

15.617, Spring 2004
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Lecture 2: Monday 2/9/04

1. Bhopal
2. Negligence
3. Mills/Fiduciary duties
4. cause/harm

Non-contractual liability
“Torts”

- duty to respect protected interest (reasonable care)
- failure to meet the duty
- harm to another
- caused by the failures

→ Liabilities/damages

UCC

India built a plant

- What do we want to know if how UCC U was negligent?
- Perhaps the design was negligent?
- Failure to exercise due care = negligence

- a.) working relationship
- b.) information

2.) How do you find out what as reasonable care?

Tort law is common sense:

- a.) look at UCC practice elsewhere
- b.) look at industry standards
- c.) safety regulations—compliance
- d.) internal policies

FDA Case:

- has many gaps
- only the “clunkers” don’t get through
- representative of other agencies
- gov’t has limited resources and chooses to focus its attention on specified things
- gov’t regulation won’t save you

What if you do comply with safety regulations?

- safety is highly a matter of negotiations with gov't regulators (fundamentally different type of inquiry, but you can win on a cost-benefit analysis)
- Internal policies are like New Year's Resolutions → fleeting.
- You have to have reasonable standards.

Question by student; "How do you live with standards?"

Ans: Some companies have problems articulating why they have different standards. In general, as prosperity goes up, so do standards.

Companies tend to decentralize the decision process.

Limited liability: A shareholder is liable only for its investment. Is this a problem?

UCC US can say you are interfering with the essence of a corp. (ll)

Yes: passive shareholder (ll)

UCC US set the whole thing up and is heavily involved. Shareholder will not protect them.

Wickline:

HMOs

Prospective review: you first consult your consultants

Polznsky: attending physician

Glassing: works for HMO

Arguing that Polensky didn't ask.

- HMO loses the holding, but they won.
- You can't write out specific rules.
- Fiduciary rules (2 kinds)
 - Care
 - Train doctors
 - Research
- Fiduciary duties are to patients, but they are not absolute.
- Conflicts are not necessarily tempting. (they can be structured)
- Fiduciary in Mills (collegial)
- Manage the corporation (but, what does this mean?)
- "non-delegable duty"

- “delegation” in the Mills Case
- Loyalty to Board (but lawyers say to the “Firm”) v. loyalty to management.
- Inside Directors v. outside Directors.
- Business Judgment Rule (see page 19, second paragraph)