

1: Current Liabilities, Accounting Terms

Basis of Liability. The liability exposure may arise out of either statutory or common law, as shown in Figure "Basis of Liability Risk". Statutory law The body of written law created by legislatures. is the body of written law created by legislatures.

June, 10th Table of Contents Introduction The standard of a reasonable man The report mainly focuses in the liability in tort law, what is the characteristic of tort, its aim and objective. It also contrast the liability in tort and liability in contractual in order to help the clients to distinguish these two common law so that they can avoid it. After that, the report will delve into two aspects of tort law, which is vicarious liability and negligence. Through the two claims of client, Mr. Johnson, reader can know the nature of liability in negligence and how a business can be vicariously liable. In order to be success in the claim for negligence, claimant must be prove to the court that the defendant owe them a duty of care, there is a breach in duty of care by the defendant and the breach of this duty cause claimant damage. Knowing the way to avoid and claim for compensation can benefit to employer and individual. Torts generally involve an intrusion by one party into the safety, health, profit, or privacy of the victim Williams, The liability in tort is held to the party which their wrongful act cause injury or damage to other party, and therefore they have to pay compensation for the injured party. The tort law incident that the party may be held liable even their act is not intentionally. One of the most common case in tort law is negligence, where the tort is committed by the carelessness of one party. In a torts claim, the damages are usually awarded to compensate the injured party for their loss. A contract is basically an agreement between parties. In the contract, it clearly outlines duties and responsibilities of one party to one another. Contract laws outline what a person can or cannot include in a contract, and what the remedies are if a party breaches their contractual duties. In contract law, each party must consent with the term that stated in the contract, which mean they cannot be force the other party to enter the contract without their agreement. Therefore, the contractual liabilities arise out of the responsibilities of each party are set by the term that clearly stated in the contract that binding them. A right in rem is a right which is available against the whole world. But the other remedies such as injunction, restitution of land, ejection of trespasser are also available. The first and main object of liability in tort is to compensate those who have suffered personal injury. The second is to punish the person having wrongful act that cause damage to other person. And finally, the third purpose is to prevent this wrongful act happen again. These objectives are set up in order to protect the injured party and ensure the justice. In contractual liability, the relationship between parties is created and governs by the contract. In tort liability, the relationship is non "contractual and is imposed by the law. The contract only form and legal if parties entering the contract consent about every term in the contract. They cannot be force the other party to enter the contract without their agreement. On the other hand, the liability in tort does not base on consent. As the definition above, torts involve an intrusion by one party into the safety, health, profit of other party. In contract claim, when there is a breach of contract term of one party, the other party will sue to restoring their position in the contract because the contract set up base on the balance in position and profit of parties. Furthermore, the compensation in case breach of contract usually clearly state in the contract and the party which breach the contract only compensate base on it. Negligence is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances Meriam Webster, Negligence involves harm caused by carelessness, not intentional harm. In order to be successful in a negligence claim, the claimant must prove: If the defendant fails to take such care to the claimant, the defendant will be liable to pay compensation for claimant because according to the law, the defendant had breach of duty of care. To do the neighbor test, the judge will look into two requirements: A person will not be liable for the acts of third parties unless they were under his control [The case Topp v London Country Bus Appendix 3, pg. The standard of a reasonable man To successful in the claim of negligence, claimant must give evidence that there was a breach of duty of care of defendant that caused the damage to him. The standard that is mentioned here is not the standard of an average man but the standard that require for a person act or job, for example, the standard of doctor or car driver [The case Nettleship v Weston Appendix 5, pg. In order

to identify if a person act fell below standard of a reasonable man, the court will consider the following factors: A person who professes to have a particular skill, for example, a doctor, is required to use the skill which he purports to have. An error of judgment is 5 Page not automatically a case of negligence. A claim for compensation for negligence will succeed unless these elements could be proved: In this case, there are two problems that need to be considered. First problem is that is it Mr. Johnson owe Tuan a duty of care? Johnson sold sandwich bread to Tommy, who bought it for his friend, Tuan. On his third mouthful of bread, Tuan bit a dead spider inside the bread and suffered a very bad stomach ache. The dead spider was accidentally inside the bread, not intention of Mr. Johnson still owe Tuan a duty of care because according to the neighbour test and the case *Donoghue v Stevenson* Appendix 1, pg. In this case, Mr. Johnson must be held to duty of care to Tuan because Tuan would be affected by the consequences of Mr. Johnson had breach that duty of care when sold the infected bread to Tuan and caused him a heavy stomach ache. According to Food Safety Act , c. The breach of duty of Mr. Johnson caused damage to Tuan. Tuan had a heavy stomach ache and had to go to hospital. Johnson owed Tuan a duty of care but he had breach it and it caused damage to Tuan. In this case, Dr. Stevenson will not liable with Tuan because he is not breach duty of care. When Tuan was brought to the hospital, he was gastroenteritis and suffered a bad stomach ache caused by ate dead spider in the sandwich. This is an emergency situation and it requires a quick respond. Stevenson does not inject antibiotic on time, the poison of the dead spider could spread all over and Tuan could be death. The longer the time floats, the lower survival rate. That is why Dr. Stevenson inject Tuan antibiotic immediately without asking him if he was allergic or not. He knew the balance between advantage and risk. The advantage is that Dr. Stevenson could save Tuan from the spread of poison that could be very dangerous for Tuan. On the other hand, Dr. Stevenson knew the risk that if Tuan allegoric to the antibiotic, then he could suffer worse injury. Furthermore, injecting antibiotic to Tuan met the standard of ordinary skilled doctor because in this situation, other doctors will do the same thing as Dr. According to the rule of reasonable man, the error of Dr. Stevenson is not automatically a case of negligence [The case *Whitehouse v Jordan* Appendix 6, pg. In a workplace, an employer can be charge for the action or exclusion of his employees in the course of employment. At the course, to make the employer liable for the action of employee, it is necessary that: There is a relationship between them of employer and employee. In order to prove that there is a relationship between employer and employee, the court will need to identity or check by using test. Basically, there are 3 tests that generally use in this situation, which is: If the person commit a tort was an independent contractor, then the employer will not be charge to vicarious liability. However, there is exception to this rule. If the employer fail to supervise an independent contractor properly, then the employer still can be liable to the harm arising as a result. Even the act of employees is committed while they are not in the course of employment, the employer still can be held for vicarious liability [The case *Ministry of Defence v Radcliffe* Appendix 8, pg. The case have clearly state that Vincent work for Mr. Johnson as home delivery driver. The task of Vincent is to deliver the product from Mr. This job does not require much. Johnson can control how Vincent perform his task, what he has to deliver and where he has to deliver product to. Johnson passed the control test. Johnson is owner of the cafe. Obviously, he has the power to recruit and assign duty for employee. Another point is that Mr. Johnson has provided the vehicle for Vincent because according to scenario, Mr. Johnson forbidden Vincent to give lift to his girl friend. Johnson cannot forbid him. It can be concluded that there are relationship between employee and employer. Instead, he gave Mimi a lift and uses the vehicle for personal.

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How legal liability is defined and determined
Types of monetary compensation for liability damages
The role of negligence in liability
Defenses against liability
Modifications to liability, as they are generally determined
Legal liability
The responsibility, based in law, to right some wrong done to another person or organization. Several aspects of this definition deserve further discussion. One involves the remedy of liability. A remedy
Compensation for a person who has been harmed in some way. A person who has been wronged or harmed may ask the court to remedy or compensate him or her for the harm. Usually, this will involve monetary compensation, but it could also involve some behavior on the part of the person who committed the wrong, or the tortfeasor
A person who commits a wrong.. For example, someone whose water supply has been contaminated by a polluting business may request an injunction against the business to force the cessation of pollution. A developer who is constructing a building in violation of code may be required to halt construction based on a liability lawsuit. When monetary compensation is sought, it can take one of several forms. Special damages
Compensation for harms that generally are easily quantifiable into dollar measures. These include medical expenses, lost income, and repair costs of damaged property. Those harms that are not specifically quantifiable but that require compensation all the same are called general damages
Compensation for harms that are not specifically quantifiable but that require compensation all the same. Examples of noneconomic or general damages include pain and suffering, mental anguish, and loss of consortium companionship. The third type of monetary liability award is punitive damages, which was discussed in Note In this chapter, we will continue to discuss the controversy surrounding the use of punitive damages. Punitive damages
Awards intended to punish an offender for exceptionally undesirable behavior. Punitive damages are intended not to compensate for actual harm incurred but rather to punish. A second important aspect of the definition of liability is that it is based in law. In this way, liability differs from other exposures because it is purely a creation of societal rules laws , which reflect social norms. As a result, liability exposures differ across societies nations over time. In the United States, liability is determined by the courts and by laws enacted by legislatures. The risk of liability is twofold. Not only may you become liable to someone else and suffer loss, but someone else may become liable to you and have to pay you. You need to know about both sides of the coin, so to speak. Your financial well-being or that of your organization can be adversely affected by your responsibility to others or by your failure to understand their responsibility to you. If you are the party harmed, you would be the plaintiff
The party harmed in litigation. The party being sued in litigation is the defendant
The party being sued in litigation.. In some circumstances the parties will be both plaintiffs and defendants. Basis of Liability
The liability exposure may arise out of either statutory or common law, as shown in Figure
Statutory law
The body of written law created by legislatures. Common law
Body of law based on custom and court decisions. Under the doctrine of stare decisis
Principle that once a court decision is made in a case with a given set of facts, the courts tend to adhere to the principle thus established and apply it to future cases involving similar facts. This practice provides enough continuity of decision making that many disputes can be settled out of court by referring to previous decisions. Some people believe that in recent years, as new forms of liability have emerged, continuity has not been as prevalent as in the past. Criminal law
Law concerned with acts that are contrary to public policy crimes , such as murder or burglary. Civil law
Law that deals with acts that are not against society as a whole but rather cause injury or loss to an individual or organization. A civil wrong may also be a crime. Murder, for instance, attacks both society and individuals. Civil law has two branches: Civil liability may stem from either contracts or torts. Contractual liability
When the terms of a contract are not carried out as promised by either party to the contract. When you sign a rental agreement for tools, for example, the agreement may provide that the tools will be returned to the owner in good condition, ordinary wear and tear excepted. If they are stolen or damaged, you are liable for the loss. As another example, if you offer your car for sale and assure the buyer that it is in perfect condition, you have made a warranty. A warranty
A guarantee that property or service sold is of the condition represented by the seller. If the car is not

in perfect condition, you may be liable for damages because of a breach of warranty. A tort A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. West Publishing Company, , That is, all civil wrongs, except breach of contract, are torts. Examples of intentional torts include libel, slander, assault, and battery, as you will see in the contracts provided as appendixes at the end of this book. While a risk manager may have occasion to be concerned about liability arising from intentional torts, the more frequent source of liability is the unintentional tort. By definition, unintentional torts involve negligence. If someone suffers bodily injury or property damage as a result of your negligence, you may be liable for damages. Negligence refers to conduct or behavior. It may be a matter of doing something you should not do, or failing to do something you should do. Negligence Failure to act reasonably, where such failure to act causes harm to others. It is determined by proving the existence of four elements sometimes people use three, combining the last two into one. These four elements are the following: A duty to act or not to act in some way Breach of that duty Damage or injury to the one owed the duty A causal connection, called a proximate cause A causal connection. When a person operates an automobile, that person has a duty to obey traffic rules and to drive appropriately for the given conditions. A person who drives while drunk, passes in a no passing zone, or drives too fast on an icy road even if within set speed limits has breached the duty to drive safely. If that person completes the journey without an incident, no negligence exists because no harm occurred. If, however, the driver causes an accident in which property damage or bodily injury results, all elements of negligence exist, and legal liability for the resulting harm likely will be placed on the driver. A difficult aspect of proving negligence is showing that a breach of duty has occurred. Proof requires showing that a reasonable and prudent person would have acted otherwise. Courts use a variety of methods to assess reasonableness. One is a cost-benefit approach, which holds behavior to be unreasonable if the discounted value of the harm is more than the cost to avoid the harm This was first stated explicitly by Judge Learned Hand in *U. In this way, courts use an efficiency argument to determine the appropriateness of behavior. A second difficult aspect of proving negligence is to show a proximate cause between the breach of duty and resulting harm. Proximate cause has been referred to as an unbroken chain of events between the behavior and harm. The intent is to find the relevant cause through assessing liability. The law is written to encourage behavior with consideration of its consequences. Liability will not be found in all the circumstances just described. The defendant has available a number of defenses, and the burden of proof may be modified under certain situations. Defenses A number of defenses against negligence exist, with varying degrees of acceptance. A list of defenses is shown in Table One is assumption of risk. The doctrine of assumption of risk Doctrine that holds that if the plaintiff knew of the dangers involved in the act that resulted in harm, but chose to act in that fashion nonetheless, the defendant will not be held liable. An example would be a bungee cord jumper who is injured from the jump. One could argue that a reasonable person would know that such a jump is very dangerous. If applicable, the assumption of risk defense bars the plaintiff from a successful negligence suit. The doctrine was particularly important in the nineteenth century for lawsuits involving workplace injuries, where employers would defend against liability by claiming that workers knew of job dangers. Many states have also abolished the assumption of risk doctrine in automobile liability cases, disallowing the defense that a passenger assumed the risk of loss if the driver was known to be dangerous or the car unsafe.*

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Explain The Nature Of Liability In Negligence » ¿ Liability of Negligence When a person is said to be liable for an action under the law, it means that they are responsible in some way for the outcome that results either in the law of a nation to be violated which comes under criminal liability, or in an injury to other individuals that is considered to be a civil liability.

LBC, , 4th ed. LBC Nutshells are the essential revision tool: Written in clear, straightforward language, the authors clearly explain the principles, and highlight key cases and legislative provisions for each subject. The civil wrong arises as a result of breach of a duty imposed by law. Some duties are laid down by legislation; others are found in the common law. The emphasis on a tort as a civil wrong distinguishes it from a crime. Crime and tort Like a tort, a crime is a breach of duty imposed by law. A crime therefore does not generally entitle the victim to an individual right of compensation as such. It rather involves the imposition of punishment by the community against the wrongdoer. Criminal law is therefore concerned primarily with punishing a wrongdoer for wrongful acts. On the other hand, the law of torts is concerned largely with compensating the person injured or damaged by a wrongful act or omission. Because both crimes and torts arise from breaches of duties imposed by law, it is possible for a particular breach to be both a tort and a crime. However not every tort is necessarily a crime. Since a crime is considered a wrong against the community, criminal proceedings are, in theory, a contest between the state ie the community and the wrongdoer or defendant in which the injured person or victim as complainant, if that person is still alive merely becomes a witness for the state. In spite of the differences between tort law and criminal law, it is important to note that there are some similarities between the two areas of law. For instance, even though tort law is primarily concerned with compensation, in some circumstances it may permit the imposition of punitive damages against a wrongdoer. Similarly, under the criminal injuries compensation statutes in Australia, it is possible for a victim of crime to be awarded some limited compensation. Contract and tort Like the law of torts, contract law is concerned with civil obligations. However, unlike tort law, the law of contract is largely concerned with the enforcement of duties that one person has by agreement, bound himself or herself to perform for the benefit of another. Even though the law of torts is also concerned with breaches of duties, those duties are not established by any agreement between persons but rather by the law itself. In some cases, a breach of contract may also constitute a tort. However not every breach of a contractual obligation is also a tort. Compensation Compensation is a monetary award made to a person who has suffered a wrong or injury. It usually takes one of two forms: A court order designed to compensate the injured party is an order that either compels a wrongdoer to do something other than pay damages or restrains a wrongdoer from doing something. If the wrongdoer has taken something from the injured party such as an irreplaceable family heirloom the injured party would hardly be compensated adequately by being awarded monetary damages. The court, in such a case, might order the wrongdoer to return the thing taken. If a wrongdoer repeatedly does a wrong act, such as releasing foul smelling exhaust fumes from premises so as to pollute the air in the neighbourhood, a court might restrain the wrongdoer from continuing to do so ie grant an injunction. An injunction is merely a court order either restraining someone from doing an act or less frequently compelling someone to do an act. The objective of compensation is not to enrich the injured party; it is to as far as practicable, return the injured person to the position in which he or she was in before the injury. Compensation granted to an injured person is normally also referred to as damages ie as against the wrong doer Damages may be real, nominal or punitive. Actual damage is an award that reflects the actual loss sustained by the injured person. Where an injured party does not suffer any loss from the conduct of the wrong doer, a court may award the injured party only nominal damage in recognition of his or her breach of right. By its nature, nominal damage is usually small or modest. The object of punitive damages is to punish and deter. Thus as a rule where the defendant has already been punished under criminal law, a court in a civil action would not award exemplary damages. Where the defendant is so responsible, he or she is said to be liable. Fault liability concerns the failure to live up to a standard through an act or omission. There are two main types of fault liability: In general, there is no liability without fault. Thus even where a person causes an injury to another,

that person is not liable for a tort unless fault ie intention to cause the injury or negligent conduct can be proven. On the other hand, there is a small number of torts which require no fault for liability. These are described as strict liability torts. In such torts, one can be held liable once it is proved that he or she caused the injury irrespective of whether their conduct was intentional or negligent or not. The element of intent The element of intent is crucial in torts and must be understood properly as a foundation for a significant part of the subject. The element negligence There are two senses in which the law of torts deals with negligence. However in tort law, the term negligence is used more commonly in its technical sense to mean the breach of a duty by the defendant consisting of his or her failure to take reasonable care to avoid a reasonably foreseeable harm to another person. A significant section of the law of torts is based on this notion of negligence. Causes of action Before a person can sue another in tort, he or she usually has to fit the facts of the case into the framework of a recognised cause of action. There are two principal forms of actions in torts These are actions in Trespass and actions in negligence. In addition to these two there is a range of related torts which are dealt with later in this text. Interests protected in tort law Like other branches of law, the law of torts protects specific interests these include:

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a) *strict liability torts do not require faults to be proved; b) the type of damage caused may not give rise to liability (damnum sine injuria); c) some conduct results in liability even without damage (injuria sine damno).*

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement and make this Agreement enforceable in accordance with its terms. In the event that a Party receives notice of a Claim, that Party must notify all other parties within 10 business days. The Party controlling and defending any Claim will be authorized to accept a settlement subject to the following: In the event Indemnitor is controlling the defense of such Claim, Indemnitee must give full written consent to any such settlement, such consent not to be unreasonably withheld. In the event Indemnitee is controlling the defense of such Claim, Indemnitor must give full written consent to enter into any such settlement or give consent to an entry of judgment, such consent not to be unreasonably withheld. Any amendment or modification to this Agreement will only be deemed valid if executed in writing and signed by all parties. This Agreement constitutes the entire agreement between the Parties and supersedes any previous understanding, arrangement, warranty, or agreement to the matter set forth in this Agreement. Except where expressly permitted herein, neither this Agreement nor the rights and obligations of any Party may be assigned without the prior written consent of all Parties subject to this Agreement. In the event that any or part of the provisions of this Agreement are held to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable. Notwithstanding anything to the contrary contained herein, if more than one person or entity is signing this Agreement as Indemnitor, its obligations under this Agreement will be joint and several. Wherever the context so requires, words used in the singular include the plural, and words used in the plural include the singular. The following provides clarification on some of the key aspects of your document. What Is Indemnification and Hold Harmless? When these terms are discussed independent of each other they have separate meanings. Indemnity is a contractual obligation to repay an indemnified party the indemnitee any actual losses that party may incur. The implication of this is that the indemnitee must actually have incurred a quantifiable loss before the obligated party the indemnitor is bound to pay. Such losses normally occur where the indemnitee loses a lawsuit or receives a fine. Hold harmless is similar to indemnity, but goes further. Instead of just being responsible for actual losses, the indemnitor must assume all liability and costs that the indemnitee has incurred. This contractual duty remains even if there is no judgment passed or fine given. Even though there is a difference between indemnity and hold harmless, in practice most courts now consider them to be essentially the same thing. Broad Indemnity Broad indemnity is the most extensive form of indemnity there is. With broad indemnity, the indemnitor assumes all risk and liability no matter who is at fault. This form of indemnity is seen as the most beneficial for the indemnitee, but very risky for the indemnitor. The level of risk for the indemnitor is so high that some states, such as California, do not even allow this level of indemnity to take place. Other states will not allow broad indemnity for certain types of contracts. Intermediate Indemnity Intermediate indemnity is the most common form of indemnity. With intermediate indemnity, the indemnitor assumes liability if it has contributed to the fault. If the indemnitee is solely at fault, the indemnitor is not liable. However, if even partly at fault, the indemnitor still must assume all liability. Limited Indemnity Limited indemnity offers the least protection to the indemnitee, and there are some that do not believe that it should even be a class of indemnity. Limited indemnity holds the indemnitor liable for the portion of fault they are responsible for. This form of liability would exist under tort law even without a release of liability agreement. However, some parties like to formalize this arrangement in writing. Defense Requirement The requirement for the indemnitor to actively defend against claims against the indemnitee varies from state to state. For example, the assumption in California is that the indemnitor will automatically have the responsibility of defending any claims, whereas in Illinois the duty to defend must be agreed to as a separate contractual obligation. The defense language also requires the defending party to seek consent before settling any claims. Executing Your Release of Liability Agreement If the release of liability

THE NATURE OF LIABILITY pdf

agreement is being executed in conjunction with another contract, the release of liability agreement should either be executed before or at the same time as the other contract. Once the release of liability agreement has been completed, simply have all parties sign and date to complete the document. Although not required, it is always a good idea to have the document notarized for extra protection.

5: Nature of Liability Sample Clauses

The free online course Diploma in Risk Management gives you an in-depth knowledge of the tools and topics of risk lifecycle and liability mitigation.

They can also make transactions between businesses more efficient. For example, in most cases, if a wine supplier sells a case of wine to a restaurant, it does not demand payment when it delivers the goods. Rather, it invoices the restaurant for the purchase to streamline the dropoff and make paying easier for the restaurant. The outstanding money that the restaurant owes to its wine supplier is considered a liability. In contrast, the wine supplier considers the money it is owed to be an asset. Other Definitions of Liability Generally, liability refers to the state of being responsible for something, and this term can refer to any money or service owed to another party. Tax liability, for example, can refer to the property taxes that a homeowner owes to the municipal government or the income tax he owes to the federal government. Liability may also refer to the legal liability of a business or individual. For example, many businesses take out liability insurance in case a customer or employee sues them for negligence. Current liabilities are debts payable within one year, while long-term liabilities are debts payable over a longer period. For example, if a business takes out a mortgage payable over a year period, that is a long-term liability. However, the mortgage payments that are due during the current year are considered the current portion of long-term debt and are recorded in the short-term liabilities section of the balance sheet. Ideally, analysts want to see that a company can pay current liabilities, which are due within a year, with cash. Some examples of short-term liabilities include payroll expenses and accounts payable, which includes money owed to vendors, monthly utilities, and similar expenses. In contrast, analysts want to see that long-term liabilities can be paid with assets derived from future earnings or financing transactions. Debt is not the only long-term liability companies incur. Items like rent, deferred taxes, payroll, and pension obligations can also be listed under long-term liabilities. The Relationship Between Liabilities and Assets Assets are the things a company owns, and they include tangible items such as buildings, machinery, and equipment as well as intangible items such as accounts receivable, patents or intellectual property. What is the Difference Between an Expense and a Liability? An expense is the cost of operations that a company incurs to generate revenue. In short, expenses are used to calculate net income. The equation to calculate net income is revenues minus expenses. For example, if a company has more expenses than revenues for the past three years, it may signal weak financial stability because it has been losing money for those years. Expenses and liabilities should not be confused with each other.

6: The nature of tort liability

The nature of liability In this essay I will discuss the differences in public and private matters of the law and why the law is divided. I will also look in to the differences of the legal processes of public and private matters.

The recent creation of a legal network for DAN members continues to generate interest and discussion. Many divers and diving businesses have already told us that they are delighted to be able to forward us the really tough questions they never knew who to ask before. To understand this answer, we must start from the perspective of DAN itself and its role in the diving industry. DAN fulfils a very unique and multi-faceted function in the community it serves: However, DAN is not a statutory or enforcing agency. Therefore, the primary objective of DAN is offering the most accurate, constructive and relevant advice and assistance, irrespective of the circumstances, within the mandate of its mission. Sometimes the assistance may take on the form of transport to a recompression facility. At other times, it might be providing advice on how to best manage the consequences of a diving accident. In summary, the objective of DAN Legal Net is to provide assistance and information of a legal nature in matters related to diving and hence to try to reduce the unnecessary anguish or anxiety that often follows legal issues. The rest is up to the respective parties involved. DAN Legal Net is intended as a complimentary advisory service to DAN members, whether they are recreational, professional or even business members, to provide the initial guidance or advice as to whether the member is in need of appointed legal counsel. If the DAN legal team advises you to get legal counsel, they will also be able to provide some recommendations referrals should you need this. Who carries the can? As we pointed out in the spring edition of the Alert Diver, even being a dive buddy has potential legal implications. So, to bump this up a notch, what about the diver training organisations themselves? Where do they stand? How do they relate to South African law? Are they all considered the same under our legal system in spite of the differences in organisational structures and training programmes? How does this affect their respective instructors and trainee divers from a legal perspective? These are not exactly simple questions. It is certainly true that the respective training organisations differ in a number of ways. However, this does not imply that there are necessarily differential legal implications for each of them. In fact, under South African law, the legal principles are common in all matters. Therefore, if you suffer a loss and you or your estate in the case of a fatality wish to recover damages, the legal principles would be applied commonly; whether you are driving or diving. Although not a frequent occurrence, there have been quite a number of law suits associated with diving injuries and damages in South Africa. As training increases, so do the chances of injuries and, with it, the chances of legal recourse. So, it remains wise to insure yourself, your equipment or your business in a proper and effective way. Given all the possibilities for injury, it is truly amazing how few injuries and fatalities actually occur. However, the lull of statistics fades when your own life or business is at stake. So, what can and should you do to mitigate or manage the inherent risks? For starters, make sure your life insurance and other long-term insurance do not exclude scuba diving. Other than the injury or accident itself, there is nothing worse than finding out that the life or disability insurance you were counting on excludes coverage for diving. That is not the time to discover the deficiencies in your coverage. Consult your policy or broker about this and, if necessary, complete the documentation necessary to include the type of scuba diving you do in your policy. Sometimes insurance policies are devised without any knowledge of scuba diving. As a result, the policy language and terms may impose contradictory or completely impractical restrictions on diving. Make sure all your equipment is serviced and up to date. This is especially important if your equipment is used by others, as it would be for a diving business. The same is true for boats, compressors and all other components associated with diving, such as: Practice training Preserve servicing and licensing Protect insurance Another important perspective to have on recreational diving is that it is just that: So, in terms of civil liability, it means that the participant is taking on a voluntary, purposeful risk. To illustrate this, let us use a more extreme example, namely rugby. Part of rugby involves being tackled by your opponent. Although there are rules and restrictions on how this may be done within the context of the game, the reality is still that when two kg objects collide, injuries will happen sooner or later. It is part of the voluntary nature of

participating in the sport. An even more extreme example is boxing or wrestling, in which you allow yourself wilfully to be hammered or thrown to the ground! These are all voluntary. Of course, there are boundaries in terms of the rules of the sport, but rules do not negate the potential effects of fists or gravity. To have a successful claim in court, these are the things your lawyer or advocate needs to prove to the magistrate or judge. The point is this: So, this is where things get interesting and more complicated. Some of you may be asking: I am not a lawyer. So, if I need legal advice or legal services, I will find a lawyer just like I would find a doctor to deal with the injury! By way of analogy: Rather than dressing warmly when you should have, you now go looking for a remedy for your runny nose. Remember the old saying? Ignorance of the law is no excuse. And that is exactly why DAN is publishing articles such as these; to assist you, the diver, in preventing the problem rather than having to deal with the consequences that could have been avoided. For a mishap or a mistake to result in legal consequences, there needs to be either negligence or dereliction or non-compliance with a duty to take care. In other words, this is when one person causes an injury or damage to another person or their property and the damage is linked directly to that person. If this happens, the person responsible is potentially liable. To break this down a little more: So, for example, divers are taught not to leave a diving cylinder standing upright. This is a universal rule no matter who trained you. If you mistakenly i. However, if I was the one who bumped your cylinder over, you would not be liable because there is no direct link between you and the damage the cylinder caused I bumped your cylinder over. No rocket science there. The same applies in traffic: It is also somewhat harder to define. After all, who determines the duty to care and the non-compliance thereto in unique emergency situations? Still, this component is more likely to lead to a recovery of damages. Put differently, when you are under a legal duty to take reasonable care and you do not do it, then you could be held liable for damages that are directly caused by the breach of that duty. This means that the damages are linked directly to the failure to perform the reasonable duty. This is called a causal connection. In other words, there must be a connection between the duty not complied with and the damages. Reasonable care is explained as follows: A standard of care that is considered reasonably required in a given situation. In other words, reasonable care is that which is reasonable to expect, given the prevailing circumstances, the diving conditions, your diving experience, your training, your diving qualifications, etc. The standard is not one of perfection and it makes allowance for mistakes and errors in judgement. However, the reasonable diver is cautious by nature and, even though they may take calculated risks, they are also more alert to what they are than a non-diver would be. However, this cannot be used as an excuse for failure to meet a standard. To apply this to the buddy system, consider the following: All diver training organisations teach this, so there would be no basis on which to claim that there is no reasonable duty to take care of a buddy in trouble. Using this line of logic, some individuals have even gone as far as to say that they prefer solo scuba diving as this releases them from the legal implications or risks associated with buddy diving. Although one might argue this on the basis of experience and sophistication of safety equipment in the case of an expert solo diver who is largely self-sufficient, there remains a possibility of unforeseen loss of consciousness from which a solo diver is unlikely to recover. As they say in the Alps: That is, of course, as long as no one is put at risk during the subsequent body recovery or rescue efforts! Well, as a qualified instructor and dive leader, I shall continue to teach and advocate the buddy system. I do not like the idea of diving alone anyway. I prefer to share the joys of diving with someone able to share the memories of the dive. To me, diving is, and remains, a team sport. Which introduces another consideration: How would the principle of duty to take care be applied to children who dive? Training agencies impose age and depth restrictions on children who enter the sport before the age of Depending on the age and diving course, a child may be required to dive with an instructor or at least another adult dive buddy. If the adult were to get into trouble, the child would not be expected to meet the duty of care of another adult. What about all those waivers? As mentioned in the previous article, waivers define the boundaries of the self-imposed risk divers are willing to take by requiring that they acknowledge them.

7: The Nature of Liability & Diving | DAN Southern Africa

Explain the nature of liability in negligence The original case was such that Mrs. Donoghue went to a café with a friend. The friend brought her bottle of ginger beer and ice cream.

Search The nature of liability In this essay I will discuss the differences in public and private matters of the law and why the law is divided. I will also look in to the differences of the legal processes of public and private matters. Peter confronts Michael in order to rectify the matter. Michael is hostile towards Peter, and after obscenities have been directed towards Peter. Michael suffers broken ribs, internal bleeding, a broken jaw and is blinded in one eye. Peter is eventually restrained by onlookers and the Police are called. This crime is, under English law, grievous bodily harm under s In R v Wilson¹ The defendant motorist had been involved in an argument with a pedestrian, which culminated in the defendant punching the pedestrian in the face. Had they not done so it would have been lawful for the onlookers to make a citizens arrest under the Criminal Law Act. Where a citizen can arrest make an arrest for an arrestable offence that carries with it a sentence of five years or more. Once cautioned he will be taken to a Police station where he must also surrender all property. He will have the right to make a telephone call, and if he so wishes, will be granted legal representation by a solicitor if he has one. In instances where the accused has not got a solicitor, a duty solicitor will be called. The duty solicitor scheme has been in operation since Peter will be taken to an interviewing room, where an audio and visual recording will take place of all that is said during the interview proceeding by all parties involved in the interview, police officers, solicitor and the accused. A second caution will be given by the police and Peter will be confined to a cell and locked in police custody. Custody can last for up to three days, but if it is a weekday the accused has been detained, there is a strong likelihood the committal will take place the following day. At the committal, in the Magistrates court there will be a check to find the police have arrested the correct person. Certain matters have to be decided; will the accused get bail or will they be remanded in custody. The place of trial will also be set, reporting instructions will be given to the media. The decision of whether legal aid will be provided will be decided. This normally is very brief, lasting, in most instances, several minutes. The first court appearance is known as the preliminary enquiry. The magistrates have to decide whether or not the accused should be allowed to remain at liberty bailed until their trial is held or whether they should be held in custody. The reason for this was because many people absconded prior to their trials so the sum of money served to act as an incentive for them returning to face trial. Now every person has the right to bail. More people are granted bail now, and the police force finds it troublesome to oppose bail. The magistrates are advised by the act what to take into consideration when deciding bail, absconding, intimidation of witnesses, seriousness of the crime. If the matter has been under investigation for some time and has received a substantial amount of publicity locally, particularly murder, child victims or anything controversial the magistrates may decide to move the place of trial. Peter cannot plead provocation as a complete defence but only as a mitigating plea. His lawyer will endeavour to bring it down from s. In public cases it is the C. S who initiates the trial, in private cases it is the wronged individual. Another distinct difference in courts is in relation to tribunal courts. In tribunal courts there are differences that are immediately visible, e. Traditional formalities are also not adhered to; formal legal English is not used, rather everyday English and the plaintiff⁴ begins proceedings. In England today, exists the adversarial system of law in the courts. The inquisitorial system is used mainly in European countries like France for example. There are a number of differences in relation to these systems. The judge does not ask questions and cannot intervene in a case in order to make just decision. The judge in the adversarial system is somewhat comparable to a referee; guaranteeing fair play between both parties involved. Each of the representatives i. The representatives owe no responsibility in justice and truth, because of this there are frequent miscarriages of justice. The judge can ask question pertaining to issues of fact. He does not owe a responsibility to either of the parties, but only to establish truth and justice. The judge is not concerned whether any party is innocent or guilty, as long as justice prevails. It is fair to state here that justice is much more likely to occur in the inquisitorial courts.

8: Some Thoughts on the Nature of Liability for Negligence in Scots Law - Oxford Scholarship

This chapter considers the nature of liability to make reparation for losses caused by negligence. It focuses on the situation where losses have arisen as a result of personal injury or physical damage to property.

XXII Torts " Miscellaneous It is difficult to establish a comprehensive definition of tort law or a tort that is sufficiently specific to be useful and that does not result in a series of exceptions. This definition, however, is so broad as to include other wrongs and remedies such as breach of trust, quasi-contract and restitution, which, based on proprietary principles, are distinguishable from torts. This definition, however, provides little assistance in determining the nature or substance of the duty that is imposed by the law of torts. It is clear from both definitions, though, that a tort arises when there has been a breach of a legal duty which is recognized under the law and that the appropriate remedy is a claim for damages, which is perhaps the primary characteristic of the action. Although certain continuing wrongs which constitute torts may be restrained by an injunctive order in equity, all torts will give rise to an action for damages even though the quantum may be minimal.

XXII Torts " Miscellaneous Historically, separate, distinct causes of action developed within the law of torts because suits had to be pleaded within an existing and recognized form of action in order to succeed. However, this pleading requirement was abolished by the Common Law Procedure Act , the principles of which have been accepted into Canadian provincial law. It is now only necessary to plead facts that may, if proven, give rise to a cause of action in tort. It is not necessary to identify or name the specific nominate tort that constitutes the basis of the action. Remedies depend upon the substance of the right, not on whether they can be fitted into a particular framework. However, the specific cause of action in tort that is being relied on by the plaintiff will still be relevant insofar as it is an issue in determining the facts that must be pleaded in order to avoid having a claim struck for want of an action, the applicable limitation period, the effect of death on the right to bring an action, the type of damage that must be established in order for the cause to be actionable, and the relief that can be claimed. The different causes of action in tort are not mutually exclusive. An act that causes injury may be actionable on the basis of more than one cause of action. For instance, an act that causes direct personal injury to another may constitute trespass to the person as well as negligence; although it is arguable that this may no longer be the case and is clearly not the case in England.

XXII Torts " Miscellaneous New foundations for liability have developed and interests worthy of protection have been recognized in tort as the law has attempted to stay abreast of social change. Although there may be a certain hesitancy in the judiciary to do so, new causes of action in tort can be created through the re-interpretation of precedent, extension of an existing cause of action or the recognition of a new interest that warrants protection under the civil law. It is unlikely that the Canadian Charter of Rights and Freedoms will give rise to a cause of action brought by one private individual against another private individual for the infringement of a right or freedom set out in the Charter. However, the liability of government for Charter breaches appears to be a developing area.

XXII Torts " Miscellaneous Currently, the predominant function of tort law is to compensate individuals for loss or injury suffered. However, as not all losses or injuries are actionable in tort, it cannot be said that this is the only purpose or aim of the law. There are other interests or functions that underlie the law of torts. The specific basis upon which liability is predicated in the various torts also shifts and distributes loss from one individual to another individual or group in our social order. This allocation of the risk of such loss arising to particular segments of society minimizes the impact and negative effect of such loss. Tort law also deters and prevents socially unacceptable and harmful conduct in addition to preserving certain fundamental values, setting normative standards of responsibility and serving other less apparent purposes. At the most, it can be said that there is no single function but a variety of purposes served by the law of torts.

Principles of Liability II. Intent may be established by showing that the defendant desired to cause certain consequences that were the result of his or her act or that the defendant believed certain consequences were certain to result from that act. In some intentional torts the onus may be placed on the defendant to disprove intention after the plaintiff has established the basic elements of the cause of action. Constructive intent, where the intention of the defendant is presumed in the absence of evidence to the

contrary, may arise as the relevant standard of liability. In addition, it has been said that a defendant may be held liable for an intentional tort on the basis of transferred intent: Therefore, where the defendant intends to commit the tort of battery, but misses the plaintiff and only causes flight, the necessary intent for the tort of assault is present. Although intention may be a requisite to liability in certain torts and the most onerous standard of liability to establish, intention to cause injury to a person will not, by itself, found liability. An act that is legal in itself will not be made illegal because the motive of the act was bad. Negligence by itself will also not always found liability in tort. Although the defendant may have breached a duty of care to the plaintiff which has been previously recognized under the law, the damage to the plaintiff must fall within recognizable limits of remoteness and causation, and must also be of a type which is remediable under the law. Volition See Canadian Abridgment: There is no right of action for any tort whether one of intention, negligence or strict liability, unless the act or conduct of the defendant was voluntary. A person who inflicts an injury and at the time is in a condition of complete automatism, will not be held liable under the principles of tort law. The onus is on the defendant to show that the act or omission complained of was involuntary. It is no defence to a voluntary, wrongful act or omission that the defendant did not appreciate its natural consequences. Motive See Canadian Abridgment: Except in cases of malicious prosecution, injurious falsehood, abuse of process, maintenance, abuse of public office and conspiracy, the motive for a tortious act is irrelevant. An act that is legal in itself is not made illegal because the motive of the individual committing the act is bad, that is, done with the intent to injure or to effect some ulterior purpose. If conduct is tortious, a good motive will not excuse the defendant. If conduct is lawful apart from the motive, a bad motive will not make the defendant liable. A bad intent may render illegal an act done in combination with others which would have been legal if committed by one person only. A bad or wrongful motive will defeat the defence of privilege in an action for defamation. Mistake See Canadian Abridgment: XXII Torts "Miscellaneous Mistake refers to the situation where the defendant intends to produce a particular result but mistakenly believes that his or her conduct is innocent. The mistake may be one of fact or law. Where the defendant is in full possession of all facts of the situation giving rise to the injury, failure to apprehend the tortious character of his or her conduct is a mistake of law. A defendant acting under a mistake of law is not excused from liability. The defendant who mistakenly but honestly and reasonably believes in a state of facts which, if true, would provide a complete justification for his or her conduct is acting under a mistake of facts. The relevance of mistake of fact on all intentional torts is uncertain, but it is generally no defence to intentional interference with property interests. A relationship based on proximity or reliance may exist between the plaintiff and defendant, giving rise to an actionable duty of care. Interest Harmed See Canadian Abridgment: XXII Torts "Miscellaneous Injury that is recognized as actionable under the law may be caused by the direct act of the defendant, the indirect or consequential act of the defendant, the omission or failure of the defendant to act or by a general legal responsibility imposed upon the defendant because she or he has a special relationship to the individual who actually caused the injury. For instance, an employer may be vicariously responsible for the act of an employee, a principal for that of an agent or a publisher for the defamatory statement of a writer. Interests protected by the law of torts can be classified as injury to the person, injury to the property of the plaintiff and injury to the financial interests of the plaintiff. For instance, in defamation and in battery, the law presumes that injury has occurred from the act that constitutes the cause of action itself. Burden of Proof See Canadian Abridgment: When a plaintiff has been injured by one of two defendants, in circumstances where both defendants have acted carelessly, and the effect of the carelessness has been to make it impossible for the plaintiff to show which one of the defendants actually caused the injuries, both defendants should be found liable unless they can exculpate themselves. The doctrine of *res ipsa loquitur* is expired and is no longer a separate component of negligence actions. Where a contract exists between the parties, the plaintiff must establish, to succeed in an action for tort, that there also existed a special relationship that gives rise to a common law duty of care in tort. If the breach alleged is of a duty arising out of the obligations undertaken by the contract, which cannot be established without reference thereto, the action must be founded in contract. Concurrent liability may exist where the plaintiff can establish that a common law duty of care was owed because there was a relationship of sufficient proximity between the parties to constitute that duty and there is

no valid policy reason for negating the duty. The terms of the contract may indicate the nature of the relationship but the express duty must not depend upon the obligations set out under the contract and must exist independently at law. The plaintiff may assert the right or cause of action which is most advantageous, unless there is an express exclusion or limitation of liability in the contractual terms between the parties. This election may have a bearing upon the relevant limitation of action provision, the commencement of the limitation period, the type of damages that can be claimed and the applicability of statutes that apportion liability. It is clear that punitive damages may be awarded in tort actions, but such an award is very rare in contract cases. Punitive damages may be awarded in respect of conduct which is of such nature as to be deserving of punishment because of its harsh, vindictive, reprehensible and malicious nature. In Canada, the courts have held that the amount of damages recoverable should not depend on whether the plaintiff brings a cause of action in tort or contract. A plaintiff cannot recover both in tort and for breach of contract when the tort and breach of contract result from the same act. The plaintiff must either elect one of the two or be deemed to have so elected. The recovery of one judgment in respect of two distinct and technically incompatible causes of action is impossible.

9: The nature of liability

This is, of course, an over-simplification; but it illustrates the nature of contractual liability. A tort is a civil wrong based on the failure of one to perform ones duty to act in a reasonable.

Josephine Mbuvi Tortious liability arises from the breach of duty primarily fixed by law, this duty is towards persons generally and its breach is redressible by an action for unliquidated damages. The differences between Tort and Crime are as follows: Tort is a wrongful act or an infringement of a right other than under contract leading to civil legal liability. A more detailed definition of Tort is a civil wrong which can be redressed by awarding damages. United States, U. In its social aggregate capacity, as distinguished from a civil injury. S2 In crime, a case is prosecuted by the state as it is the custodian of the society. In Tort, the individual person will go to court for redress. Crime involves a criminal procedure while in Tort, a civil procedure is undertaken. The wrong doer in Crime is referred to as an offender or the accused person. In Tort, the wrong doer is called a tort-feasor. In Crime, the available remedy is generally termed as punishment. This may be in the form of imprisonment in institutions such as jails custodial or even one may be forced to pay a fine non-custodial. In Tort, there are unliquidated damages. These are also referred to as general damages. These are non-monetary aspects to a specific harm suffered for instance pain. 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. The role of contract law simply revolves around the enforcement of promises. The remedies thus seek to place the claimant in the position so far as money can do it, that he or she would have been in had the contract been performed. In contrast, tort is concerned with compensating the victim who has suffered injury as a result of conduct classified as a civil wrong by law. The aim is not to bargain but to compensate the victim for his or her out-of-pocket expenses, thus placing the victim in the same position as he or she would have been in had the victim not sustained the wrong for which the compensation was being awarded. This is contrary to Tort whereby the remedy is unliquidated or general damages. Tort is a breach of a duty fixed by law *Rylands v Fletcher* This is in contrast to Contract which is a breach of duty is by the involved parties. In Tort, the duty is on persons generally owed to every other person and no person in particular while in contract the duty is limited to contracting parties. Civil proceedings shall be instituted. In contrast, Breach of Trust and other equitable obligations are criminal offences, and are liable for punishment with imprisonment, or fine or both. In Tort the motive is irrelevant. In Equitable Obligation, the motive is relevant. The law of torts in its origin is a part of the common law. In Breach of Trust and other obligations fell exclusively within the jurisdiction of equity. In The Law of Torts the plaintiff and the defendant may or may not know each other previous to the incidence of tortious liability. In Equitable Obligation the plaintiff and the defendant know each other from the beginning. In fact the law of the trust is depended upon the trust on each other. In Equitable Obligation the injunctions, specific restitution of property, and the payment of liquidated sums of money by way of penalty, etc.

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