



CURRICULUM GUIDE

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American Museum of Tort Law
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CASES AND SUBJECTS

Cases about the burden of proof:

Brown v. Kendall (1850)
Byrne v. Boadle (1863)

Case about why there are still lawsuits:

Sioux City & Pacific Railroad Co. v. Stout (1873)

Cases about power of jury verdict:

Grimshaw v. Ford Motor Company (1978)
Cipollone v. Liggett Group, Inc. (1984)

Cases about Compensation:

Liebeck v. McDonald's Restaurants (1994)

Cases about Product Liability:

MacPherson v. Buick Motor Co. (1916)
Greenman v. Yuba Power Products, Inc. (1963)

History and Evolution of Tort Law and Trial by Jury:

Timeline and Frieze at entrance to museum
Hoffman v. Jones (1973)

Cases about Physicians, informed consent, etc.:

Tarasoff v. Regents of University of California (1976)
Canterbury v. Spence (1972)

Environmental tort:

Anderson v. Pacific Gas & Electric (1996)

Racism:

Donald v. United Klans of America (1987)

Frivolous Lawsuits:

Liebeck v. McDonald's Restaurants (1994)

Class materials provided in Museum folders

- ❖ Nametags
- ❖ Notepaper
- ❖ Lesson Handouts (study materials for later on)
- ❖ Museum gift

Takeaways

- ❖ Students will understand the importance of service on a jury.
- ❖ Students will understand the Constitutional duty of service as a juror.
- ❖ Students will understand the difference between civil and criminal law.
- ❖ Students will understand basic civil remedies.
- ❖ Students will have a basic understanding of how lawsuits work, including possible tort charges and defenses.
- ❖ Students will engage in activities that promote the development of research, reading, writing, speaking and listening skills as part of the inquiry in the Social Studies classroom.
- ❖ Students will engage in active note taking skills for use of that information in the future.

INTRODUCTION (15 MINUTES)

Guide for the Class:

- ❖ you are teaching a lesson plan from the American Museum of Tort Law located in Winsted, CT. This is the only law museum of its kind in the country.
- ❖ pass out folders.
- ❖ talk about the Tort Museum; how it was founded, by whom, background on the museum.
- ❖ set classroom rules.

The Courts . . . and torts.

Guide for the Class:

- ❖ We will talk about the law in the United States; about jury trials, and the kinds of law there are, but especially tort law, the law of wrongful injuries.

- ❖ We will talk about what should happen if someone injures you-- specifically, what the best solution would be for a few different situations.
- ❖ We will discuss actual situations in which there was a dispute because someone did something hurtful or wrong. For each situation, how do you think that the dispute should be resolved?

Ask the class:

- ❖ How do we hold wrongdoers accountable? (in the context of law)
- ❖ What are the ways that the law does this?
- ❖ What would you (the victim) want for an injury someone caused to you?

LECTURE: Courts and Juries

Did you know that the Constitution and the Bill of Rights guarantee the right to have a case tried by before a jury? It's true.

There is a Constitutional right of trial by jury in both criminal and civil cases. We'll talk about what those terms mean in a minute, but here's a question: Why? Why did the Founding Fathers think that trial by jury was so important that it was put into the Constitution?

Class Discussion

There are a couple of important reasons why trial by jury is so important.

Can you think of reasons why?

Trial by jury is old. In fact, it is one of the earliest forms of government that still exists. It is also one of the most direct forms of government that exists.

The civil jury trial is indeed a form of government. It has its roots in the old English common law, and was created as a way to resolve disputes, rather than by duels or blood feuds. There are other important reasons for juries, too.

FIRST: ***all*** citizens stand equal before the jury.

SECOND: "the power exercised by the jury properly belongs to the people as a whole, not to a wealthy few, and the jury is thus a fundamentally democratic institution."

THIRD: juries are insulated from corruption. The power of the jury depends on the inability of powerful individuals to tamper with it.

What does this mean for you?

Service on a jury is a duty, and a privilege. Not all countries let their citizens make important decisions, the way juries in our country do. When you become an adult, you will have the opportunity to serve on a jury, in either a criminal or a civil case. That is an important responsibility, and one that generations of Americans have taken very seriously. As a juror, you will have the opportunity to sit in judgement of your fellow citizens, to decide right and wrong, and, by the verdict that you and your fellow jurors reach, to speak to all America about what is just, and what is not acceptable.

So now, let's talk about the law, and tort law, especially.

LECTURE: Torts

The Museum provides note taking material for students within their folders.

Guide for the Class:

- ❖ Today we're going to talk about torts.

Ask the class:

- ❖ To take notes. They will need them later for future projects.
- ❖ Does anyone know what a Tort is?

Guide for the Class:

- ❖ A lot of people haven't even heard of Torts until they go to law school. What we're going to be covering today is law-student material, so when you leave here you should feel proud that you have learned about an area of the law with which most people are unfamiliar.

Ask the class:

- ❖ Is anyone interested in Law school? Government?

What is A Tort?

Definition of Torts: A tort is a wrongful injury. There are three types of torts:

1. **Intentional** – wherein the wrongdoer acts deliberately;
2. **Negligent** - where the wrongdoer injures another through carelessness; and

3. **Reckless** - where the wrongdoer's conduct is so extreme and outrageous, that even though there is no intent to injure anyone, the likelihood of injury is very high.

EXAMPLES:

Negligence: a driver is not paying attention and carelessly drives through a stop sign, causing an accident.

Recklessness: a driver is under the influence of alcohol and texting while driving, and drives through a stop sign causing an accident.

Students may want to write the underlined words down so they know they are important.

Examples:

- ❖ A person who punches another person and injures them can be sued for the tort of battery.
- ❖ A doctor that performs surgery on a patient and amputates the wrong leg can be sued for the tort of medical malpractice.
- ❖ A company that makes its employees work in unsafe conditions that result in the death of a worker can be sued for the tort of wrongful death.
- ❖ A person who destroys a rival's reputation by spreading vicious lies can be sued for the tort of defamation.
- ❖ A person who locks someone in a closet and refuses to let them out can be sued for the tort of false imprisonment.

Ask the class:

- ❖ Can anyone think of any other examples that could be considered torts?
- ❖ Any current examples?
- ❖ Do you have any questions?

EXAMPLES OF TORT CASES ATTACHED, FROM MUSEUM CASE EXHIBITS.

Guide for the Class:

- ❖ Note that both people and companies can commit torts- just like a person who causes injury to another person can be sued by the person they injured, a company that does something wrong and causes injury can be sued by the injured person or persons. A company who injures a whole lot of people may be subject to what's

called a *class action suit*- where many plaintiffs who were all injured the same way sue the entity that injured them.

Ask the class:

- ❖ Questions?

The Difference between Civil and Criminal Law

Guide for the Class:

- ❖ Explain that even though there are some things that are both crimes and torts (like assault and battery) torts are governed by *civil* law not *criminal*.

1. Tort law is different from criminal law.
2. Tort law is one branch of civil law (contract law is the other).

In criminal law, the government (local, or state, or federal) is taking the accused to court and charging them with a crime. The punishment for a crime may include going to prison. Criminal laws govern crimes- the actions that the government has decided are so harmful, they are considered injuries to the community, not just the the victim.

Crimes- criminal wrongs- are punished by the criminal justice system, and charged by the government- the government brings a charge against an individual. This is why, in a criminal case, the case is usually called “The People vs. So-and-so” or “California vs. So-and-so” or even “The United States vs. So-and-so”. The person charged with a crime is the defendant.

Tort law punishment does NOT include prison. In tort law, the wrongfully injured individual (Plaintiff) is suing the wrongdoer (Defendant), and seeking money as compensation for his or her injuries and losses.

Some wrongful acts may be both torts and crimes, but only the government has the power to send the wrongdoer to jail.

Example:

- ❖ Take example from the OJ Simpson case, where he was acquitted of murder in a criminal case, but found liable for assault in a tort case.

Ask the class:

- ❖ Who remembers?
- ❖ What is the usual punishment for this tort? (do not say crime)
Answer: monetary damages

Explain:

- ❖ Battery is a *crime*, where a person who commits a battery can be charged with that crime, tried in a criminal trial and possibly convicted and sentenced to prison or probation.
- ❖ However, battery is also a *tort*, where a person can also be sued by the injured person, have a civil trial and if they lose, have to pay the injured person an amount of money called damages.

Main Differences between Civil and Criminal

Civil laws, though, provide remedies for the *violation of private rights*.

- One individual or group- not the government- can sue another individual or group for wrongfully injuring them. The person who has been wronged, and is suing the wrongdoer, is called the plaintiff. The wrongdoer, the one who is being sued, is called the defendant.
- If the plaintiff wins the lawsuit, he or she gets a civil remedy – money to compensate them for their injuries and losses. In certain cases, they may also get a court order that the the defendant must stop engaging in the type of conduct that caused the injury.
- Jail is off the table. Incarceration is not a remedy for tort.

- ❖ Example of Tort Case:

So why should some things be both crimes and torts? Isn't that double punishment?

Guide for the Class:

- ❖ Not always.

Example:

- ❖ Let's say someone assaults me and injures me. For a number of reasons, the police might not charge the wrongdoer with a crime (maybe there were no independent witnesses to the attack). Therefore, there will not be a criminal case brought against the attacker. However, I can still sue him for the tort, and seek money to compensate me for my injuries, medical expenses, and time lost from work.

- ❖ Discuss OJ Simpson criminal murder and civil wrongful death trials as an example of how someone can be civilly liable without being criminally punished for the same conduct.
- ❖ Make sure to be clear that there is a lesser standard of proof for civil/tort law cases.

Ask the class: DISCUSSION

- ❖ Why else might we need both criminal law and torts?
- ❖ Why do we let the courts make some people pay other people money for doing things wrong?
- ❖ Is this better than putting them in jail? Worse?

Burden of Proof.

The one who files the lawsuit has what is called the burden of proof. That means that it is up to the plaintiff, who has sued the wrongdoer, to prove his or her case. The defendant (that is, the wrongdoer), doesn't need to disprove anything. The plaintiff must prove his or her case, and if he or she fails to do so, the plaintiff loses the case.

The plaintiff must prove his case by the preponderance of the evidence. This means, he must offer evidence which shows that his claims are more probable than not; he must tip the scales of justice in his favor. Note – this is different than the level of proof in a criminal case. There, the prosecutor must prove that the defendant was guilty “beyond a reasonable doubt.” It is a higher, more difficult standard of proof than in a tort case.

Elements of a tort case.

So, what does a plaintiff need to prove to win a lawsuit against the wrongdoer?

Answer:

- a. Duty
 - b. Breach of duty
 - c. Causation
 - d. Damages
- a. Duty** means the wrongdoer had a duty of care. That means he had to follow the rules, like speed limits, or driving on the proper side of the road. It may also mean a duty not to injure someone else (even though that duty isn't written down).
 - b. Breach of duty** means that the plaintiff must prove that the defendant failed to meet that standard of care, and that the wrongdoer was negligent (or careless), reckless, or acted intentionally.

Point out that when we say the person must intend their action, that doesn't mean they have to intend- or even think of- the consequences of their actions.

[Teacher A] playfully taps [Teacher B] on the back of the head.

[Teacher A] has no idea that [Teacher B] has a very thin, fragile skull.

[Teacher B] is injured and requires emergency surgery.

[Teacher A] never meant for for his light tap to cause injury.

This is still an intentional act. [Teacher A] meant to tap [Teacher B]. The consequences- whatever they are- are on [Teacher B].

- c. **Causation** means that the plaintiff must prove that the defendant caused her injuries. If she already had a broken arm, she can't claim that the defendant caused it.

- d. **Damages** has two related meanings. The first meaning of "damages" is the injuries and losses caused suffered by the plaintiff, and caused by the wrongdoer. This can include medical expenses, lost income from work, physical injuries, pain, suffering, scarring, and reduced ability to enjoy life's activities. The second meaning of "damages" is the amount of money awarded by the jury to compensate the plaintiff for those injuries and losses. So a jury awards "Damages" (money) to compensate the plaintiff for her damages (injuries and losses) caused by the tortfeasor.

Ask the class:

- ❖ What do you think damages are based on?

Damages: The money awarded by a jury verdict is determined by the jury. The amount they may award, if the plaintiff has proven her case, must be (a) based upon the evidence in the trial, and the law given by the judge; and should be fair, just, and reasonable.

The purpose of the monetary award is to make the plaintiff whole; that is, to compensate for her injuries and losses, including medical expenses, lost income or reduced earning capacity; pain, suffering, scarring, disfigurement, and reduced ability to enjoy life's activities.

Punitive damages: these are money damages awarded just to punish the person or company who committed the tort, *and are only possible in limited cases.*

Benefits of Tort Law:

There are three benefits of tort law. The first is **compensation**.

Compensation: Questions:

What does “compensation” mean?

- Money paid to make the injured person “whole.”

Why do we use money?

- We don't have a time machine to go back and change what happened; money is all we have.

Is this a good system? Why?

- A private remedy (the police and State do not need to get involved);
- Prevents feuds, retaliation;
- Jury system makes dispute resolution societally acceptable.

I said that there are three benefits of tort law. Compensation is one. Does anyone know what the other two benefits are?

The second benefit is **disclosure**: Jury trials are open to the public and open to the press. Therefore, evidence that is revealed in a trial can be publicized widely. This enables the public to learn about hazardous practices or dangerous products; so tort law promotes public safety.

The third benefit of tort law is **deterrence**: A jury verdict can not only compensate the injured victim; but can also change the world, by putting an end to dangerous practices, or forcing dangerous products to be re-designed. As a result of tort law, many different kinds of products – from toys to food to cars, are safer. We all benefit from tort law.