Small children have a natural understanding of what it means to act intentionally. When a parent scolds a child for breaking something, the child may plead, “But it was an accident. I didn’t do it on purpose!”

A person who plans to perform a certain act, and then does so, is said to have acted with intent. For example, a child who knocks a glass off the table on purpose does it intentionally. This is true even if the child genuinely hoped the glass would land softly on the rug unharmed, rather than shattering into many pieces.

Actions taken to deliberately harm another person or their property are called intentional torts. There are two general types of intentional torts: those causing injury to persons and those causing harm to property. In the law of torts, the required intent is to do the forbidden act—knocking the glass off the table—not a bad motive or a desire to cause harm.
Types of Damages

A person who proves that someone else committed an intentional tort against him or her can recover damages to make up for the harm caused. These are called compensatory damages because the award compensates for harm caused by the defendant. For example, when Gus is punched by Seth, Gus receives damages of $6,000 to cover his hospital bills.

Compensatory damages can also include lost wages, as well as “pain and suffering.” To receive these types of damages, the plaintiff has to prove any future losses—such as medical bills, reduced or lost wages, and pain and suffering—with reasonable certainty. Juries decide how much money will fully compensate the injured person for any pain and suffering.

In some cases, the plaintiff recovers only nominal damages, or a token amount of money awarded by the court to show that the claim was justified. These are symbolic awards of money that are paid even if the plaintiff is unable to prove economic harm. Nominal damages are awarded to recognize that the defendant acted wrongfully even though he or she did not cause substantial injury or loss. For example, suppose Juan slapped Matthew in a heated argument. In court, it is shown that even though Juan wrongfully slapped Matthew, Matthew suffered no serious injury. The court might award $1 in nominal damages to Matthew.

The Mischievous Child

Jeremy, a five-year-old child, was playing in the backyard when his neighbor, an elderly woman named Helen, went outside to sit down. Jeremy pulled the lawn chair away just before Helen sat down. Helen was unable to catch herself and fell to the ground. As a result, she fractured her hip.

Jeremy did not intend to hurt Helen and did not believe she would be hurt. The child was aware, however, that if he pulled away the chair as Helen was sitting down, she would almost certainly land on the ground.

Problem 19.1

a. Did Jeremy act intentionally? Is a five-year-old too young to act intentionally? To understand the significance of his actions?

b. Did Jeremy cause Helen’s fall? Explain the reasons for your answer.

c. Can Helen sue Jeremy and force him to pay for her injuries? Can she sue Jeremy’s parents?

d. Should it matter that Jeremy did not mean to hurt the woman?

e. Would the legal outcome be different if the child had been running in the yard and tripped over the chair just as Helen was sitting down, resulting in the same injury to her? Explain your answer.
Punitive damages are the amounts of money awarded to the plaintiff to punish the defendant for malicious, willful, or outrageous acts. Punitive damages also serve as a warning to others not to engage in such conduct.

It is possible for both nominal and punitive damages to be awarded even where there is little or no actual harm that would justify compensatory damages. Suppose that Kate shoots a gun at Mark and misses him. This is an intentional tort. The court could award nominal damages (because there was no actual harm inflicted) and punitive damages (because Kate’s act was so outrageous).

Sometimes people sued for intentional torts do not have to pay any damages at all, even though they did exactly what the plaintiff claims. In these instances, the defendant may have a legal defense.

**Torts That Injure Persons**

Several acts are classified as intentional torts causing injury to a person or persons. The following sections explain the five most common types of intentional torts.

**Battery**

A battery occurs when a person intentionally causes a harmful or offensive contact with another person. The perpetrator is liable for all resulting damages, regardless of whether he or she wanted or expected the contact to cause injury. For example, Elaine became angry at Ravi and shoved him toward an open window. Although the shove was not hard, he fell backward through the window and suffered serious injuries. While Elaine did not want him to suffer such serious injury, she will be liable for damages if Ravi sues her for battery.

What constitutes a harmful or offensive contact? Certainly a punch in the nose or a gunshot through the chest is a harmful and offensive contact. But what about an unwanted kiss on the cheek? The law considers “offensive” to be whatever would offend an average person in society. For example, most people would not be offended by a light tap on the shoulder accompanied by a pleasant “Excuse me, sir, do you have the time?” Such a touch would not be considered a battery, even if it somehow led to an injury.
Assault

The tort of assault occurs when a person goes beyond mere words and intentionally makes someone fear an immediate harmful or offensive contact. An assault can be an intentional threat, show of force, or movement that causes a reasonable fear. For example, if Jeb throws a rotten tomato at Colin’s head, Jeb has committed the tort of assault, even if Colin ducks at the last instant and does not get hit. If Colin fails to duck and the tomato hits him, there has been both an assault and a battery. While battery requires a harmful or offensive contact, assault merely requires fear that a harmful or offensive contact is about to occur.

For assault to occur, the fear of harmful or offensive contact must be reasonable or well founded. For example, assume Simon is sitting at a traffic light and Monica is crossing the street in the intersection in front of Simon’s car. Monica suddenly becomes overwhelmed by a terrible feeling that Simon is going to step on the gas and run her over. As a result of this fear, she has a heart attack. There is no assault in this case, because Monica’s fear was not reasonable. Also, Simon did not intend to make her fear an immediate, harmful, or offensive contact.

As the result of an assault, the plaintiff can recover compensation for mental suffering, such as fright or embarrassment, along with any physical injury that directly results from the assault.

Problem 19.2

a. Lenny is a successful—and very rich—bank robber. He is also careful not to harm bank tellers. In fact, he always uses weapons without bullets. Unfortunately for Lenny, he holds up one bank too many, and the police catch him. The day before he is caught, he sticks an unloaded gun into the face of Cynthia, the teller at the Last National Bank. Cynthia wants to bring a civil suit against Lenny for assault. Will she be successful?

b. The tort of battery can be committed against someone who is asleep or unconscious, but the tort of assault cannot. Explain.

Infliction of Emotional Distress

Intentional infliction of emotional distress, a relatively new tort, has been recognized by the courts only since about 1940. A person commits this tort by intentionally using words or actions that are meant to cause someone extreme anxiety or emotional distress. Actual physical injury is not required for the plaintiff to recover damages for infliction of emotional distress. However, courts do require that the defendant’s conduct be quite outrageous and that the plaintiff prove extreme distress. Mere insults are not enough to form the basis of a lawsuit for emotional distress.
Read each of the cases below. If an intentional tort has been committed, name the tort in each case. In addition to seeking a remedy through the civil justice system, are there school policies that could help the victim in each case? Explain your answers.

a. Evan’s family just moved from Metropolis, where he attended a large urban school, to Smallville, which has just one high school of 500 students. Evan is a quiet, wiry boy with braces and purple spiked hair. He obviously stands out from the crowd at his new school. There is a group of students, led by Shawn and Jason, who constantly make fun of Evan by calling him names like “freak boy” and “grape head.” Four times in the last month, these two boys have waited for him after school and thrown him into the trash receptacle behind the school. The last time this happened, Evan broke his arm. He has become withdrawn from his family and is scared to go to school for fear of what might happen next.

b. Tiana is a very shy high school sophomore who always wears black. She is not performing well in her classes, does not have many friends, and has thought a lot about dropping out of school. Some of her classmates have started calling her “witch” and “ghoul girl.” Tiana wants to be a poet and spends her free time writing in her journal, which she keeps in her locker when she is at school. Most of her entries are her private thoughts and poems about how lonely the world is and how mean the other people can be. One morning when Tiana checks her e-mail, she finds an anonymous broadcast message that has been sent to the entire student body. The subject is “Ghoul Girl Speaks Out,” and the message contains an entry from her personal journal and several of her most private poems. Not willing to endure any more teasing, Tiana leaves school before her classes begin for the day and never comes back.

c. Ramon is a senior on his high school’s varsity football team. He suffers from a speech impediment that causes him to stutter when he is upset or nervous. Although several years of speech therapy have taught him how to keep it under control, he is still very sensitive about his condition.

The football team had a chance to advance to the state finals. In the final seconds of their last game, Ramon fumbled the ball and the team lost the game, ending their hopes of advancing to the finals. Two of his teammates, Diego and Kyle, took the loss especially hard. For the past three days, they have been harassing Ramon by booing, taunting, and stuttering insults. Ramon tries to defend himself, but in his nervousness, he stutters severely, causing Diego and Kyle to taunt him even more. Despite all his hard work in therapy, his stuttering has gotten worse.
When the actions of bill collectors, insurance adjusters, and landlords have been truly outrageous and excessive, courts have sometimes allowed plaintiffs to recover damages. For example, in one case, a young man owed a store money. The store tried to collect the debt from the youth’s father by falsely claiming that he guaranteed the son’s debt, making late-night calls to the father, and sending letters telling the father that his credit had been revoked. In this case, the court found that the store had intentionally caused the father severe emotional distress.

Extremely outrageous conduct by restaurants, hotels, or transportation companies can also sometimes form the basis for the tort of emotional distress. These businesses and certain others have a special obligation to deal with the public in a courteous manner.

Recovery for this tort is sharply limited in order to keep the legal system from being flooded with lawsuits brought by persons suffering from unkind and inconsiderate acts. In addition, there is some value for a free society in letting angry people express their anger without fear of being sued. Among the legal defenses sometimes used are that the defendant’s conduct was not outrageous, that the plaintiff is overly sensitive, and that a reasonable person would not suffer extreme distress as a result of the defendant’s conduct.

**Problem 19.3**

Give a specific example of a situation in which you believe someone should be able to recover damages for infliction of emotional distress. Write the dialogue, showing exactly what each party said and did. Determine the amount of damages that should be awarded.

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**False Imprisonment**

Being able to sue for false imprisonment protects a person’s right to be free from unreasonable restraint. False imprisonment occurs when someone intentionally and wrongfully confines another person against his or her will. For example, assume that a restaurant manager tells an employee to get out of the walk-in refrigerator so she can lock up and go home. When the employee takes too long, the manager shuts the refrigerator door with the employee still inside and leaves for the night. The restaurant manager has committed the tort of false imprisonment.

Suspected shoplifters sometimes sue shopkeepers who detain them as they attempt to leave the store. In balancing an individual’s right to be free from confinement and a shopkeeper’s right to protect his or her property from theft, the law recognizes a shopkeeper’s privilege to temporarily detain a person suspected of shoplifting. However, shopkeepers must act reasonably, using no more restraint than is necessary to protect their property.
The Case of . . .

The Captured Shoplifter

Kathleen, 17, is looking around in a music store. As she passes a rack of CDs, she takes one and slips it under her jacket. Thinking that no one has noticed, she turns to leave the store. The store manager, however, has been watching her on a closed-circuit television. As she passes the cash register, he stops her before she leaves the store.

Problem 19.4

a. The store manager has several ways he can proceed. Rank the following options in order of most reasonable to least reasonable:

1. The manager calls the police and keeps Kathleen in his office until they come.
2. The manager tells an assistant manager to keep Kathleen in the back room until the police arrive. The assistant manager is called away on another task, and he ties Kathleen’s hands and feet together so she cannot run away before the police can get there.
3. The manager yells, “Stop, you thief!” as he runs after Kathleen in the store. He also shouts at her as he escorts her back to his office. Then he calls her parents and tells them he is taking her to the police station immediately.
4. The manager locks Kathleen in the storage room for about seven hours, until he is ready to close the store for the day. Then he takes her to the local police station.
5. The store manager tells his armed security guard to arrest Kathleen. The guard pulls his gun, takes Kathleen to the back of the store, and then calls the police.

b. Would any of these options qualify as false imprisonment? If so, which ones and why? What should a shopkeeper do if he or she catches a shoplifter?

Torts Related to Defamation

A person’s reputation is protected by laws prohibiting defamation. Defamation includes acts that harm a person’s reputation and can be classified as oral or written. Oral statements that harm reputation are called slander; written defamation is called libel. Damages are often more difficult to prove for slander than for libel.

Defamation occurs when someone makes a false statement about another person that is communicated to a third party, causing harm to the person’s reputation. If a patient yells, “You’re a drunken butcher!” to his surgeon, it is not slander if no one else hears the statement. However, if the patient yells this false statement in the hospital hallway where others can hear it and the doctor’s reputation is harmed, a tort has been committed.

Proving that the offensive statement is true is a complete defense in a defamation lawsuit. For example, Sid brings his car to a garage and yells at the mechanic, “You ruined my transmission!” in front of other . . .
customers. This statement might be harmful to the mechanic and his business. But if Sid can prove that the mechanic did ruin his transmission, he has a good defense to slander charges.

The law also protects opinion. Assume a movie critic watches a new movie and, in her review, is particularly critical of one actor’s performance. The review may harm the actor’s reputation and economic interests, but such statements are usually protected as opinion.

In the United States, freedom of speech and freedom of the press are very important. Therefore, courts balance a person’s right to protect his or her reputation against the public’s interest in receiving a wide range of information. For this reason, the U.S. Supreme Court has established rules making it difficult for public figures to win damage awards against the media. To win a defamation suit against the media, a public figure must prove not only that a statement was false and caused harm, but also that the statement was made with actual malice. This means that the statement was made with knowledge of its falsity or with a reckless disregard for whether or not the statement was true. These rules make it difficult for celebrities and other famous people to sue the media and win. In a sense, famous people sacrifice some protection of their reputations.

The Case of . . .

The Very Unpopular Photographer

A newspaper article reported that a certain photographer, famous for his candid but unauthorized photos of celebrities, was “the most hated photographer” in town. The same article reported that this photographer had installed listening devices outside the homes of celebrities. The photographer sued the newspaper for defamation. At the trial, the newspaper called as witnesses several of the celebrities who testified about the listening devices (bugs) they had discovered.

Problem 19.5

a. What should the photographer have to prove to win his defamation case?

b. In what way do you think the photographer was harmed by the article?

c. What defense, if any, might be available to the newspaper?

d. How should this case be decided? Give your reasons.
Torts That Harm Property

Tort law protects a person’s property in two ways: (1) it protects against interference with the owner’s exclusive use of the property, and (2) it protects against the property being taken or damaged. Three kinds of property are protected: real property (land and the items attached to it, such as houses, crops, and fences), personal property (property that can be moved, such as cars, clothing, and appliances), and intellectual property (the ownership interest in creations of a person’s mind). The legal system in the United States is very protective of private property rights.

Real Property

Everyone has seen signs that read “Private Property—Keep Out” or “No Trespassing.” The tort of trespass occurs when a person enters another person’s property without permission. The owner can recover damages from the trespasser even if there is no harm to the property because the law protects the owner’s exclusive right to the property.

In a technical sense, a trespass occurs every time you cut across a neighbor’s lawn on the way to the grocery store. Obviously, landowners rarely sue people who merely walk across their property. But what would you do if someone committed a continuing trespass by going onto your property without permission and erecting a sign advertising a nearby restaurant?

Tort law protects you when others damage your property. In some instances, tort law also requires that you use reasonable care to protect other persons from harm when they are on your property. In general, though, you are not liable if a trespasser is injured on your property. For example, if a trespasser walks across your lawn, trips on a sprinkler, and sprains her ankle, she will not be able to recover damages from you.

An exception to the general rule occurs when the trespasser is a child too young to appreciate a dangerous condition on your property. The law requires landowners to...
use reasonable care to eliminate a dangerous condition on their land or to otherwise protect children when the condition presents an unreasonable risk of serious injury where children are likely to trespass. Because of this law, sometimes called the \textit{attractive nuisance} doctrine, construction companies generally fence in excavation sites.

Most people who enter your property are probably not trespassers. Generally they are either guests in your home or businesspeople and customers visiting your workplace. In most states, you have a legal duty to warn guests of any known danger on your property. For example, if your front porch is being repaired, you have a duty to warn your guests to avoid this dangerous situation.

If you own a store or other business establishment and the public enters your property for a business purpose, the law imposes an even higher duty. Business owners have a duty to use reasonable care to inspect their property to make it safe for business visitors. For this reason, a restaurant owner is not merely required to warn customers of a slippery sidewalk on a snowy day but is obligated to use reasonable care to make the sidewalk safe. This may be done by shoveling the snow or spreading salt or sand.

In some cases, tort law protects against harm caused by someone who never physically enters your property. A \textit{nuisance} occurs when there is an unreasonable interference with your ability to use and enjoy your property. Courts will balance the usefulness of the activity complained of against the harm caused.

You do not have a right to be free from all interference with your property, only unreasonable interference. For example, Ari and Brenda are neighbors. One Sunday, Ari has 20 guests for a barbecue in his backyard, and Brenda is unable to listen to the baseball game on the radio while lying on her hammock. This one-time event is not a nuisance. If Ari were to cut his lawn at six o’clock every Sunday morning, however, that would probably be a nuisance.

You can recover damages if you win a nuisance suit. In some cases, you may also be able to get a court order requiring the defendant to stop the activity. This court order is called an \textit{injunction}. An injunction requires that a person do, or not do, a specific act.
Real Property and Reasonable Interference

Read each case carefully. Is there an unreasonable interference with property? If a nuisance does exist, decide on a fair remedy. Explain the reasons for your answers.

a. Mr. Iwamoto works the 11 P.M. to 7 A.M. shift at the plastics factory and then comes home to sleep. On his way to school every weekday at about 8 A.M., Darrell walks by Mr. Iwamoto’s house with his boom box blaring heavy metal music. The loud music frequently awakens Mr. Iwamoto.

b. A passenger on a commuter train uses his cell phone to make and receive business and personal calls each day during his one-hour ride to work.

c. Morgan owns a restaurant next to High Penn’s oil refinery. The refinery occasionally emits gases and odors that make people feel sick. Morgan, believing that this hurts her restaurant business, brings a suit against the oil refinery. High Penn argues that (1) the refinery was properly constructed, (2) there is no way to operate the refinery without emitting these occasional gases and odors, and (3) the refinery was in operation before Morgan opened her restaurant.

d. Commercial advertisements constantly appear in the inbox of your personal e-mail account. The ads are for products that do not interest you. You did not request information about these products.

e. In order to earn the extra money they need to send their two children to college, Larry and Meg operate a small auto repair and body shop in their garage. After returning from their day jobs, they work on cars until about 10 P.M. The noise produced when they rev up car engines disturbs their neighbors.

f. Adriana Stein is a successful musician who travels extensively to give concerts. To enjoy some peace and relaxation when she is not traveling, she buys a house in the countryside only five miles from the nearest airport. As the surrounding metropolitan area grows, air traffic at the airport increases. Eventually, the airport needs to build another runway to accommodate the increased traffic. Experts report that the runway can be built in only one location at the airport. Airplanes using this runway would descend directly over Adriana’s house, creating loud noise and disrupting the quiet of the countryside. In response to the airport’s plan to build the runway, Adriana organizes her neighbors into a citizen action group called RAMP (Residents Against More Planes). The group sues the airport, seeking an injunction to stop the planning and construction of the new runway.
The Unfenced Swimming Pool

The Garcia family built a large swimming pool in their backyard. The pool was two feet deep in the shallow end and nine feet deep near the diving board. They placed lights around the pool that turned on automatically at dusk. They also placed four large “Danger—Deep Water” signs around all sides of the pool.

One day, a four-year-old who lived a block away wandered onto their property, entered the pool, and drowned. The child’s parents sued the Garcia family for not fencing in the pool.

Problem 19.6

a. How should this case be decided?
b. Suppose the Garcias had fenced in the pool and the child had climbed the fence and drowned. Should the child’s parents be able to recover damages in that situation?

Personal Property

Tort law provides compensation to someone whose personal property is taken, damaged, or interfered with. Suppose a burglar breaks into Laura’s house and steals her computer. If the person is arrested, there will be a criminal prosecution for burglary. Laura could also sue the thief in civil court for a tort called conversion. Conversion occurs when someone unlawfully exercises control over the personal property of another person. Of course, it might be difficult for Laura to collect money damages from this defendant.

A series of privileges has developed for protecting property. You can always use nonviolent means to protect real property or to recover personal property. However, use careful judgment in these cases. Telling your locker mate that she has taken the wrong lunch may work well; yelling at a fleeing thief to drop your wallet is likely to fail!

Reasonable force can also be used to protect property. Precisely how much force is reasonable depends on the circumstances. Generally, deadly force cannot be used to protect property, although the rules of self-defense allow the use of deadly force to protect a person if serious bodily harm is threatened.

Problem 19.7

The Kings own a store in a crime-ridden section of town. As victims of break-ins in the past, they buy a guard dog to protect their store. The dog is trained to attack on command. It also stays in the store from 11 P.M. to 7 A.M. while the store is closed. One night, a man breaks into the store and is attacked by the dog. The man is caught and convicted of burglary. After the judge gives him a suspended sentence, the burglar sues the Kings for the injuries caused by the dog. How would you decide this case?
Imagine that you have created a brilliant, action-packed computer game with dazzling 3-D graphics. You are sure that everybody will love it, so you begin to sell copies of your program to people over the Internet. A large software company buys a copy of your game and, without your permission, makes thousands of copies and sells them for a much cheaper price. The company makes millions of dollars by taking credit for and selling the game that you created. Unable to compete with the large company, you have to discontinue your business.

Or perhaps you are a musician and you perform original songs at your school’s dances. What if one day you saw a celebrity musician on television performing a song that you wrote? What if this musician falsely took credit for writing the song, performed it on a hit CD, and made a fortune from it without asking your permission or giving you a cent?

If people knew that they could not protect their work from being stolen, there would be little incentive to create anything or to show new creations to others. This is why the law protects the creations of people’s minds as a form of property that can be owned and thus may not be stolen. Another word for the mind is intellect, so property in the form of creations of the mind is called intellectual property.

If the intellectual property is something you have invented, then a patent recognizes your ownership of the invention. If the intellectual property is some form of creative expression such as a book, movie, computer program, or song, then a copyright recognizes
ownership of the expression. When a person has a patent or a copyright indicating ownership over some invention or expression, any other person who uses the patented or copyrighted work without permission commits a tort called infringement.

Intellectual property law promotes progress in the arts and sciences because it provides an incentive, or a reward, for engaging in creative pursuits. Also, most people believe it is fair that creators profit from their creations. However, advancements are often made by building on the work of others. If people cannot use the work of others, it might hinder technology and progress, so intellectual property rights (especially patents) are kept somewhat limited.

**Patents**

Patents protect useful inventions such as processes, machines, and new products. However, patents are given only to inventors who have thought of something that has never been invented before. That is, the idea must truly be new or novel. For example, notebooks are usually sold with space for either three or five subjects. You would not be able to get a patent for a four-subject notebook, however, because there is nothing novel about the idea. It is an obvious extension of an existing idea. On the other hand, if you invented a notebook with a mechanism that allowed it to be attached to the desk to prevent it from slipping, you would have a better chance of getting a patent for your novel idea.

Dr. Gertrude Elion and Dr. George Hitchings invented and received patents for several drugs, including a leukemia-fighting drug. What characteristic must an idea have before it can receive a patent?
Getting a patent requires a lengthy—and sometimes expensive—legal process. An inventor who gets a patent has a complete monopoly over the product for 20 years. If anyone else tries to sell the product or profit from the idea, the patent-holder can sue for infringement. After 20 years the patent expires, and the invention becomes part of the public domain. Anyone may then use or profit from the invention.

**Copyrights**

Copyrights protect any expression that is somehow fixed (written down, recorded on tape, stored on a computer disk, painted on a canvas, etc.). Unlike a patent, you do not have to go through any legal process to obtain a copyright. As soon as you make your expression fixed or permanent, you automatically have a legal copyright without doing anything else. If you keep a diary, take photos, or write music, then you hold copyrights.

In 1998, Congress provided further protection for creative endeavors, extending the life of a copyright to the lifetime of the holder plus 70 years. The existing law had protected copyrights for the lifetime of the holder plus 50 years. In 2003, the U.S. Supreme Court agreed that Congress had the power to make such an extension, thus providing significant protection to those who want to safeguard their expressions. The Court’s decision was based on an analysis of Article I, Section 8, of the Constitution that gave Congress the power to promote progress in science and the arts by “securing for limited times to authors and inventors the exclusive right to their writings and discoveries.” In fact, copyright protections were extended many times during the 1900s. However, the policy debate about this case dealt with whether it was in the public’s interest to

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**For Your Information...**

Protecting Your Creations

The federal government makes information available online to help you protect your intellectual property and creations. Visit the U.S. Copyright Office online at [www.copyright.gov](http://www.copyright.gov) and learn how to search copyright records, register a work, and record a document. Then follow the links to visit the U.S. Patent and Trademark Office—[www.uspto.gov](http://www.uspto.gov)—to check the status of patents and trademarks. You can also learn how to search and apply for patents. The Patent and Trademark Office also sponsors the online National Inventors’ Hall of Fame at [www.invent.org](http://www.invent.org).
allow people to copy and distribute old movies, music, or books on the Internet rather than to continue protecting the interests of those in the entertainment industry for an additional period of years. At some point, old works enter the public domain—the question is, when?

Although copyrights exist as soon as expression is fixed, there are legal benefits to registering the copyright and putting a copyright notice on your work. Registering is easy and does not require a lawyer. You merely fill out a simple form and send it to the U.S. Copyright Office. You should also submit two copies of the work to the Library of Congress. Placing the copyright notice on your work serves to warn others that a work is copyrighted. Notice consists of the © symbol, the year the work was created, and the author’s name.

Unlike patents, copyrights do not require novelty. Copyrightable expression need only have some slight “spark of creativity.” For example, the arrangement of legal cases in a textbook and the written label on a shampoo bottle have been held to be creative enough to merit a copyright. While copyrights protect the form of expression, they do not protect ideas or facts. A network news anchor-person who writes a script for the evening news owns the copyright for that expression, and nobody else may report the news in the same way. But anybody may report the same facts (the news) using his or her own expression. Anyone may create a mischievous son and a father who loves to eat (ideas), but copying Bart and Homer Simpson (expression) would infringe on the author’s copyright.

Copyrights give the owner the exclusive right to copy the work, to make derivative works (works very similar to a copyrighted work), to sell copies of the work, to display copies of the work in public, and to perform the work. To prove infringement, the infringing work must be “substantially similar” to the copyrighted work. If you copy your next report from the encyclopedia but change a few words around, you are infringing on a copyright!

Exceptions to the exclusive rights of a copyright holder include first sale and fair use. First sale means that when the copyright owner sells a copy of the work, the lawful owner of the particular copy may resell that particular copy. First sale does not mean the owner of a copy can make further copies and sell them. If you purchase a copy of a popular video, you are free to sell that tape to your friend without infringing on the copyright (under first sale). You may not, however, make fifty copies of it and open up your own video store.

Downloading music files from the Internet raises ethical and legal issues. How might downloading files or copying songs from a CD be a copyright infringement?
The **fair use** clause of the copyright statute allows limited legal reproduction of copyrighted works for certain noncommercial purposes, such as for criticism, news reporting, scholarship, or research. For example, if you copy a video clip of the movie *Letters from Iwo Jima* to show during a presentation for your history class, this would be fair use and not a copyright infringement. This is because the material is being used to help educate your classmates, you are not showing the entire movie, and you are not charging your friends to watch the clip. These are all relevant factors in determining whether your use of the copied video is fair to the creator of the movie.

In recent years, technology—principally computers and the ability to download materials from the Internet—has raised ethical and legal issues. For example, one software company used the slogan “Rip, mix and burn” to describe how a buyer could produce his or her own music CDs by “ripping” songs from other CDs they owned, mixing them in the order they liked, and burning them onto another CD that they might give to a friend. The question arose: If people copy songs or other materials from CDs, are they infringing on copyrights? The general rule is that copying songs from CDs is a copyright violation, as is making additional copies of music, movies, books, or computer software that you buy.

The courts have also ruled that the copyright law prohibits the copying of copyrighted music using digital technology that stores songs on computers or handheld players. In the famous Napster case, a court shut down the Napster Web site because it enabled users to download files without the permission of the copyright owner. The court found that the sharing of music files among Napster users was really unauthorized copying and distribution of the music, which directly violated federal copyright laws.

As technology advances, “fair use” questions become more difficult. The most reliable guide may be to imagine that you are the owner of a copyrighted work. Then ask yourself whether it would be fair for people to copy your work without paying you or getting your permission.

**Problem 19.8**

Gloria has a computer that she uses for schoolwork and entertainment. She must decide what to do with certain content she finds on the Internet. Consider the law and ethics involved and advise her on what to do in each of the following situations:

- **a.** She sees a Web site advertising unlimited downloading of top 50 songs for $9.95 a month.
- **b.** Gloria’s friend Alex wants her to help him start a business in which the two would buy music CDs, copy them, and sell the copies for $5.
- **c.** Gloria wants to download a photograph from a television network’s Web site to use in her report.
People in many countries copy American-made goods such as films, music recordings, books, software, brand-name shoes and clothing, handbags, and more. These goods are then sold in violation of their U.S.-registered copyright, trademark, or patent. Most of these violations are taking place in Russia, Malaysia, India, Vietnam, and China.

Assume that Country X is the biggest offender. It has been estimated that 90 percent of all goods manufactured there have been pirated, or copied illegally. This situation could be causing losses of over $200 billion per year to U.S. businesses. The government of Country X takes the position that in a large country experiencing rapid economic growth, it is difficult to police intellectual property infringement. Others say that there is a growing group of consumers in Country X who want these goods but do not yet have the money it takes to purchase them from the original producers. In addition, Country X has a long history of manufacturing exact replicas of goods.

The government of Country X has signed all the major international agreements, including the World Trade Organization’s treaty and corresponding intellectual property agreements. Country X has also passed laws and issued regulations to prosecute violators. Critics say that Country X signs these agreements and passes these laws but does not make a serious attempt to enforce them.

**Problem 19.9**
The U.S. government is being pressured by manufacturers to take actions to reduce piracy in Country X. Consider the following possible actions and decide whether you support or oppose each one. Explain your reasons.

- **a.** Ask the government of Country X to sign an agreement to pay the U.S. company that holds the copyright, trademark, or patent a fine of $10 for every pirated item sold.
- **b.** Ask the government of Country X to allow U.S. companies to sue Country X companies in Country X courts for violations.
- **c.** Encourage the government of Country X to conduct massive public awareness campaigns stating that pirating is immoral and illegal.
- **d.** File lawsuits in the United States against Country X companies that are pirating goods in Country X or smuggling pirated goods into the United States.

* Selling pirated goods
Defenses to Intentional Torts

Even if a plaintiff proves that the defendant has committed a tort, the defendant can still escape liability if he or she has a valid defense. Consent is the most common defense to many intentional torts. This defense means that the plaintiff consented, or agreed, to the harmful conduct and thus gave up the right to sue later. In the sport of boxing, punches are thrown that in almost any other situation would be serious batteries. However, boxers sign a contract consenting to be punched during a match. Of course, if one boxer tries to stab another with a knife, this would be an assault, as the consent did not involve weapons and was limited to punches.

Consent can be written, spoken, or simply assumed based on the situation. For example, children often knock each other down while playing, but this conduct does not constitute a battery. It is assumed that children may accidently bump into each other while running and playing. In another example, suppose you were seriously injured in an auto accident and taken to the hospital for emergency surgery. Ordinarily, you would sign a consent form giving the doctor permission to perform the operation, but in an emergency, when your physical or medical condition makes it impossible to sign a form, the law assumes that you consent to lifesaving surgery.

Privilege is another defense to intentional torts. Privilege justifies conduct that would otherwise be a tort, because the defendant’s interests (or those of the public) require it. Privilege also often justifies conduct that would otherwise be a tort because public policy is best served by permitting such behavior.

Legal authority is one such privilege that can be applied to many different situations. For example, a police officer has legal authority to restrain a person’s liberty while carrying out an arrest, and therefore an officer has a valid defense to a false imprisonment suit. Parents have legal authority to use reasonable force to discipline their children. Owners have legal authority over their property and may use reasonable force to recover their property from a thief, even though they would otherwise be committing the acts of false imprisonment, battery, or assault.
Perhaps the best-known privilege is **self-defense**. If Julie attacks Amanda, then Amanda can use reasonable force to protect or defend herself. If Julie later sues Amanda for battery, Amanda will be able to use self-defense to justify her actions, as long as the force she used was not excessive. Deadly force—force that may cause life-threatening harm—would be considered excessive unless Amanda’s life was in danger.

Defenders who take control of a situation and become aggressors commit battery and have no self-defense claim. For example, while self-defense allows Amanda to defend herself against Julie, it does not allow her to teach Julie a lesson or to seek revenge. Self-defense also allows someone to come to the rescue of another person and to use the same amount of force the victim could have used to repel the attacker.

**Defense of property** is another privilege that allows people to use reasonable force to defend their homes or property. Deadly force is generally not considered reasonable when defending property. However, an exception to this rule was created by the Castle Doctrine (see page 244).

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**Intentional Torts and Legal Defenses**

Read each of the following accounts and determine whether or not any intentional torts have been committed. Is there a legal defense in each situation? Give reasons for your answers.

**a.** During the last inning of a high school baseball game, the star pitcher in the game loses control of an inside pitch. As a result, the ball hits the batter, shattering two bones in his arm.

**b.** Josh has an appointment to have an oral surgeon remove a tooth that has been causing him discomfort for some time. While Josh is under anesthesia, the surgeon notices that two other teeth are emerging in a crooked position. She believes the crooked teeth are likely to cause Josh pain in the future, so she removes them as well.

**c.** While horsing around, Sandy, 17, throws a snowball at a friend on a crowded city street corner. The snowball misses the friend but hits an elderly man, who falls to the ground and is injured.

**d.** Maya, a prison guard, is physically attacked by an angry inmate. The inmate knocks Maya down and kicks her in the head and ribs. Maya responds to the inmate in a similar fashion.

**e.** Wendy breaks into the first floor of Amy’s house and begins to steal valuable property. Hearing the intruder, Amy comes downstairs wielding a baseball bat. Seeing this, Wendy drops the property and runs toward the front door of the house. Amy runs after her and hits her on the head with the bat, knocking her unconscious.
The essence of human rights involves the responsibility of all human beings to treat each other with dignity. When people commit intentional torts, such as assault or battery, they are not treating each other with dignity. They are also violating internationally accepted human rights, such as those listed in the following articles of the Universal Declaration of Human Rights:

Article 3: Everyone has the right to life, liberty and personal security.

Article 17: (1) Everyone has the right to own property, alone as well as in association with others. (2) No one shall be arbitrarily deprived of his (or her) property.

Consider how these human rights may relate to the facts in the following case:

The Case of the Fraternity Hazing

Wade is a first-year student at Everett College. The social life at Everett primarily revolves around fraternities, so Wade is very interested in joining one. He visits the Sigma Tau house and decides this is the best place for him. He must go through a two-week pledge period to join. He has heard it is pretty difficult but is willing to endure it to be initiated. If he does not fulfill all of the requirements during the pledge period, Wade will not be allowed to join the fraternity.

During the pledge period he is required and agrees to do the following things:

- Bow to all fraternity members when they enter the room.
- Stand outside the sorority house and yell out a rating of each woman based on her looks as she leaves for class.
- Make breakfast to order for the 70 fraternity members every morning.
- Streak naked across campus at midnight on a designated night.
- Allow any fraternity member to enter his room, use his computer and stereo, and listen to his CDs whenever they choose to do so.
- Sleep only from the hours of 3:00 A.M. to 5:00 A.M. each night for a week, and then only on an individual step in the stairwell of the fraternity house.
- Run through a line of fraternity members as they hit him with the traditional fraternity paddles.

Problem 19.10

a. Are any of the pledge requirements described above violations of human rights? If so, which ones and why? Do any of the requirements violate the rights of anyone besides Wade? Why or why not?

b. Do any of the requirements involve intentional torts? If so, which ones and why?

c. Should Wade be able to sue anyone for any injuries he might sustain from the hazing activities? Why or why not?

d. If Wade does file a suit, who should be held liable and why? Should the fraternity or its individual members be held liable for his injuries? What about the college? Explain your reasons.

e. Are there defenses that can be successfully raised against these tort claims?

f. Why do people join fraternities? Do you think that all fraternities engage in activities such as those listed here? Suggest some possible requirements and activities that neither violate human rights nor constitute torts.