

# UNIVERSITY FOR SENIORS

## Civil Litigation

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### I. Introduction

#### A. My Background

#### B. What is civil litigation?

1. Not criminal
2. Lawsuits – usually about money
  - a. Maybe declaration of rights between parties – real estate, insurance coverage
  - b. Specific rights – e.g. child custody
3. Dispute between parties that must be resolved by judge or jury
4. Right to jury trial
  - a. Common law action
  - b. State or federal constitution
  - c. Statutes creating rights or causes of action
5. Alternative Dispute Resolution – required in Minnesota
  - a. Mediation – settlement conferences
  - b. Arbitration – various types

### II. Lawsuits generally have two elements: liability and damages.

- A. A cause of action generally involves a wrongful act or omission; examples:

1. Following too closely in vehicle/not paying attention to traffic
2. Breach of contract
3. Failure to diagnose fetal distress
4. Calling someone a pedophile (falsely)
5. Manufacturing defective tires

B. The wrongful act or omission must cause damages or harm; examples:

1. Medical bills, wage loss, pain and suffering, disability
2. Loss of business profits
3. Death
4. Harm to reputation or honor

C. The plaintiff has the burden of proving both the liability (fault) and damages (harm) elements of the case.

1. Evidence: direct vs. circumstantial

### III. Types of Lawsuits

A. Negligence is the failure to use reasonable care.

1. "Reasonable care" is the care a reasonable person would use in the same or similar circumstances.
2. Negligence can be either when a person does something a reasonable person would not do, or fails to do something a reasonable person would do.
3. Negligence can also result from failure to satisfy a particular duty of care.

a. Drivers – common law duties to keep lookout, etc., and statutory duties in driving regulations (speed limits, etc.).

b. Landowners – duty to maintain premises in safe condition for those entering the land

(1.) Duty to lawful entrant: Protect from unreasonable risk of harm

(2.) Duty to trespasser – to warn of unreasonable risk posed by an artificial condition caused by the owner or by the owner's activities on the premises

4. Comparative fault – plaintiff also has duty to use reasonable care

a. Fault compared to fault of defendant

b. Percentage of plaintiff's fault reduces recovery of damages

c. Plaintiff receives nothing if more at fault than defendant.

## B. Product Liability

1. Design defect – A manufacturer has a duty to use reasonable care to design a product that is not unreasonably dangerous to users of the product when used as intended or in a way the manufacturer could reasonably have anticipated.

a. Judged according to scientific knowledge available at the time the product was designed.

b. Must consider all facts and circumstances:

(1.) The danger posed by the product

(2.) The likelihood that harm will result from use of the product.

(3.) The seriousness of the harm

(4.) The cost and ease of taking effective precautions to avoid that harm

(5.) Whether the manufacturer considered the scientific knowledge and advances in the field

c. Feasible alternative design – expert testimony

2. Duty to warn: a manufacturer has a duty to provide reasonably adequate warnings or instructions for its products to those who use the product as intended or in a way that the manufacturer could reasonably have anticipated.

a. Judged by the same criteria as for a design defect

b. Generally, an adequate warning must include a description of the harm that might result from misuse.

3. Manufacturing defects – product is in defective condition unreasonably dangerous to consumer if the consumer could not have anticipated the danger posed by the product.

a. Strict liability

b. Defect may be caused by or result of manufacturing process, assembly, inspection, packaging, or testing.

C. Professional Malpractice – failure to meet the accepted standard of care that a professional in a similar practice would use under similar circumstances.

1. Doctors – failure to properly diagnose, treat, follow instructions from drug manufacturer, refer to specialist, or obtain informed consent for procedure

2. Lawyers – failure to diligently and competently advise or represent client (especially if a claimed specialist)

3. Others subject to higher standard of care: accountants, architects, engineers, and nurses.

D. Dram Shop – Minnesota statutory duty imposed on liquor vendors

1. Illegal sales defined in statute include sale to obviously intoxicated person, sale after hours, to minor, to non-members at a private club, and on prohibited days (e.g. Sundays).

2. A person is “obviously intoxicated” if the intoxication is or should be reasonably evident to another person using usual powers of observation.

a. A person is “intoxicated” when, as a result of drinking alcohol, he or she has lost control to any extent of his or her mental or physical faculties.

b. Mere evidence of actual intoxication (such as blood alcohol level) is not sufficient to prove obvious intoxication at the time of sale.

3. Liquor vendor who makes illegal sale is liable for any damage caused by the intoxicated person as a result, including bodily injury, property damage, and loss of means of support

a. Intoxicated person may not claim damages for his or her own intoxication.

b. Dependents of injured or deceased intoxicated person may claim loss of support.

4. The Act applies only to licensed liquor vendors and to adults who provide alcohol to persons under age 21, or who, in their own home, knowingly permit persons under age 21 to consume alcohol.

#### E. Defamation – Libel and Slander

1. A statement or communication is defamatory if it tends to:

a. So harm the reputation of a person that it lowers his or her esteem in the community,

b. Deter third persons from associating or dealing with him or her,

c. Injure his or her character,

d. Subject this person to ridicule, contempt, or distrust, or

e. Degrade or disgrace this person in the eyes of others.

2. The statement must be “published”, or communicated to at least one person other than the person being defamed.

3. Truthful statements or personal opinions are not actionable defamation.

4. A public official or public figure must prove that the defamatory statement was made with actual malice.

F. Minnesota has a no-fault automobile insurance system.

1. A person injured in a car accident gets medical bills and wage loss paid by his or her own insurer, regardless of fault.
  - a. Limits: \$20,000 medical, \$20,000 wage, unless insured purchased stacking coverages
  - b. Wage loss paid at 85% of gross pay, maximum \$250 per week
  - c. Insurer has no right to repayment by at-fault driver or insurer, unless commercial vehicle
  - d. Disputes are submitted to arbitration
2. Non-economic damages (pain, suffering, disability, emotional distress) available from at-fault driver and insurer, subject to tort thresholds:
  - a. At least \$4000 in non-diagnostic medical expenses or
  - b. At least 60 days of disability (cumulative) or
  - c. Permanent injury or disfigurement
3. Mandatory uninsured motorist and underinsured motorist coverages.
4. Owner of vehicle is liable for acts of anyone driving the vehicle with owner's permission.

G. Workers Compensation

1. Person injured in the course and scope of employment is entitled to certain workers compensation benefits, but cannot sue employer for any other benefits or damages.
  - a. Temporary wage loss benefits – 2/3 of gross wage
  - b. Medical expenses
  - c. Permanent loss of function
  - d. Vocational rehabilitation or retraining
  - e. Permanent total disability (offset by social security disability)
2. Statutory amendments limit all benefits by amount and duration

3. Litigation system separate from district courts, with specialized judges

#### IV. Civil Litigation Reform

##### A. Is there a problem in Minnesota?

1. In Minnesota, the number of personal injury lawsuits has decreased by 30% in the last 10 years.

- a. Total of 4356 filed in 2006 (out of 5 million residents)
- b. 130 medical malpractice cases filed in 2006
- c. Approx. 400 wrongful death cases filed in 2006

2. Courts are filled with other types of cases (all 2006 data):

- a. 66,682 major criminal
- b. 1,555,212 minor criminal
- c. 61,689 juvenile
- d. 50,131 major family (divorce, child support, domestic abuse, etc.)
- e. 25,764 unlawful detainer (evictions)

3. The U.S. Chamber of Commerce ranks Minnesota's civil justice system and lawsuit climate as the second-best for business (only Delaware was better) (rank measures "how reasonable and balanced the tort liability system is").

4. Minnesota doctors have the second-lowest malpractice premiums in the country, even though state law does not provide a cap on damages, even for wrongful death.

- a. Florida, which has a "hard cap" on damages, is ranked 36<sup>th</sup> by the U.S. Chamber.
- b. Texas, which has passed a number of tort reform bills, including damage caps, is ranked 45<sup>th</sup>.

B. Is there a problem nationally?

1. Tort lawsuits have declined by 10% in the last five years.

- a. Only 1647 tort cases went to trial in federal court in 2002; total civil filings in federal court have decreased 79% since 1985.
- b. State jury trials in tort cases decreased by 44% from 1992 to 2002.
- c. The median personal injury award nationally in 2002 was \$28,000 (down from \$64,000 in 1992).
- d. 69% of small business owners say they have trust and confidence in the civil justice system.

2. In the past 5 years, medical malpractice claims and awards have both declined, while premiums nationally have gone up (by 120%).

- a. The Institute of Medicine found that preventable medical errors in the U.S. cause 98,000 deaths each year.
- b. The New England Journal of Medicine found that 13% of patients are subjected to medical malpractice.
- c. Only two percent of medical malpractice victims file claims, and far fewer actually commence lawsuits.
- d. Nationally, malpractice claims and litigation amount to less than 2% of healthcare costs.
- e. Since 1990, the number of physicians in the U.S. has increased by 40%; E.R. doctors by almost 100%; OB/Gyn doctors by 25%.

3. Research has compared case assessments of juries, judges, and independent reviewers: all three agree on verdicts the vast majority of cases, with juries being slightly more likely to rule in favor of the defendant.

C. What about “frivolous” lawsuits?

1. The definition of a “frivolous” lawsuit usually depends on the perspective of the definer:

a. The Texas Beef Council sued Oprah Winfrey for saying she was going to stop eating meat.

b. The Recording Industry Association sues everyone it suspects of downloading music for free for thousands of dollars per song.

(1.) Does the amount of compensation claimed make a case more frivolous?

(2.) Does a favorable jury verdict make a suit less frivolous? What about an unfavorable verdict?

(3.) If a defendant pays a nominal sum to settle, does that make a case meritorious?

c. Tobacco companies alleged that every case filed against them for decades was frivolous.

d. Typical personal injury case: treating doctors vs. doctors hired by the defense

e. The McDonald’s Coffee Case

2. True facts of the McDonald’s Coffee Case:

a. Stella Liebeck was the passenger in a parked car when she spilled coffee from McDonald’s onto her lap.

b. The temperature of the coffee was 185 degrees Fahrenheit, which can burn through all layers of human skin in less than seven seconds.

c. The standard temperature for restaurant coffee is 135 to 140 degrees, which does not cause human skin to burn.

d. McDonald’s had received more than 700 complaints of burns from its coffee before Mrs. Liebeck’s injury.

e. McDonald’s quality assurance manager testified at trial that coffee served at 185 degrees was not fit for human consumption, but that they had no intention of serving coffee any cooler than that, even after Mrs. Liebeck’s injury. The reason the coffee was

so hot was that McDonald's uses low quality coffee beans that smell better in the restaurant when brewed very hot.

f. Mrs. Liebeck suffered 3<sup>rd</sup> degree burns over 6% of her body, in the groin area. She spent 8 days in the hospital and incurred \$20,000 in medical bills, including debridements and skin grafts.

g. She offered to settle for the \$20,000 in medical bills, but McDonald's refused to offer anything, and insisted on going to trial.

h. The jury found Mrs. Liebeck 20% at fault, and McDonald's 80% at fault, and awarded her \$200,000 in damages (net \$160,000 because of her comparative fault).

i. The jury also awarded her \$2.7 million in punitive damages, representing two days of profits from coffee sales for McDonald's. The judge reduced the punitive damage award to \$480,000.

3. Remedies for frivolous lawsuits should include giving judges the power to dismiss them, and sanction the persons and lawyers who file them.

a. Blanket legislation vs. judge who hears facts

b. Lawyers as filters for bad cases

c. The additional problem of pro se litigants.

#### D. Other legislative concerns

1. Good faith bill

2. Obesity lawsuits

3. Immunity for selected industries (drug manufacturers, airlines, railroads; others?)

4. Damage caps – compensatory, economic, punitive damages

5. Limits on attorneys fees

6. National no-fault; “No pay, no play”

