

# Liability

Definition: Bound or obligated in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution.

Meaning: You are able to be held accountable for the actions/results that have occurred under your responsibility/jurisdiction/area.

## *Types of Liability Affecting Advisors*

### Tort Liability

What is a Tort? It is not a pastry or a dessert!! A tort is a complex legal concept that boils down to a wrong that can be re-dressed that is not criminal (governmental) or contractual (private) in its existence.

#### Kinds of Torts

**Intentional Torts** - These are those Torts that are caused by a person who intends the result that occurs. A good example is a fight/punch. A person intends to throw a punch and hit someone. There are possible criminal (governmental) results (Assault & Battery) that may occur, but a private action for compensation is available to the injured party.

**Unintentional Torts** - These are Torts where the result is not intended by the party, but one party owed a Duty to the other and failed to reasonably exercise that Duty. This is your classic example of Negligence. An example of this would be not taking care of the steps to your front porch and someone getting hurt as a result.

**Strict Liability** - This is rarely going to affect you as Advisors. It is where if someone gets hurt...you are the one to blame. The most common case of this is a manufacturer who makes glass bottles. If a bubble gets in the glass and it explodes and hurts someone, it doesn't matter if you were not Negligent, you are at fault.

#### Common Elements of a Tort

Duty - Having an obligation or responsibility to someone

Breach of Duty - Not meeting that obligation

Proximate Cause - Was any harm directly related to the Breach of Duty?

Actual Injury - There must be a real harm. Not just a possibility or close

call.

## **Contracts**

Short Version: A contract is a binding agreement between two parties (usually private) that involves the exchange of value for value.

Components: A contract, to be considered, must contain the following:

- Parties with legal capacity to enter a Contract
- Legal Subject Matter
- Promise
  - Offer
  - Acceptance
- Consideration (something of Value)
  - an act other than a promise, or forbearance, or the creation, modification, or destruction of a legal relation, or a return promise bargained for and given in exchange for the promise.
- Intent to enter into a Contract/Meeting of the minds

Types of Contracts: Express (Clearly Stated) or Implied (assumed)  
Written or Oral (has strict limitations)

## **Respondeat Superior**

Short Version: If you are doing your job, your boss is liable.

Meaning: If you are acting within the scope of your employment, then the courts can impose joint responsibility on your employer for any torts committed by you. This is the “deep-pockets” philosophy where you sue the person with the most money. By doing this employer are viewed as having greater resources to answer for the damages or to defend themselves, and you, against the suit.

Application: If you are an advisor, make sure that it is listed as part of your job responsibilities so that there is no doubt that you are acting within the scope of your employment when acting as an advisor.

# United States Constitution

## 1st Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## 5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## 9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## 10th Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people.

## 14th Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## ~~First Amendment Exceptions~~

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| Fighting Words | language which by its utterance inflicts injury or which is threatening, profane, and likely to cause the victim to respond by fighting.   |
| Obscenity      | 3 Part Test <ol style="list-style-type: none"><li>1) Taken as a whole would be found by the average person in the community to appeal to prurient interests;</li><li>2) Depicts or describes in a patently offensive way sexual conduct specifically defined and prohibited by state law;</li><li>3) Taken as a whole has no serious literary, artistic, political, or scientific merit.</li></ol> |
| Behavior       | Speech or other acts of expression which creates a CLEAR AND PRESENT DANGER of imminent violence or lawlessness.   |
| Defamation     | Libel (written) or Slander (spoken)<br><br>Proof: <ul style="list-style-type: none"><li>-untrue statement</li><li>-published</li><li>-negligent or malicious</li><li>-injury</li></ul>   |

## Student Protests

### Time and Place Limitations

Governing bodies can limit the time, place, and manner of student protests on campus. Regulations on time, locations allowed, and other reasonable restrictions (amplification, permits, etc.) have been allowed.