

**Class 10 Outline**  
**Business Finance 749**  
**Spring Quarter, 2007**

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**I. Liability Exposures**

- A. A commercial liability loss exposure is the possibility of experiencing a liability loss as a result of a specific legal claim or suit against a person or organization.
- B. The most obvious way that an organization can suffer a liability loss is when the organization becomes legally obligated to pay damages.
- C. However, a person or organization can experience a liability loss even if it not held to be legally liable.
- D. All the other party (called the “claimant”) has to do is allege that the organization is legally liable to pay damages. The accused organization (or its liability insurer) must then incur expenses to investigate and defend the claim.
- E. Even if the claim is eventually found to be invalid, the organization (or its insurer) will have incurred a liability loss.
- F. If the claimant succeeds in proving legal liability, the loss will be increased by the amount that must be paid as damages.

**II. Civil Law, Criminal Law and Liability Insurance**

- A. Legal liability can be imposed by civil law, criminal law or both.
- B. Civil law provides a means to resolve disputes between parties, whereas criminal law imposes penalties for wrongs against society.
- C. Liability insurance responds to liability imposed by civil law.
- D. Insurance is not available for criminal liability
- E. Such insurance would be against public policy and is prohibited by law.
- F. The same conduct could constitute both a civil wrong and a crime.
- G. For example, if a driver causes death of a pedestrian, government authorities may charge the driver with vehicular homicide, a criminal act.
- H. The driver may also be subject to a civil action by the state of the deceased pedestrian for medical bills, funeral expenses, loss of support and other damages
- I. Insurance would not respond to the criminal charges. It could, however provide payment for the civil claims.
- J. Civil liability can be based on torts, contracts or statutes.

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<b>Legal Liability</b>		
<b>Torts</b>	<b>Contracts</b>	<b>Statutes</b>
Negligence	Hold Harmless or Indemnity Agreements	Workers Compensation
Intentional Torts	Breach of Contract	Other statutes that define legal duties and standards of care
Strict/Absolute Liability Torts		

**III. Legal Liability Based on Torts**

- A. A tort is a civil wrong against another person other than breach of contract.
- B. Most of the claims covered by liability insurance are based on the laws relating to torts.
- C. Tort law protects the rights of individuals.
- D. Originally, these legally protected rights included the rights to security of:
  - Person
  - Property
  - Reputation
- E. Over the years, legal changes have established other rights of individuals, such as the:
  - Right to privacy
- F. Where there is a right, there is also a duty on the part of others to:
  - Respect that right
  - Refrain from any act or omission that would impair or damage that right
- G. Elements of negligence
  1. Legal duty
  2. Breach of duty
    - a. In non-business liability, the standard of care is what would a “reasonably prudent person” done in similar circumstances.
    - b. In professional liability, the standard often is what would a reasonably, adequately trained professional done in similar circumstances.
      - May need expert testimony to establish this
    - c. In many business liability cases, the courts often use an economic standard. The test becomes: Did the business take cost-justified precautions to prevent the harm
  3. Proximate cause relationship
    - a. Sine qua non or “but for” rule

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b. Foreseeability test

- If defendant should have reasonably foreseen that his or her action could create a significant risk of injury, then the defendant's action will be deemed the proximate cause even if there are intervening events

4. Damages and other remedies

H. Defenses to Negligence – Way to avoid or reduce liability under negligence

1. Assumption of risk defense
2. Establish that the defendant was also negligent
  - a. Contributory negligence standard
  - b. Comparative negligence standard

**IV. Sources of Liability Exposures – Businesses and Organizations**

- A. Commercial liability exposures can arise from a variety of sources.
  1. Premises and operations liability
  2. Products liability
  3. Completed Operations liability
  4. Automobile liability
  5. Watercraft liability
  6. Another key source is employees, since most employees are obligated by workers compensation laws to pay for the occupational injuries of employees

**V. Premises Liability and Operations Liability Exposure**

- A. Arises out of the ownership, occupancy and use of property (the premises).
  1. Categories of people/parties exposed to premises liability exposures
    - a. Owner-occupants
    - b. Landlords
    - c. Tenants
  2. Firms are legally responsible to maintain the property in a safe condition and are responsible for the acts of their employees.
  3. Standard of care is that the property be maintained as a reasonable and prudent person would maintain.
  4. Highest degree of care is owed to customers, who are considered invitees.
  5. This means the customer must be warned and protected against any dangerous condition.
  6. For example, a reasonable and prudent would be expected to keep the floors dry, carpet repaired (not torn), and walking areas free of objects that might cause injury to another person.

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- B. Types of Premises liability
1. Slip and fall liability
  2. Premises security liability
    - Liability for crimes committed by employees
    - Liability for crimes committed by third parties
  3. Liquor liability
    - Dram shop and liquor control statutes
    - Employer hosts
    - Social hosts
    - Common law defenses to liquor liability
  4. Liquor liability – a word about coverage
    - a. CGL policies typically exclude this exposure, if the form is in the business of manufacturing, selling, distributing or serving of alcoholic beverages.
    - b. This exclusion does not apply to casual or occasional distribution of alcoholic beverages, such as at the office annual picnic or a holiday office party.
  5. Bailment liability
    - a. Types of bailments
    - b. Defenses and limitations on bailment liability
  6. Operations Liability Exposure
    - a. Relates to any activity in addition to occupancy
    - b. Operations could be for any kind of business
  7. Firms generally thought of as having a significant operations exposure:
    - a. Manufacturers
    - b. Processors
    - c. Contractors
  8. Specific operations liability examples
    - a. Paving contractor - If a member of the public is injured as a result of negligent construction activity while the project is underway, the resulting liability claim will have arisen out of the operations liability exposure.
    - b. Lumberyard – Employees unloading lumber in a lumberyard may accidentally damage a customer's car.
    - c. Building contractor – Constructing a high rise apartment. Worker drops a tool that injures a pedestrian
- C. Products Liability
1. Arises from the possibility that a member of the public might be injured by a product manufactured, sold or distributed by an organization.

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2. Thus, manufacturers, wholesalers and retailers are all exposed to the possibility of a products liability claim or suit.
  3. Products liability can be imposed under several different legal theories, including
    - a. Breach of warranty
    - b. Negligence
    - c. Strict liability in tort
      - i. Who may bring an action
      - ii. Elements of strict liability in tort
- D. Defenses to products liability
1. State of the art
  2. Compliance with product specifications
  3. Open and obvious danger
  4. Plaintiff's knowledge
  5. Contributory or comparative negligence and assumption of risk
  6. Product misuse
  7. Product alteration
  8. Written disclaimers
  9. Post accident product changes
  10. Existence of an intermediary
  11. Allergy and susceptibility
- E. Completed Operations
1. Refers to legal liability arising out of faulty work performed away from the premises after the work or operation is completed.
  2. The completed operations exposure includes any materials provided by the organization doing the work.
  3. The word "completed" is important. If an injury occurred because of a contractor's negligence during the work of work (and before the work is completed), the claim would be said to have arisen out of the contractor's operations liability exposure.

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4. Examples of firms associated with this exposure: contractors, plumbers, repair shops.

<b>Principal Loss Exposures Covered by CGL: Examples</b>	
<b>Exposure</b>	<b>Example</b>
Premises liability	Customer slips on a wet floor in a department store and breaks ankle
Operations liability	Employee of insured plumbing contractor accidentally sets fire to customer's house while soldering pipes
Products liability	Defective gas range manufactured by insured firm causes explosion that damages buyers house
Completed operations liability	Overhanging walkway connecting two buildings constructed by insured firm collapses two years after being put into use

**VI. Other Liability Exposures**

A. Contingent Liability

1. Refers to liability arising out of the work done by independent contractors
2. Businesses and organizations are not generally liable for the work done by independent contractors
3. However, a firm can be held liable if:
  - The activity is illegal
  - The situation or activity does not permit delegation of authority
  - The work done by the independent contractor is inherently dangerous

B. Personal and advertising injury

2. Refers to liability arising out of
  - a. Certain intentional tort
  - b. Using ideas that belong to another in your advertising or infringing a copyright right or trade slogan in your advertising
3. Examples of intentional torts
  - ✓ False arrest
  - ✓ Detention or imprisonment
  - ✓ Malicious prosecution
  - ✓ Wrongful eviction and, wrongful entry
  - ✓ Slander, libel, defamation of character
  - ✓ Violation of privacy

C. Fire Legal Liability

1. A firm may rent or use property such as building that belongs to another party
2. If a fire occurs because of the negligence of the firm or its employees, the firm can be held legally liable for the loss.

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D. Environmental pollution

1. A firm may pollute the environment through the discharge, seepage, release, etc. of smoke, vapors, acids, toxic chemicals, waste and other pollutants.
2. These can be liquid, solid or gaseous.
3. Liability arising from pollution can be significant.
4. Most pollution liability is excluded under the CGL.

E. Professional liability

1. Historically associated with the practice of certain learned professions: accountancy, dentistry, law, medicine, education and the clergy
2. In more recent times, expanded to include architects, engineers, insurance agents and brokers, etc.
3. The term “Professional Liability” is also used to describe other coverages not covered in the CGL including:
  - a. Directors and officers liability
  - b. Employment practices liability
  - c. Employee benefit liability
  - d. Fiduciary liability
4. ISO Commercial Lines Manual requires that CGL policies issued to certain professions include a professional liability exclusion endorsement.
5. Most Professional Liability policies exclude bodily injury and property damage

**VII. Commercial General Liability Policy (p. 387 – 395 of Policy Handbook)**

A. Introduction

1. Most organizations have a premises or operations liability exposure and therefore commonly purchase CGL.
2. CGL can therefore be viewed as the foundation for most organizations liability programs. (Exception: Small to medium-sized enterprises may cover CGL like exposures through a businessowners policy).
3. Additional types of liability insurance, such as automobile liability insurance, are frequently purchased to cover exposures that the CGL policy excludes.
4. The most commonly used standard form for providing CGL insurance is the Commercial General Liability Coverage Form of the Insurance Services Office (ISO).
5. The CGL Coverage Form provides three separate coverages:
  - a. Coverage A – Bodily Injury and Property Damage Liability

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- b. Coverage B – Personal and Advertising Injury Liability
  - c. Medical Payments
- B. Coverage A Insuring Agreement
- 1. Consists of two distinct promises made by insurer
    - a. To pay damages on behalf of the insured
    - b. To defend insured against claims or suits seeking damages covered under the policy
  - 2. Insuring agreement imposes the following conditions on the insurer's duty to pay damages
    - a. The insured must be legally obligated to pay damages
    - b. The damages must result from "bodily injury" or "property damage" as defined in the policy
    - c. The policy must apply to the bodily injury or property damage
    - d. The bodily injury or property damage must be caused by an "occurrence" as defined in the policy.
    - e. The occurrence must take place in the coverage territory
    - f. The bodily injury or property damage must occur during the policy period (Claims-made form contains a different provision).