

Class 13 Outline
Business Finance 640 - Insurance and Risk
Autumn Quarter, 2007

This class discusses the basis for the liability risk exposure. Theoretically there is no maximum upper limit to the size of a liability suit. Attorney fees arising from defending a liability suit can be enormous. A person's income and assets can be attached to satisfy a liability judgment.

We start by discussing the types of legal wrong, and then look at the major elements of a negligent act. Next, we briefly look at the legal defenses that can be used if one is sued. Then, we turn to a review of specific applications of the law of negligence.

Later in the class, we focus on alleged defects found in our legal system and their implications for public policy. We review rising tort liability costs and various tort reform measures.

I. Basis of Legal Liability

A Types of Legal Wrongs

1. *Legal wrong* is defined as the failure to perform a legal duty.
2. Types of legal wrongs include crimes, breach of contract, and torts.

B Types of Torts

1. Intentional—such as libel, slander, assault, and false arrest
2. Absolute liability—liability is imposed regardless of negligence or fault
3. Negligence

II. Law of Negligence

A. Negligence Defined—failure to exercise the standard of care required by law to protect others from harm

B. Elements of a Negligent Act

1. Existence of a legal duty to protect others from harm
2. Failure to perform that duty
3. Damages or injuries to the plaintiff
4. Proximate cause relationship between the negligent act and the infliction of damages

C. Types of Damage Awards

1. Special damages
2. General damages
3. Punitive damages

D. Defenses Against Negligence

1. Contributory negligence
2. Comparative negligence
3. Last clear chance rule
4. Assumption of risk

E. Imputed Negligence—negligence of one person can be imputed to another

1. If there is an employer-employee relationship
2. If a vicarious liability law applies
3. If there is a joint business venture
4. If a dram shop law applies

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- F. *Res Ipsa Loquitur*
 - 1. Definition—this means the thing speaks for itself.
 - 2. Four elements must be present for it to apply: (a) the event must be such that it would not have occurred unless someone was careless; (b) the defendant has superior knowledge of the cause of the accident; (c) the instrumentality causing the accident must be in the exclusive control of the defendant; and (d) the injured party has not contributed to the accident in any way.

III. Specific Applications of the Law of Negligence

- A. Ownership of Property
 - 1. Degree of care required for trespasser, licensee, or invitee
 - 2. Attractive nuisance doctrine—a condition that can attract and injure children
- B. Ownership and Operation of Automobiles
 - 1. The negligent owner and operator of the vehicle can be held liable for bodily injury or property damage caused to another.
 - 2. Where the owner is not the operator, the general rule is that the owner is not liable for the negligence of the operator—exceptions are when an agency relationship exists, a vicarious liability statute exists, or a permissive use statute has been passed.
- C. Government Liability
 - 1. Government entities can be sued if a proprietary function is involved.
 - 2. With respect to government functions, immunity from lawsuits has been eroded.
- D. Charitable Institutions—immunity has been eroded both by court decisions and by legislation.
- E. Employer and Employee Relationships
 - 1. Must be an employee, not an independent contractor
 - 2. Must be acting within the scope of employment
- F. Parents and Children
 - 1. Under the common law, parents usually were not liable for a child's tort.
 - 2. Today, parents can be held liable if a child is given a dangerous instrument; a child is acting as an agent for the parent; under the family purpose doctrine, parents can be held liable if a car is operated by a minor child; and state laws have been passed that make parents liable for deliberate property damage by the children.
- G. Animals
 - 1. Absolute liability applies to injuries caused by wild animals, even though they have been domesticated.
 - 2. For domestic pets, the majority of states hold the owner liable for injury to another even if the pet is not vicious.

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IV. Current Tort Liability Problems

- A. Defective Tort Liability System
 - 1. Rising tort liability costs
 - 2. Inefficiency in compensating injured accident victims
 - 3. Uncertainty of legal outcomes
 - 4. Higher liability awards
 - 5. Long delay in settling lawsuits
 - 6. Tort reform

- B. Medical Malpractice Crisis
 - 1. Reasons for medical malpractice problem
 - 2. Approaches to medical malpractice problem

- C. Corporate Fraud and Lax Corporate Governance

- D. Increase in Asbestos Lawsuits