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## **Under what circumstances can a civil lawsuit be filed? - by Michael Brangwynne**

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Despite references in popular culture to the contrary, one cannot sue another, or be sued for that matter, for any reason at all. To be more precise, a person could file a civil lawsuit against another for any reason under the sun, but unless that individual's lawsuit is based on an appropriate cause of action, there is a very strong likelihood it will be dismissed by the court in short order.

### Causes of Action Generally

A cause of action, also known as a claim or a count, is a combination of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a legal right against another party. Causes of action can arise from the common law, which has been created over hundreds of years through the decisions of our courts, or they can be created by statute by the state or federal legislature.

A cause of action is the civil law equivalent of a crime. Much like the prosecutor in a criminal prosecution must prove certain elements to establish that a crime has been committed, so too the plaintiff (claimant) in a civil lawsuit must prove each of the elements of his or her cause of action to establish that the defendant is liable for damages.

Indeed, some causes of action closely resemble crimes, and have similar elements that must be proven. For example, battery has long been recognized as a civil cause of action under the common law. In order to establish a claim for battery in Massachusetts, the plaintiff must prove:

1. An act by the defendant;
2. With the intent to cause harmful or offensive contact;
3. Resulting in a harmful or offensive contact to the plaintiff.

For example, if David aimed a pistol at Patrick and fired a shot, striking Patrick in the leg, Patrick would have a legitimate cause of action against David for battery and could file a lawsuit against him. If Patrick could prove these facts in court to a jury - through eye witness testimony, video footage, or other evidence - then a jury could find David liable to Patrick for battery, and award Patrick monetary compensation for his damages, which might include medical bills, lost wages, pain, suffering, and emotional distress.

### Defenses Generally

Under certain circumstances, even if a plaintiff can prove each element of his or her cause of action, the defendant may be able to establish additional facts that protect him or her from liability. Such assertions are known as affirmative defenses to a claim. Continuing with our example above, if David could show, through evidence, that he and Patrick were in fact friends and that Patrick had asked David to shoot him in the leg, then David could raise the defense of consent - that Patrick had consented to the otherwise harmful or offensive touching. By establishing these facts at trial, David

could avoid a finding of liability, even where Patrick was able to prove each of the elements of his battery cause of action.

#### Why Is This Important?

You may be asking, “When is the chase, and can you please cut to it, counselor?” Simply put, there is no better way to avoid unwanted litigation or understand when you may need to initiate litigation than by becoming familiar with the most common causes of action. The purpose of this series is to explore some of the most common causes of action that the reader may encounter in his or her personal or professional life. By understanding the types of conduct that can give rise to liability, we can:

- (1) Avoid engaging in such conduct ourselves (and potentially prevent our employees from engaging in such conduct) and
- (2) Recognize when others have engaged in legally actionable conduct and may be liable for harms that they have caused.

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