value normally does not exceed $7,500 (although the amount can vary from state-to-state). Log on to **glencoe.com** to get a list of agencies that can help you with any small claims problems. List your findings in your WebQuest folder to share with your class.

Find Unit 1 study tools such as **Graphic Organizers, Academic Skills Review,** and **Practice Tests** at **glencoe.com**.

Ask STANDARD & POOR'S

Invest Your Money Wisely

Q: What is a typical investment scam, and what can I do to avoid it?

A: A common way investors lose money is through penny stock scams. Penny stocks are highly risky stocks that sell for under one dollar. In a penny stock scam, a scammer buys a large amount of cheap stock in a worthless company. The scammer then drums up interest in the stock with hot tips spread by word of mouth and over the Internet. As people buy up the stock, thinking they are getting in on a great deal, it drives up demand for the stock—and the price. By the time investors discover the stock is worthless and demand dries up, the scammer has sold all the stock at a tidy profit. Consider the source of a stock tip, treat every tip with doubt, and resist peer pressure. Most importantly, do not get greedy. Always heed the old saying, "If it sounds too good to be true, it probably is." Thoroughly investigate investment opportunities you are considering. Conduct research or consult with an investment professional.

Language Arts/Reading Standard & Poor's is one of the world's main providers of credit ratings and financial-market indices. Go to **glencoe.com** and read more about investment.

CHAPTER 1

The Law and the Courts

BusinessWeek News

Another Spammer Flames Out

By Elizabeth Woyke

One of the world's biggest spammers may face time in the slammer. On June 30, federal authorities arrested Christopher Smith (aka "Rizler") of Burnsville, Minn., after he stepped off a plane in Minneapolis. Smith, 25, was returning from the Dominican Republic, where he went in May after an FBI raid seized $4.2 million in assets, including a fleet of luxury cars.

Experts call Smith one of the ten most prolific spammers. Gregg Mastoras of software firm Sophos says Smith sent more than 1 billion e-mail pitches for things like fake college degrees and hair-growth products, eventually building a chain of Web sites staffed by an 85-person office. The Feds allege that Smith kept operating from overseas under an alias, making $18 million this year alone selling medications without proper prescriptions or a medical license. He's charged with criminal contempt of a court order and could face up to six months in jail.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to **glencoe.com** for Flex Your Reading activities, more information on reading strategies for this chapter, and for guided practice in reading legal documents.

Trial by Jury A defendant has a right to be tried before either a judge or a jury. *What are the steps in a jury trial?*

SECTION 1.1 The Foundations of Law

What You'll Learn

- Explain how ethical decisions are made.
- Identify the different ethical character traits.
- Describe how the law relates to ethics.
- Explain the importance of the law.
- Identify the parts of the Constitution.
- Explain the components of common law.
- Explain the purposes of statutory law.
- Identify the ways that the courts make law.

Why It's Important

Knowing where laws come from will help you understand your own legal rights and responsibilities.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 2) **Study the ways human beings view themselves in and over time.**

English Language Arts (NCTE 12) **Use spoken, written, and visual language to accomplish your own purposes.**

Reading Guide

Before You Read

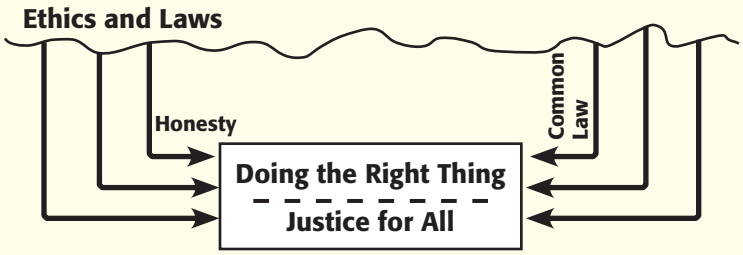
Connect Have you ever been tempted to cheat on an exam? If you have, you have faced an ethical decision.

Focus on Ideas

The law is a set of rules developed over centuries from many different sources. It develops as society changes.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- morality
- ethics
- justice
- law
- constitution
- common law
- statute
- administrative law

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- empathy
- permissible
- prevalent

What Are Ethics and Morality?

Do you think choosing between right and wrong always involves rules?

Determining the difference between right and wrong can be difficult. People use different methods to decide on the right thing to do in any given situation. **Morality involves the values that govern a group's ideas about right and wrong. Ethics refers to the rules used to determine the difference between right and wrong.** In this book, the words *ethics* and *morality* will be used for both ideas.

As You Read

Predict How do you know you are making the right ethical decision?

What Does Ethics Come From?

Using ethical rules will help you deal with big and small moral questions.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

The Greatest Good One way to decide about right and wrong is to apply the greatest good idea. This examines whether the action will cause the greatest good for the greatest number of people. The more good that results, the more right the action. It is used incorrectly when people think only of their own good, or if a person sees only the good created for a small group.

The Golden Rule The Golden Rule says, "Do unto others as you would have them do unto you." Many people prefer this rule because it works in many situations. The heart of the Golden Rule is **empathy.** Empathy means putting yourself in another person's position. One way to test whether an action is right or wrong under the Golden Rule is to ask, "Would I want to be treated this way?" If your answer is no, then the action breaks the Golden Rule.

Real-World Ethics Real-world ethics says that there are moral rules that most people know instinctively, without thinking. For example, lying is wrong. However, real-world ethics says that there are rare times when a person might have to lie. For example, it might be **permissible** to lie to save somebody's life. This does not mean what you have done is right. It means that what you have done is less wrong. If you lie to save a life, you know that the lie is still wrong, but you also know that it is less wrong than saying something that leads to someone's death.

Hammurabi's Code One of the earliest written set of laws is the Code of Hammurabi, which was carved in stone. *Who was Hammurabi and how long ago was his code of law written?*

Reading Check

Explain *Is an ethical decision always the correct legal decision?*

Ethical Character Traits

In difficult cases where moral rules and legal guidelines do not help, specific character traits become a compass you can use. For example, think of a situation in which you have to decide whether to tell the truth, knowing that the truth will get you and others into trouble.

Honesty Honesty is a character trait of someone who is truthful in dealings with others.

Justice **Justice means treating people fairly and equally.** That means everyone, not just relatives and friends. A just person will see that everyone gets his or her fair share.

Compassion Compassion means caring about other people and the situation they are in. Compassionate people understand other people's mistakes and motivations.

Integrity Integrity is a willingness and determination to do the right thing. People with integrity stand up for their convictions, even when many people are against them.

The Relationship between Ethics and Law

What does the law have to do with right and wrong?

If people used ethics all the time to guide their behavior, there would be no need for law. In the real world, people sometimes do the wrong thing. This happens even when they know better. In order to develop and live both an ethical and a legal lifestyle, you must follow the law and incorporate ethics into your life.

Why Is Law Necessary?

Ethics tell you what you ought to do. However, people do not always do what they are supposed to, so governments create laws. **Law is a system of rules of conduct established by a country's government to maintain stability and justice according to the values that are relevant to that country.** The law defines the legal rights and responsibilities of the people. Under the different types of laws, the government can require certain actions, or it can forbid others. Laws create specific responsibilities for people. In the United States, the law is a way to enforce the rights and duties of everyone through the police, the courts, the legislature, and regulatory agencies. It is everyone's responsibility to obey the law.

The law has the power to punish people for acting illegally. Consider the contrast between a dishonest but legal business transaction and one that is both dishonest and illegal. If you tell a friend that you have no money to lend him when, in fact you have a lot of money and could easily lend him what he needs, your action is perfectly legal. However, no matter which ethical theory you use, you will have to admit that you have lied, which is clearly dishonest. The law cannot force you to tell the truth in this

situation. On the other hand, if you steal money to lend to your friend, you have done something that is both dishonest and illegal. The law can clearly punish you for stealing.

Many new laws are created as a response to a person's or a company's unethical practices. For example, in the late 1990s some American corporations lied about their finances before they went bankrupt and many people lost money they had invested in the corporations on the stock market. As a result, the U.S. Congress established a new set of laws that made corporations more accountable to the public.

Ethical and Legal Conflicts

Ethics and the law affect each other. Changes in ethical standards can help us make new laws, or get rid of old laws. Changes in the law can help people adjust their ideas on morality. The conflict between social forces has led to such changes in the United States. For example, desegregation laws have changed the way many people act toward one another.

The Five Main Sources of the Law

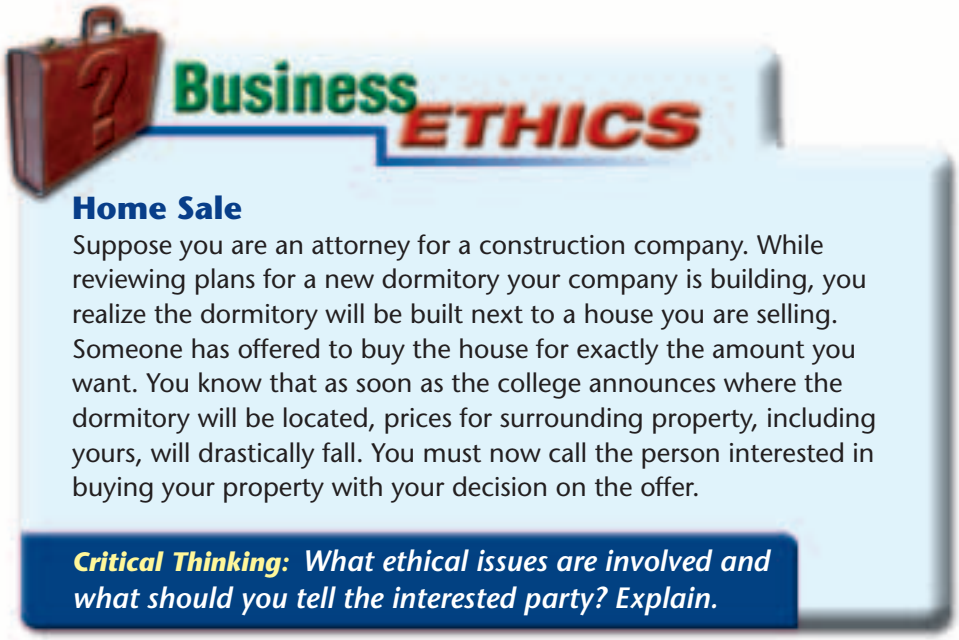
What document is the basis of all U.S. laws?

In general, law in the United States today comes from five main sources.

Constitutional Law

A constitution is a country's formal document that spells out the principles by which its government operates. In our country, the most basic law is the U.S. Constitution.

The Constitution of the United States The United States Constitution describes the three branches of the U.S. government and their roles. It sets up the limits within which the federal and state



governments may pass laws. The Constitution also sets down the rights of the people. The Constitution was created upon a basic value system the Founding Fathers felt was appropriate to all Americans.

Article I sets up the legislative branch of government, the Congress, which is responsible for passing laws for the country, and lays out duties and requirements for serving in the federal government. Article II creates the executive branch. The executive branch includes the President and all of the different departments within the government, such as the State Department and the Department of Defense. The executive branch is responsible for ensuring that the laws passed by Congress are upheld and followed. Finally, Article III describes the judiciary branch of government, which is responsible for interpreting the laws passed by Congress and adjudicating criminal cases in federal matters and disputes between parties.

These initial three Articles form a system of checks and balances, so that one branch is not more powerful than another. No one branch has the sole authority to pass laws, enforce laws, and adjudicate laws. These responsibilities are divided among the three branches.

Article IV requires each state to give full faith and credit to the laws of all other states. This means that each state must accept the laws of all the other states. Article V tells how laws may be added to the Constitution—by creating amendments.

Article VI contains the supremacy clause. This clause states that the U.S. Constitution and the laws of the United States are the highest laws in the country. Article VII, the last article, explains how to approve the Constitution. This event took place in 1787.

The Constitution now has 27 amendments. The first ten amendments were approved in 1791. They are called the Bill of Rights. They limit the powers of the government. The basic goal of the Bill of Rights is to protect our individual rights and freedoms. For example, the First Amendment protects some very important rights, such as freedom of speech, religion, assembly, and freedom of the press. No law may be passed by Congress, or any state, that would limit these individual rights and freedoms. Other important amendments include the 13th Amendment, which abolished slavery in the U.S.; the 19th Amendment, which gave women the right to vote; and the 26th Amendment, which lowered the voting age to 18 years of age.

State Constitutions Each state has its own constitution. State constitutions are not the same as the United States Constitution. Although state constitutions usually include a number of similarities, such as three branches of government and the protection of certain basic rights, state constitutions are often longer and more detailed than the United States Constitution. Duties and requirements for serving in state and local governments are determined by the individual states.

Precedent: *n* An earlier occurrence. From Latin *praecedere:* prior in time.

Integrity: *n* Firm adherence to a code of moral or artistic values, the quality of being undivided. From Latin *integritas:* entire.

Vocabulary Builder List three words that have the same origin as *precedent* and three words that have the same origin as *integrity*. Define and name parts of speech for each word.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to **glencoe.com** to find more vocabulary resources.

Common Law

In the early days of England's history, the king tried to centralize the English court system. Judges traveled around the country deciding cases. Because there was no written law, judges made decisions based on the customs and traditions of the people. Judges shared their decisions with one another so that the same laws would be applied everywhere in the country. This practice formed the basis of common law.

The common law is a set of laws made by the courts which provide a series of consistent rules that later courts must follow. The early American colonists came from England, so it was natural for them to use the common law of England in their new land.

Eventually, these court decisions were written down and a body of cases developed. Judges could then refer to past cases when making their decisions. These past cases came to be known as precedent. A precedent is a past case that a court follows when making a present decision.

The process of relying on past court cases is called stare decisis. This means "let the decision stand." English common law is not used today as much as it was in the past. However, parts of the common law are still used in some states.

Law at the State Level
State legislatures and state courts play an important role in the U.S. legal system. Legislatures vote on statutes and create laws. State courts review and interpret statutes and also create case law. *Where is your state's supreme court located? Where is your state legislature located?*

Statutes and the Civil Law System

The origin of civil law can be traced back to the Roman Empire during the 6th century when Emperor Justinian I called for the collection of all the different laws created by previous Roman emperors. This is the basis of the civil law system that is **prevalent** in Europe and the state of Louisiana.

Unlike common law, civil law is law based on statutes, rather than court decisions. **A statute is a law passed by a government body that has been made for the purpose of creating laws.** A government body that has been set up to pass statutes is called a legislature. A statute can declare the law on an issue. Statutes may also order people to do something. For example, a statute might say people have to pay taxes or wear seat belts. Other statutes say that people cannot do something. This is what a criminal statute does when it says murder is a crime.

A statute is created when legislature passes a proposed law, or bill. After the bill is passed, it is sent to the President or the

Governor, depending on whether it is a federal law or a state law, to sign the bill into law. A law does not go into effect until the President or Governor signs it.

Federal Statutes Laws that are passed by the U.S. Congress and signed by the President are called federal statutes. The United States Congress is a legislature. It has the job of making statutes under the powers given to the federal government by the Constitution. These powers include such things as the power to spend, tax, and borrow money.

Commerce Clause One important clause in the constitution is the commerce clause. The commerce clause gives Congress the power to make laws pertaining to interstate commerce, or commerce between the states. Congress has used this clause to pass laws that affect American businesses on various topics such as civil rights and interstate trucking.

Global Law

International Sources of Law

Countries throughout the world have many sources of law: national constitutions, religious texts, court-created case law, and voter-initiated propositions. Even within the United States, diversity abounds. Louisiana, for example, uses a code-based legal system inherited from the French tradition, whereas most other states follow a case law system that originates in England.

European systems of law were adopted by many countries around the world. France and the United Kingdom were very influential. The United States created a legal system that incorporates parts of both French and British law.

The United States has four primary sources of law:

1. The U.S. Constitution
2. International treaties
3. Statutes passed by the U.S. Congress
4. Case law created by the U.S. Supreme Court

France, on the other hand, has three sources of law with no case law:

1. The French Constitution
2. International treaties
3. The *Code civil des français,* or French Civil Code

Finally, the United Kingdom also has only three sources of law, with no constitution:

1. International treaties
2. Statutes passed through the Houses of Parliament
3. Case law created by the House of Lords in its holdings

Across Cultures: What's a lawyer called in England?

In England lawyers are divided into two categories based on the legal work that they do. Barristers engage in trial work and often prepare trial briefs, and solicitors handle office work. Barristers count on solicitors to provide them trial work because they are not allowed to do it on their own.

Critical Thinking: ***What are the advantages (or disadvantages) of having a supreme court that can create law? What about a constitution?***

As noted earlier, the U.S. Constitution is the supreme law of the land. This means that Congress cannot pass laws that conflict with the U.S. Constitution, including the Bill of Rights. The Supreme Court may declare any statute that does go against the Constitution to be unconstitutional. This means that the statute is invalid.

State Statutes Each state also has its own legislature. Like Congress, the state legislatures cannot pass statutes that conflict with the U.S. Constitution or their own constitutions.

> **Example** Lawmakers in Massachusetts wanted to have a graduated income tax that would very much be like the federal income tax. A graduated tax requires people with larger income to pay a higher tax rate than people with smaller incomes. Such a tax could not be passed because the Massachusetts constitution requires all people to be taxed at an equal percentage rate.

As a way of lessening confusion and creating similar statutes in all the states, there are many different uniform codes. One of the best known examples is the Uniform Commercial Code, or UCC. Every state has passed a version of the UCC, which means that statutes relating to commerce are essentially the same in all the states, and people do not have to worry about knowing 50 different sets of law with regard to business transactions.

Ordinances Most local governments, like cities and towns, have the power to create laws that affect their citizens. These laws are known as ordinances and can apply to topics such as parking fines and noxious weed control.

Court Decisions

Most people are surprised to learn that courts make law. Court-made law is often called case law, court decisions, or judge-made law. Courts make law in three ways: through the common law tradition, by interpreting statutes, and by judicial review.

Creating Laws Decisions made by the highest court of a state are the law of that state. These decisions must be followed by other courts in that state. These decisions continue to be law until they are changed by statute or a new court decision.

Interpreting Laws A second type of court decision involves interpreting statutes. When a statute is confusing, the court must figure out what the statute means. A judge cannot interpret a statute unless the statute is part of a case.

Judicial Review The courts can also decide whether laws conflict with the Constitution. Any laws or government actions that conflict with the Constitution are unconstitutional. The Supreme Court of the United States has the last word on whether a statute conflicts with the Constitution.

Administrative Regulations

The legislature must regulate many activities. This is true of Congress and of the state legislatures. However, legislators do not have knowledge in every field. They also do not have the time to do everything that they are charged with doing. For these reasons, legislatures will give the power to regulate certain activities to an administrative agency. For example, the Federal Communications Commission (FCC) has the power to regulate radio, television, and cable companies.

Administrative agencies are departments of government that are formed to carry out certain laws. These agencies can make and enforce rules directly related to the area of responsibility given to them by the legislature. **Administrative law is the body of rules created by government agencies.**

Administrative agencies have a lot of power. However, there are checks and balances that keep them from becoming too powerful. The legislature that created an agency has the power to end the agency or to change its power. A final decision by an agency can be reviewed by the courts.

International Law

Although not a major source of law in the United States, international law can be equally important. International treaties signed by the United States and other countries are held to the same level as federal statutes. Like a federal statute, everyone in the U.S. must follow any treaty that the U.S. has signed.

In addition to treaties, there are international agreements between countries, such as trade agreements, that are not binding on the countries, but provide recommendations for how countries should interact within the international community.

After You Read

Summarize What are the five main sources of the law?

Section 1.1 Assessment

Self Check

1. What is the difference between morality and ethics?
2. Why is the law necessary?
3. What are the possible purposes of a statute?

Academic Connection

Social Studies The Bill of Rights clearly spells out the immunities for the individual citizen. Why do you think the writers of the Bill of Rights were so concerned with this?

English Language Arts Using the Bill of Rights as a guide, write a bill of rights addressing student rights to a free education.

Critical Thinking

Software Downloading Suppose that your best friend had a way to hack into your math teacher's computer so that he could download the answers to your next test. Your friend offers to give you the answers for five dollars. Would you go along with your friend's tempting offer? Why or why not? What ethical rule would you use to make this decision?

Go to **glencoe.com** to check your answers.

The Court System and Trial Procedures

SECTION 1.2

Reading Guide

Before You Read

Connect If a 16-year-old gets into legal trouble, does the case always go to a juvenile court?

Focus on Ideas

There are many different levels of the court system to deal with different types of legal problems.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.

Litigation

1. **Filing a Complaint** _____
2. _____
3. _____
4. _____

Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- jurisdiction
- appellate court
- alternative dispute resolution (ADR)
- arrest
- bail
- arraignment
- detention hearing

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- informal
- mediator
- jeopardy

What You'll Learn

- Define jurisdiction.
- Describe the structure of the federal court system.
- Explain the role of the United States Supreme Court.
- Determine the common structure of most state court systems.
- Identify alternative dispute resolution techniques.
- Differentiate between civil and criminal cases.
- Describe the steps in a civil lawsuit.
- Explain the rights of criminal defendants.
- List the steps in a criminal prosecution.

Why It's Important

Learning about the structure of the U.S. court systems will help you understand how the U.S. legal system works.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 10)
Study the ideals, principles, and practices of citizenship in a democratic republic.

Math (NCTM DAPS 2)
Select and use appropriate statistical methods to analyze data.

As You Read

Predict Do all cases get resolved in court?

A Dual Court System

Are all the U.S. courts of justice the same no matter where you live?

The United States has two major court systems: federal and state. Federal courts hear cases involving federal subjects. They also hear cases involving citizens from different states or from another country. According to the U.S. Constitution, powers not specifically granted to the federal government are reserved for the states. So states have their own courts with their own rules.

The Federal Court System

Jurisdiction is a court's power to hear a case and to make a judgment. Federal courts have jurisdiction over certain types of cases. These cases include:

1. Actions in which the United States or one state is a party, except those actions between a state and its citizens
2. Cases that raise a federal question, such as interpreting the Constitution
3. Cases, which involve citizens of different states and in which the amount of money in dispute exceeds $75,000
4. Admiralty cases, or those pertaining to the sea
5. Patent and copyright cases
6. Bankruptcy cases

Federal courts are arranged in three tiers. The first tier is the U.S. district court. Each state has at least one district court; many have more. The second tier consists of the U.S. courts of appeals and the highest tier is the U.S. Supreme Court (see **Figure 1.1,** page 17).

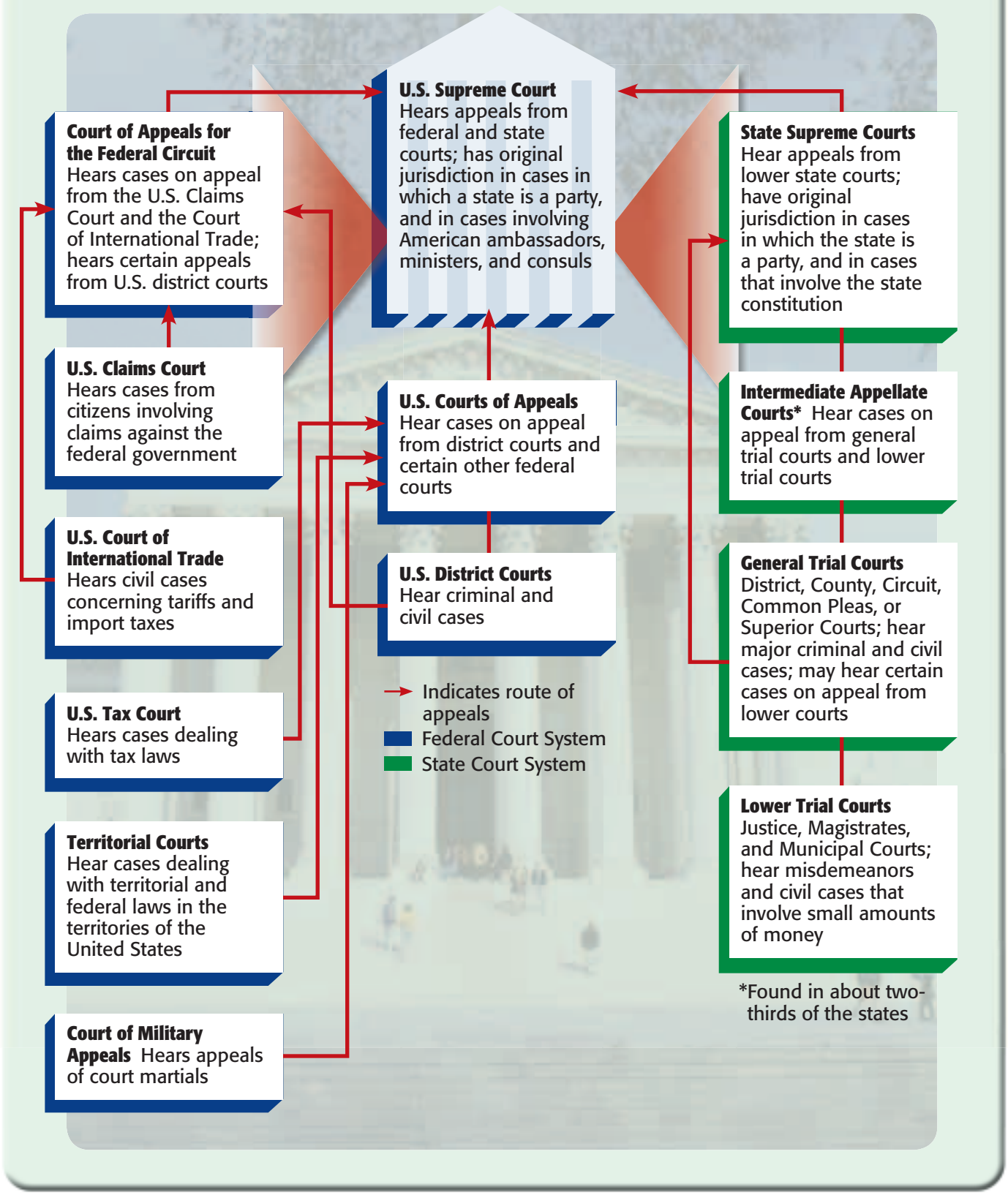
The Supreme Court The highest court in the land is the U.S. Supreme Court. Supreme Court justices have vast legal experience as lawyers and judges. *Who was the first African American appointed to the Supreme Court?*

District Courts District courts have original jurisdiction over most federal civil and criminal cases. Original jurisdiction means that a court has the power to hear a case for the first time. Most federal cases begin in one of the U.S. district courts.

Courts of Appeals U.S. courts of appeals are the appellate courts of the federal system. An appeal is a request to a higher court to reverse a lower court's decision. **An appellate court is a court that hears appeals and reviews cases from the lower courts.**

In the federal system, the courts of appeals are intermediate courts. An intermediate court is one that is between lower courts and the highest court of a system and has appellate jurisdiction. Appellate jurisdiction is the power to hear an appeal from a lower court.

Figure 1.1 Court Systems in the United States



The courts in the United States are divided into federal and state systems.
In which court system would a criminal trial be heard?

Who Gets to Be a Supreme Court Justice? A diverse student body representing the country's demographics is the goal of many colleges that train future lawyers, judges, and justices. Many private companies, such as Honda, also foster diversity in law schools and colleges and use their efforts as promotion. ***What do you think the most challenging part of studying law and becoming a lawyer is?***

The United States is divided into thirteen judicial circuits. Each circuit has several district courts and one court of appeals. A panel of three judges is responsible for rendering decisions in most appeals. No witnesses are heard, no evidence is presented, and no jury is present. Only questions of law can be raised on appeal, not questions of fact. Appellate courts only determine whether the lower court correctly applied the law in the case.

Special U.S. Courts Congress has set up several special federal courts. These courts have jurisdiction in certain kinds of cases. These cases include lawsuits that are brought by citizens against the federal government.

Supreme Court The United States Supreme Court is the highest court in the country. It consists of the Chief Justice of the United States and eight associate justices.

The President chooses the justices with the consent of the Senate. Like all federal judges, the justices who sit on the United States Supreme Court serve for life. The Court's main job is to hear appeals. The Court decides which appellate cases it will hear. This requires a vote of at least four of its nine justices. The Supreme Court will hear cases that affect a wide range of people and those that involve the Constitution. A case is also likely to reach the Supreme Court when several lower courts have faced the issue, but have disagreed on how to resolve it. The Supreme Court has original jurisdiction in all cases that involve ambassadors, consuls, and other public ministers. It also has original jurisdiction in cases that involve a state.

State Court Systems

Each state has its own court system. However, the general pattern is the same in all states.

Local Trial Courts Local courts are courts of limited jurisdiction. Limited jurisdiction means that a court handles minor matters. Such cases might involve disputes over small amounts of money which are heard in small-claims courts. Minor cases are also heard by traffic, police, or mayor's courts.

General Trial Courts In most states, each county has one general trial court, also called a court of general jurisdiction. Courts with general jurisdiction handle criminal and civil cases.

Juvenile Courts Juvenile courts deal with juvenile offenders and with children who need the protection of the state. These courts deal with children up until the age of majority, which is 18 in most states. They have special jurisdiction over delinquent, unruly, abused, and neglected children.

Procedures in juvenile courts differ from those in other courts. Most juvenile matters are sealed, meaning that unlike other court proceedings, they are not open to the general public. This is to protect the privacy of the minor. Hearings are often more **informal** than in other courts of law. Young people who appear before a juvenile court have no right to a trial by jury and no right to be released on bail. However, the Supreme Court has held that there must be proof beyond a reasonable doubt to convict a child as an adult.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Intermediate Appellate Courts Some states have intermediate appellate courts that hear appeals. Appeals may be made to a state intermediate court when the parties believe they did not have a fair trial in the lower court. They may also appeal to the intermediate court if the judge did not interpret the law correctly. State appellate courts hear appeals only on questions of law. No witnesses testify. Appeals judges hear arguments from attorneys. They also study the documents and records in the case.

State Supreme Courts The highest court in most states is the supreme court. A state's highest court decides matters of law appealed from lower courts. Supreme courts do not hold a second trial.

They do not look at the facts in the case. Instead, they decide whether the lower court made a mistake in interpreting or applying the law. At times, cases that have been decided by a state supreme court may be appealed to the United States Supreme Court.

Civil Trial Procedure

Suppose you are suing your neighbor for damaging your property. Will your case appear in the court as a criminal case?

The law can be divided into two very simple categories: substantive law and procedural law. Substantive law tells us what the law is. There are many different classifications of substantive law ranging from criminal law to business law, family law to bankruptcy law. Most of this book is devoted to substantive law.

Procedural law tells us how the law works. The two major divisions in this area of the law are civil procedure and criminal procedure. Criminal procedure and civil procedure are very different from one another.

The government brings criminal cases to court for offenses against the public. Criminal law is enacted to protect the public from harm. In contrast, individuals who believe they have been injured bring civil cases. Civil law is enacted to govern

Case Study – Marbury v. Madison

Critical Thinking ***A Supreme Court Justice said that, in this decision, the Supreme Court gave up power to gain power. What do you think this means?***

Flex Your Reading **Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.**

Unconstitutional Act? Shortly before President John Adams left office as President, he appointed William Marbury as a Judge. Mr. Marbury, however, never received his official commission papers. The new president, Thomas Jefferson, told his Secretary of State, James Madison, not to deliver the commission papers to Mr. Marbury.

Mr. Marbury sued for a writ of mandamus, a court order that requires a specific act or duty be carried out. Mr. Marbury requested that the Supreme Court order the delivery of his commission papers. The Judiciary Act of 1789 gave the Supreme Court, among other things, the power to issue writs of mandamus to federal government officials.

In an important decision, the Supreme Court held that the Judiciary Act was unconstitutional because nowhere in the U.S. Constitution was the Supreme Court given the power to order a federal official to do something. This holding established judicial review, or the power to determine the constitutionality of U.S. statutes.

Marbury v. Madison, 5 U.S. 137 (1803)

Go to **glencoe.com** for more case study practice.

the relationships between two individual parties, and does not normally involve the government. The injured person begins a lawsuit by filing a complaint with the court. Another name for bringing a civil lawsuit is litigation.

There are many advantages to litigation. One advantage is that, since litigation has a long history in our legal system, the courts have had a chance to develop rules that make the process as fair as possible. However, there are disadvantages too. For instance, when an individual brings a civil case to an attorney, the lawyer investigates the case. This investigation can be costly and time consuming. Unlike in criminal cases, a person in a civil lawsuit is not guaranteed or provided an attorney. Many people choose to represent themselves in court, and they are expected to follow the same specific rules that attorneys follow during litigation.

Reading Check

Enumerate *List the different types of federal courts and state courts.*

Important Civil Statutes

There are many reasons for civil litigation. For example, if someone is hit by a car and dies, the victim's family may sue the driver of the car for wrongful death. The family may get money to compensate for the pain of losing their loved one.

Survival statutes are written to ensure that when a plaintiff dies, a representative for the deceased can continue the case, or bring a new case on the deceased's behalf. Statutes of limitation are passed to provide time limits for when a plaintiff may sue a defendant. For example, the statute of limitation for bringing a wrongful death claim may be three years. In the above example, that means that the family of the victim has three years to begin a suit against the driver for their loss. There are different time limits for each separate claim.

Alternative Dispute Resolution

To cut costs and to save time, people have begun to explore substitutes for lawsuits. **Alternative dispute resolution (ADR) occurs when parties try to resolve disagreements outside of the usual court system.** Some ADR techniques are mediation, arbitration, conciliation, and negotiation.

Mediation Mediation occurs when parties to a dispute invite a **mediator** to help them solve the problem. This can be done voluntarily, or as required by a court. A mediator tries to persuade the parties to compromise. A major advantage to mediation is that the final decision remains in the hands of the parties. A disadvantage is that, if carried out too quickly, mediation can highlight the disagreement between the parties rather than the points of agreement.

Arbitration Sometimes, the parties give the power to settle their dispute to a third party. This process is called arbitration. The person who is hired to settle the case is the arbitrator. An advantage to arbitration is that it often results in a fair solution because the decision is in the hands of an independent, objective third party. A disadvantage is that the final decision does not remain in the hands of the people who have a dispute.

Conciliation Conciliation is similar to mediation and arbitration. In conciliation, however, the intermediary, who is generally referred to as the conciliator, does not bring the parties together in a face-to-face conversation. Instead, the conciliator shuttles back and forth between the parties seeking a consensus. An advantage to conciliation is that the parties are kept apart from one another. This reduces the possibility of an angry confrontation. A disadvantage is that conciliation takes more time because the conciliator must meet separately with everyone involved.

Negotiation In negotiation, each party appoints a spokesperson to represent him or her in the reconciliation process. The negotiators then meet to hammer out an agreement. Negotiation is just one step closer to litigation, which involves an actual lawsuit. An advantage to negotiation is that it permits the parties to determine the relative merits of their arguments without going to court. A disadvantage is that often negotiation simply leads to litigation, thus adding an extra step to an already long process.

Civil Case Procedures

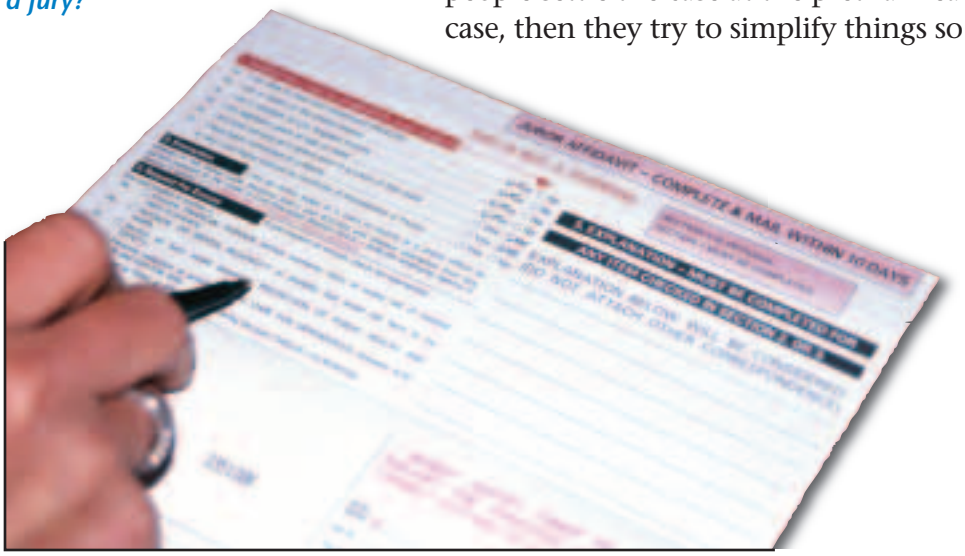
How do court trials start?

Civil litigation begins with pleadings: formal papers filed with the court by the plaintiff and defendant. The plaintiff is the person bringing the lawsuit. The defendant is the person who the lawsuit is against. The complaint expresses the plaintiff's claims against the defendant. The answer is the defendant's official response to the claims in the complaint.

Methods of discovery are used to bring facts out before trial. They include depositions, interrogatories, requests for documents and other evidence, physical and mental examinations, and requests for admission. If a case cannot be settled at that point, the court clerk places the case on the calendar, or court docket, for trial.

Pretrial Hearing Before the trial takes place, a pretrial hearing occurs. This hearing is an informal meeting before a judge. Sometimes, people settle the case at the pretrial hearing. If they do not settle the case, then they try to simplify things so the trial can run smoothly.

Jury Duty People are summoned at random for jury duty. ***How many people sit on a jury?***



Steps in a Trial

When a case is filed, the parties must decide whether they want a jury trial or a court trial. With a court trial, there is no jury, and a judge makes all the decisions. If a jury trial is requested, then the trial begins by choosing the jury members. The trial then moves to opening statements. After the opening statements, the evidence is

introduced. When there is no more evidence to show, the closing arguments begin. Then, the judge gives the jury its instructions. The jury then decides the case and brings a verdict. The verdict is followed by a judgment.

Selecting the Jury The judge calls the court to order. Then the judge has a jury drawn from a group of people who have been called to serve. The jury must determine the facts of the case. The jury also applies the law to those facts. The lawyers question each juror to predict whether a juror will be fair or unfair. The lawyers consider the juror's background, education, experience, relationships, attitudes, and employment.

The Witness Stand A witness testifies under oath at a trial (a deposition may be used in a trial if the witness is not available). The plaintiff or the defendant may be witnesses. Witnesses testify about what they have seen, heard, or experienced, or about the signing of a document such as a contract or a will. ***What is the most important responsibility of a witness?***

Arguments and Evidence After jury members are chosen, the lawyers make opening statements. The opening statements explain what the lawyers intend to prove. The plaintiff's lawyer goes first. The defendant's lawyer goes next, or waits to give an opening statement until after the plaintiff's evidence has been presented.

The plaintiff's lawyer presents all of the plaintiff's evidence. Witnesses testify at this time, including expert witnesses. Expert witnesses give authoritative opinions on evidence in the case.

The defense lawyer has the chance to cross-examine the plaintiff's witnesses. The cross-examination is supposed to test the truth of a witness's statements. It might also bring out evidence that was not brought out on direct examination. When the plaintiff's lawyer is done, the defendant's lawyer presents evidence. The plaintiff's lawyer may then cross-examine. When both lawyers are done, they rest their cases.

The plaintiff's lawyer is the first to give a closing argument. This is followed by the defense lawyer. Each lawyer gives a summary of the evidence and suggests reasons why the judge or jury should find in favor of their client.

Instructions to the Jury The judge must explain the law to the jury. This is a process called jury instruction. Lawyers from both sides may suggest instructions.

Verdict and Judgment Jury members go to the jury room to talk about the case. After discussing the case, the jury will decide who has won the suit. This decision is called the verdict. States may allow a less than unanimous decision by jurors to agree on a verdict. Following the jury's verdict, the court issues a judgment. The judgment is the court's determination of liability in the case, or who is responsible for what. If there is no jury, the judge issues findings of fact, which are similar to a jury verdict, and then conclusions of law and a judgment.

Lawyers and Clients Court decisions may be appealed. In appeals cases, lawyers prepare to make their arguments to an appellate court. *What is the main difference between an appeal case and a trial?*

Remedies When a defendant is found liable in a civil trial, the plaintiff is granted a remedy. Courts provide two types of remedies. One type is the payment of money. The other type requires some other action by the defendant. The plaintiff may want the defendant to keep a promise in a contract. This is called specific performance. Sometimes the plaintiff wants the defendant to stop doing something. In that case, the plaintiff seeks an injunction.

Execution of Judgment After the trial, the judgment of the court must be carried out. A judgment is enforced when the judge issues an execution order. The judge might order the sheriff to take some of the property that belongs to the losing party. The sheriff would then sell the property at an auction. The sheriff must use the money made at the auction to pay the winning party.

The Appeal Process

The parties are permitted to appeal the judgment of the court. The appeals process is different from trial. An appeal can only be based on a legal mistake by the judge. This is why attorneys object to certain procedures and to certain decisions made by the judge at the lower court level. There is no retrial at the appellate level. The lawyers argue their case before the appellate court, which then can affirm, reverse, or remand the case back to the lower court.

Criminal Trial Procedure

What happens when the police arrest a criminal suspect?

An arrest occurs when a person is legally deprived of his or her freedom. Criminal cases often start when the defendant is arrested. Defendants have a right to due process of law, or fair treatment according to established legal principles. The law requires a court hearing right away. This is supposed to protect the defendant's rights. The trial is planned for later to give both lawyers time to prepare their cases. The rules in criminal procedure must be followed exactly. In contrast, in a civil case, procedure can often be altered or changed by the agreement of the parties and judge. This is to protect the rights of the defendant.

Rights of the Defendant

The Supreme Court, in a case called Miranda v. Arizona, decided that people must be informed of their constitutional rights when they are arrested. The Miranda warnings require the police to tell people what crimes they are being arrested for. The police must also tell people they arrest that they have the right to a lawyer. If a defendant cannot afford a lawyer, the court must appoint one at no cost. The police must also tell people they arrest that they have the right to not say anything and that anything they do say can be used against them in court.

A police officer may arrest a person at any time if the officer has a warrant. A police officer may arrest a person without a warrant if the officer believes the person has committed or is committing a crime in the officer's presence.

Bail A person who has been arrested can sometimes be released on bail. **Bail is money or other property that is left with the court to assure that a person who has been arrested, but released, will return to trial.** A judge determines bail.

Search and Seizure A police officer may search a person, car, house, or other building only if permission is given or if the officer has a search warrant. The search must only be the area mentioned in the warrant. An officer may conduct a limited search, or frisk, if the officer believes a person is carrying a weapon. When the search is over, the person must either be released or arrested. Persons who have been arrested may be searched without a warrant.

The Arraignment

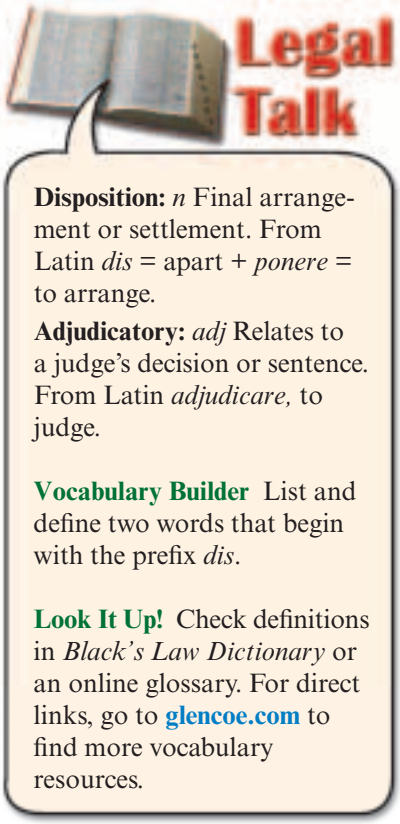
The suspect is brought before the court as soon as possible after an arrest. At this brief hearing, the criminal defendant is informed of the complaint. The defendant is also made aware of his or her rights. At this time, the judge may find a reason to dismiss the complaint. The judge might also decide that there is probable cause that a crime was committed.

Grand Jury Depending upon the jurisdiction, the prosecuting lawyer either prepares an information or presents the case to the grand jury. An information is a set of formal charges drawn up by the prosecuting attorney. A grand jury is a jury made up of citizens who must decide whether there is enough evidence to justify accusing a person of a crime. A grand jury conducts its hearings in private to determine whether someone must stand trial. If jurors decide a crime has been committed, they issue an indictment, or written accusation charging the individual. This does not mean that the named person is guilty but that the grand jury believes there is a possibility the person is guilty.

Following the indictment, the accused is brought to court for arraignment. **An arraignment is a formal hearing during which the defendant is read the indictment or information and is asked to plead guilty or not guilty.** The accused is informed of his or her rights. If the person pleads guilty, the judge may then impose the sentence. If the person pleads not guilty, the case goes on to trial. A defendant may also plead guilty pursuant to a plea agreement. This is an agreement between the government and the defendant. Trial can be difficult, so the government may offer to change the charges to a crime with a lesser sentence if the defendant will plead guilty without a trial.

The Trial

If the defendant requests a jury trial, the jury members must be selected. Otherwise, the case is tried before the judge, which rarely



happens in criminal trials. The actual trial is similar to a civil trial. The lawyers make opening statements. They introduce evidence. The trial ends with each lawyer's closing statement. The closing statements are followed by the judge's instructions to the jury.

In a criminal case with a jury, the verdict must be unanimous. When a jury cannot unanimously agree, it is called a hung jury and a mistrial is called. A new trial may be held at the option of the prosecution. If the verdict is not guilty, the defendant is released. If the defendant is guilty, the judge imposes a sentence in the form of a fine, imprisonment, or both. In a criminal matter, if the defendant is guilty, that means that beyond all reasonable doubt, the defendant is the person who did the crime. In addition, for every crime, there is an element of intent, which means the defendant must have intended to break the law. A person who is found not guilty cannot be tried twice for the same crime in the same court. This is the principle of double **jeopardy** which is defined in the Fifth Amendment of the U. S. Constitution.

Sentencing

After a person has been convicted of a crime, the court will sentence that individual. This means the judge decides the punishment. The law provides certain sentencing guidelines and penalties. The penalties could include fines, imprisonment, and even death.

Fines A fine is the payment of money as a penalty for committing a crime. Fines are levied against a defendant when the crime is minor. However, fines can also be attached to more serious penalties, such as imprisonment.

Imprisonment States deal with imprisonment in different ways. In some states, the judge may hand down an indefinite sentence. This means that the judge orders a minimum and maximum amount of time that the convicted criminal may spend in prison, such as five to ten years. Other states make the judge state the exact period of time a criminal will spend in prison. Some states have made mandatory sentences for certain crimes which cannot be changed for any reason.

The Death Penalty Our Constitution says death penalty laws must include guidelines to ensure fair treatment. The U.S. Supreme Court has held that a jury, not a judge, must now decide whether a defendant deserves the death penalty. The United States Supreme Court has ruled that criminal defendants under 18 years of age and those who are mentally incompetent cannot be sentenced to death.

Disposition of Juvenile Cases

Cases involving juvenile offenders are handled by the juvenile court. As a first step, the judge usually holds a detention hearing. **A detention hearing is a court session during which the judge tries to learn whether there are good reasons to keep the accused in custody.** The court's probation department or a

child welfare agency investigates the minor's background and home life. The judge might dismiss the charges after hearing the results of the investigation.

Adjudicatory Hearings If the charges are not dismissed, the judge conducts an adjudicatory hearing. This is the informal hearing of the case by the court. The judge may question the young person and the parents, listen to witnesses, or seek advice from the probation officer. After a hearing, the judge may decide the outcome of the case in one of three ways.

- The judge may allow the offender to return home on probation for a period of time, under the supervision of a probation officer.
- The judge may place the offender in an agency or foster home. The natural parents will then be required to pay what they can toward the offender's support.
- The judge may commit the offender to a training or reform school.

The judge can also order the juvenile offender to pay for the damages with money, work, or both. The parents of the offender may have to repay the victim. Sentences for youthful offenders are set with rehabilitation in mind. They are generally limited to probation under court supervision, confinement for not more than three years in a reformative institution, or another course of action designed to help, rather than to punish.

After You Read

Summarize List differences and similarities between civil and criminal court procedures?

Section 1.2 Assessment

Self Check

1. What is the difference between a civil and a criminal case?
2. What is the role of the United States Supreme Court?
3. Under what conditions can a police officer search a person?

Academic Connection

Mathematics Create a table listing which of the 13 original colonies were represented in the 39 signatures to the U.S. Constitution. Calculate the percent that figure represents of the total participants.

CONCEPT **Number and Operations: Using Fractions, Decimals, and Rounding.** To figure out the problem, take the number for each category and divide by the total. For example, 8 ÷ 39 = .205. Then change the decimal to a percent by moving the decimal to the right two spaces and adding a percent sign. Round numbers of 5 or more up and numbers less than 5 down. For example, .2045 rounds to 20.5% and .2044 rounds to 20.4%.

Math For more math practice, go to the Math Appendix.

Critical Thinking

Search and Seizure
Suppose that the principal of your school has decided that all students will be searched when they enter the school building in the morning and when they leave in the afternoon. Write a legal argument that you could present to the principal when you ask him or her to reconsider the new search policy.

Go to **glencoe.com** to check your answers.

Chapter 1 Review and Assessment

Summary

Section 1.1 The Foundations of Law

- Ethical decisions can be made by applying the greatest good principle, or by following the Golden Rule.
- Four ethical character traits are: honesty, justice, compassion, and integrity.
- Ethics may be subjective. Laws provide an objective standard of behavior.
- The U.S. Constitution, which consists of seven articles and 27 amendments, enumerates the fundamental rights of citizens, names the functions of the three branches of government, and creates a system of checks and balances.
- Common law is a set of laws that provide rules for courts of justice. It is the basis of the U.S. legal system. Statutory law is the body of laws derived from statutes.
- Legislatures form regulatory agencies, which have a wide range of powers to create, enforce, and adjudicate rules and procedures.

Section 1.2 The Court System and Trial Procedures

- Jurisdiction is the power and authority given a court to hear a case and make a judgment.
- Federal courts are arranged in three levels: U.S. district courts, U.S. courts of appeals, and the Supreme Court of the United States.
- State court systems consist of local trial courts, courts of general jurisdiction, appellate, and supreme courts.
- Mediation, arbitration, conciliation, and negotiation are examples of reactive Alternate Dispute Resolution (ADR).
- In civil court, the plaintiff sues the defendant for a remedy. In a criminal proceeding, the district attorney prosecutes on behalf of the government.
- The steps in a civil trial are: jury selection, opening statements, evidence, closing arguments, instructions to the jury, the jury verdict, and the court's judgment.

Vocabulary Builder

1 **On a sheet of paper, use each of these terms in a sentence.**

Key Terms

- morality
- ethics
- justice
- law
- constitution
- common law
- statute
- administrative law
- jurisdiction
- appellate court
- alternative dispute resolution (ADR)
- arrest
- bail
- arraignment
- detention hearing

Academic Vocabulary

- empathy
- permissible
- prevalent
- informal
- mediator
- jeopardy

Go to **glencoe.com** to play a game and improve your legal vocabulary.

Key Points Review

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

2. What are the four ethical character traits?
3. What are the parts of the U.S. Constitution?
4. What is common law?
5. How do the courts make laws? What is the structure of the federal court system?
6. What is the common structure of most state court systems?
7. What are some alternative dispute resolution techniques?
8. What are the steps in a civil lawsuit?
9. What rights does a criminal defendant have?
10. What are the steps in a criminal prosecution?

Standardized Test Practice

11 Read this excerpt of Senate Document 105-14 entitled "How Our Laws Are Made" and complete questions 1 and 2.

"Laws may be initiated in either chamber of Congress, the House of Representatives or the Senate. For this example, we will track a bill introduced in the House of Representatives.

When a representative has an idea for a new law, s/he becomes the sponsor of that bill and introduces it by giving it to the clerk of the House or by placing it in a box, called the hopper. The clerk assigns a legislative number to the bill, with H.R. for bills introduced in the House of Representatives and S. for bills introduced in the Senate. The Government Printing Office (GPO) then prints the bill and distributes copies to each representative."

1. The first step for a new law is

A. Get a sponsor
B. Create an idea
C. Give it to the House
D. Call the hopper

2. Laws can be initiated through

A. House of Representatives or Senate
B. Government Printing Office or House of Representatives
C. House of Representatives or President
D. President, Senate, or House of Representatives

Test-Taking Strategies

Make sure you read all the answer choices, identify choices that are obviously wrong, and choose from answers that remain.

Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

12 Lost Wallet

As you walked down the street you found a wallet full of money on the ground. You placed an ad in the lost and found section of the local paper. After a month of running the ad no one has responded to it.

You Debate *Is it your ethical duty to find the rightful owner?*

13 Eyewitness

Alex witnessed a mugging on his way home but did not stop to get involved. Other witnesses saw Alex leaving the area. Later Alex saw on TV that the police were asking for witnesses to the mugging to come forward and give a statement.

You Debate *Can the law force Alex to give a statement?*

14 Free Speech

Rini is running for student council and has placed flyers on all the cars and inside the campus buildings. The principal suspended her for doing this without permission. Rini argued she is entitled to free speech under the First Amendment.

You Debate *Does free speech extend to flyers posted for a student election?*

15 Plea Bargaining

Roberto is an accountant charged with stealing company funds from Haven's Landscaping. The district attorney offered Roberto a deal of one year in prison if he would plead guilty to the crime. Roberto accepted the deal.

You Debate *Should punishment for a crime be lessened in exchange for the defendant pleading guilty without the expense of a trial?*

16 Entrapment

Manik has always been an upstanding citizen. A man came in to Manik's used electronics store and offered to sell him flat-screen TVs at an extremely low price. Manik did not question the low sales price. When Manik paid the man for the goods, he discovered that the man was an undercover police officer, who charged Manik with purchasing stolen goods.

You Debate *Can Manik argue that the charge was entrapment?*

Case Study Practice – Papaila v. Uniden America Corp.

17 Who Has Juridiction? Theodore Papaila, an American employee of Uniden America Corporation (UAC), a subsidiary of a Japanese company, sued UAC for racial discrimination. He claimed UAC treated 16 Japanese employees differently by giving them higher base salaries, fringe benefits, and job protection. Two laws apply to this case. U.S. Code statute 42 U.S.C. §2000e-2(a)(1) reads: "(a) Employer practices: It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." The Friendship, Commerce, and Navigation Treaty and Protocol Between the United States and Japan, 4 U.S.T. 2063 reads: "Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice."

Source: Papaila v. Uniden America Corp., 51 F.3d 54 (5th Cir. 1995)

Practice Which law should apply to this case? What are the ethical implications?

18 Ethics Application

Guilty by Silence? As you enter the classroom, you see another student named Jonathan copying down the answers to today's test from the teacher's desk.

- What would be the ethical decision to make regarding this situation?

19 Internet Application

Learn How to File a Complaint In your neighborhood, the sidewalks are not handicap accessible, which prevents your wheelchair-bound grandmother from using them. You have contacted the city manager's office but have had no luck in getting them changed.

Go to **glencoe.com** to access the Americans with Disabilities Act Mediation Program Web link to learn how to file a complaint. Outline the steps to share with your class.

Reading Connection

Outside Reading Go to **glencoe.com** for a list of reading suggestions about ethics and the court system.

CHAPTER 2

Criminal Law

BusinessWeek News

Bernard Ebbers: Stiff Sentence

By Mike France

Bernard Ebbers orchestrated one of the largest corporate frauds in history—and now it looks like he'll be serving one of the longest sentences ever meted out to a former chief executive. U.S. District Judge Barbara Jones sentenced the former CEO to 25 years in prison. A Manhattan jury convicted Ebbers, 63, of conspiracy, securities fraud, and seven counts of making false regulatory filings. Ebbers is appealing his conviction.

The tough sentence stemmed, in large part, from the estimated $2 billion in investor losses prosecutors attributed to Ebbers' fraud. Judges can still take this into account in determining punishment for white-collar felons, even though the federal sentencing guidelines were overturned by the U.S. Supreme Court earlier this year. That should be a sobering thought for other execs facing criminal trials in coming months.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to **glencoe.com** for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about criminal law cases.

Crime Scene The elements of a crime are the criminal act and the required state mind. ***What is the state of mind required for murder?***

SECTION 2.1

Crimes and Criminal Justice

What You'll Learn

- Explain the differences between categories of crime.
- Distinguish federal from state criminal law.
- Describe the elements of a crime.
- Determine several defenses to criminal acts.
- Explain the differences between penalties for committing felonies and misdemeanors.

Why It's Important

Knowing the elements of a crime and the defenses to crimes will help you if you are ever accused of a crime or the victim of a crime.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 5) **Study interactions among individuals, groups, and institutions.**

English Language Arts (NCTE 12) **Use spoken, written, and visual language to accomplish your own purposes.**

Reading Guide

Before You Read

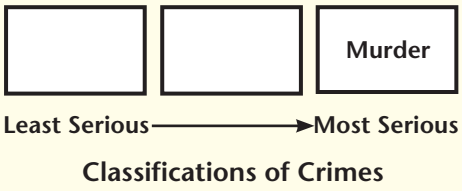
Connect You have may seen trials on television and in movies. In real life, what does a prosecutor have to prove to convict someone of a crime?

Focus on Ideas

There are different categories of crimes based on their level of seriousness.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- crime
- defendant
- plaintiff
- prosecutor
- felony
- misdemeanor
- infraction

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- intent
- motive
- impulse

Classifications of Crimes

What types of crimes can you go to jail for?

A crime is an offense committed against the public good, or society. U.S. criminal law is very specific and the penalties for most criminal offenses are very serious. A person who is convicted of a crime can be fined, imprisoned, or sometimes even sentenced to death. The Constitution of the United States limits how the government can deal with people who have been accused of a crime to protect the innocent from unjust accusations or imprisonment.

A defendant is a person who is accused of a crime. The state or the federal government, representing the public, is the plaintiff. **A plaintiff is the party that accuses a person of a crime. The prosecutor is the government official who brings the case against the defendant.** In some states, the prosecutor is called a district attorney. The prosecutor represents the people, or the public, in a criminal case.

As You Read

Predict What is the difference between a serious crime and a petty crime?

Felonies

A felony is a major crime. A person who commits a felony may be punished by a fine, or by imprisonment in a penitentiary, or both. Murder and robbery are examples of felonies. The most serious felony is murder. In some states, murder is punishable by death. Felonies may also be called high misdemeanors. People convicted of a felony may also be liable for a civil penalty awarded to the victim or the victim's family. For example, a rape victim may be able to sue the defendant to recover the costs of medical bills and counseling.

Misdemeanors

A misdemeanor is a less serious crime. A person who commits such a crime can also be punished by a fine, by jail time, or both. However, the maximum amount of time in jail is usually less than a year. Also, if a defendant gets jail time, it is usually served in a smaller, county jail, rather than in a state penitentiary. Driving an automobile without a license is an example of a misdemeanor.

Infractions

Both felonies and misdemeanors are punishable with imprisonment. **An infraction is a minor offense that is usually punishable with a fine and not with jail time.** Some states refer to these as minor misdemeanors, while others call them petty crimes. Minor traffic violations, such as speeding tickets, are considered infractions.

Criminal Cases Serious crimes are prosecuted in courts and rely on physical evidence and testimonies of witnesses and experts. *Is a misdemeanor a crime?*

Criminal Law in the U.S. Legal System

Are all criminal law courts federal courts?

The American legal system is actually made up of two court systems: federal and state. The federal court system deals with laws on a national level. In addition, each state has its own court system. Both the federal and state courts have the power to make and enforce criminal laws. However, the powers of each are different.

Federal Criminal Law

The Constitution limits the powers of the federal government. For example, the federal government cannot make criminal laws. However, there are exceptions to this rule. For example, the federal government can make laws against counterfeiting money because money is printed by the federal government.

The federal government also has a police force. This police force is called the Federal Bureau of Investigation (FBI). The power to create this police force comes from a special clause in the Constitution known as the Commerce Clause. The Commerce Clause says that the U.S. Congress can regulate interstate commerce, or business that crosses state lines. This includes criminal activities that cross state lines. For this reason, federal criminal law usually involves commerce among the states.

State Criminal Law

Each state government has the built-in power to make criminal laws. That power is called the state's police power. Many states have criminal laws that are just like the criminal laws in other states. Still, the definitions and names of certain crimes are not exactly the same in every state. For example, a crime that is called theft in one state may be called stealing in another.

Evidence During the investigation of a crime, police collect as much evidence as possible. This evidence may be used in court to prove or disprove a defense to a crime. *What type of evidence might help prove self-defense?*

Elements of a Crime

Can you be convicted of a crime if the state cannot prove you had a motive?

A crime is made up of two elements. The first element is the criminal act. The second element is the required state of mind.

Criminal Act

Criminal laws must describe the specific conduct that the law forbids. For example, the definition of theft is stealing another person's property, while the definition of robbery is stealing another person's property through violence or the threat of violence. Some criminal laws make not doing something a crime. For example, not paying taxes that are owed is a crime.

Global Law

The International Criminal Court

The International Criminal Court (ICC) is an independent criminal court located in The Hague, Netherlands. It was created by treaty on July 1, 2002, 60 days after the final ratification of the treaty by 60 countries. The original treaty was signed by 120 countries, although only 60 had to ratify the treaty for it to go into effect. It is the first permanent, treaty-based international criminal court established to promote the international rule of law and ensure that the worst international crimes are prosecuted. It was created to be a complement to national criminal jurisdictions. The jurisdiction of the ICC is defined as follows:

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
   - **(a)** The crime of genocide
   - **(b)** Crimes against humanity
   - **(c)** War crimes
   - **(d)** The crime of aggression

Since its implementation on July 1, 2002, the ICC has taken three cases under consideration. Those three cases come from alleged violations in the Democratic Republic of Congo, the Republic of Uganda, and the Darfur region of Sudan. Five warrants for arrest have been issued in the Republic of Uganda case against commanders of a rebel group alleged to have committed numerous crimes against civilians in Uganda.

Across Cultures: Equality on the Court

The International Criminal Court is trying to be the first court founded on equality. Under the founding documents, the ICC must try to have an equal number of male and female judges and attorneys. Furthermore, there cannot be more than one judge from any country and each geographic region must be equally represented.

Critical Thinking ***The United States has decided not to join the International Criminal Court, arguing that by joining the ICC the U.S. would allow its citizens to be prosecuted by an international organization that may not offer the same protections that the U.S. offers. Is this a good reason, or should the U.S. join the ICC?***

A criminal act must be voluntary; it cannot be a person's condition. For example, it is not a crime to be an alcoholic. This is because alcoholism is a condition, not an act. However, the government may create laws that make it a crime to operate a vehicle while under the influence of alcohol.

Required State of Mind

The second element of a crime is the required state of mind. The law defining murder forbids the intentional taking of a person's life. The required mental state is **intent**. The law defining involuntary manslaughter forbids the negligent taking of somebody's life. The required mental state is negligence. In both laws the criminal act is taking a person's life. In the law against murder, the mental state is intent, meaning the defendant must have intended to take another person's life. In the law against involuntary manslaughter, the mental state is negligence, meaning the defendant was negligent or careless, and because of this negligence, another person died.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Reading Check

Enumerate *Name the different people who play a role in a trial.*

Motive

In detective movies and television shows there is often a heavy emphasis on proving a defendant's **motive**. In reality, motive plays no part in proving that a person committed a crime. All that is needed is to prove that a defendant committed an act with the required state of mind. The motive does not matter. Motive only helps to explain why a defendant did what he or she did.

Defenses to Crimes

What are some reasons for pleading not guilty in a criminal case?

In any legal proceeding, civil or criminal, defendants have several possible defenses they may use to try and explain their actions. The main defenses for defendants in criminal cases, as shown in **Figure 2.1,** include insanity, entrapment, self-defense, and defense of family members.

Insanity

U.S. law says that people cannot be held responsible for their actions if they do not know what they are doing. This means that insanity can be a defense to criminal conduct.

The oldest legal test of insanity is called the M'Naghten Rule. This rule goes back to an 1843 English case. A man named Daniel M'Naghten was acquitted of killing the Prime Minister's secretary

Figure 2.1 Defenses to Crimes

An **insanity** defense requires that the person did not know the difference between right and wrong when he or she committed the crime.

Entrapment is when a law enforcement official tricks someone into committing a crime he or she would otherwise not have committed.

In a criminal case, the defense tries to show that the prosecution failed to prove the required elements of the crime. ***What element of a crime does the insanity defense seek to eliminate?***

because he was insane and did not know what he was doing. Under this rule, a defendant must have a mental disease so serious that he or she does not know the difference between right and wrong when he or she commits the crime.

Another test used by some states is the irresistible **impulse** test. Under this rule, the defendant must have a mental disease that makes telling the difference between right and wrong impossible or makes the defendant unable to stop him- or herself from committing the crime.

The American Law Institute (ALI) has a more modern test for insanity. Under the ALI rule, the defendant must have a mental disease so serious that he or she lacks substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

People who are found not guilty by reason of insanity do not go free. They must go to a mental institution to receive psychiatric treatment. These people are released only when they are found to be sane.

Entrapment

If a police officer talks a person into committing a crime, the person may have a defense. This defense is called entrapment. Entrapment means that a person was talked into or tricked by a police officer into committing a crime he or she would not otherwise have committed.

WebQuest

Scholarship Scams

Each year the Federal Trade Commission (FTC) lists scams directed toward high school students looking for college scholarships. Log on to **glencoe.com** to begin your WebQuest project and to find links that will help you search for types of scholarship scams.

List three scams you find and how to avoid them in your WebQuest folder to share with your class.

People can claim **self-defense** when they believe they were in imminent danger and had no choice but to use force to protect themselves.

With **defense of family members,** a person can use force to protect family members who are in danger of being hurt or killed.

Self-Defense

There are situations when people believe they are in danger of being hurt or killed. In such cases, they may use force to protect themselves. This is known as self-defense. In some states, the person using self-defense must try to run away first. Running away is not necessary if the person is in his or her own home. People cannot use self-defense in court if they started the confrontation or if they continued to use force even after the danger was gone.

Defense of Family Members

Sometimes, someone believes a family member is in danger of being hurt or killed. In such cases, the person may use force to protect the family member. This defense is called defense of family members. As in the case of self-defense, the rescuer must have a good reason to believe the victim was in danger of severe bodily injury or death.

People cannot use this defense if the crime occurs after the threat of harm has passed. For example, a parent cannot go after someone who hurt his or her child if that person has left the area and is no longer capable of hurting the child.

After You Read

Summarize Name and define the four main defenses to a crime.

Section 2.1 Assessment

Self Check

1. Where did the federal government get the power to create the Federal Bureau of Investigation (FBI)?
2. What is the oldest insanity test used in the United States and what does that test say?
3. What does the defense of entrapment involve?

Academic Connection

Social Studies The law of the land in the United States is based on the Constitution, which gave the federal government certain powers, and the Bill of Rights (passed in 1791), which amended the Constitution to protect the rights of individuals. How does the federal government keep up with changing values in American society? Give a couple of examples.

English Language Arts Amendments to the Constitution have to be carefully worded to address a specific right and to avoid misinterpretation. Write a 28th Amendment to the Constitution guaranteeing a specific right you think everyone should have.

Critical Thinking

When Does Self-Defense Become a Crime? Sam and Wade are walking home after school when they are attacked by two gang members. Sam and Wade overpower their attackers. Sam knocks his attacker to the ground and sits on him until the police arrive, but Wade keeps hitting his attacker in the head even after he is lying on the ground unconscious. Can Sam claim self-defense? Can Wade? Explain.

Go to **glencoe.com** to check your answers.

Types of Crimes

SECTION 2.2

Reading Guide

Before You Read

Connect Crimes can affect both people and property. Can you name crimes that directly involve people as victims?

Focus on Ideas

Every criminal law must use specific language to describe the conduct that is forbidden by that law.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.

Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- murder
- manslaughter
- battery
- assault
- burglary
- larceny
- robbery
- vandalism

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- domestic
- malicious
- contempt

What You'll Learn

- Describe the different categories of crime.
- Identify several special crimes that involve the use of motor vehicles.
- Define different types of business crimes, such as arson, forgery, and embezzlement.

Why It's Important

Knowing how to distinguish among various crimes will help you understand criminal liability.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 10)
Study the ideals, principles, and practices of citizenship in a democratic republic.

Math (NCTM NOS 2)
Understand meanings of operations and how they relate to one another.

As You Read

Predict Name one or more categories of crimes.

Crimes against People

What could you be charged with if you killed someone by accident?

Crimes can be categorized into crimes against people, property, business, government, society, and crimes involving motor vehicles. Common crimes against people include murder, manslaughter, assault, battery, kidnapping, and domestic violence.

Murder

Murder is the intentional killing of another person. First-degree murder involves one or more of the following circumstances: killing after making a detailed plan to kill; killing in an especially vicious way, such as by torture; and killing while committing another serious crime. If none of these conditions apply, the crime may be second-degree murder. The distinction between first-degree murder and second-degree murder is important because a person convicted of first-degree murder can receive the death penalty in some states.

Manslaughter

Manslaughter is killing another person without intending to do so. Manslaughter is either voluntary or involuntary. Voluntary manslaughter happens when someone kills a person while in a state of great distress and without a prior plan to kill. Involuntary manslaughter occurs when someone kills another person accidentally while committing an unlawful or reckless act.

Assault and Battery

Battery is the unlawful touching of another person. It involves the forceful use, however slight, of a person's hand, a weapon, or other instrument against another person. Battery

Case Study – Deck v. Missouri

Critical Thinking ***Do you believe the jury was negatively influenced? Why or why not?***

Flex Your Reading **Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.**

A Bad Impression When Carman Deck appeared before the jury to be sentenced after a murder conviction, he was in chains and shackles. The jury sentenced him to death. Deck later appealed his sentenced arguing that the chains and shackles had negatively influenced the jury.

Deck v. Missouri, 544 U.S. 622

Go to **glencoe.com** for more case study practice.

may be committed by ordering a dog to attack a person or even kissing someone who does not want to be kissed. **An assault is an attempt to commit a battery.** Waving a baseball bat at someone is assault. Hitting the person with the baseball bat is battery. Simple assault and battery are misdemeanors. Aggravated assault and battery are felonies. To be aggravated, the crime must be committed with a deadly weapon, or with the intent to commit murder, rape, or robbery.

Traffic Laws Young drivers do not get any special treatment when they violate traffic laws. *Can you get a ticket if you did not know you were driving past curfew hours?*

Kidnapping

Kidnapping is the unlawful removal or restraint of a person against his or her will. Most state laws distinguish between simple kidnapping and more serious offenses, such as child stealing and kidnapping for ransom.

Sex Offenses

The crime of rape involves one person forcing another to have sexual intercourse. The law applies to both men and women. Statutory rape involves having sexual intercourse with a minor, with or without force. A minor can be prosecuted for having sex with another minor. Sexual assault by a friend or a date is a sexual offense, called date rape or acquaintance rape.

Domestic Violence

Any reckless form of physical or mental harm in a family or household is **domestic** violence. Domestic violence laws protect children, spouses, and other family members from neglect, mental abuse, or physical abuse by another member of the family or household. Children are protected by child endangerment and child abuse laws. Abused spouses may request a court order to stop an abusing spouse from coming near them.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Crimes against Property

If someone breaks into a house and takes $2,000 worth of computer equipment, which crime was committed?

The most common crimes against property include burglary, robbery, arson, larceny, and vandalism. Crimes against property can be felonies or misdemeanors.

Vandalism To be guilty of vandalism you do not have to be the person who actually did the damage. *Is graffiti considered a form of vandalism?*

Burglary

Burglary, under common law, is breaking and entering into a house at night to commit a felony. State laws have expanded the definition of burglary to include daytime breaking and entering, breaking and entering places other than homes, and breaking and entering to commit a misdemeanor. If any part of the definition of burglary cannot be proven, the defendant cannot be found guilty.

Larceny

Larceny is the unlawful taking of someone's personal property with the intent to keep the property away from that person. In some states, larceny is called theft. Petty larceny, a misdemeanor, is stealing property of a small monetary value. The individual states usually set that value between $300 and $1,000. Grand larceny, a felony, is stealing property valued at more than a state's limit for petty larceny.

Robbery

Robbery is the wrongful taking of someone's property by threatening violence or using violence. The penalty for robbery is greater than the penalty for larceny.

Vandalism

Vandalism is willful or malicious damage to property. It is also called **malicious** mischief or criminal damage. To be guilty of vandalism, a person does not have to be the one who actually does the damage. Anyone who supports vandalism by being a lookout, for example, can also be charged.

Crimes Involving Business

Could you be charged with shoplifting before you actually leave a store with unpaid merchandise?

Crimes involving business are also called white collar crimes. Business crimes include embezzlement, shoplifting, fraud, money laundering, arson, and forgery.

Embezzlement

Embezzlement is the wrongful taking of property by someone lawfully entrusted with possession and control of that property. Embezzlement is often committed by an agent or employee of a business who has the power to write checks and to withdraw funds from the firm's bank accounts.

Reading Check

Explain *What is the difference between murder and manslaughter, and what is the difference between robbery and burglary?*

Shoplifting

Shoplifting is stealing goods from a store. Shoplifting costs American consumers billions of dollars each year because prices of goods are raised to make up the loss. In some cases, people may be charged with shoplifting just for hiding merchandise in their pants or stuffing them under a baggy sweatshirt, even before they leave the store.

Fraud

Fraud is when a person or a business engages in some form of deception to obtain money or property. Fraud undermines the very foundation of the business world. Some types of fraud are federal offenses. Using the United States Postal Service to commit fraud is referred to as mail fraud. Using the telephone or other forms of electronic communication, such as the Internet, to commit fraud is called wire fraud.

Money Laundering

When criminals obtain large amounts of money illegally, they need to hide the money. They often do this by putting the money into legal businesses to launder it, as one would clean laundry to remove the dirt. The federal government has passed laws to prosecute any persons involved in money laundering even if they did not steal the money themselves.

Arson

Sometimes, business owners who find themselves on the verge of bankruptcy will destroy their own property to collect the insurance on it. They commit arson. Under common law rules, arson is defined as the willful and malicious burning of someone else's house. Today, most states define arson as the burning of any building.

Forgery

Forgery is placing a false signature on a check or other document with the intent to deceive someone in order to deprive that person of his or her property. It is a felony subject to a fine and imprisonment. Forgery does not require that the property actually change hands. Once the false signature is placed on the check, the signer has committed forgery.

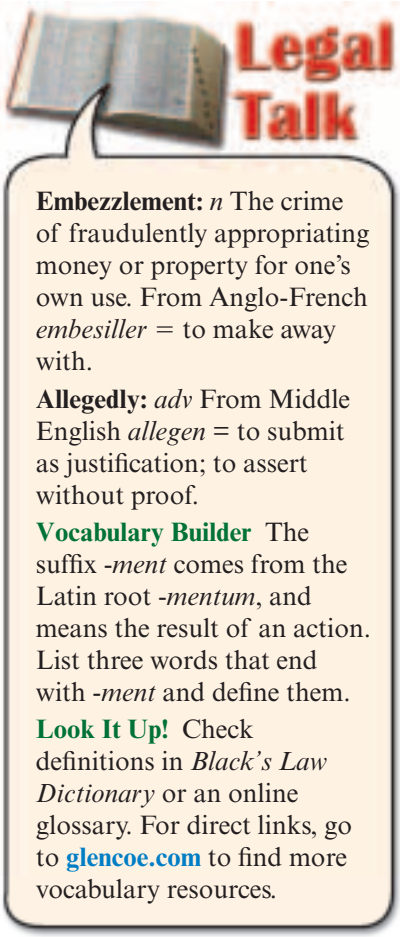
Crimes against the Government

Is it a crime if you ignore an order to appear in court?

Crimes that involve direct offenses against the government itself include treason, perjury, obstruction of justice, contempt of court, and bribery.

Treason

Treason is defined in Article III, Section 3 of the United States Constitution as waging war against the United States, or giving aid and comfort to the enemies of the United States. Treason is the only crime that is mentioned by name in the U.S. Constitution.



CYBERLAW

Commonwealth v. Jaynes

65 Va. Cir. 355 (2004)

Jeremy Jaynes was charged by the Commonwealth of Virginia with violating a Virginia law governing the transmission of unsolicited bulk e-mail (spam). In a period of three days, Mr. Jaynes allegedly sent millions of spam e-mails to America Online (AOL) addresses using false or forged e-mail transmission or routing information. Mr. Jaynes had used fake e-mail addresses and falsified the transmission information, making it appear that the e-mails had originated in the country of Belize, not the United States.

Ruling and Resolution

Mr. Jaynes argued that the law disallowing him from sending spam e-mail was unconstitutional because it violated his right to free speech under the First Amendment of the U.S. Constitution. The Virginia court held, though, that the law prohibited e-mails using false or forged information, but did not prohibit people from sending bulk e-mails using a valid e-mail address from a valid computer.

Critical Thinking Do you think Mr. Jaynes has a right to send his e-mails to anyone from any e-mail address? If not, what do you think Mr. Jaynes's penalty should be?

Perjury, Obstruction of Justice, and Contempt of Court

Perjury, obstruction of justice, and **contempt** of court all involve offenses that undermine the administration of the courts. Perjury occurs when a person lies under oath during a court process or an administrative procedure. Generally, the lie must involve a fact that is material to the proceeding.

Obstruction of justice occurs when an individual does something that hinders the ability of the court to move forward in a judicial proceeding. It might involve suppressing evidence or shielding someone from arrest. Contempt of court occurs when an individual ignores a court order or shows a lack of proper respect for the integrity of the court.

Bribery

Bribery is giving money or property to a public official in exchange for a favor from that official. Both the person offering the bribe and the public official accepting the bribe are guilty of bribery. For instance, if a company executive offers a bribe to the chairperson of a government planning board in exchange for a vote approving his or her company's bid, that executive is guilty of paying a bribe. If the chairperson actually takes the bribe, he or she is guilty of accepting a bribe.

It is against the law to pay a bribe, to offer a bribe, or to accept a bribe. It is also against the law to ask for a bribe when none has been offered. This crime is called bribery solicitation.

Crimes Against Society

Can you be prosecuted for using racist language?

All criminal law statutes involve offenses against society. Some deserve special attention because they prohibit behavior that endangers the public peace.

Disorderly Conduct and Rioting

Disorderly conduct is an activity that threatens to disrupt the social order, to imperil public safety, or to jeopardize the health of the public at large. Rioting is an activity that generally requires a gathering of at least three individuals who threaten to harm people or to damage property, or who violently commit one or the other of those offenses.

Motor Vehicle Violations

Do you have a right to a driver's license?

A license to drive a motor vehicle is a privilege, not a right. If drivers abuse that privilege, they may lose it. All drivers who ignore traffic laws are treated the same. Young drivers do not get a break when they speed, drive recklessly, or run red lights. They may be tried in traffic court and they can be fined. They can also have their licenses suspended or taken away permanently. Many states outlaw drag racing and joyriding. Drag racing is racing two vehicles side by side or timing vehicles that separately run a prearranged course. Joyriding is taking a vehicle without the owner's permission. In both cases, everybody who joins in is liable.

After You Read

Summarize Give two examples of crimes in each category.

Section 2.2 Assessment

Self Check

1. What is the only crime specifically named in the U.S. Constitution?
2. What are the different ways an anti-bribery statute can be violated?
3. What are white collar crimes?

Academic Connection

Mathematics In the United States, there was an estimated 56,146 felony cases filed in the state courts of the 75 largest counties during May 2002. About a fourth of these felony defendants were charged with a violent offense, usually assault (12.7%) or robbery (5.4%). Those charged with murder (0.8%) or rape (1.8%) accounted for a small percentage of defendants overall. About three-fourths of defendants were charged with a nonviolent felony. The most frequently charged nonviolent offenses were drug trafficking (17.1%), other drug offenses (18.6%), theft (8.8%), and burglary (8.1%). Create a table showing this information in numerical versus percent form.

Math For more math practice, go to the Math Appendix.

CONCEPT **Number and Operations: Using Fractions, Decimals, and Rounding.** Figure out the total number for each percent given. For example: 56,146 × .127 (12.7%) = 7,130.5 assaults. Remember to round numbers of 5 or more up and numbers less than 5 down. For example, .542 rounds to .5.

Go to **glencoe.com** to check your answers.

Chapter 2 Review and Assessment

Summary

Section 2.1 Crimes and Criminal Justice

- A crime is an act against the public good. Crimes are divided into felonies or misdemeanors. A felony is a major crime punishable by imprisonment or death. A less serious crime is called a misdemeanor.
- An infraction is a minor offense punishable by a fine.
- Both federal and state courts can make and enforce criminal laws.
- A crime is defined by two elements: the criminal act and the required state of mind.
- Criminal defendants can use the following defenses: insanity, entrapment, self-defense, and defense of family members.

Section 2.2 Types of Crimes

- Crimes against people include murder, manslaughter, assault, battery, kidnapping, sex offenses, and domestic violence.
- Crimes against property include burglary, larceny, embezzlement, robbery, arson, vandalism, and shoplifting.
- Business crimes include embezzlement, shoplifting, fraud, money laundering, arson, and forgery.
- Crimes against the government include treason, perjury, obstruction of justice, contempt of court, and bribery.
- Crimes against society include statutes that involve disorderly conduct, and statutes that prohibit rioting.

Vocabulary Builder

1 **On a sheet of paper, use each of these terms in a sentence.**

Key Terms

- crime
- defendant
- plaintiff
- prosecutor
- felony
- misdemeanor
- infraction
- murder
- manslaughter
- battery
- assault
- burglary
- larceny
- robbery
- vandalism

Academic Vocabulary

- intent
- motive
- impulse
- domestic
- malicious
- contempt

Go to **glencoe.com** to play a game and improve your legal vocabulary.

Key Points Review

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

2. What are the differences between a felony and a misdemeanor?
3. What are the elements of a crime?
4. What are the defenses to a crime?
5. What are the major crimes that can be committed against people?
6. What are the major crimes that can be committed against property?
7. What crimes can be committed directly against the government?
8. What crimes can be committed against society?
9. What are two crimes that involve the use of motor vehicles?

Standardized Test Practice

10. **Read the following information provided by the Department of Motor Vehicles (DMV) and complete questions 1 and 2.**

All states offer courses in defensive driving through the DMV. Passing a defensive driving course can often reduce the cost of your auto insurance. However, the key reason to take defensive driving should be to improve your driving skills. Some basic concepts of defensive driving include the following guidelines. Slow down, especially during inclement weather conditions or at night. Do not follow too closely. Concentrate on your driving at all times. Never drive if you are impaired by lack of sleep or are under the influence. Check your mirrors frequently. Assume that drivers will run through stop signs or red lights at intersections and be prepared to react. Keep a watchful eye on pedestrians and pets along the roadside. Incorporating these defensive driving tips into your everyday driving technique will help you become a better driver.

1. Defensive driving teaches drivers that

A. pedestrians do not walk on the sidewalk
B. they should assume some drivers may run a stop sign
C. accidents are caused by following too closely
D. there are more accidents when it rains

2. What are three of the recommendations given for defensive driving?

A. Do not follow closely, keep pets in a carrier, and be prepared to react.
B. Slow down, watch for pedestrians, and watch for intersections.
C. Concentrate, check mirrors frequently, and watch for pedestrians.
D. Slow down, keep radio volume low, and watch for pets.

Test-Taking Strategies

If you are preparing for a multiple-choice test, find out whether points are deducted for each wrong answer.

Apply and Debate

11 Self-Defense

While cooking dinner, Jack and Rick got into a fight over Jack's girlfriend. Rick picked up a vase to hit Jack, so Jack grabbed a knife from the counter and stabbed Rick.

You Debate *Can Jack's actions be considered self-defense?*

12 Felony or Misdemeanor

Isabel intended to burn her house down when she set fire to it. As the house started to burn, however, she changed her mind and used a hose to put it out. Isabel is arrested and charged with arson.

You Debate *Should Isabel's crime be classified as a felony or a misdemeanor since she changed her mind and did less than $500 damage to her property?*

13 Burglary

Yolanda went over to a friend's house to visit. When she arrived, her friend was not home, but had left the door unlocked. Yolanda went inside the house and took a laptop before returning home.

You Debate *Should this be considered burglary since the house was left unlocked?*

14 Double Jeopardy

Lois was charged with embezzling money from her employer. She was tried in court before a jury who found her innocent of the crime. After the trial, the police found additional evidence clearly showing Lois was guilty of the crime.

You Debate *Since Lois cannot be charged with embezzlement again, can she be charged with stealing?*

15 Mischief or Vandalism

On Halloween night, John and several friends decided to pull some pranks at their school and damaged some of the classrooms. The next morning, school security officers reviewed the security videotapes to see who had done the damage. They arrested the students for vandalism.

You Debate *Since John and his friends are under the age of 18, was their Halloween behavior mischief?*

Case Study Practice – State v. Ham

16 Who Has Valid Consent? Andrew Ham was 19 and lived with his mother in a two-bedroom apartment. In February, Andrew entered into an informal agreement with his mother to pay rent for his bedroom, which he shared with a younger brother. He paid the rent for February and March, but failed to pay rent in April. Since he did not pay the rent, Mrs. Ham told Andrew that he would have to move out. Prior to moving out, the police began to investigate Andrew in connection with a burglary. The police went to the Hams' apartment and asked Mrs. Ham whether they could search Andrew's bedroom, even though the police did not have a warrant to perform the search. Mrs. Ham consented. While searching the bedroom, the police found the stolen property in Andrew's closet.

Source: State v. Ham, 744 P.2d 133 (Id. Ct. App. 1987)

Practice Can Andrew's mother provide consent to the police to search Andrew's room? Does it make a difference whether Andrew paid rent to his mother?

17 Ethics Application

Responsible Party You have been invited to a Friday night party with a group of your friends. Your family says it is okay for you to go as long as there is adult supervision and no underage drinking. When you arrive, you see that there are no adults present and a lot of the partygoers are drinking alcohol.

- Do you call your family to let them know what is happening at the party?

18 Internet Application

Identity Theft Susan finds out that she is the victim of identity theft. Several charge cards have been opened and used in her name without her knowledge. These financial companies are now demanding payment from Susan.

Go to **glencoe.com** to access the Federal Trade Commission's Web site on identity theft. Then list the steps to take when you are a victim of identity theft.

Reading Connection

Outside Reading Go to **glencoe.com** for a list of reading suggestions about criminal offenses.

CHAPTER 3

Tort Law

BusinessWeek News

A Break for the Defense

By Lorraine Woellert

Alabama radiologist George H. Martindale got what seemed like an easy part-time job. An industrial testing company, N&M Inc., asked him to provide a second reading of X-rays of patients diagnosed with silicosis by another doctor who had conducted full medical exams. Over the course of about a year, the part-time gig brought in nearly $265,000 before he quit.

Last fall, Martindale discovered to his surprise that his cursory second opinions had been used as clinical evidence by people making silicosis claims in a mass-tort lawsuit in Texas against more than 20 companies. Instead of supporting the alleged victims, Martindale backed off his reports.

He wrote in a March letter obtained by *BusinessWeek.* "It was never my expectation that I would be identified as the 'diagnosing physician' in lawsuits."

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to **glencoe.com** for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about civil law cases.

Intentional or Unintentional If you cause damage or injury through carelessness rather than deliberately, you have committed an unintentional tort. ***What is another term for unintentional tort?***

SECTION 3.1 Definition of a Tort

What You'll Learn

- Distinguish between a tort and a crime.
- Differentiate between and give examples of negligence and intentional torts.
- Explain a person's rights and duties in relation to tort law.
- Describe remedies available in tort law.
- List the main intentional torts against people and property.

Why It's Important

Knowing the difference between a tort and a crime will help you understand what your legal options are if you ever feel you have been victimized.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 5) **Study interactions among individuals, groups, and institutions.**

English Language Arts (NCTE 8) **Use a variety of technological and information resources to gather and synthesize information and to create and communicate knowledge.**

Reading Guide

Before You Read

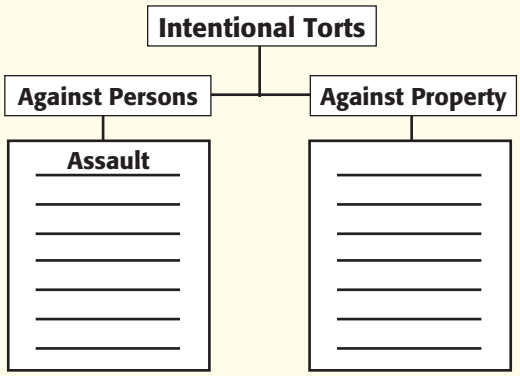
Connect Has anyone ever intentionally embarrassed you, scared you, or victimized you? Did you think that there was any legal action you could take?

Focus on Ideas

A tort is not a crime against society. A tort is a wrong one person commits against another person.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- tort
- tortfeasor
- intentional tort

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- compensate
- confidential
- distress

The Nature of Tort Law

If someone assaults you, is it a crime against you or against society?

Tort law is based on the idea that everyone in our society has certain rights. For example, the right to walk around freely without being falsely arrested, the right to privacy, or the right to one's good name and reputation. Along with having certain rights, everyone has the duty to respect the rights of others. The purpose of tort law is to enforce those rights and duties.

As You Read

Predict Name actions that can violate someone's rights.

What Is a Tort?

In law, **a tort is a private wrong committed by one person against another. A tortfeasor is a person who commits a tort.** A person who commits a tort interferes with another person's rights. There are three elements to any tort: (1) the possession of certain rights by an innocent party; (2) a violation of those rights by the tortfeasor; and (3) a resulting injury that somehow hurts the person whose rights were violated. The person injured is usually called the victim, the innocent party, or the plaintiff in a lawsuit. The tortfeasor is the defendant in a lawsuit.

Global Law

Tort Law in Mexico

Tort law in Mexico differs quite a bit from U.S. tort law. In the United States, if someone is injured in an accident, it is not uncommon for the victim to sue the person who caused the accident. In Mexico, however, such a procedure is less likely to occur.

Mexican culture, not the law, holds that a person who causes an accident should help pay for any costs incurred by the victim, including medical expenses and expenses to replace damaged property. The Mexican Federal Labor Act provides the calculation of lost wages so that the victim can be compensated for those as well. Mexican law does not provide for the recovery of punitive damages or compensation for pain and suffering. Although Mexican culture provides for the non-litigious resolution of most tort claims, there are two pieces of legislation that provide for tort claims in court.

Mexican Tort Legislation

1. The Mexican Civil Code

   The Civil Code provides for tort claims arising out of contractual liability between two parties. It further has a section that covers objective liability, which is similar to strict liability in the United States.

2. The Mexican Federal Labor Act

   The Federal Labor Act was passed by the Mexican Legislature in part to cover personal injury cases arising from accidents that occur while on the job.

Across Cultures: Historic Legal System

When Spain conquered Mexico in the 1500s, the Spanish found that the indigenous peoples had created a legal system that was so effective the Spanish maintained it for more than 300 years. When Mexico gained its independence, it created a new system.

Critical Thinking: ***Should the Mexican Legislature change its laws to allow punitive damages or compensation for pain and suffering?***

The Difference between Criminal Law and Tort Law

Torts are different from crimes. A crime is a wrong committed against the public good. A tort is a wrong committed against a particular person or property. A tort is considered a civil or private wrong rather than a criminal wrong. However, sometimes a tort is also a crime. For example, an assault is both a tort and a crime because it not only hurts an individual, but poses a threat to all members of society. Slander is a tort but not a crime because it hurts only an individual and does not threaten society in general.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Penalties in Criminal Law The purpose of criminal law is to protect society from criminal offenders by punishing them. The penalties for most criminal offenses are very serious.

Remedies in Tort Law The purpose of tort law is to **compensate** the victim for injuries caused by the tortfeasor. Remedies in tort law usually consist of the court making the tortfeasor pay a fair amount of money—called damages—to the injured party. Damages can be awarded for pain and suffering, to pay medical expenses, to replace (or repair) damaged property, or to pay for lost wages. The court might also award punitive damages to punish a tortfeasor for especially serious acts.

Intentional Torts against Persons

Can you sue someone for telling lies about you?

Intentional torts are actions that deliberately hurt, embarrass, or scare people. Some intentional torts are much more serious than others. The most common intentional torts against people are assault, battery, false imprisonment, defamation, invasion of privacy, and the intentional infliction of emotional distress (see **Figure 3.1**).

Assault and Battery

Assault and battery are two separate torts. They can be committed together or by themselves. A person commits an assault by threatening to harm an innocent person. For example, if someone pulls a knife on you, you have been assaulted even if you manage to escape. The assault occurs as soon as you are afraid of immediate harm to your body.

Battery involves the unlawful, unwanted touching of another person. A battery is committed even if the physical contact is not harmful. Battery can also be touching something closely associated with a person's body, such as a backpack or cap, that causes harm. For example, if you pull the chair out from under someone before the person sits down, you have committed a battery.

Reading Check

Connect *What are two examples of intentional torts?*

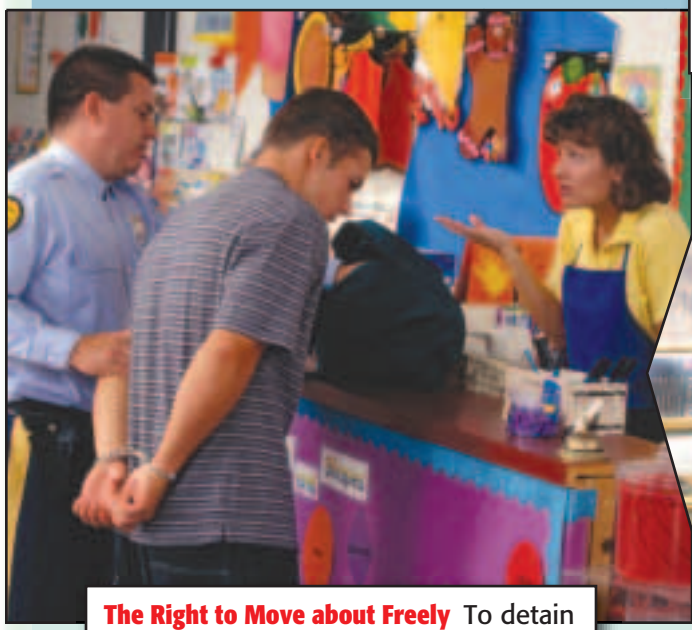
False Imprisonment

People have a right to move around freely. If somebody interferes with this right, then that person has committed false imprisonment. For example, security guards in a store must have

Figure 3.1 Intentional Torts against Persons

Assault and Battery An assault occurs as soon as a person is afraid of immediate harm, even if the person is not physically touched. Battery is the unlawful touching of another person, even if the physical contact does not cause injury.

Prying into Other People's Lives Invasion of privacy is interfering with a person's right to be left alone and to be free from unwanted publicity. This includes using a person's name or likeness without the person's permission.



The Right to Move about Freely To detain someone without reasonable cause is called false imprisonment.

Defamation Telling lies about someone damages that person's reputation. Libel includes lies that are printed or broadcast.

A person who commits a tort interferes with another person's rights and can be sued for damages by that person. This figure shows four main types of torts.
What is a fifth main tort and what does it require?

Actual malice: *nominal phrase* Libel made with reckless disregard for the truth. From Latin *actus* = act + *malitia* = ill will, spite: action made with the desire to harm.

Remedy: *n* From Latin *re* + *mederi* = to heal. A medicine that cures a disease. Also, the legal means to recover a right or redress a wrong.

Vocabulary Builder In Latin, *malus* or *mal* means bad. Look up three words in the dictionary that begin with the prefix *mal* and define them.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to **glencoe.com** to find more vocabulary resources.

reasonable grounds to suspect shoplifting before they stop a customer. They must also hold the person in a reasonable way and only for a reasonable time.

Defamation

Defamation occurs when somebody lies about another person in a way that hurts the innocent person's reputation. There are two types of defamation: libel and slander.

Libel consists of lies about a person in written, printed, or recorded form, including television shows, magazine stories, Web sites, and e-mails. Slander consists of verbal or spoken lies that damage a person's reputation.

Movie stars, famous athletes, and politicians have a hard time winning libel suits because the Supreme Court ruled that public figures must prove that lies about them are told with actual malice. Actual malice means that the person who published the lie knew it was a lie and published it anyway. Actual malice could also mean that the person who published the lie thought it was true but did a poor job checking out the facts.

Invasion of Privacy

Invasion of privacy is interfering with a person's right to be left alone. This includes the right to be free from unwanted publicity. It also means that people must stay out of your private matters.

People who use **confidential** records in their jobs, such as doctors, nurses, lawyers, teachers, and counselors, have to be extremely careful with those records. A nurse may talk to another nurse about a patient if both nurses are taking care of that patient. The same nurse, however, cannot let outsiders see the patient's records or talk about them to outside people. It is also an invasion of privacy for somebody to use your photograph, likeness, or name without your permission for advertising, publicity, or marketing purposes.

Intentional Infliction of Emotional Distress

Someone can cause great emotional or mental **distress** to another person, even if there is no intent to cause physical harm. For example, one person might falsely convince another person that a close family member has died. In the past, the victim had no recourse to remedy. Today, you can sue for intentional infliction of emotional distress. The distress, however, must be caused by extreme and outrageous conduct.

Intentional Torts Against Property

Can you sue someone for borrowing something and not returning it?

Some intentional torts are actions that affect property. The most common intentional torts against property are trespass, conversion, nuisance, and disparagement.

Trespass

A trespass is interfering with somebody's real property. Real property is land. It also includes things built on the land, such as a storage shed, and things that are attached to the land permanently, such as a house or a tree. It can even include whatever might be under the property, such as minerals and oil.

Conversion

Conversion is interfering with a person's right to personal property. Suppose you lend a friend your cell phone. If your friend never returns it, your friend has converted your property to his or her own and interfered with your right of ownership.

Nuisance

Nuisance is anything that interferes with the enjoyment of property. Loud music at night, foul odors, or fumes coming from a nearby house are nuisances. If a nuisance affects only one person or household, it is a private nuisance. If it affects a lot of people, such as an entire neighborhood, it is a public nuisance.

Disparagement

Disparagement consists of lies about objects. The lies can be about quality or ownership. For example, if you try to sell your used car, which is in excellent condition, to a friend and someone claims your car is defective, that person has committed disparagement. In court, you must prove that you actually lost money as a result of the lie.

After You Read

Summarize List the main differences between crimes and torts.

Section 3.1 Assessment

Self Check

1. Is it possible for a wrongful act to be both a crime and a tort? Explain.
2. What is the definition of an intentional tort? Give an example.
3. What are the three elements of any tort?

Academic Connection

Social Studies The National Highway Traffic Safety Administration (NHTSA), under the U.S. Department of Transportation, was established by the Highway Safety Act of 1970 to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966. Why do you think this agency was formed?

English Language Arts Go to glencoe.com and visit the NHTSA Web site to read what programs and benefits are available to consumers. Prepare an informational flyer to share with your class on the information you discover.

Critical Thinking

The Actual Malice Test Suppose you wrote an article for the school newspaper accusing the mayor of your town of corruption. The accusation turns out to be totally false. Can the mayor sue you, and possibly your school, for defamation? If so, will the suit be based on slander or libel? Will the actual malice test be applied by the court? Why or why not?

Go to **glencoe.com** to check your answers.

SECTION 3.2 Negligence and Liability

What You'll Learn

- Define negligence.
- Explain the concepts of the reasonable person test and proximate cause.
- Explain the concept of strict liability.
- Compare and contrast negligence, strict liability, and proximate cause.

Why It's Important

Understanding what negligence is will help you if you are ever the victim of an accident or the cause of an accident.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 10)
Study the ideals, principles, and practices of citizenship in a democratic republic.

Math (NCTM AS 4)
Analyze change in various contexts.

Reading Guide

Before You Read

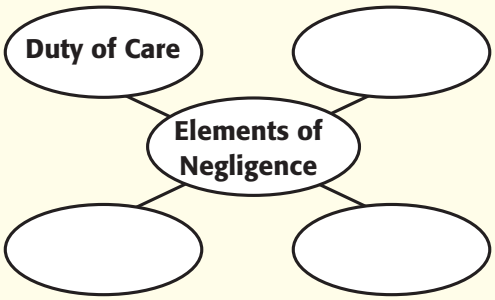
Connect List all the careless things that you think you did during the past few months. Could the examples on your list have caused injury to another person or damage to property?

Focus on Ideas

Negligence involves a certain level of carelessness that people must avoid or they could suffer legal consequences.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

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

Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- reasonable
- objective
- foreseeable

Negligence

Can you be sued if you hurt someone by accident?

Negligence is a tort that results when one person carelessly injures another. It is an accidental tort. It is also the tort that occurs most often. In contrast to an intentional tort, it requires no actual intent by the tortfeasor. Negligence is being less careful than a **reasonable** person should be in the same situation. Negligence can occur in an automobile accident, in the meltdown of a nuclear power plant, or when someone slips on the ice.

As You Read

Predict Can you be sued for negligence even if no harm was caused?

Elements of Negligence

The law has tough standards 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.
- The defendant breached that duty by being careless.
- The defendant's carelessness was the proximate cause of harm.
- The plaintiff was really hurt by the defendant's carelessness.

Remember, you have to prove all the elements. Fail to prove just one and you will not receive remedy from a defendant.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Duty of Care 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 these rights. This concept of duty is extremely important in negligence lawsuits. When plaintiffs cannot prove that the defendants owed a duty of care—the obligation to use a reasonable standard of care to prevent injury to others—the judge will throw out the case.

Breach of Duty You breach, or break, your duty to another person when you fail to use reasonable care in dealing with

Business ETHICS

Defective Cars

Suppose you are an attorney for a car manufacturer. A company engineer informs you that one in 1,000 of the company's new cars may suffer from a transmission failure if it idles too long at a stoplight. Your company has sold 50,000 of the new cars so far. To recall the cars would cost the company $5 million. It could cost a lot less to settle the 50 potential lawsuits that might result because of the defective cars.

Critical Thinking: *What is your advice to the company?*

Proximate Cause Proximate cause involves a negligent act that could lead to an injury or accident. *What do courts use to determine if proximate cause exists?*

that person. Just how careful do you have to be? To determine whether certain conduct is negligent, the law has developed a standard called the reasonable person test. The reasonable person test is an **objective** test. It does not change because the injured party changes.

According to the reasonable person test, you have to be as careful as a reasonable person would be in the same situation. A reasonable person considers how likely a certain act is to cause harm, how serious the harm would be, and the burden involved in avoiding the harm. For example, suppose the walkway leading to your home has some cracks in it that could cause someone to trip and fall. The likelihood that someone will trip is small and the harm would probably not be serious. The cost of replacing the walkway could be substantial compared to how unlikely it is to cause an accident. However, it would be reasonable to patch the worst cracks or post a warning sign to avoid the harm.

Proximate Cause It is not enough to show that a defendant's actions were unreasonable. The action or behavior must also be the proximate cause of the injury. **Proximate cause, also called legal cause, exists when the link between the negligent conduct and the injury is strong enough to be recognized by the law.** Without proximate cause, there would be no injury.

To determine if proximate cause exists, courts use the foreseeability test. The court asks whether the injury to the victim was **foreseeable** at the time of the negligent conduct. If the injury to the victim was foreseeable, then proximate cause exists, and the defendant is liable for negligence.

Actual Harm If a victim was not actually harmed, there can be no negligence. The victim must suffer an injury, have property destroyed, or lose a lot of money. Without actual harm, even the biggest mistake will not result in negligence.

Defenses to Negligence

You can defend yourself in a negligence suit by eliminating one of the four elements. For example, you could argue that you owed no duty to the plaintiff. You could also claim that you were as careful as a reasonable person would have been in the same situation. You could also state that your actions did not cause the victim's injury. Finally, you could try to prove that the victim was not really injured in the way that he or she claims.

A defendant who cannot get rid of at least one of these elements could be in serious trouble. However, that defendant is still not necessarily liable. There are three other defenses that a defendant could use against negligence.

Contributory Negligence **Contributory negligence is a defense against negligence whenever the defendant can show that the victim did something that helped cause his or her own injuries.** If the defendant can prove this, then the plaintiff loses the lawsuit. It does not matter how small the victim's negligence was. Many states no longer follow this doctrine. This is because it is unfair to plaintiffs who may have been only very slightly negligent. These states use another standard called comparative negligence.

Comparative Negligence **Comparative negligence is a defense against negligence which is raised when the carelessness of each party is compared to the carelessness of the other party.** The amount of money plaintiffs can receive in damages is reduced by the percent of their carelessness. Comparative negligence actually protects plaintiffs. This is because plaintiffs can still collect damages even if they were careless.

There is a condition, however, called the 50 percent rule. Most states use the 50 percent rule. According to the 50 percent rule, the plaintiff is allowed to receive some damages if the plaintiff's negligence is less than the defendant's. If the plaintiff's negligence is more than half, however, the plaintiff gets nothing.

Assumption of Risk **Assumption of risk is a defense against negligence that is raised when the plaintiff knew of the risk involved and still took the chance of being injured.** People who are injured while participating in extreme sports may also be unable to bring lawsuits for negligence. This is because they assume the risk involved with a dangerous sport. If you jump out of an airplane that is in good condition, you have assumed a risk of injury, even with the parachute on your back. The same is true if you bungee jump, skateboard, or windsurf.

Reading Check

Analyze *How does negligence relate to proximate cause?*

Case Study – Liebeck v. McDonald's Restaurants

Critical Thinking ***If you cause injury to yourself by spilling hot food, should you be able to sue the company that served you the food?***

Flex Your Reading **Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.**

Personal Responsibility? Stella Liebeck was a passenger in her grandson's car. They decided to go through their local McDonald's drive-thru. Ms. Liebeck purchased a cup of coffee and placed it between her legs to hold it while she tried to mix in cream and sugar. While the lid was off, the hot coffee spilled and Ms. Liebeck was burned severely.

Ms. Liebeck spent eight days in the hospital and suffered third-degree burns to her skin. Her treatment included several skin grafts to help repair the burned area. The burns left Ms. Liebeck scarred and disabled for more than two years. Before deciding to sue McDonald's, Ms. Liebeck offered to settle the case with the company for approximately $20,000 (the cost of her medical bills). McDonald's made a counteroffer of only $800, which Ms. Liebeck refused.

Liebeck v. McDonald's Restaurants, No. CV-93-02419 (N.M. Dist. Aug. 18, 1994)

Go to **glencoe.com** for more case study practice.

Strict Liability

Who is liable if you are injured by a faulty product?

Strict liability is a legal doctrine that says that some activities are so dangerous that liability will always follow any injury that results from those activities. Some states call strict liability absolute liability. This rule applies only to ultrahazardous activities. These activities always involve a great risk to people and property. The risk is so great that no amount of care will eliminate it.

Using explosives and keeping wild animals as pets are both in this category. If you keep a pet rattlesnake in a shoe box and it escapes and bites somebody, you are liable no matter how careful you were when you placed the rattler in the box.

Product Liability

Strict liability has been applied in product liability cases. When people are injured by defective products, both the firm that manufactured the products and the seller of the products are liable for injuries. Fault does not matter.

Limits to Product Liability

Product liability has limits. It does not apply if the seller of the defective product does not usually sell such items. For example, a corporation that auctions off some machinery after one of its

plants closes would not be liable for an injury caused by a defect in one of the machines. Product liability will also not apply if the only damage done by the product is damage to the product itself.

Tort Reform

If the injured party in a lawsuit dies, what happens to the lawsuit?

Some of the traditional rules of tort law are out of step with the real world. To solve this problem many state legislatures have passed new laws to reform tort law. Two such attempts involve survival statutes and wrongful death statutes.

Survival Statutes

In the past, under common law, when an injured person died, the right to sue also died. This meant that the defendant in a lawsuit was better off if the plaintiff died from injuries caused by the defendant. Most states now have survival statutes that say a lawsuit can continue even if both the plaintiff and the defendant die.

Wrongful Death Statutes

Also under common law, when an injured person died, the person's family forfeited, or gave up, the right to sue the party whose negligence caused the injury. This meant that, for example, a person who lost a spouse could not sue for damages even though he or she depended on the spouse's income for support. Wrongful death statutes now prevent this injustice and allow the relatives to bring a lawsuit even if the victim has died.

After You Read

Summarize Name the four elements of negligence.

Section 3.2 Assessment

Self Check

1. What does duty of care mean?
2. What does breach of duty mean?
3. What types of activities are involved in strict liability?

Academic Connection

Mathematics The projected tort-related costs in product liability lawsuits for each American citizen in 2005 was $1,000. In 1950 it was $12 per citizen. What percent change does the 2005 figure represent over the figure from 1950?

CONCEPT **Number and Operations:** To calculate the percent change, divide the amount of change by the base figure. In this problem, the amount of change is the amount in 2005 minus the amount in 1950, and the base figure is the amount in 1950.

Critical Thinking

Bad Brakes Suppose that you are driving to work after school and your brakes fail. All that happens is you glide to a stop in the parking lot. However, on two more occasions your brakes fail. You cannot afford to pay for repair costs yet so you decide to take your chances. Applying your knowledge of negligence, explain whether you could be held liable.

Go to **glencoe.com** to check your answers.

Chapter 3 Review and Assessment

Summary

Section 3.1 Definition of a Tort

- A tort is a private wrong committed by one person against another. A tortfeasor is a person who commits a tort. A person who commits a tort interferes with another person's rights.
- 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.
- The major intentional torts that can be committed against people are assault, battery, false imprisonment, defamation, invasion of privacy, and intentional infliction of emotional distress.
- The major intentional torts against property are trespass, conversion, nuisance, and disparagement.

Section 3.2 Negligence and Liability

- Negligence is an accidental or unintentional tort. It is the tort that occurs most often.
- Negligence is the failure to exercise the degree of care that a reasonable person would have exercised.
- A suit for negligence must prove four elements: duty of care, breach of duty, proximate cause, and actual harm.
- People can defend themselves against negligence by eliminating one of the four elements. If the defendant cannot eliminate one of the elements, he or she may still be able to use contributory negligence, comparative negligence, or assumption of risk as a defense.
- 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.

Vocabulary Builder

1. On a sheet of paper, use each of these terms in a sentence.

Key Terms

- tort
- tortfeasor
- intentional tort
- negligence
- proximate cause
- contributory negligence
- comparative negligence
- assumption of risk
- strict liability

Academic Vocabulary

- compensate
- confidential
- distress
- reasonable
- objective
- foreseeable

Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

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

2. What are the three elements of a tort?
3. What is the difference between a crime and a tort?
4. What is the difference between libel and slander?
5. What are the main intentional torts against people?
6. What are the main intentional torts against property?
7. What is negligence?
8. What are the elements of negligence?
9. What are the major defenses to negligence?
10. What is strict liability?

Standardized Test Practice

11. **Read the following information about the National Highway Traffic Safety Administration (NHTSA) and complete questions 1 and 2.**

The NHTSA is responsible for reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. This is accomplished by setting and enforcing safety performance standards for motor vehicles and motor vehicle equipment, and through grants to state and local governments to enable them to conduct effective local highway safety programs.

The NHTSA investigates safety defects in motor vehicles, sets and enforces fuel economy standards, helps states and local communities reduce the threat of drunk drivers, promotes the use of safety belts, child safety seats, and air bags, investigates odometer fraud, establishes and enforces vehicle anti-theft regulations, and provides consumer information on motor vehicle safety topics. (*Information excerpted from the NHTSA Web site.*)

1. How does the NHTSA accomplish reducing deaths, injuries and economic losses from vehicle crashes?

A. educational grants and incentives for drivers
B. building new interstate highways and rest stops
C. reducing the cost of GPS tracking systems
D. setting and enforcing safety performance standards

2. The purpose of NHTSA investigating motor vehicle safety defects is to

A. build less expensive cars to increase new car sales
B. install anti-theft devices to prevent vehicles from being stolen
C. mandate child safety seats and air bag standards
D. advertise employment possibilities at the NHTSA

Test-Taking Strategies Try to include time at the end of the test to review your test before turning it in.

Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

12 Disturbing the Peace

To celebrate Kama's sixteenth birthday, 42 friends and family members gave her a surprise party. As the party went into the evening hours, her next door neighbors complained about the noise and the cars parked on the street.

You Debate *Under the tort of nuisance doctrine, are the neighbors justified in their complaint?*

13 Invasion of Privacy

Donna and Matthew share an office. Donna was balancing her checkbook when she was called away from her desk. Matthew saw the checkbook on her desk and went through it while she was away.

You Debate *Did Matthew's actions constitute invasion of privacy?*

14 Assault and Battery

Tania and Megan were arguing over which one of them should be homecoming queen. Tania told Megan that if she won the race she would cause her severe bodily injury. Megan told her parents of the threat and they contacted the police.

You Debate *Did Tania commit assault or battery or should the statement not be taken seriously because of the context in which it was said?*

15 Defamation of Character

Aisha wrote an unfavorable article about one of her teachers for her high school newspaper. She did not talk to the teacher to get the teacher's side of the story. As a result of the article, the teacher was put on suspension pending an investigation.

You Debate *Is Aisha's article slander or libel and can the teacher do anything about it?*

16 Assumption of Risk

Leslie went snowboarding with a group of friends at a local resort. As she slid down the mountain, she hit a trail marker sign, flipped off her board, and broke her leg.

You Debate *Can Leslie sue the resort for placing a sign where users might run into it and be injured?*

Case Study Practice – Kolarik v. Cory International Corp.

17 Who Is Liable? Douglas Kolarik bought a jar of pitted olives. When he bit into one of the olives, Mr. Kolarik broke a tooth on a piece of olive pit or some other hard object in the olive. He sued the olive company on grounds of strict liability and negligence. Under the theory of strict liability, Mr. Kolarik claimed the jar of olives had left the processing plant in a defective condition and that the defect was dangerous to any consumer. Mr. Kolarik further claimed that he had used the olives in an ordinary manner and that if the olives had left the processing plant without defects, his injury would not have occurred. Mr. Kolarik also argued that the olive company was negligent in failing to remove all pits or hard objects from the olives or preventing them from entering the olives as they were processed. Prior to trial, the olive company moved to dismiss the case, arguing it was not liable for stray pits left in olives.

Source: Kolarik v. Cory Int'l Corp., LACV063821 (Ia. Dist. Ct. March 31, 2004)

Practice Should the court dismiss this case? Why or why not?

18 Ethics Application

Duty to Disclose After listing your car for sale, you are sent a notice regarding a mechanical recall on your vehicle. This afternoon you have an interested buyer coming to look at the car. After seeing and test driving the car, the buyer makes you an immediate offer to pay what you are asking.

- What would be the ethical way to handle this situation?

19 Internet Application

Anti-bullying Laws Suppose you are being constantly harassed in and out of school by another student. You have complained about the harassment to the bully, to the school, and to your family, who contacted the bully's family and told them about problem. Still, the bully continues to harass you.

Go to **glencoe.com** to find out about federal and state anti-bullying laws and what you can do legally to protect yourself.

Reading Connection

Outside Reading Go to **glencoe.com** for a list of reading suggestions about tort law. (*Information execerpted from the NHTSA Website.*)

UNIT 1

Careers in Law

Denise M. Howell

Counsel, Appellate Group
Publisher, BagandBaggage.com

What do you do at work?

"My specialty is appellate practice and procedure, which means I have devoted a good deal of time and study to the art of presenting cases to appellate tribunals, which differ greatly from the trial courts. Half the fun of being a litigator of any kind is the freedom it affords you to be a generalist (regarding subject matter). It's a rare case where I'm not learning about some area of the law with which I was not already very familiar. That said, my personal and professional interests mostly intersect in the ever-changing area of technology and intellectual property law."

What skills are most important to you?

"Effective and efficient information gathering and research techniques are especially important. It's also important to have the ability to analyze and tie sources together into a persuasive presentation."

What training do you recommend?

"The best training for appellate practitioners is to spend lots of time with other appellate practitioners, and let them shred your work—over and over again. It can be demoralizing, but it's effective. Whatever your area of legal expertise or interest, I recommend looking into the world of legal weblogs, or blogs. At the minimum, you will likely find free and informative writing by legal professionals who keep meticulously current on developments in your field. You might also find you have something to contribute to the discussion and analysis."

What is your key to success?

"Steve Jobs told Stanford's 2005 graduating class that it is best not to let many consecutive days pass by if you dislike what you are doing. Instead, change the course, select another option, move on, and find your passion. If you find that passion, you'll project the positive attitude, professional behavior, and personal responsibility so necessary for professional success."

Résumé Builder

Academic Skills

- Strong ability to investigate and conduct research
- Analyze information gathered into meaningful pieces

Education and Training

Collegiate focus will vary based on the specialty of work chosen. The following high school and college courses will help develop the necessary background knowledge:

- English Language Arts
- Social Studies
- U.S. Government
- Introduction to Law (in high school)
- Basic law courses (in college)
- Business, contracts, and consumer law

Critical Thinking

How can appropriate business attire, respect for confidentiality, and ethical behavior help you to project a professional image?

Go to **glencoe.com** to find legal careers resources.

UNIT 1

The Writing Connection

Expository Writing Practice

What Happened, and What Is the Crime? Henry, a 78-year-old man, makes a right-hand turn onto a street temporarily closed because of the farmer's market, where hundreds of people mingle and buy produce and other goods. His car runs over the orange pylons and makeshift gates closing off the street. He continues to drive, allegedly accelerating through the market, injuring dozens of people and instantly killing six before his car runs into a vendor's tent and stops. Bystanders pull Henry from his car and proceed to shout at him. He seems dazed and confused at all the commotion. Police arrive at the scene, interview witnesses, and cover the bodies, as paramedics tend to the injured. The police take Henry into custody for questioning.

Assignments

Research Research what particular charges might be filed against Henry. Determine your state's rules for crimes against people.

Write Imagine you are a public defender assigned to the case, and there is still much unknown about what exactly happened. Consider the situation above and write an expository essay analyzing how and what you need to find out from Henry regarding his character and the day at the market. Describe in detail the information you know and the information you need to gather in order to create a picture of the day and the man.

Writing Tips Before you start writing your essay, read through the following composition review tips:

- ✓ Determine and define your audience.
- ✓ Define your purpose.
- ✓ Explain your main idea in a clear thesis statement.
- ✓ List facts as supporting details.
- ✓ Focus on cause-effect relationships between facts.

Essay Test Strategies The word expository is a derivative of the word expose, which means to make known or explain. Expository writing explains and informs. Make sure you can explain your position clearly and support it with facts.

Go to **glencoe.com** to find more writing resources.

UNIT 1

Thematic Project

Small Claims Suits

For this project, you will use what you have learned to prepare a checklist and a guide for filing an action in one of your state's small claims courts.

Here is a checklist of the skills that you will need to complete this project and that your teacher will consider when evaluating your work.

Evaluation Rubric	
Academic Skills	
1. Online and library research	**1.** 10 points
2. Reading for information	**2.** 10 points
3. Note-taking	**3.** 5 points
4. Essay structure and outline	**4.** 10 points
5. Grammar, spelling, and transitional and topic sentences	**5.** 10 points
Legal Skills	
6. Research of small court procedures	**6.** 15 points
7. Requirements of a plaintiff and defendant in small claims cases	**7.** 15 points
8. Analysis of the essential procedural information	**8.** 20 points
9. Use of technology	**9.** 5 points
	Total 100 Points

Go to **glencoe.com** for more resources and for grading rubrics.

Step 1: Preparation

1. Create a vocabulary reference guide of terminology used in small claims court.
2. Use all you have learned in this unit, at the library, or on the Internet as tools.
3. Complete this project in a format acceptable for a portfolio addition.

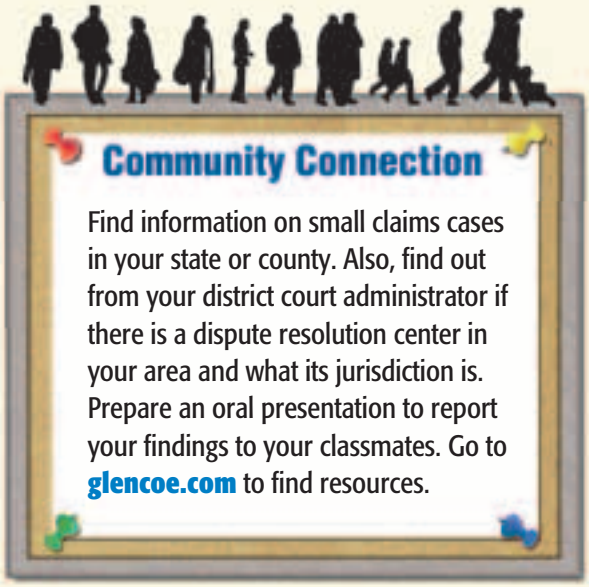
Step 2: Procedure

1. **Review** the text in this unit and make a list of the terminology with definitions.
2. **List** the following subcategories: 1) small claims court; 2) what you cannot do in small claims court; 3) do you need a lawyer; 4) costs involved in filing a suit in small claims court; 5) small claims court terminology; and 6) small claims checklist.
3. **Write** a guide using the categories above to use for gathering information to present a case in small claims. Use the Internet to download a copy of your state's small claims filing form. Make enough copies of your guide and checklist so your classmates can review and annotate your information.
4. **Describe** a scenario that would require you to file a suit in small claims court using your guide as a reference. Present the facts to support your case to your class and have them act as the judge in determining if the information would be sufficient to make a decision in the case.

Step 3: Create an Analysis Report

As a class, compare the checklists and guides that are presented. Create a spreadsheet to list and summarize the best ideas of the projects presented. In reviewing your classmates' checklists and guides, answer the following questions:

1. How many subcategories and items were presented in the checklists?
2. Did all of the guides include all the necessary elements to file a suit?
3. If not, how does the absence of the element(s) affect the validity of a suit?
4. How was your guide similar to and different from the other guides presented?



Competitive Event Prep

Knowing about the Law

Situation Assume the role of an experienced employee at a deli counter that is a favored spot for nearby office workers to pick up lunch. Employees of the deli are allowed a 30 percent discount on the sandwiches and salads that they purchase for themselves. This discount does not extend to persons other than the employee. A new employee has been purchasing two sandwiches each day, then passing one of the sandwiches to a friend who eats lunch with the employee.

Activity You are to explain to the new employee (event judge) that this behavior is a violation of the employee discount privilege.

For more Competitive Event preparation, performance tips, and evaluation rubrics, go to **glencoe.com**.

UNIT 1

Landmark Case

Cipollone v. Liggett Group, Inc.

United States Supreme Court 505 U.S. 504 (1992)

Read Critically **As you read the case, ask yourself the following questions:**

1. Why did the jury deny Rose Cipollone's claim for compensation?
2. What defense did the cigarette manufacturers raise in this case?
3. What is the effect of the supremacy clause in the U.S. Constitution?
4. When does federal law preempt state law?

Assignment **When you are done, write a short summary of the situation. Include the court's decision and a couple of sentences about why or how the court reached its decision.**

Facts **Health Problems from Cigarettes** 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."

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.

Manufacturer's Response The manufacturers argued 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.

Jury Verdict 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 **Congressional Actions** 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 did not 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 Misrepresentations** 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 "[state] regulation can be effectively exerted through an award of damages as through some form of preventative 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 federal law could overrule them.

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 supersedes a state law.

Holding The Court's Decision

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.

TRIAL PREP

The National High School Mock Trial Association organizes competitions at the local, regional, and national levels where teams of high school or college students prepare and argue fictional legal cases before practicing attorneys and judges. Mock Trial team members are each assigned a role as either an attorney or witness. Each team must develop a courtroom strategy, legal arguments, and a presentation style.

Go to **glencoe.com** to find guided activities about case strategy and presentation.