As a matter of public policy, the tort law system should serve to (1) compensate harmed persons in a prompt and efficient way, (2) fairly allocate benefits to victims and costs to wrongdoers, and (3) deter conduct that is unreasonably risky or dangerous. However, some argue that our tort law system does not always meet these goals. Critics generally claim that:

- The amount of money awarded to plaintiffs is sometimes unreasonably high.
- Going to court has become too expensive, with lawyers getting too much of the money awarded.
- Civil courts take too long to resolve disputes.
- Tort law is so complicated that it can be difficult to determine who is at fault.
- The injured party should sometimes receive compensation for a loss, regardless of whether the other party was at fault.

Tort reform has many supporters in the business community.
Tort Reform

As a result of the concerns listed on the previous page, a movement called tort reform has developed. Some efforts at reform target the process of settling tort claims. These efforts could require participants to try to settle a tort case before beginning a trial. In some civil courts, for example, the judge is required to ask the parties whether they have tried to settle the case outside court before a trial starts. For some cases, a judge will send the parties to a mediation service in an attempt to settle the case without a trial. Some states have laws, such as no-fault auto insurance, that eliminate the need for civil suits in certain auto accident cases.

Another strategy for changing the process of settling tort claims is to reduce the amount of time a plaintiff has to file a lawsuit for damages after an injury. Every state has laws setting deadlines for filing lawsuits. In most states this law, the statute of limitations, requires that a tort claim be filed within either two or three years of when the injury is suffered. However, there is significant variation from state to state, with limits as short as one year and as long as six years, depending on state law.

Other tort reform efforts target the outcome of tort cases. These efforts most often focus on limiting damage awards. In particular, tort reformers contend that punitive damage awards, as well as damage awards for pain and suffering, should be limited—or “capped.” They argue that the tort system would still provide a remedy for injured plaintiffs based on damages proven at trial but that caps would limit large, emotionally driven jury awards.

Some critics also argue that plaintiffs and their lawyers sometimes bring frivolous lawsuits, or cases without merit, in an effort to force businesses to offer a cash settlement rather than going to the expense of defending themselves at a trial. Some reformers see the system used in England as the remedy for frivolous lawsuits. The English rule requires the losing party to pay the other side’s legal expenses. Reformers argue that this rule would not be a hardship on plaintiffs with strong claims because, if they won, the defendant would pay both the damages and the plaintiff’s legal expenses. However a plaintiff with a questionable case would be reluctant to sue, because losing would result in a court order to pay legal fees for both sides.

Those who support the current system in the United States contend that tort reformers are trying to fix a system that is not broken. They cite data showing that only a small number of cases on the civil docket are tort cases. In fact, more than 90 percent of tort cases are resolved without going to trial. Supporters of the current system also point out that the media frenzy caused by the coverage of a few cases with large damage awards misleads the public on this issue. In most cases, the typical jury award for plaintiffs who prevail at trial is quite modest (about $30,000).
In addition, existing legal practice protects defendants against frivolous lawsuits, as judges can easily dismiss these cases or order the plaintiff to pay the defendant’s legal fees in the event of a truly frivolous suit. Those who favor the current system also argue that the English system would be unfair. Tort cases can be complex, and liability is not always clear. A plaintiff with a reasonably good case might be reluctant to sue a company for fear of losing and having to pay the defendant’s legal fees, potentially leading to personal bankruptcy.

One of the strongest arguments in favor of the current system is that tort law provides a strong incentive to produce safe products and deliver safe services. Knowing that harmful products or practices will be costly encourages careful product development and testing as well as proper training and supervision of service providers.

Legislators have the challenge of passing laws that represent a sensible balancing of interests. Laws need to provide reasonable access to the justice system. Laws should be crafted to encourage safety. At the same time, the tort system must not impose unreasonably high costs on product and service providers. Unreasonably high costs can lead to higher prices for consumers, loss of jobs, failure to develop needed products, and loss of services.

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The Case of . . .

The New Car That Was Used

The issue of whether the Constitution provides a limit on punitive damages has been presented to the Supreme Court a number of times. In a case decided by the Court in 1996, an Alabama doctor purchased what he thought was a new BMW, later finding out that the car had been repainted before he purchased it. He sued BMW. BMW said its policy had been to sell damaged cars as new if the damage could be fixed for less than 3 percent of the cost of the car. A jury awarded the doctor $4,000 (the value of the car) in actual damages as well as $4 million in punitive damages. The state supreme court reduced the punitive damage award to $2 million. BMW appealed the punitive damage verdict to the U.S. Supreme Court, arguing that such an excessive award was basically unfair and violated the due process clause of the Fourteenth Amendment.

In a 5-4 decision, the Court agreed with BMW. The Court found that punitive damages could be allowed and were constitutional, but that they could not be “grossly excessive.”

Problem 22.1

a. What happened in this case?

b. What issue was presented to the Court?

c. What are the strongest arguments on each side of the issue?

d. Do you agree with the Court’s decision? Give your reasons.

e. One way to look at this case is that punitive damages do not present a constitutional issue, and the Supreme Court should let state courts and legislatures decide these matters. What do you think about this position?
Driving While Yapping (DWY): Should There Be a Law?

Assume that you live in a state without a law regulating the use of cell phones in automobiles. In your state, as elsewhere around the country, more than half of the residents own cell phones. National surveys show that about 80 percent of cell phone owners keep their cell phones turned on at least some of the time when they are driving.

You also know the following facts:

- “Driver distraction” (eating in the car, adjusting the radio, etc.) is a factor in causing 20 to 30 percent of all car crashes.
- Most states do not collect data on whether cell phones were in use at the time of an auto accident when investigating such accidents.
- While many states have considered and rejected bans on cell phone use in cars, several municipalities have passed laws prohibiting school bus drivers and taxi drivers from using cell phones. In addition, some municipalities have passed laws that prohibit the use of handheld cell phones within their city limits.
- Police have been able to catch drunk drivers faster, and emergency vehicles have been able to respond more quickly and save lives because of calls from cell phone users.

A large group of concerned citizens from around the state is asking the state legislature to pass a bill that would increase highway safety by limiting or even prohibiting the use of cell phones while driving.

The following groups will testify before a panel of state legislators that is responsible for deciding whether to have such a law.

**Law enforcement groups:** They realize that cell phone users help catch unsafe drivers, but they also believe that cell phone use has caused accidents.

**Messengers:** They believe they cannot do their jobs unless they can use cell phones in cars and on bicycles.

**Telecommunications companies:** They believe that cell phones can be made safe for use in cars if drivers use devices such as headsets.

**Highway safety group:** This group believes that cell phones should be used in cars only when the car is not in motion.

**Libertarians:** They agree that there is a problem, but they believe the answer is to use common sense, not to pass more laws. For example, they argue that there are no laws against changing radio stations or eating while driving—activities that may be just as dangerous.

**Problem 22.2**

**a.** Assume the role of either the panel of legislators or of one of the interest groups that will testify. Research the issue to see what other states have done or are in the process of doing.

**b.** Conduct a hearing in which each interest group makes a brief statement and then answers questions from the panel of legislators. Those testifying should make specific recommendations and be as responsive as possible to the questions from the legislators.

**c.** The legislators should draft a law and circulate it to the interest groups for comment. Invite lobbyists, legislators, or other interested citizens to discuss it with the entire class.

**d.** Share your recommendations with real-world decision makers where you live.