# DOWNLOAD PDF BOOK 3. PRIVATE WRONGS AND THEIR REMEDIES

## Chapter 1 : Legal Punishment (Stanford Encyclopedia of Philosophy)

*Private wrongs and their remedies: being the third book of Blackstone's Commentaries: incorporating the alterations down to the present time / by James Stewart.*

Features of Criminal Law The life of the criminal law begins with criminalization. On this view, we are not invited to commit crimesâ€”like murder, or driving uninsuredâ€”just as long as we willingly take the prescribed legal consequences. As far as the law is concerned, criminal conduct is to be avoided. This is so whether or not we are willing to take the consequences. It is possible to imagine a world in which the law gets its wayâ€—in which people uniformly refrain from criminal conduct. Obviously enough this is not the world in which we live. These powers and permissions exist ex anteâ€—prior, that is, to the commission of crime. We can add those that exist ex postâ€—once crime has been committed. By the time cases reach the courts those accusers are typically state officials or those to whom the state has delegated official power. Some legal systems do make space for private prosecutions. But such prosecutions can be discontinued or taken over by state officials and their delegates. In this way, the state exercises a form of control over criminal proceedings that is absent from legal proceedings of other kinds Marshall and Duff  It may seem from the above that criminal proceedings are tilted heavily in favour of the accusing side. These typically include the right to be informed of the accusations in question, the right to confidential access to a lawyer, and the privilege against self-incrimination. At least on paper, the procedural protections on offer in criminal proceedings are more robust than those available to the accused in legal proceedings of other kinds. This is explained in large part by the consequences of criminal conviction. This is to say nothing of criminal sentences themselves. Those sentences are typically punishments: This is not to say that suffering or deprivation must be the ultimate end of those who punish. What it cannot be is a mere side-effect. This is one thing that distinguishes criminal sentencesâ€—at least of the punitive kindâ€—from the reparative remedies that are standard fare in civil law. But we can imagine cases in which this is not so: The award may remain a reparative success. It cannot be anything other than a punitive failure Boonin , 12â€—17; Gardner  Obviously suspicions are sometimes misplaced. So it is no surprise that the most destructive powers and permissions are jealously guarded by the criminal law. But a moot court has no power to detain us in advance, to require us to appear before it, or to sentence us to imprisonment. Force used to achieve any of these things would itself be criminal, however proportionate the resulting punishment might be. As this example shows, criminal law is characterised by an asymmetryâ€—it bestows powers and permissions on state officials and delegates which are withheld from private persons, such that the latter are condemned as vigilantes for doing what the former lawfully do Thorburn a, 92â€—93; Edwards forthcoming. This remains the caseâ€—often to the great frustration of victims and their supportersâ€—even if the official response, assuming it comes at all, will be woefully inadequate. Functions of Criminal Law Few deny that one function of criminal law is to deliver justified punishment. Some go further and claim that this is the sole function of criminal law Moore , 28â€— Call this the punitive view. Rules of criminal procedure and evidence, on this view, help facilitate the imposition of justified punishment, while keeping the risk of unjustified punishment within acceptable bounds. Rules of substantive criminal law help give potential offenders fair warning that they may be punished. Both sets of rules combat objections we might otherwise make to laws that authorize the intentional imposition of harm. To combat objections, of course, is not itself to make a positive case for such laws. That case, on the punitive view, is made by the justified punishments that criminal courts impose. This is not to say anything about what the justification of punishment is. It is merely to say that criminal law is to be justified in punitive terms. Some object that this focus on punishment is misplaced. The central function criminal law fulfills in responding to crime, some say, is that of calling suspected offenders to account in criminal courts Gardner , 80; Duff c,  This view puts the criminal trial at the centre, not just of criminal proceedings, but of criminal law as a whole Duff a,  Trials invite defendants to account for themselves either by denying the accusation that they offended, or by pleading a defence. The prospect of conviction and punishment puts defendants under pressure to offer an adequate account. Call this the curial view. It differs from the punitive view in two ways. First, part of the

positive case for criminal law is independent of the imposition of punishment. Second, part of the positive case for imposing criminal punishment is dependent on the punishment being part of a process of calling to account. The following two paragraphs expand on both these claims. As to the first, we often have reason to account for our actions to others. We can leave open for now the precise conditions under which this is so. But it is plausible to think that if Alisha steals from Bintu she has reason for account for the theft, and that if Chika intentionally kills Dawn she has reason to account for the killing. Defenders of the curial view argue that criminal proceedings are of intrinsic value when defendants are called to offer accounts of themselves that they have reason to offer in criminal courts Gardner , â€"; Duff c, 15â€" Imagine Alisha stole from Bintu because she was under duress. Imagine Chika intentionally killed Dawn to defend herself or others. Neither of these defendants, we can assume, is justifiably punished. On the curial view, things are different. Alisha and Chika both have reason to account for their behaviourâ€"to explain what they did and why they did it. Criminal proceedings invite each to provide that account and put each under pressure to do so. Assuming Alisha and Chika have reason to account in a criminal court, proceedings in which they are called to do so are of intrinsic value. To endorse the curial view is not, of course, to say that we should do away with criminal punishment. But it is to say that the connection between trial and punishment is not merely instrumental. Some think that the facts that make punishment fittingâ€"say, culpable wrongdoingâ€"obtain independently of criminal proceedings themselves Moore , The fitting way to respond to criminal wrongdoing, on this view, is to call the wrongdoer to account for her wrong. We can see the implications of this view by imagining a world in which trials are abolished, because some new-fangled machine allows us to identify culpable wrongdoers with perfect accuracy. On the curial view, the punishments we impose are inherently defective: Though our new-fangled machine might justify doing away with trialsâ€"once we factor in how expensive they can beâ€"we would lose something of value in doing away with them. If criminal law does have a particular function, we can ask whether that function is distinctive of criminal law. We can ask, in other words, whether it helps distinguish criminal law from the rest of the legal system. It has been claimed that criminal law is distinctive in imposing punishment Moore , 18â€"30; Husak , One might also claim that criminal law alone calls defendants to account. But punishments are imposed in civil proceedingsâ€"exemplary damages are the obvious case. And it is arguable that civil proceedings also call defendants to accountâ€"that they too invite defendants to offer a denial or plead a defence; that they too use the prospect of legal liability to put defendants under pressure to account adequately Duff a. In response, one might try to refine the function that is distinctive of criminal law. What we should make of this proposal depends on what a public wrong is Lamond ; Lee ; Edwards and Simester To make progress, we can distinguish between primary dutiesâ€"like duties not to rape or robâ€"and secondary dutiesâ€"like duties to answer, or suffer punishment, for rape or robbery. We incur duties of the latter kind by breaching duties of the former. Many wrongs are both crimes and torts. So the two bodies of law often respond to breaches of the same primary duty. A more promising proposal looks to secondary duties. Perhaps the function of civil law is to respond to wrongs on behalf of some of usâ€"to discharge secondary duties owed to particular individuals. This might be thought to explain why criminal proceedings, unlike civil proceedings, are controlled by state officials: The view described in the previous paragraph conceives of criminal law as an instrument of the communityâ€"a way of ensuring that the community gets what it is owed from wrongdoers. Call it the communitarian view. If we combine this with the curial view, the distinctive function of criminal law is to seek answers owed to the community as a whole. One might doubt that the functions of criminal and civil law can be so neatly distinguished. More importantly, one might claim that in the case of paradigmatic crimesâ€"like robbery, rape, or batteryâ€"criminal law responds to wrongs on behalf of particular individualsâ€"on behalf of those who have been robbed, raped, or battered. Those who reject the communitarian view might be thought to face the following difficulty: First, we should not always require the wronged to have to pursue those who have wronged them. Second, we should not always support those who think themselves wronged in pursuing alleged wrongdoers. As to the first point, some are trapped in abusive relationships with those who wrong them. Others are susceptible to manipulation that serves to silence their complaints. Some wrongdoers can use wealth and social status to stop accusers in their tracks. As to the second point, the temptation to retaliate in the face of wrongdoing is often great. It is all

too easy for the pursuit of justice to become the pursuit of revenge, and for the perceived urgency of the pursuit to generate false accusations. Official control can help vulnerable individualsâ€”like those described aboveâ€”to get what they are owed. And it can mitigate the damage done by those trying to exact vengeance and settle scores Gardner , â€” It can ensure that those in positions of power cannot wrong others with impunity, and reduce the likelihood that vindictiveness begets retaliation, which begets violent conflict from which all lose out Wellman , 8â€”

## Chapter 2 : Theories of Criminal Law (Stanford Encyclopedia of Philosophy)

*PRIVATE WRONGS. BOOK III. CHAPTER THE EIGHTH. OF WRONGS, AND THEIR REMEDIES, RESPECTING THE RIGHTS OF PERSONS. THE former chapters of this part of our commentaries having been employed in defcribing the feveral methods of redreffing private wrongs, either by the mere act of the parties, or the mere operation of law; and in treating of the nature and feveral fpecies of courts; together with the.*

The Rights of Persons[ edit ] The Rights of Persons is by and large concerned with the relations of status in the English social structure, from the King of England and the aristocracy down to the untitled commoners. Also dealt with here were common relationships such as that of husband and wife , master and servant in modern-day terminology, employer and employee , and guardian and ward. The vast majority of the text is devoted to real property , this being the most valuable sort in the feudal law upon which the English law of land was founded. Property in chattels was already beginning to overshadow property in land, but its law lacked the complex feudal background of the common law of land, and was not dealt with nearly as extensively by Blackstone. The various methods of trial that existed at civil law were also dealt with in this volume, as were the jurisdictions of the several courts, from the lowest to the highest. Almost as an afterthought, Blackstone also adds a brief chapter on equity , the parallel legal system that existed in English law at the time, seeking to address wrongs that the common law did not handle. Here, Blackstone the apologist takes centre stage; he seeks to explain how the criminal laws of England were just and merciful, despite becoming later known as the Bloody Code for their severity. He does however accept that "It is a melancholy truth, that among the variety of actions which men are daily liable to commit, no less than an hundred and sixty have been declared by Act of Parliament to be felonious without benefit of clergy ; or, in other words, to be worthy of instant death". Legacy[ edit ] Blackstone for the first time made the common law readable and understandable by non-lawyers. At first, his Commentaries were hotly contested, some seeing in them an evil or covert attempt to reduce or codify the common law which was anathema to common law purists. For decades, a study of the Commentaries was required reading for all first year law students. Lord Avonmore said of Blackstone: He found it a skeleton and clothed it with life, colour and complexion. He embraced the cold statue and by his touch, it grew into youth, health and beauty. In the United States, the common law tradition was being spread into frontier areas, but it was not feasible for lawyers and judges to carry around the large libraries that contained the common law precedents. The four volumes of Blackstone put the gist of that tradition in portable form. They were required reading for most lawyers in the Colonies, and for many, they were the only reading. Quotations[ edit ] "Of great importance to the public is the preservation of this personal liberty; for if once it were left in the power of any the highest magistrate to imprison arbitrarily whomever he or his officers thought proper, as in France it is daily practised by the crown, there would soon be an end of all other rights and immunities. Some have thought that unjust attacks, even upon life or property, at the arbitrary will of the magistrate, are less dangerous to the commonwealth than such as are made upon the personal liberty of the subject. To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals. And yet there are very few, that will give themselves the trouble to consider the original and foundation of this right.

## Chapter 3 : The Internet Classics Archive | Politics by Aristotle

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Legal Punishment and its Justification The central question asked by philosophers of punishment is: What can justify punishment? More precisely, since they do not usually talk much about punishment in such contexts as the family or the workplace but see Zaibert ; Bennett  Part II , their question is: What can justify formal, legal punishment imposed by the state on those convicted of committing criminal offences? We will also focus on legal punishment here: What then are we to justify in justifying punishment? The search for a precise definition of punishment that exercised some philosophers for discussion and references, see Scheid ; Boonin  Two points are worth particular notice here. First, punishment involves material impositions or exactions that are in themselves typically unwelcome: What distinguishes punishment from other kinds of coercive imposition, such as taxation, is that punishment is precisely intended to â€¦: Some would say that punishment is intended to inflict pain or suffering: Others would say that punishment is intended to cause harm to the offender â€" adding, if they are careful see Hanna  It is safer to say that punishment must be intended to be burdensome, and that is how punishment will be understood in what follows. Penalties, such as parking tickets, might be imposed to deter the penalised conduct or to recoup some of the costs that it causes without being intended to express societal condemnation. But even if a primary purpose of punishment is deterrence see ss. These two features, that punishment is intentionally burdensome and condemnatory, make the practice especially normatively challenging. We should not assume, however, that there is only one question of justification, which can receive just one answer. As Hart famously pointed out Hart  Second, who may properly be punished: Third, how should the appropriate amount of punishment be determined: One dimension of this third question concerns the amount or severity of punishment; another, which is insufficiently discussed by philosophers, concerns the concrete modes of punishment that should be available, in general or for particular crimes. It might of course turn out that answers to all these questions will flow from a single theoretical foundation â€" for instance, from a unitary consequentialist principle specifying the good that punishment should achieve, or from some version of the retributivist principle that the sole proper aim of punishment is to impose on the guilty the punitive burdens they deserve. But matters might not be as simple as that: But it is an illegitimate assumption: The abolitionist claim is not merely that our existing penal practices are unjustified: For those who think that punishment can in principle be justified, this means simply and hardly surprisingly that our penal practices need radical reform if they are to become justified: We will attend to some abolitionist arguments in what follows. Even if those arguments can be met, even if legal punishment can be justified, at least in principle, the abolitionist challenge is one that must be met, rather than ignored; and it will help to remind us of the ways in which any practice of legal punishment is bound to be morally problematic. Punishment, Crime, and the State Legal punishment presupposes crime as that for which punishment is imposed, and a criminal law as that which defines crimes as crimes; a system of criminal law presupposes a state, which has the political authority to make and enforce the law and to impose punishments. A normative account of legal punishment and its justification must thus at least presuppose, and should perhaps make explicit, a normative account of the criminal law why should we have a criminal law at all? How far it matters, in this context, to make explicit a political theory of the state depends on how far different plausible political theories will generate very different accounts of how punishment can be justified and should be used. We cannot pursue this question here for two sharply contrasting views on it, see Philips , Davis ; for more recent contributions showing the importance of political theory, see Pettit ; Matravers ; Dolovich ; Garvey ; Dagger ; Brettschneider ; Sigler ; Markel ; Chiao ; Flanders , save to note one central point. For any political theory most obviously any version of liberalism or republicanism that takes seriously the idea of citizenship as full membership of the polity, the problem of punishment takes a particularly acute form, since we have now to ask how punishment can be consistent with citizenship how citizens can

legitimately punish each other: Before we tackle such theories of punishment, however, we should look briefly at the concept of crime, since that is one focus of the abolitionist critique of punishment. On a simple positivist view of law, crimes are kinds of conduct that are prohibited, on pain of threatened sanctions, by the law; and for positivists such as Bentham, who combine positivism with a normative consequentialism, the questions of whether we should maintain a criminal law at all, and of what kinds of conduct should be criminalised, are to be answered by trying to determine whether and when this method of controlling human conduct is likely to produce a net increase in good. Such a perspective seems inadequate, however: For the criminal law portrays crime not merely as conduct which has been prohibited, but as a species of wrongdoing: Crimes are, at least, socially proscribed wrongs â€" kinds of conduct that are condemned as wrong by some purportedly authoritative social norm. Tort law, for instance, deals in part with wrongs that are non-private in that they are legally and socially declared as wrongs â€" with the wrong constituted by libel, for instance. She must decide to bring, or not to bring, a civil case against the person who wronged her; and although she can appeal to the law to protect her rights, the case is still between her and the defendant. By contrast, a criminal case is between the whole political community â€" the state or the people â€" and the defendant: But such accounts distract our attention from the wrongs done to the individual victims that most crimes have, when it is those wrongs that should be our central concern: Some abolitionists, however, argue that we should seek to eliminate the concept of crime from our social vocabulary: One can of course count a criminal conviction as a kind of punishment: More plausibly, the abolitionist claim could be that rather than take wrongdoing as our focus, we should focus on the harm that has been done, and on how it can be repaired; we will return to this suggestion in s. Now it is a familiar and disturbing truth that our existing criminal processes â€" both in their structure and in their actual operations â€" tend to preclude any effective participation by either victims or offenders, although an adequate response to the criminal wrong that was done should surely involve them both. Such an insistence on the need for a public criminal process reflects two aspects of the concept of crime: Faced, for instance, by feuding neighbours who persistently accuse each other of more or less trivial wrongs, it might indeed be appropriate to suggest that they should forget about condemning each other and look for a way of resolving their conflict. So we must turn now to the question of what could justify such a system of punishment. Consequentialist Accounts Many people, including those who do not take a consequentialist view of other matters, think that any adequate justification of punishment must be basically consequentialist. For we have here a practice that inflicts, indeed seeks to inflict, significant hardship or burdens: However, when we try to flesh out that simple consequentialist thought into something closer to a full normative account of punishment, problems begin to appear. A consequentialist must justify punishment if she is to justify it at all as a cost-effective means to certain independently identifiable goods for two simple examples of such theories, see Wilson ; Walker  Whatever account she gives of the final good or goods at which all action ultimately aims, the most plausible immediate good that a system of punishment can bring is the reduction of crime. A rational consequentialist system of law will define as criminal only conduct that is in some way harmful; in reducing crime we will thus be reducing the harms that crime causes. It is commonly suggested that punishment can help to reduce crime by deterring, incapacitatiing, or reforming potential offenders though for an argument that incapacitation is not a genuinely punitive aim, see Hoskins  There are of course other goods that a system of punishment can bring. It can reassure those who fear crime that the state is taking steps to protect themâ€"though this is a good that, in a well-informed society, will be achieved only insofar as the more immediate preventive goods are achieved. It can also bring satisfaction to those who want to see wrongdoers suffer â€" though to show that to be a genuine good, rather than merely a means of averting vigilantism and private revenge, we would need to show that it involves something more than mere vengeance, which would be to make sense of some version of retributivism. It is a contingent question whether punishment can be an efficient method of reducing crime in any of these ways, and some objections to punishment rest on the empirical claim that it cannot be â€" that there are other and more efficient methods of crime reduction see Wootton ; Menninger ; Boonin  Our focus here, however, will be on the moral objections to consequentialist accounts of punishment â€" objections, basically, that crime-reductive efficiency does not suffice to justify a system of punishment. The most familiar line of objection to

consequentialist penal theories contends that consequentialists would be committed to regarding manifestly unjust punishments the punishment of those known to be innocent, for instance, or excessively harsh punishment of the guilty to be in principle justified if they would efficiently serve the aim of crime reduction: There are some equally familiar consequentialist responses to this familiar objection. Another is to argue that in the real world it is extremely unlikely that such punishments would ever be for the best, and even less likely that the agents involved could be trusted reliably to pick out those rare cases in which they would be: Retributivist Accounts Whereas consequentialist accounts regard punishment as justified instrumentally, as a means to achieving some valuable goal typically crime reduction , retributivist accounts contend that punishment is justified as an intrinsically appropriate, because deserved, response to wrongdoing but see Berman for an argument that some recent versions of retributivism actually turn it into a consequentialist theory. Penal desert constitutes not just a necessary, but an in-principle sufficient reason for punishment only in principle, however, since there are very good reasons â€" to do with the costs, both material and moral, of punishment â€" why we should not even try to punish all the guilty. Negative retributivism, by contrast, provides not a positive reason to punish, but rather a constraint on punishment: Because negative retributivism represents only a constraining principle, not a positive reason to punish, it has been employed in various mixed accounts of punishment, which endorse punishment for consequentialist reasons but only insofar as the punishment is no more than is deserved see s. A striking feature of penal theorising during the last three decades of the twentieth century was a revival of positive retributivism â€" of the idea that the positive justification of punishment is to be found in its intrinsic character as a deserved response to crime see H. Morris ; Murphy ; von Hirsch ; two useful collections of contemporary papers on retributivism are White and Tonry  Positive retributivism comes in very different forms Cottingham  All can be understood, however, as attempting to answer the two central questions faced by any retributivist theory of punishment. First, what is the justificatory relationship between crime and punishment that the idea of desert is supposed to capture: Davis â€" and what do they deserve to suffer see Ardal ; Honderich , ch. Second, even if they deserve to suffer, or to be burdened in some distinctive way, why should it be for the state to inflict that suffering or that burden on them through a system of criminal punishment Murphy ; Husak ; Shafer-Landau ; Wellman ? One retributivist answer to these questions is that crime involves taking an unfair advantage over the law-abiding, and that punishment removes that unfair advantage. The criminal law benefits all citizens by protecting them from certain kinds of harm: The criminal takes the benefit of the self-restraint of others, but refuses to accept that burden herself: Morris ; Murphy ; Sadurski ; Sher , ch. This kind of account does indeed answer the two questions noted above. However, such accounts have internal difficulties: Davis , ; for criticism, see Scheid , ; von Hirsch  Furthermore, they seem to misrepresent what it is about crime that makes it deserving of punishment: A different retributivist account appeals not to the abstract notion of unfair advantage, but to our normal, appropriate emotional responses to crime: Such accounts try to answer the first of the two questions noted above: Criminal wrongdoing should, we can agree, provoke certain kinds of emotion, such as self-directed guilt and other-directed indignation; and such emotions might typically involve a desire to make those at whom they are directed suffer. But just as we can agree that anger is an appropriate response to wrongs done to me, while also arguing that we should resist the desire to hit back that anger often, even typically, involves see Horder  At the least we need to know more than we are told by these accounts about just what wrongdoers deserve to suffer, and why the infliction of suffering should be an appropriate way to express such proper emotions. For critical discussions of Murphy, see Murphy and Hampton , ch. On Moore, see Dolinko  See also Murphy ,  A third version of retributivism holds that when people commit a crime, they thereby incur a moral debt to their victims, and punishment is deserved as a way to pay this debt McDermott  This moral debt differs from the material debt that an offender may incur, and thus payment of the material debt returning stolen money or property, etc. Punishment as Communication Perhaps the most influential version of retributivism in recent decades seeks the meaning and justification of punishment as a deserved response to crime in its expressive or communicative character. On the expressed dimension of punishment, see generally Feinberg , Primoratz ; for critical discussion, see Hart  Consequentialists can of course portray punishment as useful partly in virtue of its expressive character see Lacey ; Braithwaite and Pettit ; but a

portrayal of punishment as a mode of deserved moral communication has been central to many recent versions of retributivism. The central meaning and purpose of punishment, on such accounts, is to communicate to offenders the censure or condemnation that they deserve for their crimes. Once we recognise, as we should, that punishment can serve this communicative purpose, we can see how such accounts begin to answer the two questions that retributivists face.

## Chapter 4 : Introduction to Tort Law

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Chapter 7 Introduction to Tort Law Learning Objectives After reading this chapter, you should be able to do the following: Know why most legal systems have tort law. Identify the three kinds of torts. Show how tort law relates to criminal law and contract law. Understand negligent torts and defenses to claims of negligence. Understand strict liability torts and the reasons for them in the US legal system. In civil litigation, contract and tort claims are by far the most numerous. Torts can be intentional torts, negligent torts, or strict liability torts. Employers must be aware that in many circumstances, their employees may create liability in tort. This chapter explains the different kind of torts, as well as available defenses to tort claims. Define a tort and give two examples. Explain the moral basis of tort liability. Understand the purposes of damage awards in tort. Definition of Tort The term tort is the French equivalent of the English word wrong. The word tort is also derived from the Latin word tortum, which means twisted or crooked or wrong, in contrast to the word rectum, which means straight rectitude uses that Latin root. Thus conduct that is twisted or crooked and not straight is a tort. The term was introduced into the English law by the Norman jurists. Long ago, tort was used in everyday speech; today it is left to the legal system. A judge will instruct a jury that a tort is usually defined as a wrong for which the law will provide a remedy, most often in the form of money damages. Although the word is no longer in general use, tort suits are the stuff of everyday headlines. More and more people injured by exposure to a variety of risks now seek redress some sort of remedy through the courts. Headlines boast of multimillion-dollar jury awards against doctors who bungled operations, against newspapers that libeled subjects of stories, and against oil companies that devastate entire ecosystems. All are examples of tort suits. The law of torts developed almost entirely in the common-law courts; that is, statutes passed by legislatures were not the source of law that plaintiffs usually relied on. Usually, plaintiffs would rely on the common law judicial decisions. Through thousands of cases, the courts have fashioned a series of rules that govern the conduct of individuals in their noncontractual dealings with each other. Through contracts, individuals can craft their own rights and responsibilities toward each other. In the absence of contracts, tort law holds individuals legally accountable for the consequences of their actions. Those who suffer losses at the hands of others can be compensated. Many acts like homicide are both criminal and tortious. But torts and crimes are different, and the difference is worth noting. A crime is an act against the people as a whole. Society punishes the murderer; it does not usually compensate the family of the victim. Tort law, on the other hand, views the death as a private wrong for which damages are owed. In a civil case, the tort victim or his family, not the state, brings the action. Kinds of Torts There are three kinds of torts: Intentional torts arise from intentional acts, whereas unintentional torts often result from carelessness e. Both intentional torts and negligent torts imply some fault on the part of the defendant. Dimensions of Tort Liability There is a clear moral basis for recovery through the legal system where the defendant has been careless negligent or has intentionally caused harm. Using the concepts that we are free and autonomous beings with basic rights, we can see that when others interfere with either our freedom or our autonomy, we will usually react negatively. Under a capitalistic market system, rational economic rules also call for no negative externalities. That is, actions of individuals, either alone or in concert with others, should not negatively impact third parties. The law will try to compensate third parties who are harmed by your actions, even as it knows that a money judgment cannot actually mend a badly injured victim. Fault Tort principles can be viewed along different dimensions. One is the fault dimension. Like criminal law, tort law requires a wrongful act by a defendant for the plaintiff to recover. Unlike criminal law, however, there need not be a specific intent. An innocent act or a relatively innocent one may still provide the basis for liability. Nevertheless, tort lawâ€”except for strict liabilityâ€”relies on standards of fault, or blameworthiness. The most obvious standard is willful conduct. If the defendant often called the tortfeasor A person or legal entity that commits a tort. Thus all crimes resulting in injury to a person or property murder, assault, arson, etc. Most tort suits do not rely on intentional fault.

They are based, rather, on negligent conduct that in the circumstances is careless or poses unreasonable risks of causing damage. Most automobile accident and medical malpractice suits are examples of negligence suits. The fault dimension is a continuum. At one end is the deliberate desire to do injury. The middle ground is occupied by careless conduct. At the other end is conduct that most would consider entirely blameless, in the moral sense. The defendant may have observed all possible precautions and yet still be held liable. This is called strict liability Liability without fault. This may arise when the defendant engages in ultrahazardous activities or where defective product creates an unreasonable risk of injury to consumers or others.. An example is that incurred by the manufacturer of a defective product that is placed on the market despite all possible precautions, including quality-control inspection. In many states, if the product causes injury, the manufacturer will be held liable. Nature of Injury Tort liability varies by the type of injury caused. The most obvious type is physical harm to the person assault, battery, infliction of emotional distress, negligent exposure to toxic pollutants, wrongful death or property trespass, nuisance, arson, interference with contract. Mental suffering can be redressed if it is a result of physical injury e. Excuses A third element in the law of torts is the excuse for committing an apparent wrong. The law does not condemn every act that ultimately results in injury. A baseball fan who sits along the third base line close to the infield assumes the risk that a line drive foul ball may fly toward him and strike him. He will not be permitted to complain in court that the batter should have been more careful or that management should have either warned him or put up a protective barrier. Another excuse is negligence of the plaintiff. If two drivers are careless and hit each other on the highway, some states will refuse to permit either to recover from the other. Still another excuse is consent: Damages Since the purpose of tort law is to compensate the victim for harm actually done, damages are usually measured by the extent of the injury. Expressed in money terms, these include replacement of property destroyed, compensation for lost wages, reimbursement for medical expenses, and dollars that are supposed to approximate the pain that is suffered. Damages for these injuries are called compensatory damages An award of money damages to make the plaintiff whole, as opposed to additional damages punitive that punish the defendant or make an example of defendant.. In certain instances, the courts will permit an award of punitive damages Punitive damages are awarded in cases where the conduct of the defendant is deemed to be so outrageous that justice is only served by adding a penalty over and above compensatory damages.. Because a punitive award sometimes called exemplary damages is at odds with the general purpose of tort law, it is allowable only in aggravated situations. The law in most states permits recovery of punitive damages only when the defendant has deliberately committed a wrong with malicious intent or has otherwise done something outrageous. Punitive damages are rarely allowed in negligence cases for that reason. But if someone sets out intentionally and maliciously to hurt another person, punitive damages may well be appropriate. Punitive damages are intended not only to punish the wrongdoer, by exacting an additional and sometimes heavy payment the exact amount is left to the discretion of jury and judge , but also to deter others from similar conduct. The punitive damage award has been subject to heavy criticism in recent years in cases in which it has been awarded against manufacturers. One fear is that huge damage awards on behalf of a multitude of victims could swiftly bankrupt the defendant. Unlike compensatory damages, punitive damages are taxable. Key Takeaway There are three kinds of torts, and in two of them negligent torts and strict liability torts , damages are usually limited to making the victim whole through an enforceable judgment for money damages. These compensatory damages awarded by a court accomplish only approximate justice for the injuries or property damage caused by a tortfeasor. Tort laws go a step further toward deterrence, beyond compensation to the plaintiff, in occasionally awarding punitive damages against a defendant. These are almost always in cases where an intentional tort has been committed. Exercises Why is deterrence needed for intentional torts where punitive damages are awarded rather than negligent torts? Why are costs imposed on others without their consent problematic for a market economy? What would a totally nonlitigious society be like? Give three examples of an intentional tortâ€”one that causes injury to a person, one that causes injury to property, and one that causes injury to a reputation. The analysis of most intentional torts is straightforward and parallels the substantive crimes already discussed in Chapter 6 "Criminal Law". When physical injury or damage to property is caused, there is rarely debate over liability if the plaintiff deliberately undertook to

produce the harm. Certain other intentional torts are worth noting for their relevance to business. Assault and Battery One of the most obvious intentional torts is assault and battery. Both criminal law and tort law serve to restrain individuals from using physical force on others.

## Chapter 5 : Legal remedy - Wikipedia

*Private Wrongs and Their Remedies: Being the Third Book of Blackstone's Commentaries: Incorporating the Alterations Down to the Present Time / By James Stewart. by Sir William Blackstone starting at.*

In courts of limited jurisdiction, the main remedy is an award of damages. Because specific performance and rescission are equitable remedies that do not fall within the jurisdiction of the magistrate courts, they are not covered in this tutorial. What Damages Can Be Awarded? There are two general categories of damages that may be awarded if a breach of contract claim is proved. The amount awarded is intended to make good or replace the loss caused by the breach. There are two kinds of compensatory damages that the nonbreaching party may be entitled to recover: General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract. Company A delivered the wrong kind of furniture to Company B. After discovering the mistake later in the day, Company B insisted that Company A pick up the wrong furniture and deliver the right furniture. Company A refused to pick up the furniture and said that it could not supply the right furniture because it was not in stock. Company B successfully sued for breach of contract. The general damages for this breach could include: These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the nonbreaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made. In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus: Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behavior and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages. Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm. How are Compensatory Damages Calculated? The calculation of compensatory damages depends on the type of contract that was breached and the type of loss that was incurred. Some general guidelines are: The standard measure of damages is an amount that would allow the nonbreaching party to buy a substitute for the benefit that would have been received if the contract had been performed. Contracts for the Sale of Goods. The damages are measured by the difference between the contract price and the market price when the seller provides the goods, or when the buyer learns of the breach. An important limitation on the award of damages is the duty to mitigate. The nonbreaching party is obligated to mitigate, or minimize, the amount of damages to the extent reasonable. Damages cannot be recovered for losses that could have been reasonably avoided or substantially ameliorated after the breach occurred.

## Chapter 6 : Read Download Private Wrongs PDF â€“ PDF Download

*Wrongs And Remedies Respecting Persons. BOOK 3, CHAPTER 8 Of Wrongs, And Their Remedies, Respecting The Rights of Persons of all private wrongs, or civil.*

Some say that the state has done a certain act; others, no, not the state, but the oligarchy or the tyrant. And the legislator or statesman is concerned entirely with the state; a constitution or government being an arrangement of the inhabitants of a state. But a state is composite, like any other whole made up of many parts; these are the citizens, who compose it. It is evident, therefore, that we must begin by asking, Who is the citizen, and what is the meaning of the term? For here again there may be a difference of opinion. He who is a citizen in a democracy will often not be a citizen in an oligarchy. Leaving out of consideration those who have been made citizens, or who have obtained the name of citizen any other accidental manner, we may say, first, that a citizen is not a citizen because he lives in a certain place, for resident aliens and slaves share in the place; nor is he a citizen who has no legal right except that of suing and being sued; for this right may be enjoyed under the provisions of a treaty. Nay, resident aliens in many places do not possess even such rights completely, for they are obliged to have a patron, so that they do but imperfectly participate in citizenship, and we call them citizens only in a qualified sense, as we might apply the term to children who are too young to be on the register, or to old men who have been relieved from state duties. Of these we do not say quite simply that they are citizens, but add in the one case that they are not of age, and in the other, that they are past the age, or something of that sort; the precise expression is immaterial, for our meaning is clear. Similar difficulties to those which I have mentioned may be raised and answered about deprived citizens and about exiles. But the citizen whom we are seeking to define is a citizen in the strictest sense, against whom no such exception can be taken, and his special characteristic is that he shares in the administration of justice, and in offices. Now of offices some are discontinuous, and the same persons are not allowed to hold them twice, or can only hold them after a fixed interval; others have no limit of time- for example, the office of a dicast or ecclesiast. It may, indeed, be argued that these are not magistrates at all, and that their functions give them no share in the government. But surely it is ridiculous to say that those who have the power do not govern. Let us not dwell further upon this, which is a purely verbal question; what we want is a common term including both dicast and ecclesiast. This is the most comprehensive definition of a citizen, and best suits all those who are generally so called. But we must not forget that things of which the underlying principles differ in kind, one of them being first, another second, another third, have, when regarded in this relation, nothing, or hardly anything, worth mentioning in common. Now we see that governments differ in kind, and that some of them are prior and that others are posterior; those which are faulty or perverted are necessarily posterior to those which are perfect. What we mean by perversion will be hereafter explained. The citizen then of necessity differs under each form of government; and our definition is best adapted to the citizen of a democracy; but not necessarily to other states. For in some states the people are not acknowledged, nor have they any regular assembly, but only extraordinary ones; and suits are distributed by sections among the magistrates. At Lacedaemon, for instance, the Ephors determine suits about contracts, which they distribute among themselves, while the elders are judges of homicide, and other causes are decided by other magistrates. A similar principle prevails at Carthage; there certain magistrates decide all causes. We may, indeed, modify our definition of the citizen so as to include these states. In them it is the holder of a definite, not of an indefinite office, who legislates and judges, and to some or all such holders of definite offices is reserved the right of deliberating or judging about some things or about all things. The conception of the citizen now begins to clear up. He who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizens of that state; and, speaking generally, a state is a body of citizens sufficing for the purposes of life. Part II But in practice a citizen is defined to be one of whom both the parents are citizens; others insist on going further back; say to two or three or more ancestors. This is a short and practical definition but there are some who raise the further question: How this third or fourth ancestor came to be a citizen? This is a better definition than the other. There is a greater difficulty in the case of those who have been made citizens after a revolution, as by

Cleisthenes at Athens after the expulsion of the tyrants, for he enrolled in tribes many metics, both strangers and slaves. The doubt in these cases is, not who is, but whether he who is ought to be a citizen; and there will still be a furthering the state, whether a certain act is or is not an act of the state; for what ought not to be is what is false. Now, there are some who hold office, and yet ought not to hold office, whom we describe as ruling, but ruling unjustly. And the citizen was defined by the fact of his holding some kind of rule or office- he who holds a judicial or legislative office fulfills our definition of a citizen. It is evident, therefore, that the citizens about whom the doubt has arisen must be called citizens. Part III Whether they ought to be so or not is a question which is bound up with the previous inquiry. For a parallel question is raised respecting the state, whether a certain act is or is not an act of the state; for example, in the transition from an oligarchy or a tyranny to a democracy. In such cases persons refuse to fulfill their contracts or any other obligations, on the ground that the tyrant, and not the state, contracted them; they argue that some constitutions are established by force, and not for the sake of the common good. But this would apply equally to democracies, for they too may be founded on violence, and then the acts of the democracy will be neither more nor less acts of the state in question than those of an oligarchy or of a tyranny. This question runs up into another: It would be a very superficial view which considered only the place and the inhabitants for the soil and the population may be separated, and some of the inhabitants may live in one place and some in another. It is further asked: When are men, living in the same place, to be regarded as a single city- what is the limit? Certainly not the wall of the city, for you might surround all Peloponnesus with a wall. Like this, we may say, is Babylon, and every city that has the compass of a nation rather than a city; Babylon, they say, had been taken for three days before some part of the inhabitants became aware of the fact. This difficulty may, however, with advantage be deferred to another occasion; the statesman has to consider the size of the state, and whether it should consist of more than one nation or not. Again, shall we say that while the race of inhabitants, as well as their place of abode, remain the same, the city is also the same, although the citizens are always dying and being born, as we call rivers and fountains the same, although the water is always flowing away and coming again Or shall we say that the generations of men, like the rivers, are the same, but that the state changes? For, since the state is a partnership, and is a partnership of citizens in a constitution, when the form of government changes, and becomes different, then it may be supposed that the state is no longer the same, just as a tragic differs from a comic chorus, although the members of both may be identical. And in this manner we speak of every union or composition of elements as different when the form of their composition alters; for example, a scale containing the same sounds is said to be different, accordingly as the Dorian or the Phrygian mode is employed. And if this is true it is evident that the sameness of the state consists chiefly in the sameness of the constitution, and it may be called or not called by the same name, whether the inhabitants are the same or entirely different. It is quite another question, whether a state ought or ought not to fulfill engagements when the form of government changes. Part IV There is a point nearly allied to the preceding: Whether the virtue of a good man and a good citizen is the same or not. But, before entering on this discussion, we must certainly first obtain some general notion of the virtue of the citizen. Like the sailor, the citizen is a member of a community. For they have all of them a common object, which is safety in navigation. Similarly, one citizen differs from another, but the salvation of the community is the common business of them all. This community is the constitution; the virtue of the citizen must therefore be relative to the constitution of which he is a member. If, then, there are many forms of government, it is evident that there is not one single virtue of the good citizen which is perfect virtue. But we say that the good man is he who has one single virtue which is perfect virtue. Hence it is evident that the good citizen need not of necessity possess the virtue which makes a good man. The same question may also be approached by another road, from a consideration of the best constitution. If the state cannot be entirely composed of good men, and yet each citizen is expected to do his own business well, and must therefore have virtue, still inasmuch as all the citizens cannot be alike, the virtue of the citizen and of the good man cannot coincide. All must have the virtue of the good citizen- thus, and thus only, can the state be perfect; but they will not have the virtue of a good man, unless we assume that in the good state all the citizens must be good. Again, the state, as composed of unlikes, may be compared to the living being: I have said enough to show why the two kinds of virtue cannot be absolutely and always the

same. But will there then be no case in which the virtue of the good citizen and the virtue of the good man coincide? To this we answer that the good ruler is a good and wise man, and that he who would be a statesman must be a wise man. And some persons say that even the education of the ruler should be of a special kind; for are not the children of kings instructed in riding and military exercises? If then the virtue of a good ruler is the same as that of a good man, and we assume further that the subject is a citizen as well as the ruler, the virtue of the good citizen and the virtue of the good man cannot be absolutely the same, although in some cases they may; for the virtue of a ruler differs from that of a citizen. But, on the other hand, it may be argued that men are praised for knowing both how to rule and how to obey, and he is said to be a citizen of approved virtue who is able to do both. Now if we suppose the virtue of a good man to be that which rules, and the virtue of the citizen to include ruling and obeying, it cannot be said that they are equally worthy of praise. Since, then, it is sometimes thought that the ruler and the ruled must learn different things and not the same, but that the citizen must know and share in them both, the inference is obvious. There is, indeed, the rule of a master, which is concerned with menial offices- the master need not know how to perform these, but may employ others in the execution of them: Hence in ancient times, and among some nations, the working classes had no share in the government- a privilege which they only acquired under the extreme democracy. Certainly the good man and the statesman and the good citizen ought not to learn the crafts of inferiors except for their own occasional use; if they habitually practice them, there will cease to be a distinction between master and slave. This is not the rule of which we are speaking; but there is a rule of another kind, which is exercised over freemen and equals by birth -a constitutional rule, which the ruler must learn by obeying, as he would learn the duties of a general of cavalry by being under the orders of a general of cavalry, or the duties of a general of infantry by being under the orders of a general of infantry, and by having had the command of a regiment and of a company. And, although the temperance and justice of a ruler are distinct from those of a subject, the virtue of a good man will include both; for the virtue of the good man who is free and also a subject, e. For a man would be thought a coward if he had no more courage than a courageous woman, and a woman would be thought loquacious if she imposed no more restraint on her conversation than the good man; and indeed their part in the management of the household is different, for the duty of the one is to acquire, and of the other to preserve. Practical wisdom only is characteristic of the ruler: The virtue of the subject is certainly not wisdom, but only true opinion; he may be compared to the maker of the flute, while his master is like the flute-player or user of the flute. From these considerations may be gathered the answer to the question, whether the virtue of the good man is the same as that of the good citizen, or different, and how far the same, and how far different. Part V There still remains one more question about the citizen: Is he only a true citizen who has a share of office, or is the mechanic to be included? If they who hold no office are to be deemed citizens, not every citizen can have this virtue of ruling and obeying; for this man is a citizen And if none of the lower class are citizens, in which part of the state are they to be placed? For they are not resident aliens, and they are not foreigners. May we not reply, that as far as this objection goes there is no more absurdity in excluding them than in excluding slaves and freedmen from any of the above-mentioned classes? It must be admitted that we cannot consider all those to be citizens who are necessary to the existence of the state; for example, children are not citizen equally with grown-up men, who are citizens absolutely, but children, not being grown up, are only citizens on a certain assumption. Nay, in ancient times, and among some nations the artisan class were slaves or foreigners, and therefore the majority of them are so now. The best form of state will not admit them to citizenship; but if they are admitted, then our definition of the virtue of a citizen will not apply to every citizen nor to every free man as such, but only to those who are freed from necessary services. The necessary people are either slaves who minister to the wants of individuals, or mechanics and laborers who are the servants of the community. These reflections carried a little further will explain their position; and indeed what has been said already is of itself, when understood, explanation enough. Since there are many forms of government there must be many varieties of citizen and especially of citizens who are subjects; so that under some governments the mechanic and the laborer will be citizens, but not in others, as, for example, in aristocracy or the so-called government of the best if there be such an one , in which honors are given according to virtue and merit; for no man can practice virtue who is living the life of a mechanic or laborer. In

oligarchies the qualification for office is high, and therefore no laborer can ever be a citizen; but a mechanic may, for an actual majority of them are rich. At Thebes there was a law that no man could hold office who had not retired from business for ten years. But in many states the law goes to the length of admitting aliens; for in some democracies a man is a citizen though his mother only be a citizen; and a similar principle is applied to illegitimate children; the law is relaxed when there is a dearth of population. But when the number of citizens increases, first the children of a male or a female slave are excluded; then those whose mothers only are citizens; and at last the right of citizenship is confined to those whose fathers and mothers are both citizens. Hence, as is evident, there are different kinds of citizens; and he is a citizen in the highest sense who shares in the honors of the state.

## Chapter 7 : Remedies for Breach of Contract â€" Judicial Education Center

*Private Wrongs is a fascinating book. It provides a powerful account of tort law that should have an impact on lawyers' thinking about these problems, and also on the more general developments in the foundations of private law.*

Counselors should be especially aware of signs of suicidal ideation. A more common problem is, perhaps, the lack of identity and accompanying hopelessness that many offenders face. Some offenders feel relatively little anxiety regarding their incarceration, and many believe that being in prison and participating in prison culture are the norm. Others feel they are the victims of society, and still others take pride in belonging to an alternative culture e. Unlike jail detainees, who are likely to be incarcerated for short terms, prisoners often learn to identify as inmates as a matter of survival. In part, this is a result of institutional pressures on them, and partly it is the result of interactions with other inmates who have accepted the role or persona of a prisoner. Gender-Specific Issues Gender in particular is a defining category for treatment and recovery in prison settings. Programs must be attuned to the differences inherent in treating men and women within a prison setting. Men in prisons The consensus panel suggests that, where possible, programs provide specific groups and educational curricula that emphasize the gender-specific aspects of treatment. For example, issues related to relationships and to fatherhood should be explored. Fathers may be encouraged to participate in parenting education, with an emphasis on responsibilities and the impact of neglect, anger, and abuse on children. Employing both male and female counselors is helpful in an all-male program, as male inmates may be less guarded and confrontational with female staff. For many incarcerated men, learning to express anger in healthy and constructive ways is vital. Violence prevention groups may help participants explore thoughts, feelings, and behaviors that are often the underpinnings of violent behavior and sexual aggressionâ€"issues such as a lack of empathy, narcissism, anger management problems, an overblown sense of entitlement, and the lack of effective thinking skills and sense of self-efficacy. Research shows that sexual offenders may be at greater risk for violent assaults by other offenders Brady  Women in prisons Incarcerated women typically have a constellation of high-risk environmental, medical, and mental health issues as well as behaviors associated with continued or renewed substance abuse CSAT b. In the prison environment, these factors can operate as influences to relapse. They include antisocial behavior, emotional problems, the trauma of imprisonment, and the separation of the inmate from her family and loved ones, especially children. Problematic behaviors and the attitudes that influence them have been developed over many years and often have their roots in childhood trauma. Often, the trauma and related negative influences of imprisonment counteract the value of services provided by the in-prison treatment provider. For some women, interference with these roles produces stress because of the loss of affection and security normally provided by their families, which can also trigger substance abuse. The 9-month residential program is composed of individualized treatment planning, focused treatment modules, and work or school. It is geared toward offenders with 3 years remaining to serve, whose psychopathy is not too severe for the program, and who, after screening, are considered able to benefit from treatment. Modules include anger management, moral problem solving, addiction awareness, relapse prevention, early memories, trauma recovery, social skills, and empowerment. Six key treatment principles guide the treatment process: It is important that in-prison treatment programs work with female participants to help create healthy prosocial relationships to meet these needs. Female inmates can draw the strength to change in a new peer group, rather than feel pressure from their old peer group to conform by engaging in drug-taking or criminal behavior. Additionally, a strong core of female staff provides opportunities for role modeling and for developing healthy noncoercive relationships with inmate participants. Because the prison population tends to be incarcerated for longer periods than jail inmates, treatment possibilities in a prison setting are more extensive, depending on funding and other factors. Counselors and prison administrators may establish programs that are long term and comprehensive. Substance abuse issues may be addressed along with behavioral, emotional, and psychological problems. Ideally, prisoners have the opportunity to abstain from substances and learn new behaviors before release. Treatment Intensity Treatment in a prison setting can vary greatly in the setting and intensity of the program.

On the most intense end of the spectrum, the TC is a treatment model that attempts to create a hour, 7-day-a-week treatment environment that integrates community, work, counseling, and education activities. Ideally, the program activities take place apart from the general prison population. Complete isolation from the general population is somewhat unusual, however. Less intensive treatment programs may simply deliver counseling, education, and other treatment services in a manner similar to outpatient programs. Inmates live in the general population and have assignments or appointments for services. Examples include weekly or twice-weekly individual therapy, weekly group therapy, or a combination of the two in association with self-help activities. Regardless of whether treatment occurs in a TC or as isolated outpatient sessions, intensity generally decreases over time as the individual meets treatment goals and moves through the stages of recovery. Treatment Components In-prison treatment incorporates several different models, approaches, and philosophies for the treatment of substance use disorders, as described in the following section. Counseling In its prison study, CASA found that 65 percent of prisons provide substance abuse counseling. Of those, 98 percent offered group counseling and 84 percent offered individual counseling. Nearly one-quarter 24 percent of State inmates and 16 percent of Federal inmates participated in group counseling while incarcerated CASA Group counseling As the most common treatment method, group counseling seeks to address the underlying psychological and behavioral problems that contribute to substance abuse by promoting self-awareness and behavioral change through interactions with peers CASA Although the intensity and duration of group therapy can vary, trained professionals typically lead groups of 8 to 10 inmates several times a week with the expectation that participants will commit to and engage in meaningful change in an emotionally safe environment. Group sessions typically range from 1 to 2 hours in length. Cognitive-behavioral groups Substance abuse treatment programs in correctional settings should be organized according to empirically supported approaches i. Programs based on nondirective approaches or medical models or those focusing on punishment or deterrence have not been shown to be effective Peters and Steinberg Such interventions concentrate on the effects of thoughts and emotions on behaviors, and include strategies e. Individuals who abuse substances tend to think automatically, in rigid terms, and with overgeneralizations. Rationalizations are also commonly used by offenders to justify maladaptive behaviors, including substance abuse and a range of other criminal behaviors. Clients are taught to be aware of their thinking patterns and to challenge their assumptions. Specialty groups Specialized treatment groups are often organized around a shared life experience e. Specialty groups offer a chance to work on specific issues that may be impeding other treatment initiatives or require special attention not readily available in the regular program. Two types of specialty groups are briefly described below. Anger management groups are widely used in drug treatment programs. They are especially helpful for inmates who are either passive and nonassertive or express anger in an explosive fashion. By careful analysis of emotional reactions to painful and threatening experiences, treatment staff help the inmate learn to manage anger in a more socially acceptable manner. For example, inmates may feel incapable of expressing negative feelings verbally. Instead of responding appropriately to a provocation, they allow feelings to build up, which leads to a delayed explosive reaction. Learning to express angry feelings verbally and in an appropriate manner helps inmates feel more competent about interpersonal relationships. Very successful groups have been organized around parenting issues. Although the perspective may differ for females and males, bonds to children can help motivate the recovery process for both genders and can contribute to a successful re-entry into the community. Practitioners have found that both men and women need to focus on developing parenting skills and overcoming patterns of neglect, abandonment, and abuse. As a result of parenting work, some program participants have tried to find their children and establish relationships with them upon release to the community. The process of becoming a responsible parent can be a critical component in the recovery process. Family counseling Family therapy is a systems approach that often focuses on large family networks. Family and friends can play critical roles in motivating individuals with drug problems to enter and stay in treatment. Often caution needs to be exercised when involving families of offenders because of high degrees of antisocial behavior and psychological disturbance. Individual counseling Individual counseling is an important part of substance abuse treatment. Counselors may operate from many different philosophical and theoretical orientations and employ a variety of therapeutic approaches in

individual therapy. The common feature of such sessions is that inmates in a private consultation are free to explore more sensitive issues, which they might not be ready to discuss in a group. Individual sessions also provide a place where a counselor can coach inmates on relapse prevention techniques such as how to recognize specific high-risk situations, personal cues, and other warning signs of relapse. Like group counseling, individual therapy strives to help offenders develop and maintain an enhanced self-image and accept personal responsibility CASA  It can act as an important adjunct to group therapy. Self-help groups Self-help groups, found in a majority of State and Federal prisons, are frequently a crucial component of recovery and can provide a great deal of support to recovering offenders. Self-help groups provide peer support and may serve as therapeutic bridges from incarceration to the community. Self-help programs were founded by individuals who found conventional help inadequate or unavailable. These individuals shared common problems and a personal commitment to do something about their condition. Instead, they are programs based on a philosophy of self-responsibility. The philosophy involves a powerful belief system that requires individuals to commit to their own healing. For many, this approach has proven inspiring and successful. A major focus of the self-help approach is altering the fundamental beliefs and overall lifestyles of participants. By taking responsibility for their own problems, individuals can gain control over their situation and develop a new sense of self-respect and competence. Recovering role models provide support and guidance. The entire approach can result in far-reaching changes in personal lifestyles and social relationships. In general, the self-help movement successfully instills the more positive aspects of individualismâ€”self-reliance and responsibilityâ€”while also stressing the importance of group effort in overcoming common problems. The concept of empowerment is perhaps the most central to understand the positive effects of self-help groups. For other benefits, see below. Self-help processes are geared to invoke and develop a sense of personal power among members. Self-help groups also encourage members to use their personal strength to enable others to feel less helpless. This, in turn, enhances the power of the helper. Since self-help programs are peer centered, they encourage mutual support and offer many opportunities for leadership. One survey found that 74 percent of prison facilities offered self-help programs of various types. Of those, AA had the strongest representation in 95 percent of those facilities , followed by NA in 85 percent. Less than one third offered other types of self-help programs. Because of the lack of empirical evidence about the effectiveness of self-help programs in reducing recidivism and relapse, the consensus panel believes that these groups are best viewed as support activities that can enhance more structured and intense treatment interventions CASA  At times compulsory self-help group attendance is used as a sanction.

## Chapter 8 : Tort | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

*In Race, Wrongs, and Remedies, Amy L. Wax applies concepts from the law of remedies to show that the conventional wisdom is mistaken. She argues that effectively addressing today's persistent racial disparities requires dispelling the confusion surrounding blacks' own role in achieving equality.*

The Group Leader Personal Qualities Although the attributes of an effective interpersonal process group leader treating substance abuse are not strikingly different from traits needed to work successfully with other client populations, some of the variations in approach make a big difference. For this reason, it is important for group leaders to communicate and share the joy of being alive. In addition, because many clients with substance abuse histories have grown up in homes that provided little protection, safety, and support, the leader should be responsive and affirming, rather than distant or judgmental. The leader should recognize that group members have a high level of vulnerability and are in need of support, particularly in the early stage of treatment. A discussion of other essential characteristics for a group leader follows. Above all, it is important for the leader of any group to understand that he or she is responsible for making a series of choices as the group progresses. Constancy An environment with small, infrequent changes is helpful to clients living in the emotionally turbulent world of recovery. Group facilitators can emphasize the reality of constancy and security through a variety of specific behaviors. For example, group leaders always should sit in the same place in the group. Leaders also need to respond consistently to particular behaviors. They should maintain clear and consistent boundaries, such as specific start and end times, standards for comportment, and ground rules for speaking. The setting and type of group will help determine appropriate dress, but whatever the group leader chooses to wear, some predictability is desirable throughout the group experience. The group leader should not come dressed in a suit and tie one day and in blue jeans the next. Active listening Excellent listening skills are the keystone of any effective therapy. Therapeutic interventions require the clinician to perceive and to understand both verbal and nonverbal cues to meaning and metaphorical levels of meaning. In addition, leaders need to pay attention to the context from which meanings come. Firm identity A firm sense of their own identities, together with clear reflection on experiences in group, enables leaders to understand and manage their own emotional lives. For example, therapists who are aware of their own capacities and tendencies can recognize their own defenses as they come into play in the group. They might need to ask questions such as: Leaders who are not in control of their own emotional reactions can do significant harmâ€”particularly if they are unable to admit a mistake and apologize for it. The leader also should monitor the process and avoid being seduced by content issues that arouse anger and could result in a loss of the required professional stance or distance. A group leader also should be emotionally healthy and keenly aware of personal emotional problems, lest they become confused with the urgent issues faced by the group as a whole. The leader should be aware of the boundary between personal and group issues Pollack and Slan Confidence Effective group leaders operate between the certain and the uncertain. This secure grounding enables the leader to model stability for the group. Spontaneity Good leaders are creative and flexible. For instance, they know when and how to admit a mistake, instead of trying to preserve an image of perfection. When a leader admits error appropriately, group members learn that no one has to be perfect, that theyâ€”and othersâ€”can make and admit mistakes, yet retain positive relationships with others. Integrity Largely due to the nature of the material group members are sharing in process groups, it is all but inevitable that ethical issues will arise. Leaders also need to be anchored by clear internalized standards of conduct and able to maintain the ethical parameters of their profession. Trust Group leaders should be able to trust others. Without this capacity, it is difficult to accomplish a key aim of the group: Humor The therapist needs to be able to use humor appropriately, which means that it is used only in support of therapeutic goals and never is used to disguise hostility or wound anyone. For the counselor, the ability to project empathy is an essential skill. Without it, little can be accomplished. Empathic listening requires close attention to everything a client says and the formation of hypotheses about the underlying meaning of statements Miller and Rollnick For interpersonal interaction to be beneficial, it should be guided, for the most part, by empathy. The group leader

should be able to model empathic interaction for group members, especially since people with substance use disorders often cannot identify and communicate their feelings, let alone appreciate the emotive world of others. The therapist promotes growth in this area simply by asking group members to say what they think someone else is feeling and by pointing out cues that indicate what another person may be feeling. One of the feelings that the group leader needs to be able to empathize with is shame, which is common among people with substance abuse histories. Shame is so powerful that it should be addressed whenever it becomes an issue. When shame is felt, the group leader should look for it and recognize it Gans and Weber  The leader also should be able to empathize with it, avoid arousing more shame, and help group members identify and process this painful feeling. Figure discusses shame and group therapy. Shame View in own window Often failed attachments in childhood and failed relationships thereafter result in shame, an internalized sense of being inferior, not good enough, or worthless. Furthermore, group members have a marked tendency to compare themselves with one another Gans and Weber  In the past, when group facilitators used highly confrontational efforts to break through denial and resistance, an undesirable side effect was intensified shame, which increased the likelihood that group members would relapse or leave treatment. Clients with addictions often are exquisitely sensitive and prone to project their shame onto relationships within the group. Often, at an unconscious level, they anticipate disapproval or hostility when none was intended. In this way, clients may demote themselves to the role of secondary player in the group. Leading Groups Group therapy with clients who have histories of substance abuse or dependence requires active, responsive leaders who keep the group lively and on task, and ensure that members are engaged continuously and meaningfully with each other. Leaders, however, should not make themselves the center of attention. The leader should be aware of the differing personalities of the group members, while always searching for common themes in the group. During the early and middle stages of treatment, the therapist is more active, becoming less so in the late stage. Moreover, during the late stage of treatment, the therapist should offer less support and gratification. For example, a client at the beginning stage of treatment who is high functioning and used to working in groups generally will require a less active therapist and less structure. Such a person also would benefit from a clinician who more actively expresses warmth and acceptance, thus helping to engage the client. When personal questions are asked, group leaders need to consider the motivation behind the question. Often clients are simply seeking assurance that the therapist is able to understand and assist them Flores  Leaders can be cotherapists Cotherapy is an effective way to blend the diverse skills, resources, and therapeutic perspectives that two therapists can bring to a group. A maleâ€”female cotherapy team may be especially helpful, for a number of reasons. It allows clients to explore their conscious and subconscious reactions to the presence of a parental dyad, or pair. It shows people of opposite sexes engaging in a healthy, nonexploitative relationship. It presents two different gender role models. It demonstrates role flexibility, as clients observe the variety of roles possible for a male or a female in a relationship. It provides an opportunity for clients to discover and work through their gender distortions Kahn  Frequently, however, cotherapy is not done well, and the result is destructive. At times, a supervisor and a subordinate act as cotherapists, and power differentials result. Alternatively, cotherapists are put together out of convenience, rather than their potential to work well together and improve and facilitate group process. True cotherapy takes place between clinicians of equal authority and mutual regard. Naturally, the foregoing does not apply to training opportunities in which a trainee sits in with a seasoned group therapist. In such a setting, the trainee functions as an observer, not a cotherapist. Problems also may arise because institutions and leaders fail to allow enough time for cotherapists to prepare for group together and to process what has happened after the group has met. While this amount of time may be ideal, the realities of most organizations do not make this level of commitment feasible. At the least, however, cotherapists should have a minimum of 15 minutes before and after each group meets. Personal conflict or professional disagreements can be a third source of negative effects on the group. Thus, cotherapists should carefully work out their own conflicts and develop a leadership style suitable for the group before engaging in the therapeutic process. Inevitably, cotherapist relationships will grow and evolve over time. The relationship between the cotherapists and the group, too, will evolve. Both the cotherapists and the group should recognize this process and be ready to adapt to constant change and growth Dugo and Beck  The development of a

healthy relationship between cotherapists will have a positive effect on their relationship to the group, relationships among members of the group, and on individuals within the group as they experience the continuous changes and growth of the group Dugo and Beck  Leaders are sensitive to ethical issues Group therapy by nature is a powerful type of intervention. As the group process unfolds, the group leader needs to be alert, always ready to perceive and resolve issues with ethical dimensions. Some typical situations with ethical concerns follow. Overriding group agreements Group agreements give the group definition and clarity, and are essential for group safety. In rare situations, however, it would be unethical not to bend the rules to meet the needs of an individual. For example, group rules may say that failure to call in before an absence from group is cause for reporting the infraction to a referring agency. If the client can demonstrate that an unavoidable emergency prevented calling in, the group leader may agree that the offense does not merit a report. Furthermore, the needs of the group may sometimes override courtesies shown to an individual. For example, a group may have made an agreement not to discuss any group member when that member is not present. Informing clients of options Even when group participation is mandated, clients should be informed clearly of the options open to them. For example, the client deserves the option to discuss with program administrators any forms of treatment or leadership style that the client believes to be inappropriate. In such an instance, issues of cultural competence should be kept in mind, because what is appropriate for an individual or a group is by no means universal. Preventing enmeshment Leaders should be aware that the power of groups can have a dark side. Although cohesion is a positive outcome to be sought and supported, the strong desire for affiliation also can place undue pressure on group members who already are in the throes of a major transition from substance abuse to abstinent lives. The need to belong is so strong that it can sometimes cause a client to act in a way that is not genuine or consistent with personal ethics. Regardless of the kind of group, the leader needs to be aware of this possibility and to monitor group sharing to ensure that clients are not drawn into situations that violate their privacy or integrity. The leader is obligated to foster cohesion while respecting the rights and best interests of individuals. Any such challenge, however, should come in a nonshaming fashion, primarily through the review of other options.

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*Wrongs and their remedies. A treatise on the law of torts [Edwin Baylies, C G. d. Addison, F S. P. Wolferstan] on blog.quintoapp.com *FREE* shipping on qualifying offers. This is a reproduction of a book published before*