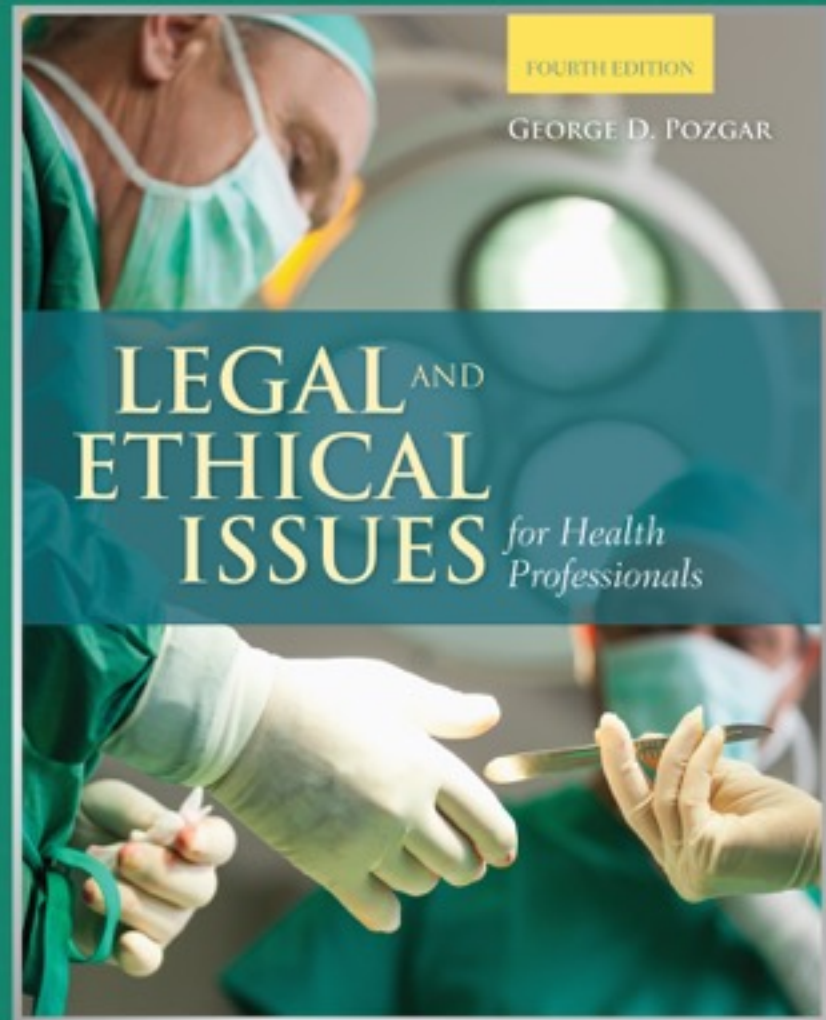


Chapter 6

Introduction to Law



Learning Objectives – I

- Understand the meaning and objectives of tort law.
- Define negligence and understand the distinction and similarity between negligence and malpractice.
- Explain how the commission and omission of an act differ.

Learning Objectives – II

- Explain the elements necessary to prove a negligence case.
- Describe the importance of foreseeability in a negligence case.
- Describe what an intentional tort is and discuss several examples of intentional torts and how they might apply in various health care settings.

Learning Objectives – III

- Explain what a crime is and how various crimes are not so uncommon in the health care setting.
- Explain the various elements of a contract.
- Describe the pretrial procedures and the process of a trial.

Tort Law

- A *tort* is a civil wrong, other than a breach of contract, committed against a person or property for which a court provides a remedy, generally in the form of monetary damages.

Objectives of Tort Law

- Preservation of peace between individuals.
- Fault-finding for wrongdoing.
- Acts as a deterrence to wrongful acts.
- Indemnify injured person(s) of wrongdoing.

Negligence

- Commission or omission of an act that a reasonably prudent person would or would not do under given circumstances.

Commission of an Act

- Administering wrong medication
- Administering wrong dosage of a medication
- Administering medication to the wrong patient
- Performing procedure without patient consent
- Performing procedure on wrong patient
- Removing the wrong body part
- Failing to assess a patient's nutritional needs

Omission of an Act

- Failure to administer medication[s]
- Failure to order required diagnostic tests
- Failure to follow up on abnormal test results
- Failure to perform a “time-out” to ensure the correct surgical procedure is being conducted on the correct patient at the correct site

Malpractice

- Negligence of a professional person, for example:
 - Surgeon who conducts surgery on the wrong body part
 - Nurse who administers wrong medication, injuring patient
 - Pharmacist who mislabels a medication, and the patient is harmed

Forms of Negligence

- Malfeasance
- Misfeasance
- Nonfeasance

Malfeasance

- Execution of an unlawful or improper act, for example:
 - Performing a partial-birth abortion when prohibited by law
 - Performing a procedure without having the appropriate credentials

Misfeasance

- Improper performance of an act, for example:
 - Wrong-sided surgery
 - Leaving an instrument in the patient's body

Nonfeasance

- Failure to act when there is a duty to act, for example:
 - Failure to prescribe antibiotics when indicated
 - Failure to respond to emergency call

Four Elements of Negligence

1. Duty to Care

- Legal obligation of care imposed on one to safeguard rights of others
- Duty created by statute
 - Defendant must have been within specified class of persons outlined in the statute.
 - Plaintiff must have been injured in a way statute was designed to prevent.
 - Plaintiff must show that injury would not have occurred if the statute had not been violated.

Standard of Care

- Actual performance of an individual in a given situation will be measured against what a reasonably prudent person would or would not have done.

Duty to Hire Competent Staff

- A nurse was hired sight unseen over telephone, an applicant who falsely stated in his application that he was a licensed LPN. In reality, he was not an LPN and he had committed 56 criminal offenses of theft and assaulted a resident.

Your verdict?

Judgment for the Plaintiff

- Nursing center failed in its “duty to care” by not validating the nurse’s license.

2. Breach of Duty

- Must be a deviation from recognized standard of care.
- Must be failure to adhere to an obligation.
 - Breach of duty can occur when a physician fails to respond to his/her on-call emergency room duties.
 - Failure to perform an adequate history and physical in the ED, such as failure to properly diagnose a patient at risk for Ebola and discharging that patient back into the community.

3. Injury/Actual Damages

- Actual damages must be established.
- Without injury damages cannot be awarded.

4. Causation

- Must be a reasonable, close, and causal connection between the defendant's negligent conduct and resulting damages suffered.
 - For example, in the *Hastings* case in the text, causation was clear: A person does not bleed to death in a hospital emergency department over a 2-hour period without some surgical intervention.

Causation, cont'd

Foreseeability

- *Test for foreseeability* is whether a person of ordinary prudence and intelligence should have anticipated danger to others caused by a negligent act.
 - In the *Hastings* case, it was highly probable that the patient would die if the bleeding was not stopped. “The broad test of negligence is what a reasonably prudent person would foresee and would do in the light of this foresight under the circumstances.”

Intentional Torts

- Assault and Battery
- False Imprisonment
- Defamation of Character
- Invasion of Privacy
- Infliction of Mental Distress

Assault and Battery

- *Assault* – deliberate threat, coupled with apparent ability to do physical harm to another. Actual contact not necessary.
- *Battery* – intentional touching of another's person in socially impermissible manner without person's consent.

Tort of Assault

- Person attempting to touch another unlawfully must possess apparent present ability to commit battery.
- Person threatened must be aware of or have actual knowledge of an immediate threat of a battery and must fear it.

False Imprisonment

- Unlawful restraint of individual's personal liberty or unlawful restraining or confining an individual.

Defamation of Character

- Involves communications to someone other than the person defamed that tends to hold that person's reputation up to scorn and ridicule.
 - Slander
 - Libel

Invasion of Privacy

- Right to
 - Be left alone.
 - Be free from unwarranted publicity.
 - Be free from exposure to public view.
 - Be free from unwarranted intrusions into a one's personal affairs.
 - Personal privacy.
 - Have records/kept confidential.

Infliction of Mental Distress

- Conduct that is so outrageous that it goes beyond bounds tolerated by decent society.

Criminal Law

- *Crime* – any social harm defined and made punishable by law
- *Purpose of criminal law*
 - Maintain public order and safety.
 - Protect the individual.
 - Use punishment as a deterrent to crime.
 - Rehabilitate the criminal for return to society.

Classification of Crimes

- *Misdemeanor* – an offense punishable by less than 1 year in jail and/or a fine (e.g., petty larceny).
- *Felony* – a much more serious crime (e.g., rape, murder) and is generally punishable by imprisonment in a state or federal penitentiary for more than 1 year.

Criminal Procedure

- Arrest
- Arraignment
- Indictment
- Conference
 - Prosecutor
 - Defense attorney
- Criminal trial

Fraud:

Billing Scam

A pharmacist dispensed the generic equivalent of a drug and billed for the higher cost brand name.

Discuss the ethical and legal issues.

Ethical and Legal Issues

- Ethical issues
 - Truth telling
 - Professional codes of ethics
- Legal issues
 - Fraud

Fraud:

Self-Referrals

Dr. L ordered unnecessary highly expensive esoteric lab tests for his patients. Dr. L referred his patients to a private lab, in which he had 30% ownership.

Discuss the ethical and legal issues.

Ethical and Legal Issues

- Ethical issues
 - Truthfulness
 - Professional codes of ethics
- Legal issues
 - Fraud

Other Criminal Acts

- Manslaughter
- Murder
- Theft

Contracts

- *Contract* – a special kind of agreement, either written or oral, that involves legally binding obligations between two or more parties

Elements of a Contract

- Offer/communication
- Consideration
- Acceptance

Kinds of Contracts

- Employment contracts
- Exclusive contracts
- Commercial ethics and noncompetition agreements

Trial Procedure and the Courtroom:

Pleadings

- Summons and complaint
- Answer
- Bill of particulars

Trial Procedure:

Discovery

- Process of investigating the facts of a case before trial
 - Obtain evidence that might not be obtainable at the time of trial.
 - Isolate and narrow the issues for trial.
 - Gather knowledge of the existence of additional evidence that may be admissible at trial.
 - Obtain leads to enable the discovering party to gather further evidence.

Trial Procedure:

Preparation of Witnesses

- The manner in which a witness handles questioning at a deposition or trial is often as important as the facts of the case.
- Each witness should be well prepared before testifying.
- Preparation should include a review of all pertinent records.

Trial Procedure, cont'd

- The court
 - Decides questions of law.
- The jury
 - Determines questions of fact.

Trial Procedure:

Subpoenas

- *Subpoena* – a legal order requiring the appearance of a person and/or the presentation of documents to a court or administrative body.
- *Subpoena ad testificandum* – orders the appearance of a person at a trial or other investigative proceeding to give testimony.
- *Subpoena duces tecum* – a written command to bring records, documents, or other evidence described in the subpoena to a trial or other investigative proceeding.

Trial Procedure, cont'd

- Opening statements
 - By plaintiff/s
 - By defendant/s

Trial Procedure:

Burden of Proof

- The plaintiff is required to show that the defendant violated a legal duty.
- The case is dismissed if the evidence does not support the defendant's allegations.

Trial Procedure:

Kinds of Evidence

- Direct evidence
- Demonstrative evidence
- Documentary evidence
- Examination of witnesses
- Expert witnesses

Defense of One's Actions

- Assumption of a risk
- Comparative negligence
- Contributory negligence
- Good Samaritan laws

Defenses of One's Actions, cont'd

- Ignorance of fact and unintentional wrongs
- Statute of limitations
- Sovereign immunity

Trial Procedure, cont'd

- Closing statements
- Judge's charge to the jury
- Jury deliberation
- Damages
- Appeals

REVIEW QUESTIONS

- Describe the objectives of tort law.
- Discuss the distinctions among negligent torts, intentional torts, and strict liability.
- Explain the difference between a *commission* and *omission* of a negligent act.
- Explain the difference between negligence and malpractice.

REVIEW QUESTIONS, cont'd

- What are the elements that must be proven in order to be successful in a negligence suit? Illustrate your answer with a case. (The facts of the case can be hypothetical.)
- Describe the categories of intentional torts.
- How does slander differ from libel? Give an example of each.
- Describe the objectives of criminal law.

REVIEW QUESTIONS, cont'd

- Describe the difference between a misdemeanor and a felony. Give an example of each.
- Discuss why physicians have been so reluctant to remove a patient's life-support systems.
- Describe a scheme to defraud.
- Explain the elements of a contract.
- Describe why exclusive contracts are so controversial.

REVIEW QUESTIONS, cont'd

- Describe the trial process, including pretrial motions and the functions of the judge, jury, and attorneys.
- Describe the kinds of evidence that a plaintiff can present in order to establish a negligent act.
- What defenses can a defendant present in order to refute a plaintiff's evidence?

REVIEW QUESTIONS, cont'd

- Describe how statutes of limitations favor defendants in a lawsuit.
- Describe the various types of damages that can be awarded a plaintiff.
- Explain why either the plaintiff or defendant may wish to appeal a jury's verdict.