

TOPIC 1: COMMERCIAL GENERAL LIABILITY INSURANCE---Eight Classroom Hours

Obj 1-1. A **LIABILITY LOSS EXPOSURE** is the possibility of experiencing a liability loss. A **liability loss** is the money paid by a person or organization as a result of a legal claim against that person or organization.

THE COMMERCIAL GENERAL LIABILITY (CGL) FORM covers **legal liability** (legal obligations arising from legal wrongs).

Legal liability can be based on

1. **torts**--wrongful acts or omissions *other than* a crime or breach of contract,
2. **contracts**--legally enforceable agreements among individuals, *or*
3. **statutes**--written laws passed by legislative bodies.

EIGHT LIABILITY EXPOSURES COVERED BY THE CGL:

1. **Premises liability**--is liability for bodily injury (**BI**) or property damage (**PD**) caused by an accident occurring on the premises owned, leased, or rented by the person or organization.
2. **Operations liability**--is liability for BI or PD caused by an accident away from the premises but arising from the person's or organization's ongoing operations.
3. **Products liability**--is the legal responsibility of the manufacturer, distributor, *and/or* retailer of a product to the product consumer.
4. **Completed operation liability**--is the legal responsibility of a contractor, repairer, or similar artisan for BI or PD arising out of his completed work, including use of defective parts and materials.
5. **Contractual liability**--arises from agreements that obligate one party to pay certain losses (contractually assumed) sustained by another party.
6. **Independent contractor liability**--is liability caused by the negligence of a contractor or subcontractor hired by the insured.
7. **Personal injury liability**--arises from intentional torts to a person, such as assault, battery, false imprisonment, and false arrest.
8. **Advertising liability**--arises from injury caused by an offense committed in the course of advertising the named insured's goods or services.

Obj 1-2. A **TORT** is a breach of an obligation imposed by common law (or, sometimes, by statute).

The four elements of a tort: (Breached duty caused damage.)

1. **wrongful invasion of** (Breached)
2. **a legally protected right** (duty),
3. **resulting in** (caused)
4. **proximate or direct damages** (damage.).

LEGAL LIABILITY BASED ON TORTS falls into three broad categories:

1. **Negligence**--if the defendant failed to exercise the required level of care he owed to the plaintiff.
2. **Intentional action torts**--*All* involve intentional actions, but *not* all involve intentional injury.
2. **Actions imposing absolute or strict liability**--**Strict (absolute) liability** is imposed without regard to care taken when the activity is inherently dangerous (blasting, owning a pet rattlesnake). **Strict liability** may be imposed by certain statutes, such as workers' compensation laws.

Obj 1-3. **NEGLIGENCE** is the unintentional tort in which the **defendant** (aka the **tortfeasor** aka the **negligent person**) failed to exercise the standard of care he owed the **plaintiff** (aka the **claimant**). Negligence is the basis of most torts *and* most liability insurance claims.

A defendant may be held liable for negligence only if the plaintiff can prove all four elements of a tort:

1. **a legal duty owed**--The duty arises under *either*
 - a. **common law**--the unwritten codification of society's rules of conduct as rendered by judicial (court) decisions *or*
 - b. **statutes**--written dictates of legislative bodies.
Statutes supersede common law.
2. **a breach of that duty**--The defendant failed to exercise reasonable care to observe the duty owed. **The prudent person test [still known by most older attorneys as the prudent man test]** evaluates the defendant's conduct by asking if he behaved the way a reasonable person of ordinary prudence would have behaved under the same circumstances.
3. **damages**--The plaintiff suffered damages recognized by law.
Compensatory damages compensate the plaintiff for
 - a. **special damages**--money-quantifiable, out-of-pocket losses such as for medical bills, lost wages, direct damage to property, and loss of use of damaged property *and*
 - b. **general damages**--money-nonquantifiable damages such as for pain and suffering, mental distress, and **loss of consortium** (loss of spousal sex, society, and services).
Punitive, aka exemplary, damages punish the defendant and set an example to others by awarding the plaintiff money in addition to compensatory damages.
4. **causal connection**--The plaintiff must prove **proximate cause** (The breached duty must directly cause the damages by a reasonably foreseeable chain of events.).

SIX DEFENSES TO NEGLIGENCE ACTIONS:

1. **Lack of negligence**--The plaintiff failed to establish *all four* essential elements of negligence.
2. **Contributory negligence**--The plaintiff's negligence, to *any* degree, in caring for his own self-interest, bars *any* recovery.
Comparative negligence has replaced contributory negligence throughout virtually the entire US.
3. **Comparative negligence**--applies in most states--**The plaintiff's negligence in caring for his own self-interest, bars recovery**
 - a. **under the 'pure type' rule**, for that proportion of damages equal to his proportion of negligence.
 - b. **under the 'not greater than' or '50% type' rule**, of *any* damages if his proportion of negligence was greater than the other party's.
 - c. **under the 'not as great as' or '49% type' rule**, of *any* damages if his proportion of negligence was at least equal to the other party's.
 - d. **under the 'slight versus gross' rule**, of *any* damages *unless* the plaintiff's negligence is slight compared to the other party's (relatively gross) negligence.
4. **Last clear chance doctrine**--Responsibility falls on the party who had the last definite opportunity to avoid injury.
5. **Assumption-of-risk**--intentional, voluntary acceptance of a dangerous situation (playing hockey, rubbernecking at fires) precludes a lawsuit for injuries that arise from that risk.
Assumption of risk involves a deliberate choice.
Contributory negligence involves carelessness.
6. **Statute of limitations**--State statutes set deadlines after which the plaintiff loses his right to sue the defendant.
Time periods vary from state to state and from cause of action to cause of action.

Obj 1-4. **INTENTIONAL TORT** *must* involve intentional activity, but need *not* involve intentional injury. Every person has the legally protected right to be free of injury or harm to his reputation, privacy, person, movement, *and* property.

NINE INTENTIONAL TORTS:

1. **defamation**--false public statements resulting in the plaintiff's loss of (damaged) reputation or esteem. **Slander** is oral defamation. **Libel** is written defamation.
2. **wrongful entry**--entry onto another's property without permission.
3. **wrongful eviction**--intentional acts that deny a person access to premises that he had a right to enter.
4. **intentional torts against the person--include**
 - a. **assault**--intentionally causing fear of battery,
 - b. **battery**--injurious or offensive touching of another without permission or privilege,
 - c. **false imprisonment**--detaining another without permission or privilege, *and*
 - d. **false arrest**--physical restraint of another without permission or privilege.
5. **fraud**--is deception to induce another to part with property *or* to surrender a legal right.
6. **interference with relationships between others--include**
 - a. **Trade disparagement**--belittles another's business, products, or services with lies or misleading statements.
 - b. **Unfair competition**--imitates a competitor's goods to fool customers into mistaking the imitation for the original.
 - c. **Interference with employment**--uses unlawful means to prevent a person's employment *or* to procure his discharge.
7. **misuse of legal process--includes**
 - a. **Malicious prosecution** is malicious criminal proceedings without probable cause terminated in favor of the defendant.
 - b. **Malicious abuse of process** uses civil or criminal procedures for a purpose for which they were *not* designed.
8. **interference with property rights--includes**
 - a. **Trespass** includes unauthorized entry upon another's land or interference with another's possession of personal property.
 - b. **Conversion** is the intentional and unlawful control of another's personal property, ie, theft.
9. **nuisance--includes**
 - a. **Private nuisance** interferes with another's quiet enjoyment of his real property.
 - b. **Public nuisance** affects a substantial segment of the public rather than just an individual or a family.

Obj 1-5. **STRICT LIABILITY is imposed for**

1. ownership of **dangerous instrumentalities** (firearms, vicious animals),
2. engaging in **ultra-hazardous activities** (blasting, mining), *and*
3. the sale of **dangerously defective products**.

Under strict liability, the defendant's extreme care and lack of moral fault are *not* defenses. The defendant is held responsible if the plaintiff can show injury.

Obj 1-6. **THREE STATUTES THAT MODIFY COMMON LAW LIABILITY:**

1. **Dram shop acts**--hold those in the business of providing alcohol strictly liable for violating the standards of care established by the law.
2. **Liquor liability laws**--hold private persons accountable for contributing to the intoxication of those who harm others.
3. **Workers' compensation laws**--abrogate the employer's common law defenses to provide a system of no-fault recovery for employees' on-the-job injuries.

Obj 1-7. **THE OBLIGATIONS OF AN OWNER OR OCCUPIER OF LAND to**

1. **trespassers**--The owner owes no duty of care to persons on the premises without his consent, but he may *not* set traps or use excessive force in removing a trespasser.
Exception: Under the **attractive nuisance doctrine**, a person who creates or maintains *any* artificial condition that is dangerous to children must take reasonable precautions to prevent any injury to any child that is likely exposed to it and who can *not* appreciate the danger.
2. **licensees**--(people on the premises with the owner's consent for their own benefit, such as social guests, salesmen, and firemen)--The owner must remove hazards or warn of hidden hazards.
3. **invitees**--(people on the premises for the owner's benefit, such as business customers, repairmen, meter readers, mailmen, and tax collectors)--The owner must use reasonable care to inspect and maintain the premises, to warn of any known hidden dangers, *and* to remedy dangerous conditions.

Notes: Several states have abolished those distinctions and adopted a rule of reasonable care for the safety of *all* persons expected on the premises.

And, yes, firemen are licensees but tax collectors are invitees!

Obj 1-8. **PRODUCT LIABILITY** is the legal liability of sellers and manufacturers of defective or dangerous products.

Product liability claims may be based on

1. negligence;
2. **breach of warranty, including**
 - a. **implied warranties** (guarantees rightfully expected by consumers) *and*
 - b. **express warranties** (specific stated guarantees);
3. strict liability; *or*
4. statute.

A **defect** is any product weakness or flaw that later causes injury or damage.

To establish strict tort liability in a product liability case, the plaintiff must prove

1. The seller was engaged in the business of selling the product.
2. The product was defective when it left the seller.
3. The defect caused unreasonable danger.
4. The defect was the proximate cause of personal injury to or damage to the property of the claimant.

Four strict liability defenses:

1. **Misuse or modification**--The user altered the product, misused the product, or failed to read a warning.
2. **Assumption of risk**--The user discovered the defect and was aware of the danger, but continued to use the product.
3. **State of the art**--The product conformed to prevailing industry standards at the time it was designed or built.
4. **Government specifications**--The product met government regulations for designing, building, or labeling such products.

Obj 1-9. **NEGLIGENCE IS IMPUTED (transferred) TO ANOTHER** in cases of **vicarious liability**. **VICARIOUS LIABILITY** (substitutionary liability) imposes responsibility on one person (a principal, employer, parent, business partner) for the torts of another (his agent, employee, child, business partner). Employers are subject to vicarious liability for their **employees** (persons hired by the employer to perform work under the employer's control) but *not* for their **independent contractors** (persons hired by others but who retain the right to control their own work) *unless* the contracted work involves nondelegable duties or inherently dangerous activities.