Introduction to Negligence and Strict Liability

In the previous chapter, we discussed intentional torts, wrongs in which an individual took an action that he or she should have known would harm another person. In this chapter, we consider two other types of torts: negligent and strict-liability torts. These torts generally do not involve the same purposeful action required of intentional torts.

Suppose Ross uses a piece of wood to smack Joey, the mailman, on the face. Ross has committed battery. If Ross is building a tree house in his yard, however, and accidentally drops a piece of wood on Joey, who is delivering Ross's mail, Ross's action lacks intent, so there is no battery. Yet there might be negligence.

Allegations of negligence are made in a wide variety of circumstances. For example, people have alleged negligence when incidents of teenage violence occurred. The parents of Marcos Delgado Jr. filed a claim of negligence against a movie theater when it admitted 13-year-old Raymond Aiolentuna without an adult to the R-rated movie *Dead Presidents.* After the movie, Aiolentuna emerged from the theater, walked one block, and shot Delgado. Delgado's parents argued that the movie theater was negligent because it did not enforce the movie ratings system. The court, however, ruled in favor of the movie theater.[2] In another instance, the families of the victims of the 1999 Columbine school shootings in Colorado sued the two alleged shooters and the gun manufacturer for negligence. What exactly is required to establish a successful negligence claim?

In this chapter, we begin by examining the elements of negligence. Then we consider the methods that courts have adopted to help plaintiffs make successful negligence claims. Next, we examine the defenses that defendants to negligence claims can raise. Finally, we consider strict-liability torts.

Negligence is behavior that creates an unreasonable risk of harm to others. In contrast to intentional torts, which result from a person's willfully taking actions that are likely to cause injury, negligent torts involve the failure to exercise reasonable care to protect another's person or property.

Sometimes, however, harm occurs because an individual suffers an **unfortunate accident**, an incident that simply could not be avoided, even with reasonable care. For example, suppose Jonathan suffers a stroke while driving on the highway, and because of the stroke, crashes into two other vehicles. Johnathon is not, however, liable for damages caused by the accident. Yet if Jonathan had some type of warning that the stroke was going to occur, he might be liable for the accident.

To win a negligence case, the plaintiff must prove four elements: (1) duty, (2) breach of duty, (3) causation, and (4) damages. (See **Exhibit 9-1**.) A plaintiff who cannot establish all four of these elements will be denied recovery.

Exhibit 9-1 Elements of Negligence

To prove negligence, a plaintiff must demonstrate

1. *Duty:* The standard of care a reasonable person owes another.
2. *Breach of duty:* Failure to live up to the standard of care.
3. *Causation:* (a) Actual cause (cause in fact)—the determination that the plaintiff's harm was a direct result of the defendant's breach of duty; and (b) proximate cause (legal cause)—the extent to which, as a matter of policy, the defendant will be held liable for the consequences of his actions.
4. *Damages:* A compensable loss suffered by the plaintiff.

DUTY

The plaintiff must first establish that the defendant owes a *duty* to the plaintiff. In some particular situations, the law specifies the duty of care one individual owes to another. In most cases, however, the courts use the reasonable person standard to determine the defendant's duty of care. The **reasonable person standard** is a measurement of the way members of society expect an individual to act in a given situation. To determine the defendant's duty of care, the judge or jury must determine the degree of care and skill that a reasonable person would exercise under similar circumstances. The judge or jury then uses this standard to evaluate the actions of the individual in the case.

Let's return to the personal injury case in the opening scenario. What duty of care do you think a reasonable person in the position of the farm owners would owe Curtis?

When courts attempt to determine whether a reasonable person would have owed a duty to others, they consider four questions:

1. How likely was it that the harm would occur?
2. How serious was the harm?
3. How socially beneficial was the defendant's conduct that posed the risk of harm?
4. What costs would have been necessary to reduce the risk of harm?

In many situations, it is far from clear what a reasonable person would do. For example, if a reasonable person saw an infant drowning in a shallow swimming pool, what would she do? In most situations like this one, the law holds that individuals have no duty to rescue strangers from perilous situations.

In some cases, however, the courts hold that individuals have a duty to aid strangers in certain types of peril. For example, if Sam negligently hits Janice with his car and, as a result, Janice is lying in the street, Sam has a duty to remove her from that dangerous position. Similarly, employers have a special duty to protect their employees from dangerous situations.

The courts generally hold that landowners have a duty of care to protect individuals on their property. Similarly, businesses have a duty of care to customers who enter business property. It is important, therefore, for future business managers to be knowledgeable about this duty. Businesses should warn customers about risks they may encounter on business property. Some risks, however, are obvious, and businesses need not warn customers about them. For example, a business need not inform customers that they could get a paper cut from the pages of a book.

The courts generally hold that businesses have a duty of care to protect their customers against foreseeable risks about which the owner knew or reasonably should have known. For example, in *Haywood v. Baseline Construction Company,* a woman who tripped over lumber on the front porch of the House of Blues restaurant in Los Angeles sued for negligence. The business's attempt to warn customers by marking the lumber with yellow construction tape was insufficient to avoid the determination of negligence; the woman was awarded $91,366 in damages. Similar to *Haywood,* the Case Opener at the beginning of this chapter raises the question of the duty of care that landowners owe to individuals who are on their property with their permission.

Businesses and corporations are also obligated to provide products to consumers that are safe from foreseeable harm or injury. Failure to care for customers' safety can mean serious legal and financial repercussions for business owners and CEOs, especially if a company knowingly offers products or services that contain defects. For example, in early 2009, the Centers for Disease Control and Prevention (CDC) traced hundreds of reported cases of salmonella-related sickness back to food products containing peanut substances manufactured by Peanut Corporation of America. Upon further investigation by the Food and Drug Administration (FDA), documents revealed that Peanut Corporation knew that its products tested positive for salmonella on multiple occasions over a time period of nearly two years. Rather than taking preventive measures to guarantee that its tainted peanut products didn't reach the public, Peanut Corporation instead decided to ship the contaminated goods.

Peanut Corporation of America's bad judgment resulted in nine deaths and over 600 reported cases of illness. Many families of those who died or fell ill from the salmonella outbreak caused by Peanut Corporation filed suit, claiming negligence on the part of the company for turning a blind eye to laboratory results that confirmed salmonella's existence in its products. Other companies, such as Kellogg's and King Nut, which manufactured products using peanut substances provided by Peanut Corporation, found themselves included in the lawsuits. Peanut Corporation has since shut down all its manufacturing plants and has filed for **Chapter 7** bankruptcy. A federal judge recommended the approval of a $12 million settlement to compensate those sickened and the families of people killed in the salmonella outbreak.[3] The former Peanut Corporation of America Owner Stewart Parnell was sentenced to 28 years in prison for crimes related to the outbreak, and his brother, a broker who provided food manufacturing giant Kellogg's with peanut paste from his brother's company, received a 20-year prison term. A former quality control manager at the now-defunct peanut firm, received a five-year prison term for her conviction on obstruction.[4]

Sometimes it can be difficult to tell when there is a duty of care between a business and its customers. For example, a man brought a negligence suit against AT&T, his cellular phone provider, for not providing information about the cell phone's calls when he was searching for his missing mother. Ernest Frey had bought the cell phone for his mother after seeing an advertisement about the enhanced safety brought about by carrying a cell phone. When his mother went missing, he contacted the police and then AT&T to find out the location of any recent calls made from her phone. A call had been made, but AT&T refused to give Ernest Frey the location of the call without a subpoena. By the time Ernest's mother was found, after a subpoena had been issued for the cellular tower location, she was dead from a fatal injury. The US district court refused to dismiss the case and found that there might be both a contractual duty of care to Ernest and his mother and a common law duty of care because the representative from AT&T was made aware of the urgency of the situation and the danger to Ernest's mother. Although previous cases involving landline telephone companies were found to lack a duty of care, the district court decided that there were enough important differences between landline and cellular telephones, as well as between the specifics of this case and the previous cases, to merit review by a trial court.[5]

Professionals have more training than ordinary people. Thus, when professionals are serving in their professional capacity, courts generally hold that they have a higher duty of care to clients than does the ordinary person. A professional cannot defend against a negligence suit by claiming ignorance of generally accepted principles in the professional's field of expertise. Clients who feel that they have suffered damages as a result of a professional's breach of her duty of care can bring a negligence case against that person. These actions are referred to as *malpractice cases,* and they are discussed in greater detail in **Chapter 11**.

BREACH OF DUTY

Once the plaintiff has established that the defendant owes a duty of care, the plaintiff must prove that the defendant's conduct violated that duty. This violation is called a *breach of duty.* For example, the driver of an automobile owes the other passengers in the car a duty of care to obey traffic signs. If the driver fails to stop at a stop sign, the driver's duty to follow traffic signs has been violated, and the driver therefore breached the duty of care. Once a duty of care has been established, it seems as if determining whether a breach of that duty occurred would be a simple task. Kathleen Turner believed that when she was hit by a foul ball at a baseball game there had been a clear breach of duty by the stadium. The Nevada Supreme Court found that Mandalay Sports Entertainment and the Las Vegas 51s had a limited duty of care to their patrons, which they fulfilled by putting up barriers in areas of high risks and providing written and audio announcements about the danger of foul balls. So, although there was a duty of care, that duty of care was fulfilled and the defendants were not negligent.[6] Looking back at the Case Opener, one can see the challenges of proving breach of duty when evidence of the breach is lacking. Because the defendants in the Case Opener destroyed the wooden dock that allegedly caused the plaintiff's personal injury, the plaintiff had to invoke the doctrine of *res ipsa loquitur* to try to prove breach of duty. The doctrine of *res ipsa loquitur* is discussed later in this chapter.

CAUSATION

Causation is the third element of a successful negligence claim, and it has two separate elements: actual cause and proximate cause. The plaintiff must prove both elements of causation to be able to recover damages.

The first element, **actual cause** (also known as *cause in fact*), is the determination that the defendant's breach of duty resulted directly in the plaintiff's injury. The courts commonly determine whether a breach of duty actually caused the plaintiff's injury by asking whether the plaintiff would have been injured if the defendant had fulfilled his or her duty. If the answer is no, then the actual cause of the plaintiff's injury was the defendant's breach. Actual cause is sometimes referred to as "but-for" causation because the plaintiff argues that the damages she suffered would not have occurred *but for* (except because of) the actions of the defendant. For example, in the personal injury case in the opening scenario, Curtis argued that *but for* the flawed construction and maintenance of the wooden dock, she would not have injured her tibia.

Proximate cause, sometimes referred to as *legal cause,* refers to the extent to which, as a matter of policy, a defendant may be held liable for the consequences of his actions. In most states, proximate cause is determined by foreseeability. Proximate cause is said to exist only when both the plaintiff and the plaintiff's damages were reasonably foreseeable at the time of the defendant's breach of duty to the plaintiff. Thus, if the defendant could not reasonably foresee the damages that the plaintiff suffered as a result of his action, the plaintiff's negligence claim will not be sustained because it lacks the element of proximate causation.

For example, if a defective tire on a vehicle blows out, it is foreseeable that the driver may lose control and hit a pedestrian. It is not foreseeable, however, that the pedestrian may be a scientist carrying a briefcase full of chemicals that may explode on impact, causing a third-floor window to shatter and injuring an accountant at a desk by the window. In most states, the accountant would not be able to successfully sue the tire manufacturer for negligence. The tire failure is not considered a proximate cause of the accountant's injury because the contents of the pedestrian's briefcase were highly unusual. The pedestrian, however, would be eligible to recover damages from the tire manufacturer because hitting a pedestrian is a foreseeable consequence of tire failure. Thus, the defect in the tire is a proximate cause of the pedestrian's injury.

Palsgraf v. Long Island Railroad Company is one of the most well-known cases addressing the issue of proximate cause (see **Case 9-1**).

BUT WHAT IF ...

WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT?

Let's say, in the Case Opener, that the dock looked extremely rickety and looked as if it hadn't been touched for years. Would this alone have been enough for Curtis to foreseeably know that the dock was unsafe and would most likely collapse?

The decision in *Palsgraf* set out the rule of foreseeability that is followed by most states today. However, a different definition of proximate cause is followed in a small minority of states. Courts in a few states do not distinguish actual cause from proximate cause. In these states, if the defendant's action constitutes an actual cause, it is also considered the proximate cause. Therefore, in these few states, both the pedestrian-scientist and the third-floor accountant would be able to recover damages from the tire manufacturer in the previous example.

Legal Principle: Proximate cause is defined in the majority of states as foreseeability of both the plaintiff and his or her injury, whereas in the minority of states proximate cause is the same as actual cause.

DAMAGES

Damages are the final required element of a negligence action. The plaintiff must have sustained compensable injury as a result of the defendant's actions. Because the purpose of tort law is to compensate individuals who suffer injuries as a result of another's action or inaction, a person cannot bring an action in negligence seeking only nominal damages. Rather, a person must seek **compensatory damages,** or damages intended to reimburse a plaintiff for her or his losses. In the opening case scenario, Curtis sought compensatory damages for her personal injury.

In typical negligence cases, courts rarely award **punitive damages,** or *exemplary damages,* which are imposed to punish the offender and deter others from committing similar offenses. Instead, courts usually award punitive damages in cases in which the offender has committed **gross negligence,** an action committed with extreme reckless disregard for the property or life of another person.

COMPARING THE LAW OF OTHER COUNTRIES

PROVING CAUSATION UNDER NORWEIGAN TORT LAW

Norwegian law is concerned, above all else, with fully compensating the victim. But what does that look like in a country known for its safety nets? In addition to national health insurance, Norway has a generous social security system, mandatory employer liability insurance, and various victim compensation funds paid for by taxes. When it comes to negligent physical injury, a victim's medical costs are alleviated by public health insurance, and disabilities are more than covered by Norwegian social security. In the United States, insurers subrogate their insured's rights and sue the tortfeasor. Norwegian social security cannot go after negligent tortfeasors. However, it may seek to recover from intentional or reckless tortfeasors.

Norwegian tort law differs from American tort law in other regards. Liability arises from the culpa rule; the one who negligently causes harm should compensate for the injury. In other words, there is no duty requirement, like in the United States. However, Norway has a similar causation analysis as the United States. The defendant must be the cause-in-fact, determined by the but-for test. Moreover, causal liability is limited by ideas of superseding cause or distance from the negligent action.

Once causation is found, the plaintiff must show the defendant's causal action was negligent. This is determined by a breach of the standard of care. Courts have the discretion to incorporate every aspect of the defendant in determining the appropriate standard of care, including experience, physical capability, and even mental capacity.

Proof of these three elements does not require a finding of negligence, however; it merely permits it. Once the plaintiff has demonstrated these three elements, the burden of proof shifts to the defendant, who must prove that he was not negligent to avoid liability.

One of the earliest uses of *res ipsa loquitur* was the case of *Escola v. Coca Cola.*[7] In that case, the plaintiff, a waitress, was injured when a bottle of Coca-Cola that she was removing from a case exploded in her hand. From the facts that (1) bottled soft drinks ordinarily do not spontaneously explode and (2) the bottles had been sitting in a case, undisturbed, in the restaurant for approximately 36 hours before the plaintiff simply removed the bottle from the case, the jury reasonably inferred that the defendant's negligence in the filling of the bottle resulted in its explosion. The plaintiff therefore recovered damages without direct proof of the defendant's negligence. Plaintiffs in numerous accident cases have subsequently used the doctrine where there has been no direct evidence of negligence. The defendant's best response to this doctrine is to demonstrate other possible causes of the accident. Think back to the opening case scenario: The plaintiff, Curtis, chose to invoke the doctrine of *res ipsa loquitur* because the wooden dock, which allegedly caused her personal injury, had been destroyed. Without the necessary evidence of negligence, Curtis had to rely on *res ipsa loquitur.*

Case 9-2 illustrates a plaintiff's attempt to use *res ipsa loquitur.* Think about the similarities and differences between the use of this doctrine in the opening scenario and its attempted use in this case.

CASE 9-2 Bonacci v. Brewer Service Station, Inc.

2016 NY Slip Op 26331 (2016)

Tom Bonacci brought his Jeep to Brewer Service Station to investigate a strange noise the vehicle was making. The Jeep was raised up on an automobile lift so that Brewer employee Paul Gebing could check out the underside of the vehicle. The vehicle fell off the lift, injuring Bonacci and Gebing. Bonacci sued for damages pursuant to the doctrine of res ipsa loquitur. *To support this claim, Bonacci argued that Brewer's principal, Steven Presti, admitted in his deposition that the accident could not have occurred except for negligence and that Bonacci's presence in the vicinity of the lift could not have led to the occurrence.*

In opposition, Brewer argued that Bonacci should not have been standing in the bay near the lift because there is signage advising customers that they are not permitted to enter the area. Bonacci countered by claiming that Gebing invited him to place himself under the vehicle and point out where he thought the problem with the vehicle was located. Shortly after moving under the vehicle, the vehicle fell from the lift.

JUSTICE LAWRENCE H. ECKER

As to plaintiff's assertion that this is an appropriate case for the application of *res ipsa loquitur,* the court is aware that the granting of summary judgment on this basis is to be rarely exercised. *Morejon v Rais Construction Company*, 7 NY3d 203 [2006]. The granting of the motion would happen only when the plaintiff's circumstantial proof is so convincing and the defendant's response so weak that the inference of defendant's negligence is inescapable.... In *Corcoran v Banner Super Mkt., ...* cited in *Morejon,* the test to be applied in order to determine whether *res ipsa loquitur* applies, is (1) the event must be of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff (internal citations omitted). Id. at 209.

Here, applying the three-prong test of *Morejon,* supra, given common experience, it would seem that the Jeep falling from the lift, as opposed to the lift itself being defective, occurred due to someone's negligence. This is admitted by the opinion of Presti, defendant's principal, who testified as to the licenses issued to his corporation and to him personally by the State of New York, and the fact he has operated the service station for 33 years. His experience bespeaks that his opinion is more than mere speculation. As such, the court finds his opinion is in the nature of an admission. As to control of the instrumentality, there is no doubt that the lift, together with the placement of the Jeep on it, and its elevation, was solely within the control of defendant's employee, Gebing, who was working within the scope of his employment. Lastly, there is no conduct on the part of plaintiff, other than his accepting the invitation by Gebing, which is not rebutted, to join him under the elevated vehicle, from which it can be argued that plaintiff contributed to the accident.

The court finds that this is one of those rare cases recognized by *Morejon,* supra, when *res ipsa loquitur* can be applied in order to determine whether plaintiff is entitled to summary judgment as to liability. The court's research reveals that the issue arises primarily in medical malpractice cases ... and that this analysis requires a careful case by case examination of the facts. However, as recognized by *Morejon,* supra, at footnote 8, there have been non-medical malpractice cases where the doctrine has been applied to justify the granting of the motion for partial summary judgment. *Harmon v United States Shoe Corp., ...* (summary judgment is properly granted in a *res ipsa loquitur* case where defendant has totally failed to rebut the inescapable inference of negligence); cited by *Mejia v New York City Transit Authority,* 291 AD2d 225 [1st Dept 2002] (*res ipsa loquitur* was applicable on summary judgment motion where pedestrian was struck by a piece of ceiling while waiting for a train on a subway platform), cited by *Flossos v Waterside Redevelopment Co., ...* (genuine issue of material fact existed as to whether doctrine of *res ipsa loquitur* applied, precluding summary judgment for owner and managers of an apartment building on painter's negligence claim, seeking to recover damages for injuries he sustained when a piece of ceiling he was painting fell down on him, propelling him and ladder on which he was standing to the floor).

CASE: NUGGET

Negligence Per Se Provides an Advantage but Not a Free Win

Simon v. Taylor F. App'x 703 (10th Cir. 2019)

As explained later, negligence per se is a doctrine that allows a plaintiff to show both duty and breach by showing the defendant violated a statute. The doctrine benefits plaintiffs because they do not have to rely on a fickle jury to determine the standard of care and whether it was breached. This 2019 appeals case shows plaintiffs must still show the remaining elements of a prima facie negligence case; namely, causation and damages.

Richard and Janelle Simon's horse, Jet Black Patriot, came in second place in the 2008 All American Futurity horse race, just behind the winner, Stolis Winner. A licensed veterinarian collected urine samples from every participating horse after the race. Stolis Winner's urine sample tested positive for caffeine. The race stewards promptly initiated a disciplinary hearing and found Stolis Winner's positive caffeine sample violated race regulations. They stripped Stolis Winner of the title, awarding first place—and its $1 million prize, to Jet Black Patriot.

Stolis Winner's jockey, Heath Taylor, appealed to the New Mexico Racing Commission, which appointed a three-person panel. The panel ruled that though Stolis Winner tested positive for caffeine, the amount was so small it could be attributed to environmental factors. Moreover, the amount Stolis Winner tested positive for was so minimal that it would not be a violation in most jurisdictions. The race steward's decision was reversed, and Stolis Winner was reinstated as the winner.

The Simons were understandably upset. They sued Jet Black Patriot's jockey and owner, alleging, among other claims, that Taylor negligently drugged Stolis Winner, causing Jet Black Patriot to finish in second place. The Simons relied on a theory of negligence per se. In the ensuing appeal, the court determined that the regulation at the time imposed a zero-tolerance caffeine policy. Accordingly, the court ruled that Taylor had a duty to ensure Stolis Winner had no caffeine in his system and that that duty was breached.

Even so, the court still affirmed the trial court's summary judgment dismissal. This was because even though the Simons had shown Taylor was negligent per se because he violated the race regulation, they could not show Jet Black Patriot would have won. More specifically, the caffeine found in Stolis Winner's urine sample was so minimal that it probably would not have caused him to perform better, causing Jet Black Patriot to place in second. In this case, the plaintiffs could not fulfill every element of their claim and were unable to prevail.

NEGLIGENCE PER SE

Negligence per se (literally, "negligence in or of itself") is another doctrine that helps plaintiffs succeed in negligence cases. Negligence per se applies to cases in which the defendant has violated a statute enacted to prevent a certain type of harm from befalling a specific group to which the plaintiff belongs. If the defendant's violation causes the plaintiff to suffer from the type of harm that the statute intends to prevent, the violation is deemed negligence per se. The plaintiff does not have to show that a reasonable person would exercise a certain duty of care toward the plaintiff. Instead, the plaintiff can offer evidence of the defendant's violation of the statute to establish proof of the negligence.

For example, if Ohio passes a statute prohibiting the sale of alcohol to minors, and a minor runs a red light and kills two pedestrians while driving under the influence of alcohol sold to him illegally, the liquor store's violation of the statute prohibiting the sale of alcohol to minors establishes negligence per se on the part of the store. The families of the pedestrians do not need to establish that a reasonable person would have a duty not to sell alcohol to a minor.

Common Crimes Affecting Business

LO 7-2 Distinguish between some of the common crimes affecting businesses.

When people hear the word *crime,* they often think of homicide. In this section, however, we examine not violent offenses but crimes that occur in a business context. As a future business manager, you should become familiar with the following crimes, which could affect your company.

PROPERTY CRIMES AGAINST BUSINESS

We now examine four criminal acts: robbery, burglary, larceny, and arson. Certainly, these crimes do not occur solely in the business context; however, they are crimes that could be committed against your future business. We distinguish these crimes from white-collar crimes for three reasons. First, nonemployees often commit these four crimes, while employees usually commit white-collar crimes. Second, these crimes are committed against the business, while white-collar crimes are usually committed against society. Third, these crimes may provoke violence, while white-collar crimes usually do not.

Robbery.

Most states define **robbery** as the forceful and unlawful taking of personal property. If force or fear is absent, the crime is theft. Someone who steals your wallet undetected while you are walking down the street has committed theft. Someone who tackles you, pins you down, and wrests your wallet from you has committed robbery. Someone who threatens you with a deadly weapon while taking your property would likely be charged with *aggravated robbery,* which carries a more severe penalty.

Burglary.

A **burglary** occurs when someone unlawfully enters a building with the intent to commit a felony. Although burglary is commonly referred to as *breaking and entering,* the requirement for burglary is met whenever a person enters a building without the owner's consent and with intent to commit a wrongful act.

Larceny.

Although the definition may vary slightly state by state, **larceny** is the secretive and wrongful taking and carrying away of the personal property of another with the intent to permanently deprive the rightful owner of its use or possession. Unlike robbery, larceny does not require force or fear. In the business context, larceny occurs, for example, when an employee takes office supplies, such as paper or blank CDs, for personal use.

States generally make a distinction between *grand larceny* and *petty larceny.* Grand larceny involves items of greater value; thus, it is a felony and carries more severe penalties than does petty larceny. As the Comparing the Law of Other Countries box reveals, other nations distinguish degrees of larceny in different ways that sometimes reflect their culture.

Arson.

Arson is the intentional burning of another's dwelling. The definition is typically expanded to include other real property beyond dwellings, as well as destruction by means other than burning, such as the use of explosive devices.

COMPARING THE LAW OF OTHER COUNTRIES

EMBEZZLEMENT AND BRIBERY IN CHINA

China is featured frequently in FCPA violations and is somewhat known for its white-collar and corruption problems. One of the risks American firms face when acquiring Chinese companies is the possibility the target has engaged in or will continue to engage in FCPA violations. The acquirer can be held liable. This risk exists despite China's enactment of anti-corruption and bribery statutes in 1980 and subsequent enhancement in 1997.

In 2013, soon-to-be President Xi Jinping vowed to crack down on corruption, stating "[w]e must uphold the fighting of tigers and flies at the same time," indicating his willingness to target not only small players, but also the powerful and prominent. Since then, China has tightened the threshold for bribery. For example, offering a 60,000 RMB bribe to a non-state functionary is now a punishable crime, down from 100,000 RMB. Certain aggravating factors, such as bribery with the intent to seek promotion, have been added.

In addition to further criminalizing the giving of bribery, China also punishes those who receive it. State functionaries face higher sentences, including life in prison or even death. In 2019, 18,585 people were charged with corruption or dereliction of duty. Among them, Hengfeng Bank's former chair, Jiang Xiuan, was sentenced to death for corruption and embezzlement. According to the World Bank, China ranked in the 33rd percentile in its Control of Corruption indicator. That rank has since risen, peaking at the 49th percentile in 2016.

Embezzlement.

Suppose Kathleen gives attorney Devin $5,000 to put in escrow, an account where Devin will have access to the money, although not to use as he pleases; but rather to use it on behalf. Devin takes some of that money out and uses it to gamble, fixing the records to cover himself. Devin has committed the crime of **embezzlement**, a crime that occurs when a person is in a position of trust or responsibility over the assets of another and converts those assets to his or her own personal use. Embezzlement is distinguished from larceny because the embezzler does not take property from another; the embezzler is already lawfully entrusted with it.

It is often employees in banks who commit embezzlement. As the recent embezzlement of $6.9 million from the American Cancer Society demonstrates, even nonprofit organizations are vulnerable. Even the Girls Scouts have been victims of embezzlement. A Girl Scout Troop leader pocketed the proceeds of her troop's annual Girl Scout Cookie Sale, as well as a portion of a donation made to the troop by a family member of a deceased troop leader. The embezzlement came to light only when the troop was unable to afford to participate in their ordinary scouting activities.[10] The Chinese government, which has been focusing on economic crimes, caught employees in two major Chinese banks altering deposit slips and bank orders to direct money to personal accounts throughout China. Those employees received death sentences, as discussed in the Comparing the Law of Other Countries box.

Even though Ponzi schemes have been around for a long time, and there has been significant publicity surrounding a number of them, people still continue to fall for them. For example, in mid-2009, the Securities and Exchange Commission and the Commodity Futures Trading Commission charged two California men, Peter Son and Jin Chung, of luring about 500 investors, primarily Korean-Americans, into a scam in which the money from the new investors was used to pay the old ones.[11] Many of those who fell for Bernie Madoff's massive Ponzi scheme were highly intelligent and sophisticated individuals whom one would normally not think would be victims of such fraud.