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The Legal System

CHAPTER SYNOPSIS

In order to fully appreciate the study of medical law and ethics, the student must have a basic understanding of the U.S. legal system. This can be a complicated system to understand unless broken into its basic components. This chapter discusses the legal system, including the concept of checks and balances, sources of the law, classification of laws, and the trial process, including testifying in court.

Chapter Lecture Outline	Instructor's Notes
<ul style="list-style-type: none"> I. The Legal System <ul style="list-style-type: none"> A. Two fundamental processes <ul style="list-style-type: none"> 1. Federal system—Power is divided between central (federal) government and smaller state governments. 2. Checks and balances—Designed by the framers of the Constitution so that no single branch of government could control the entire government and so that each branch of government is scrutinized by other branches of government. B. All powers not specifically delegated to the federal government by the Constitution are retained by states. C. Legislative branch—Congress <ul style="list-style-type: none"> 1. Law-making body. 2. Confirms Presidential appointments to the courts. 3. Can pass law to override judicial decision. II. Sources of Law <ul style="list-style-type: none"> A. Constitutional law—Rights, privileges, or immunities secured and protected for each citizen by the U.S. Constitution or by state constitutions. B. Statutory and regulatory law—Statutes are laws enacted by state or federal legislatures. C. Common law—Case law that is based on decisions made by judges. <ul style="list-style-type: none"> 1. Precedent—A ruling on an earlier case that is then applied to subsequent cases. 2. <i>Stare decisis</i>—“Let the previous decision stand.” 3. Many old case decisions still influence today’s medical practitioners. 	

Chapter Lecture Outline	Instructor's Notes
<p>III. Classification of Laws</p> <p>A. Civil (Private) law—Concerns relationships between individuals or between individuals and the government that are not criminal.</p> <ol style="list-style-type: none"> 1. Tort Law—Division of law that covers acts that result in harm to others. <ol style="list-style-type: none"> a. Intentional torts <ol style="list-style-type: none"> i. Assault—Threat of bodily harm. ii. Battery—Actual bodily harm. iii. False imprisonment—Violation of personal liberty. iv. Defamation of character—Damage to a person's reputation. v. Fraud—Deceitful practice. vi. Invasion of privacy—Break in confidentiality, unauthorized publicity of information. b. Unintentional torts—Such as negligence, occur when the patient is injured as a result of the healthcare professional's not exercising the ordinary standard of care. 2. Contract Law <ol style="list-style-type: none"> a. Expressed contract—An oral or written agreement. <ol style="list-style-type: none"> i. Most agreements, including oral agreements, are enforceable. ii. Specific state and federal laws relate to the medical profession. b. Consideration—Something of value. c. Implied contract—An agreement that is made through inference by signs, inaction, or silence. d. Breach of contract—Either party fails to comply with the terms of the agreement. e. Abandonment—Withdrawing medical care from a patient without providing sufficient notice to the patient. <ol style="list-style-type: none"> i. Sending a letter by certified mail is the best method physicians can use to protect themselves from a charge of abandonment. ii. Termination of contract should be made in writing by the physician. 3. Class action lawsuit—can be filed by one or more people on behalf of a larger group of people who are all affected by the same situation. <p>B. Public Law: Criminal and Administrative Law</p> <ol style="list-style-type: none"> 1. Criminal case—Government brings a lawsuit against an individual or group. <ol style="list-style-type: none"> a. Felony—A serious crime that carries a punishment of death or imprisonment for more than one year. b. Misdemeanors—Less serious than felonies, punishable by fine or imprisonment of up to one year 2. Administrative law—regulations set by government agencies. <ol style="list-style-type: none"> a. Licensing and supervision of prescribing controlled substances. b. Health department regulations. 	

Chapter Lecture Outline	Instructor's Notes
<ul style="list-style-type: none"> c. Regulations against homicide, infanticide, euthanasia, assault, and battery. d. Regulations against fraud. <p>IV. The Court Systems</p> <ul style="list-style-type: none"> A. Two court systems—Federal and state. B. Jurisdiction—Power to hear a case. C. The federal court system has jurisdiction when one of the following is present: <ul style="list-style-type: none"> 1. The dispute relates to federal law or the U.S. Constitution. 2. The U.S. government is one of the parties involved in the dispute. 3. Citizens from different states are involved in the dispute, and the case involves over \$75,000. 4. Citizens of another country are involved in the dispute, and the case involves over \$75,000. 5. The dispute occurred on or in international waters. D. The court system has three levels: <ul style="list-style-type: none"> 1. District (municipal). 2. Court of Appeals (circuit court). 3. U.S. Supreme Court. E. The case must go from lower to higher levels F. Small claims court. G. Probate court—Estate court. <p>V. The Trial Process</p> <ul style="list-style-type: none"> A. The grand jury—A group of private citizens selected to hear evidence about a criminal case to determine if the case has enough merit to be heard in court. B. The procedure <ul style="list-style-type: none"> 1. Litigation—A dispute resulting in one party suing another. 2. Plaintiff—A person or group bringing suit against another person or group. 3. Defendant—A person or group sued civilly or prosecuted criminally in a court of law. 4. Waive—Give up the right to something. C. Course of typical trial <ul style="list-style-type: none"> 1. Judge or jury. 2. Opening statements. 3. Plaintiff—Questioning of witnesses. 4. Cross-examination of witnesses by defendant. 5. Defendant—presents own witnesses. 6. Cross-examination of witnesses by plaintiff. 7. Closing arguments or comments. 8. Decision making by jury or judge. 9. Appeals process. D. Subpoena—Court order <ul style="list-style-type: none"> 1. Deposition—Oral testimony. 2. A subpoena must be hand delivered. 	

Chapter Lecture Outline	Instructor's Notes
<p>E. Expert witness</p> <ol style="list-style-type: none"> 1. An expert witness has special education, training, or experience in a given area and testifies in a court of law for a fee. 2. An expert witness does not testify about the actual facts of the case. <p>F. Testifying in court</p> <p>G. Appellate court system—An appeal to a higher court to have a judge review the decision of the lower court.</p>	

LEARNING OBJECTIVES

(Student answers may vary.)

1. Define the glossary terms.

Administrative law a branch of law that covers regulations set by government agencies.

Assault “imminent apprehension of bodily harm.”

Battery requires bodily harm and unlawful touching (touching without consent of patient).

Beyond a reasonable doubt evidence that is almost an absolute certainty that a person did commit a crime.

Breach neglect of an understanding between two parties; failing to perform a legal duty.

Breach of contract the failure, without legal excuse, to perform any promise or to carry out any of the terms of an agreement; failure to perform a contractual duty.

Case law also called common law; case law is based on decisions made by judges.

Checks and balances designed by the framers of the Constitution so that no one branch of government would have more power than another and so that each branch of government is scrutinized by other branches of government.

Civil law concerns relationships that are not criminal; either between individuals or between individuals and the government.

Class action lawsuit lawsuit filed by one or more people on behalf of a larger group of people who are all affected by the same situation.

Closing arguments closing speech or summary made by the attorneys for the plaintiff and the defendant.

Common law also called case law; common law is based on decisions made by judges.

Competent capable of making a decision without mental confusion due to drugs, alcohol, or other reasons.

Consideration in contract law, consideration is something of value given as part of the agreement.

Constitutional law the inviolable rights, privileges, or immunities secured and protected for each citizen by the Constitution of the United States or by the constitution of each state.

Contract law that division of law that includes enforceable promises and agreements between two or more persons to do or not do a particular thing.

Criminal case one in which court action is brought by the government against a person or groups of people accused of committing a crime, resulting in a fine or imprisonment if found guilty.

Criminal laws set up to protect the public from the harmful acts of others.

Defamation of character making false and/or malicious statements about another person; includes libel and slander if the plaintiff can prove damages.

Defendant person or group of people sued civilly or prosecuted criminally in a court of law.

Deposition oral testimony that is made before a public officer of the court to be used in a lawsuit.

Discovery the legal process by which facts are discovered before a trial.

Embezzlement the illegal appropriation of property, usually money, by a person entrusted with its possession.

Expert witness a medical practitioner or other expert who, through education, training, or experience, has special knowledge about a subject and gives testimony about a subject in court, usually for a fee. They do not testify about the facts of the case.

Expressed contract an agreement that is entered into orally or in writing and that clearly states all the terms.

Felony a serious crime that carries a punishment of death or imprisonment for more than one year. Examples are murder, rape, robbery, and practicing medicine without a license.

Fraudulent deceitful.

Implied contract an agreement that is made through inference by signs, inaction, or silence.

Indictment a written charge presented to the court by the grand jury against a defendant.

Intentional torts occurs when a person has intentionally or deliberately been injured by another.

Jurisdiction the power to hear a case.

Libel any publication in print, writing, pictures, or signs that injures the reputation of another person.

Litigation a dispute that has resulted in one party suing another.

Misdemeanors less-serious offenses than felonies; punishable by fines or imprisonment of up to one year. These include traffic violations and disturbing the peace.

Plaintiff a person or group of people suing another person or groups of people; a person who instigates the lawsuit.

Preponderance of evidence evidence more likely than not that the incident occurred.

Prosecutor a person who brings a criminal suit on behalf of the government.

Regulations rules or laws made by agencies.

Slander speaking false and malicious words concerning another person, which brings injury to his or her reputation.

Stare decisis Latin phrase meaning “let the previous decision stand.”

Statutes laws enacted by state and federal legislatures.

Subpoena court order for a person or documents to appear.

Subpoena duces tecum Latin phrase meaning “under penalty, take with you”; a court order requiring a witness to appear in court and to bring certain records or other material to a trial or a deposition.

Summary judgment judge’s ruling to end a lawsuit without a trial based on a matter of law presented in pleadings.

Tort a wrongful act, defined by the law, that is committed against another person or property that results in harm; a civil wrong, and is compensated in money damages.

Tort law that division of law that covers acts that result in harm to another.

Unintentional torts such as negligence, occur when the patient is injured as a result of the healthcare professional’s not exercising the ordinary standard of care.

Waive give up the right to something.

2. Discuss why an understanding of the legal profession is necessary for the healthcare professional.

The advanced state of medical technology creates new legal, ethical, moral, and financial problems for the consumer and healthcare professional. Patients are now more aware of their legal rights than in the past. The outcome of court cases has had a great impact on the way that healthcare professionals practice their business.

3. Describe the sources of law.

There are four sources of law: constitutional, statutory, regulatory, and common or case law.

Constitutional law is based on the U.S. Constitution and the constitutions of the individual states. The Constitution defines the power of the government to act and sets limits on the government’s power.

Statutory laws are made by legislative bodies such as Congress or the state legislatures. The bills that are passed by these legislative bodies are called statutes.

Regulatory law is made by agencies such as the Food and Drug Administration.

Common or case law is established from a court decision. This law may explain or interpret other sources of law—for example, when a case explains what a federal regulation means.

4. Describe the steps for a bill to become a law.

Statutes begin as bills submitted by legislators at the state or federal level. The bill is first introduced into one of the two houses of Congress: the Senate or the

House of Representatives. It goes on to a committee in either the Senate or the House for discussion and consideration. After a hearing about the bill, the committee sends a report with a recommendation of pass or fail, and the bill goes back to the house in which it originated. A vote takes place in that house. If the bill passes, it becomes an act. The act is then sent to the other house, where it goes through the same steps as it did as a bill. The act can be amended in the second house, but the amended version has to be considered and passed in the first house in its new form. After it passes there, the heads of the Senate and the House of Representatives sign it. The act is then sent to the President for a federal act or to the governor for a state act for final signature. It becomes a law if it is signed by the chief executive and not vetoed within 10 days. A presidential veto can be overridden by a two-thirds majority of both houses of Congress.

5. Discuss the difference between civil law and criminal law, explaining the areas covered by each.

Civil law concerns relationships between individuals or between individuals and the government. Civil law cases include divorce, child custody, auto accidents, slander, libel, and trespassing.

Criminal laws are set up to protect the public as a whole from the harmful acts of others. The purpose of this branch of law is to define socially intolerable conduct that is punishable by law. With this type of law, the government (usually the individual state) brings the suit against a person or group of people accused of committing a crime. If convicted, the person may receive a fine, prison term, or both. These crimes may involve the borders of the United States, as would the transport of illegal drugs. Also included under criminal law are the crimes of murder, robbery, burglary, larceny, rape, sodomy, arson, and practicing medicine without a license.

6. List six intentional torts and give examples of each.

(Student examples may vary.)

1. Assault: Threatening to hold a patient down on an exam table while a procedure for which the patient has not granted consent is performed.
2. Battery: Performing a surgical procedure, such as an appendectomy during an abdominal operation for a hysterectomy, without the patient's consent.
3. False imprisonment: Refusing to allow a patient to leave a medical office or hospital when he or she requests to leave.
4. Defamation of character: Making a negative statement about another physician's ability.
5. Fraud: Promising to cure a patient.
6. Invasion of privacy: Allowing a patient's test results or medical condition to become known without the patient's permission.

7. List examples of criminal actions that relate to the healthcare worker.

- Practicing medicine without a license.
- Illegal drug sale and abuse.
- Rape of a patient or employee.

8. Discuss the difference between a felony and a misdemeanor.

A felony is a serious crime that carries a punishment of death or imprisonment for more than one year.

A misdemeanor is a less serious offense, punishable by fine or imprisonment of up to one year.

9. Summarize the types of courts in the legal system.

The two court systems are the state and federal courts. The federal court system tries cases relating to federal law when the government is one of the parties; when citizens of different states are involved in a dispute and the case involves over \$75,000; when citizens of another country are involved in a dispute with a U.S. citizen and the case involves over \$75,000; and, when the actual dispute occurred on or in international waters. The state court is set up with a structure similar to the federal court system but tries cases that relate to citizens and companies within that particular state.

10. Explain the trial process.

Litigation occurs when two parties cannot resolve a dispute by themselves. The plaintiff brings the action into litigation and sues the defendant in a court of law. Note that not all lawsuits end up in court. Many cases, if not most, are settled outside of the court. If the parties cannot settle their dispute, a trial is held. The court case can be tried before a judge only or before a judge and jury of the defendant's peers. If a jury is requested, then six to 12 people are selected from among a large pool of potential jurors.

The trial begins with opening statements made by the attorneys for each side of the case. The plaintiff's attorney then questions the first witness. This witness can be cross-examined by the defendant's attorney. After the plaintiff's witnesses are examined and cross-examined, the defendant's attorney presents witnesses for their side of the case, and the plaintiff's attorney may cross-examine the defense witnesses. When this process is completed, both sides "rest their case."

A request may be made by an attorney for a summary judgment to take place in a civil lawsuit. A summary judgment is a decision made by the court (judge) in response to a motion that declares there is no necessity for a trial since neither the defendant nor the plaintiff is entitled to win based on existing law.

Attorneys make closing speeches (arguments) or summaries for each side. In a jury trial, the judge instructs the jury on the points of law that affect the case. The jury deliberates in private and comes to a conclusion, or verdict. If there is no jury, then the judge makes the decision based on evidence presented in the case.

In a civil case, the defendant, if found guilty, will be ordered to pay the plaintiff a monetary award. If found guilty in a criminal case, the defendant will receive a fine and/or prison sentence.

11. Discuss why an expert witness might be used during a lawsuit.

An expert witness is a person called as a witness in a case where the subject matter is beyond the general knowledge of most people in the court or on the jury. The testimony should assist the jury or judge in determining the accuracy of the facts in the case.

THE CASE OF JACOB AND THE DISEASED LEG

Jacob is an outstanding quarterback on his high school football team who has been offered a college scholarship when he graduates. Unfortunately, Jacob was injured during a late summer practice just before his senior year. He suffered a compound fracture of the fibula bone in his lower leg. Since the fracture broke through his skin, he required a surgical repair to align or set the bone and close the skin. Dr. M., an orthopedic surgeon, kept Jacob in the hospital for three days and ordered intravenous antibiotics to be administered. When he was discharged from the hospital, Jacob was told to come in for an office visit once a week for six weeks.

At six weeks Jacob's parents took him in to the surgeon's office for his cast removal, and except for a slightly inflamed and draining area around his stitches, Jacob's broken bone seemed to be healing. After his cast was removed, Jacob was told to wait for a few minutes while the surgeon went across the hall to check on another patient. Dr. M. removed his gloves, washed his hands in Jacob's exam room, and then went across the hall to examine another patient, Sarah K. The doors between the exam rooms were left open and Jacob's parents could see and hear Dr. M. examine Sarah's infected leg. They could tell that Dr. M. did not replace his gloves. He told Sarah that he was glad to see that her osteomyelitis (a serious bone infection) was almost better, and he told her to come back in another week. Dr. M. then came back into Jacob's room, still without gloves, and examined Jacob's leg more carefully. He was concerned about the inflammation around the incision site and told the parents to keep the area clean and dry. He wrote Jacob a prescription for an oral antibiotic and said he could start to put a little weight on his leg. When Jacob came back the following week, his leg was grossly infected with a large abscess. Jacob had to have further surgery to drain the abscess. The pathology report of tissue specimens from Jacob's leg determined that he had developed osteomyelitis. This infection took several months to heal. The delay in his recovery meant that Jacob was unable to play football that fall and lost his chance at a college scholarship. Jacob's parents asked Dr. M. to provide them with the results of the tissue test. They then sued Dr. M. for negligence.

Case Questions

1. What obvious mistake did Dr. M. make?

Students should immediately note that Dr. M. did not put on sterile (or even clean gloves) each time he examined a patient. Dr. M. did not close the doors between the two exam rooms, but this should not be the "mistake" that students dwell on.

2. Did Jacob or his parents contribute in any way to his condition?

It is hard to imagine the Jacob did not notice any discomfort or pain from his inflamed incision site before his cast was removed at six weeks. However, a young patient is not always cognizant of what type of discomfort he or she should be looking for after a broken leg. Jacob's parents did notice that Dr. M. did not put gloves on after returning from Sarah's exam and before he examined Jacob's leg. They did not speak up at that time. However, many patients and their families are intimidated by physicians and surgeons and fail to speak up. If his parents kept his incision clear and dry, as requested, and administered his antibiotics correctly, then they, apparently, did all they could to assist in his recovery.

3. What could all of the involved parties have done to prevent this situation from occurring?

Dr. M. should have provided clear written and verbal instructions to Jacob and his parents regarding what symptoms to look out for while he had his cast in place (i.e., fever, pain, and unusually warm or cold toes, feet, and leg. Itching around the incision site is usually a good sign that healing is taking place.) The parents could have asked Dr. M. to wash his hands and put on fresh gloves before touching their son.

These are suggested solutions to the case. Instructors may be able to add many more options based on their own experiences.

POINTS TO PONDER (FROM TEXTBOOK)

Teaching note: These questions are meant to stimulate classroom discussion. Some questions, such as “Can I be sued if I unintentionally leave a patient record with a diagnosis of AIDS within sight of another patient?” have clear answers: Students must realize that even if an action is unintentional, they can still be sued. However, other questions, such as “Can I restrain a person against his or her will if I know it is for his or her own good?” are not as clear. Students may discuss what is the greater good in this case—allowing a person the freedom of a lack of restraint or protecting the person and risking a charge of false imprisonment. The student answers may vary to all of these questions.

1. Why do I have to know how a bill becomes a law?
2. Why is common law important?
3. How can I avoid a lawsuit?
4. Can I restrain a person against his or her will if I know it is for his or her own good?
5. Can I be sued if I make a statement to a patient about a mistake a physician has made?
6. What should I do if I see a physician or other healthcare employee make an error?
7. Can I be sued if I unintentionally leave a patient record with a diagnosis of AIDS within sight of another patient?
8. What do I do if I am subpoenaed?

REVIEW QUESTIONS (FROM TEXTBOOK)

Discussion Questions

1. Discuss the significance of common law for the healthcare professional.

Common law, or case law, is based on precedent that was set by an earlier case when it was tried. This previous case established a law based on a court decision. Common law defines the legal obligation that a healthcare professional has to use reasonable care in treating a patient.

2. Explain what is meant by the statement, “It is easier to prevent negligence than it is to defend it.”

Negligence is the failure to perform professional duties to an accepted standard of care. It is difficult to defend why a person did not do something that was required of him or her. Preventing negligence means that medical professionals must perform those responsibilities they were trained to perform within their scope of practice.

3. Differentiate between common law and statutory law.

Common law is based on a precedent that was set when a similar case was tried and a law was established by a court decision.

Statutory law is law passed by a legislative body at the state or federal level. Statutes also create agencies, such as the Food and Drug Administration, that can pass rules governing particular aspects of concern, such as the sale of food or drugs.

4. Explain what the numbering system in public law means.

A public law is designated by the initials P.L. The five or six digits that follow indicate the Congress that passed the law (the first two or three digits) and which piece of legislation this law was in that Congress (the last three digits).

5. What is meant by burden of proof?

Burden of proof means that the responsibility for proving that the defendant is guilty of an action falls on the plaintiff who brought about the action or lawsuit.

6. What is a subpoena and who can accept it?

A subpoena is a written command from the court for a person or documents to appear in court. A subpoena must be hand-delivered, or served, to the person who is being requested to appear in court. This is the person named on the subpoena. An assistant cannot accept a subpoena on behalf of a physician without his or her knowledge, otherwise the subpoena is considered “not served.” However, a physician may delegate this responsibility to an assistant. [Note that this practice is not encouraged since the physician can then deny that he or she actually received the subpoena.]

REVIEW CHALLENGE

Short Answer Questions

1. How can embezzlement be prevented?

Embezzlement, a form of fraud, is the illegal appropriation of property, usually money, by a person entrusted with its possession. It can be avoided by using a method of tight control of finances in which more than one person should receive payments, issue receipts for payments, audit the accounts, and deposit the money.

2. What is the difference between libel and slander?

Libel, *written* defamation of character, is any publication in print, writing, pictures, or signs that injures the reputation of another person.

Slander, or *oral* defamation of character, is speaking false and malicious words concerning another person that brings injury to his or her reputation.

3. What are some of the reasons for termination of a medical contract?

- Failure to follow instructions
- Missed appointments
- Failure to pay for services
- Patient states that he or she is seeking the care of another physician

4. What is an expert witness and why might one be used during a lawsuit?

An expert witness is a person called upon in court to provide subject matter that is beyond the general knowledge of most people in the court or on the jury.

5. What is the difference between a felony and a misdemeanor?

A felony is a serious crime carrying a punishment of death or imprisonment for more than a year. Examples are practicing medicine without a license, murder, and rape.

Misdemeanor is a less serious offense than a felony, punishable by fine or imprisonment in jail for up to one year. Examples are minor theft, disturbing the peace and traffic violations.

6. What is a subpoena *duces tecum*?

Subpoena *duces tecum*, meaning “under penalty take with you” is a court order requiring a person to appear in court *and* to bring certain records or other material to a trial or for a deposition.

7. What is a class action lawsuit? Give an example of one.

This is a lawsuit filed by one or more persons on behalf of a larger group of people who are affected by the same situation. There have been class action lawsuits against tobacco companies on behalf of several persons who claimed to develop cancer from smoking.

8. What is the role of the appellate court within the court system?

An appellate court, or court of appeals, examines evidence to determine if the ruling from a lower court will still stand. It does not retry the case, but acts as a reviewing court. After reading the transcripts from the case, the judge (no jury) will affirm the original decision, reverse it, or modify it.

Matching

Column A

1. breach
2. deposition
3. plaintiff
4. defendant
5. felony
6. misdemeanor
7. waive
8. tort
9. subpoena
10. precedent

Column B

- f. failure
- i. oral testimony to be used in court
- g. person who sues another party
- b. person who is being sued
- j. serious crime such as practicing medicine without a license
- h. less serious crime such as a traffic violation
- c. give up the right to something
- d. law that covers harm to another person
- a. order for person or documents to appear in court
- e. earlier ruling applied to present case

Multiple Choice

1. Sources of law include all of the following except
 - a. regulatory law.
 - b. executive law.
 - c. statutory law.
 - d. common law.
 - e. constitutional law.

Answer: b

2. Subpoena *duces tecum* means
 - a. “let the master answer.”
 - b. “under penalty, take with you.”
 - c. “let the decision stand.”
 - d. “the thing speaks for itself.”
 - e. “the thing has been decided.”

Answer: b

3. *Stare decisis* means
- “let the master answer.”
 - “under penalty, take with you.”
 - statutory law has been invoked
 - constitutional law has been invoked
 - “let the previous decision stand.”

Answer: e

4. Administrative law covers all of the following except
- health department regulations.
 - licensing of prescription drugs.
 - Internal Revenue Service regulations.
 - fraud.
 - all of the above are covered under administrative law.

Answer: e

5. The person who brings the action into litigation is called a(n)
- attorney.
 - plaintiff.
 - defendant.
 - judge.
 - jury.

Answer: b

6. A court order that requires a witness to appear in court with certain records is called a
- deposition.
 - discovery.
 - subpoena *duces tecum*.
 - res judicata*.
 - waiver.

Answer: c

7. The common law of the past that is based on a decision made by judges is called
- civil law.
 - constitutional law.
 - case law.
 - criminal law.
 - statutory law.

Answer: c

8. The threat of doing bodily harm to another person—stating, for example, “If you won’t allow us to continue this procedure, we will have to tie your hands”—is
- assault.
 - battery.
 - fraud.
 - invasion of privacy.
 - all of the above.

Answer: a

9. Standard of care refers to the care that
 - a. a reasonable person would use.
 - b. is ordinary care.
 - c. a prudent person would use.
 - d. healthcare professionals in all specialties must practice.
 - e. all of the above.

Answer: e

10. Removing one's clothing in order to allow the physician to perform a physical examination is a(n)
 - a. invasion of privacy.
 - b. defamation of character.
 - c. implied contract.
 - d. abandonment.
 - e. none of the above is correct.

Answer: c

Discussion Cases

I. Analyze "The Case of Jacob and the Diseased Leg" (found at the beginning of the chapter, using the Three-step Ethics Model (Blanchard-Peale)).

- a. Is it legal? This may be a case of malpractice which is illegal. The physician is clearly in the wrong by not washing his hands and changing his gloves before examining Jacob. In this case it is also unethical.
- b. Is it balanced? No, it is not. The physician is not usually corrected by his or her patients when they do not change gloves. In fact, most medical professionals (and students) are not often corrected by their patients. Therefore, the medical professional has more power than the patient in this case.
- c. How does it make me feel? If the physician is aware that he or she is at fault for damage to a patient, then as a member of the human race, he would feel remorse. However, it often happens that medical professionals deny that they have done anything wrong. The caution for students is to always be aware of the damage that can be done to a patient if we become careless.

II. Using Figure 2.7 on p. 48, explain the procedure for a civil trial.

The procedure for a civil trials consists of:

1. Plaintiff's complaint is filed in court: The complaining party, or attorney, prepares a complaint and files it with the court.
2. Defendant is summoned to court: The defendant is served a summons, which formally notifies the defendant of the plaintiff's lawsuit. The defendant or defendant's attorney prepares an answer and files it in the same court. After this happens the pretrial matters are heard. And the case may be settled out of court.
3. Defendant's attorney files an answer. Pretrial matters may be filed or heard. A settlement may be reached at any time.
4. Trial date is set.
5. Trial: The case is heard in court by a judge or by a jury comprised of six to 12 jurors.
6. Court of appeals: Either party may wish to appeal the case to a Court of Appeals and perhaps eventually to the Supreme Court.

7. Supreme Court

(“A Citizen’s Guide to Washington Courts,” Washington State Office of Administrator for the Courts)

III. *Adam Green is an orderly in the Midwest Nursing Home. His supervisor, Nora Malone, has asked him to supervise the dining room while 20 residents eat their evening meal. Bill Heckler is an 80-year-old resident who is very alert and ambulatory. He tells Adam that he doesn’t like the meal that’s being served, and he wants to leave the dining room and go back to his own room. Adam is quite busy since he has to watch the behavior of several patients who are confused. He’s concerned that patients might choke on their food or otherwise harm themselves. Adam becomes impatient with Bill and tells him that he cannot leave the room until everyone is finished eating. Adam then locks the dining room door. Bill complains to the nursing home administrator that he was unlawfully detained. He then hires an attorney who brings forth a charge of false imprisonment.*

IV. a. Was Adam’s action justified?

The action may have been justified in light of the circumstances, but he still cannot take the action of locking a door so that a competent patient cannot leave.

b. In your opinion, was this a case of false imprisonment?

Yes, the student should view this as a case of false imprisonment.

c. What could Adam have done to defuse the situation?

This is the step in which much of the trouble could have been defused. Adam should have used his communication skills to have Bill wait until he was able to accompany Bill to his room. He might offer Bill other food than what he was served. He might ask Bill to help him by talking to some of the other patients. As a last resort, Adam should have called for some help. There would most likely have been a supervisor somewhere in the building who could have been called or paged to come and help him.

d. Do the nursing home administrator and Nora Malone have any legal responsibility for Adam’s action?

Yes, under the doctrine of *respondeat superior*, they are responsible for the actions of their employees. However, the owner of the nursing home has the ultimate responsibility for his or her employees’ behavior. In addition, the nursing home appears to be short-staffed, since Adam is the only person caring for 20 residents.

PUT IT INTO PRACTICE

Give an example of a violation of each of the six torts mentioned in this chapter (assault, battery, false imprisonment, defamation of character, fraud, and invasion of privacy) as it might affect your particular area of medical specialization.

Teaching note: The instructor may wish to divide the class into six teams and have each team present (or act out) one of the six torts for the rest of the class.

WEB HUNT

Search the website of the National Institutes of Health (www.nih.gov). What types of information and services does this site offer?

CRITICAL THINKING EXERCISE

What would you do if you had a choice between having a legal system that never punishes an innocent person but often lets the guilty go free, or a system that sometimes punishes the innocent but never frees the guilty?

Instructor's Note: Students may have differing opinions about what they believe is the better choice in this exercise. It might be mentioned that public defenders (attorneys who are asked by the court to represent indigent defendants) will often state that "everyone deserves a fair trial." It is the goal of the court system to keep an innocent person out of prison or to prevent him or her from receiving a death penalty sentence.

SUPPLEMENTAL QUESTIONS

Multiple Choice

Select the one best response to the following questions.

1. Constitutional law
 - a. addresses the relationship between individuals and the government.
 - b. addresses the relationship between individuals and private entities.
 - c. is superceded by statutory and regulatory law.
 - d. defines and sets limits on the government's power.
 - e. a and d only.

Answer: e

2. Which of the following is not a step in the process of a bill becoming law?
 - a. The bill goes to a committee for discussion and consideration.
 - b. The chief executive signs the bill.
 - c. The bill is approved as "constitutional" by the courts and submitted to the House.
 - d. Both the Speaker of the House of Representatives and the Vice- President of the Senate sign the bill.
 - e. After the bill passes in one house, it becomes an act and is submitted to the other house.

Answer: c

3. Rules and laws made by agencies are defined as
 - a. regulatory law.
 - b. executive law.
 - c. statutory law.
 - d. common law.
 - e. constitutional law.

Answer: a

4. Common law is established by
 - a. statutes.
 - b. a judge.
 - c. the Constitution.
 - d. a previous court decision.
 - e. b and d.

Answer: e

5. Reasons for premature termination of a medical contract include all of the following except
- the patient is competent.
 - failure to pay for the service.
 - failure to follow instructions.
 - missed appointments.
 - the patient states that he or she is seeking the care of another physician.

Answer: a

6. In the U.S. legal system, the burden of proof is placed upon
- the defendant.
 - the judge.
 - the jury.
 - the plaintiff.
 - none of the above.

Answer: d

7. An oral testimony that is made before a public officer of the court to be used in a lawsuit is a
- deposition.
 - consideration.
 - precedent.
 - breach.
 - confession.

Answer: a

8. Consideration, under contract law, is defined as
- the legal process by which facts are discovered before a trial.
 - a possible out-of-court agreement.
 - laws enacted by state and federal legislation.
 - something of value given as part of the agreement.
 - a dispute that has resulted in one party suing another.

Answer: d

9. When a patient rolls up his sleeve to have his blood pressure taken, he is demonstrating
- discovery.
 - precedent.
 - implied contract.
 - stare decisis*.
 - a tort.

Answer: c

10. If called to testify in court, one should
- not memorize his or her testimony ahead of time.
 - not answer questions he or she does not understand.
 - always tell the truth.
 - be professional.
 - all of the above.

Answer: e

True/False Questions

1. Administrative law is that branch of public law that covers regulations set by government agencies. (true)
2. Checks and balances were set up by the government to regulate the banking industry. (false)
3. Federal law is administered in the same way in all 50 states. (true)
4. When applying case law, the facts in the new case must be the same as those in which the precedent was established. (true)
5. For a tort of assault to be present, it is sufficient for the patient to only fear that he or she will be hurt. (true)
6. Slander is placing statements in writing that injure the reputation of a person. (false)
7. To prevent embezzlement, it is always wise to have only one person in a medical office handle the money (receive payments, issue receipts, audit the account, and deposit the money). (false)
8. Standard of care is the type of healthcare that a “reasonable person” would provide. (true)
9. Consideration must have both an offer to do something and the acceptance of the offer. (true)
10. Physicians cannot be sued if they have promised to cure patients and then, through no fault of their own, have failed to do so. (false)

Short Answer Questions

1. Why is there a system of checks and balances within our branches of government?
To make sure that no one branch of government (legislative, judicial, or executive) has too much power.
2. What are the four sources of law?
 - a. constitutional law
 - b. statutory law
 - c. regulatory law
 - d. common or case law
3. What are the two main classifications of law?
 - a. civil
 - b. criminal
4. What is contract law?
Contract law is that branch of law that includes enforceable promises and agreements between two or more persons to do, or not do, a particular action.
5. What are six categories of private or civil law?
 - a. tort
 - b. contract
 - c. property
 - d. inheritance
 - e. family
 - f. corporate

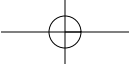
6. What are six classifications of intentional torts?
 - a. assault
 - b. battery
 - c. false imprisonment
 - d. defamation of character
 - e. fraud
 - f. invasion of privacy
7. What is an example of an unintentional tort?

Negligence that occurs, for example, when a patient is injured as a result of the healthcare professional's not exercising the ordinary standard of care.
8. What are two examples of defamation of character?
 - a. slander
 - b. libel
9. What are some reasons a physician may wish to terminate a medical contract of care for a patient?
 - a. failure to follow instructions
 - b. missed appointments
 - c. failure to pay for services
 - d. the patient is seeking the care of another physician
10. What are the two categories of torts?
 - a. intentional
 - b. unintentional (accidental)

TEACHING STRATEGIES

1. Have a small group of students write a scenario in which the patient's privacy appears to have been violated. They should write the scenario so that it seems the medical professional did not know that he or she was violating the patient's privacy and very little harm seems to have resulted from the incident. Form two teams of debaters—four students on each team—to debate whether this scenario is an example of intentional or unintentional tort. A class discussion should follow the debate.
2. Instruct each student to write a certified letter to a fictitious psychiatric patient who has neglected to keep his appointments. It appears, too, that the patient is no longer being compliant with the prescribed medication regime, because medication refills have not been requested. The letter should be written in such a way that a claim of abandonment could never be lodged against the treating psychiatrist. The letters should then be displayed for all the other students to read.

[NOTE: This is an exercise only. Staff do not write this type of letter. Only the physician does.]
3. Divide the class into groups of three and ask each group to write a scenario in which a medical professional commits malpractice. The scenarios should then be presented to the class as a whole, and the class should arrive at a consensus as to the one scenario they think best to portray. Actors should then be selected to represent the judge, prosecuting attorney, defense attorney, defendant, plaintiff, and witnesses. The remainder of the class should serve as the jury. A class discussion on the verdict should follow the role-playing.



4. Instruct each student to bring in a recent newspaper article describing an illegal action or the trial of a tort case. Have the students work in groups of four to discuss their articles and determine the following: the type of tort, the verdict, and the sentence.
5. Invite a physician into the classroom to discuss various ways in which he or she protects against litigation, such as in charges of abandonment by the patient.
6. Divide the class into six teams and have each team present (or act out) one of the six torts for the rest of the class.
7. Have the students prepare flash cards for the key terms (glossary).

