4. Liability Insurance

Purpose of Liability Insurance

Liability is the legal responsibility for damage to another party’s person or property. If an accident occurs on your property for which you are found liable, you can expect to pay money damages to the person who was harmed. The other person’s losses may be so widespread that without proper coverage, you can lose everything...business, home and savings.

If you injure another person or his/her property and are legally obligated to pay for the damage, coverage by liability contracts that protect your assets, which is its purpose. Liability insurance is a three (third) party contract: (1) the insured, (2) the insurance company, and (3) an unknown third party, the other person. Liability contracts protect you and will pay the other person on your behalf when you accidently cause damage or injury to him/her. Damages include:

1. Bodily Injury (BI)
   The physical injury to another person as a result of an accident for which you are liable

2. Property Damage (PD)
   The physical injury you cause to another person’s belongings

3. Personal Injury
   Types of insurable offenses that produce harm other than bodily injury such as false arrest, detention, or imprisonment; malicious prosecution; slander; libel; and invasion of privacy

4. Advertising Injury
   This coverage is similar to personal injury, but in this effects businesses. It covers the following offenses in connection with the insured's advertising of its goods or services: libel, slander, invasion of privacy, copyright infringement, and misappropriation of advertising ideas.
Limits of Liability

This is the maximum dollar amount that the insurance company will pay for claims covered under your policy.

Per Occurrence

This refers to the most an insurance company will pay for all claims arising from a single incident. With auto insurance, it comprises bodily injuries sustained by all parties in a single auto accident.

Aggregate Limit

This is the maximum dollar amount your insurance company will pay to settle your claims. Often the limit is referred to as an annual aggregate limit, which is just the total amount your insurer will pay in a single year.

Let’s go ahead and take a look at auto insurance limits. You should know how these limits work together.

Split Limits

1. Per Person

This represents the most the policy would pay for accidental bodily injury (BI) to any one person involved in an accident.

2. Per Occurrence

This represents the maximum amount that the policy will pay for all persons involved in a single accident.

3. Property

This represents the maximum that the policy will pay for property damage (PD) for each occurrence. These limits are usually expressed as three amounts, i.e., 250/500/100.

Per Person - $250,000, Per Occurrence - $500,000, Property Damage - $100,000

This would mean that the policy would pay up to $250,000 for the injury of any one person, up to $500,000 for bodily injury to two or more people (but not more than $250,000 to any one person), and up to $100,000 for damage to property of others.
Combined Single Limit

This is one combined limit that applies to both BI and PD. It is expressed as one amount, such as $500,000. The limits typically apply on a per occurrence basis. This means that a cap applies to the payment of claims that arise from a single accident.

Occurrence vs. Aggregate Limits

Each property policy has a limit that reflects the total amount that the insurer will pay for a loss. Most claims that are filed by insureds are for partial losses rather than total losses. When a partial loss claim is filed, if covered by the policy, the insurer will pay for only the amount of the partial loss. In paying for a partial loss, the total limit of the policy is reduced by the partial loss amount; however, after the repairs are made to the property, the insurer restores the total limit of the policy back to the original amount.

With liability policies that have a per occurrence limit, the insurer will pay up to the occurrence limit for that one occurrence. Once that claim is paid, the insurer restores the policy to its original limit until the next occurrence. This feature may be referred to as the restoration or nonreduction of limits. Then the process starts over again. There is usually no limit to the number of occurrences that an insured can report under a policy.

If the policy comes with an aggregate limit, the per occurrence limit is restored after paying the claim. However, the annual aggregate limit will not be restored until the annual renewal date of the policy.

Criminal Law vs. Tort Law

Criminal law deals with public wrongs which are a violation of a duty owed to society for which society, as a whole, seeks punishment of the violator in a criminal action. Criminal penalties include incarceration, monetary funds, or both.

Tort is a civil wrong, other than a breach of contract, which violates the rights of others. A person who suffers an injury resulting from a tort is entitled to receive "damages", usually monetary compensation, from the person or people responsible — or liable — for those injuries. Incarceration is not a penalty used for civil wrongs.
Negligence

Negligence can be defined as the failure to use the amount of care which an ordinary person of reasonable prudence would or would not use under the given or similar situations to protect others from an unreasonable chance of harm.

Negligence is accidental as distinguished from “intentional torts” (assault or theft, for example) or from other crimes (criminal law). For example, most stores that consumers shop in should have store rules and regulations in place that prevent the consumer from entering an area with wet floors. Wet floors are considered a hazard that could lead to bodily injury of a consumer. The store has a duty to consumers in making sure these rules and regulations are enforced. Failure to do so is a breach of the store’s duties and could result in the store being held negligent.

Liability insurance will not cover intentional acts, only accidents. Negligence involves harm caused by carelessness, not intentional harm.

Establishing Negligence

To establish negligence, four factors must be involved:

1. Legal duty owed
2. Breach of legal duty owed
3. Proximate cause
4. Damages

#1 - Legal Duty Owed

There is reasonable expectation that you owe a duty to protect the rights and property of others. You are expected to behave like a reasonable or prudent person (reasonable person rule) in the affairs of daily life.

The duty you owe to another person is sometimes expressed as a degree of care or standard of care. For example, as a property owner, you owe the greatest degree of care to an invitee—a person you invite onto your property.

Slightly less responsibility is owed to a licensee, who is a person on your property with your consent, but usually for business purposes that benefit the licensee.

The least degree of care is owed to a trespasser, who comes onto the property without having permission to be on it.
#2 - Breach of Legal Duty Owed
There must be a breach of the legal duty owed.

#3 - Proximate Cause
No, it’s not APproximate cause... leave the AP off. The proximate cause is one event that sets in motion an unbroken chain of other events that causes a loss... sort of a ripple effect. This sequence is unbroken by any other factors or events, and the loss would not have occurred without the proximate cause. If an independent action breaks the chain of events and sets in motion a new chain of events, this **intervening cause** becomes the proximate cause. Let’s use an example of how this might work.

Keep in mind that a **negligent act** is the **proximate cause** of an injury if the injury is the natural and probable result of the act. In other words proximate cause exists when the injury is the foreseeable result of the negligence. Let’s take a closer look...

Let's say that you are texting while driving (a definite no-no) and negligently run through a stop sign and crash into a house. Inside the house, the impact causes a chandelier to fall and bash Joe on the head (poor Joe).

So it is accurate to say that Joe’s injury was a likely result of crashing your car into his house. What is the proximate cause of Joe’s injury? Crashing into Joe’s house is the proximate cause of his injury. After all, it was likely that some sort of injury would occur when you were texting while driving.

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#4 - What's the Damage?
An essential element of negligence and liability insurance are dollar **damages**. If you would have looked up in time to stop your car in front of Joe's house, there would be no negligence. Yes, you breached your duty by texting while driving.
Pay Me

Under most circumstances, the damages in liability cases are compensatory damages, also called actual damages, and are intended to pay the other person for loss, injury, or harm suffered as a result of another's breach of duty. Two types of compensatory damages:

1. General damages are difficult to measure: physical or emotional pain and suffering, loss of companionship, loss of consortium, disfigurement, loss of reputation, loss or impairment of mental or physical capacity, loss of enjoyment of life, etc. How do you put a dollar amount on these?

2. Special damages are easy to calculate: i.e. medical costs, repair or replacement of damaged property, or lost earnings.

Let's Punish Somebody

Punitive damages, or exemplary damages, are intended to punish the defendant and discourage others from engaging in similar conduct. Punitive damages are often awarded where compensatory damages are deemed an inadequate remedy.

Punitive damages are excluded in most Liability policies. The general consensus is that if the insurance company pays the damages, the defendant has not been punished.

For example, in the O.J. Simpson civil case, the civil jury awarded millions of dollars in compensatory and punitive damages to Brown and Simpson's children, and the victims' families.

The jury awarded a relatively modest amount of compensatory damages, but awarded tens of millions of dollars in punitive damages against Simpson because the jury found, in effect, that Simpson was guilty of murdering Brown and Goldman.
**Accident vs. Occurrence**

Most injuries that occur as a result of negligence may usually be thought of as accidents—an unintended and unforeseen event. But insurance defines accident as an event that is sudden and unexpected on the part of the insured. It generally pertains a single happening that can be attributed to a definite time, place and cause. If you run a stop sign and hit another vehicle, this would be considered an accident—if it was not an intentional act—that occurred at a definite place and time.

Occurrence is often equated with "accident"; however, some policies define occurrence to include "continuous or repeated exposure which results in bodily injury or property damage neither expected nor intended by the insured". For example, there has been numerous long-term bodily injury claims involving asbestos inhalation or property damage caused by release or re-entrainment of asbestos in buildings. It was the continuous and repeated exposure to the asbestos that caused the damage. This situation would not be considered an accident, but rather an occurrence.

**Strict and Absolute Liability**

The doctrines of strict liability and absolute liability are closely-related legal concepts.

**Strict** or **absolute** liability means that you are responsible for injuring another person regardless of negligence or intent. Even though you may not have intended to commit a wrong, you are still held responsible for your actions.

**Strict liability** today is most commonly associated with *defectively manufactured products*. An injured party must prove that the item was defective, that the defect proximately caused the injury, and that the defect rendered the product unreasonably dangerous. With strict liability, duty is not a factor. A plaintiff may recover damages even if the seller has exercised all possible care in the preparation and sale of the product.

**Absolute liability** is liability without fault - liability for which there is *no excuse*. Most often, the courts perceive absolute liability as a severe form of liability, reserved only for those situations where the associated activities are inherently dangerous and even the general public may need to be protected. Even when the greatest level of care has been taken, absolute liability may be imposed.
For example, under workers’ compensation insurance, most states recognize an employer carries absolute liability, meaning that damages associated with an employee injury on the job are considered the liability of the employer, even if the employer is not at-fault.

Absolute liability is also imposed for ultra-hazardous activities or products such as demolition using explosives or products using radioactive materials that are so fundamentally dangerous that liability is automatically assigned to the defendant regardless of any negligence on the part of the injured.

Also, activities involving dangerous animals would fall under absolute liability. Bringing home a wild animal as a pet would fall under ultra-hazardous activities.

Vicarious Liability

Vicarious liability is liability that you incur due to the actions of others, such as family members or employees. For example, employers are responsible for negligent acts or omissions by their employees in the course of employment. Parents can be held liable for their own negligent acts, such as failure to properly supervise a child, or failure to prevent a child from accessing handguns or other dangerous items.
Legal Defenses Against Negligence

1. Comparative Negligence
This allows a determination of liability to be made even when both parties have contributed to the loss. The award to the plaintiff may be reduced, or even prohibited, depending how plaintiff's actions caused or contributed to the accident.

For example, Joe is late for a meeting and is speeding through heavy fog to get there on time. He hits another car causing bodily injury and property damage to the other driver. During the accident investigation, it was determined that the other car did not have its lights on. In states that follow a comparative negligence system, how would the other driver's financial recovery be affected?

In this situation, both parties have some degree of negligence in causing the accident. Joe's responsibility to the other driver is reduced by the other driver's degree of negligence. For example suppose a jury decides that Joe was driving too fast in the fog and was 60% responsible for the accident, while other the driver with no lights on is 40% responsible. If the jury awarded the other driver $100,000, his/her recovery would be reduced to $60,000 because of his/her 40% contributory negligence. Would Joe also be entitled to any financial recovery since the other driver didn't have any lights on? That would depend on state law. Some states hold that the driver who is over 50% responsible would not be entitled to any financial recovery. If that was the situation here, Joe would receive nothing since he was held 60% responsible for the accident.

2. Assumption of Risk
If the other person knew the consequences of his/her actions and voluntarily accepted any risk associated with his/her actions, then he/she would be solely responsible for any resulting injury. For example, Joe bought a hammer and a box of nails before starting work on his "honey do" list. Joe cannot hold the store responsible if he accidently smashes his finger while hammering in a nail. Well, not unless the hammer was defective. In that case, strict liability may be imposed.

Another example of assumption of risk: The courts have upheld that if a spectator to a sporting event, such as a baseball game, is hit by a foul ball, the spectator may be barred from recovering damages by the assumption of risk defense. The spectator knew, or assumed, the risk before attending the game.
3. Intervening Cause

An intervening cause is a separate event or action that breaks the direct connection between a person's actions and an injury or loss to another person. It breaks and alters the natural and continuous sequence of events that follows the person's actions (proximate cause).

If an intervening cause is discovered, it may relieve the person of liability for the injury or loss. The result is that the person who started the chain of events is no longer responsible and will not be found liable for damages to the injured person. The intervening event is deemed a "superseding cause" of the injury or loss.

Let's say in the earlier example, you negligently crashed into Joe's house breaking a window but not injuring Joe. Later that night, a burglar crawls through Joe's broken window and assaults him. Joe then files a personal injury action against you to recover for the injuries inflicted by the burglar.

In this case, the burglar's conduct was not a foreseeable result of your negligence. Therefore, the burglar's conduct is an intervening or superseding cause. Your negligence is not the proximate cause of Joe's injuries, so he cannot recover damages from you in a personal injury action.

4. Statute of Limitations

In some states, the statute of limitations laws hold that certain types of lawsuits must be filed within a set time limit of the occurrence to be valid. If Joe sues you 10 years after you crashed into his house, he would probably have a difficult time mounting a solid defense.

Pull the Trigger

A coverage trigger is the event that must occur before a liability policy will respond to a loss.

Occurrence Policy

For example, under an occurrence policy, the occurrence of injury or damage is the trigger. Your liability will be covered if the injury or damage to Joe occurred during the policy period, regardless of when the claim was made.

Claims-Made Policy

Under a claims-made policy, the coverage is triggered when the claim is made. Coverage will respond to incidents arising on or after the policy retroactive date and which are reported during the term of the policy.
Retroactive Date

Your retroactive date is the start date of the first claims-made policy you are actively renewing. You are covered for any covered incident as long as it occurs on or after your retroactive date. The retroactive date remains the same and is not advanced as long as you renew your policy.

No Fault Benefits

Medical Payments to Others (Med Pay)

Most insurance policies include coverage for all necessary medical expenses incurred within 3 years of an accident that causes bodily injuries to another person. The Med Pay section of your liability coverage will pay regardless of who is at fault. Medical payments covered could include doctor's fees, x-rays, hospital stays, and similar expenses.

This coverage applies to injuries sustained while the injured party is:

1. on the insured location with the insured's permission or
2. off the insured location, if the injury arises out of a condition:
   a. on the insured location
   b. caused by the activities of the insured or
   c. caused by an animal in the insured's care

This coverage typically provides low limits such as $1,000 per person. Coverage does not apply to any injury sustained by the insured or the insured's family members.
Supplementary Payments

Liability policies also provide certain supplementary payments that are paid in addition to the policy’s regular limit of liability. This coverage provides for the insurance company to pay all of the expenses that the insured incurs at its request to assist in the investigation or defense of a claim.

These coverages may vary some depending on the policy, but in general they include:

Defense Costs

Liability policies promise to defend the insured against any lawsuit seeking BI or PD, even if the charges are totally groundless, false, or fraudulent. The costs to defend against a lawsuit are paid in addition to any payment for a claim. The duty to defend against the claim ends once the amount paid for damages equals the policy limit. Additionally, expenses incurred while investigating a claim are payable as a supplementary payment.

Prejudgment Interest

This is interest on an award for damages to compensate for the interest that the plaintiff may have earned if he or she had received compensation at the time the injury or damage occurred, rather than at the time of judgment.

Post Judgment Interest

This is interest on an award accruing after it has been made, but prior to the insurer paying it.

Bonds

Included are premiums for certain types of bonds, such as bail bonds, appeal bonds, and release of attachment bonds.

First Aid

First aid supplementary payments are made to others at the time of an accident.

Loss of Earnings

This is loss of earnings for an insured when the insured is required to miss work for court appearances.

Let's suppose that your liability coverage limit was $100,000 at the time you crashed into Joe's house. Later, Joe was awarded $100,000 his injuries. Your liability policy would pay the $100,000. But what about the three days you took off work to appear in court? Supplementary payments will cover your loss of earnings up a certain daily limit in addition to the policy’s limit of liability.
Fire Legal Liability Coverage

This coverage pays for amounts that a tenant is legally obligated to pay for direct loss caused by property damage to tangible property of others in the tenants' care or custody. The property damage must result directly from fire or explosion occurring within the policy period.

In other words, if a person leases a building or space in a building, fire legal liability covers damage resulting from a negligent act or omission of the tenant that allows a fire to damage their leased space. For example, if a tenant left a space heater or coffee pot turned on overnight that causes a fire that damages the building, this would cover the damage to the space actually occupied by the tenant.

Exclusions

Each liability policy or coverage part contains certain exclusions which we will discuss in greater detail throughout this course. For now, we will simply list a few general exclusions that are common to liability insurance coverage. Generally, there is no coverage for:

- damage to property owned by the insured
- damage to property in the insured’s care, custody, or control
- bodily injury to an insured
- losses covered under workers’ compensation laws
- losses covered under nuclear energy liability policies and
- injuries or damages caused intentionally by the insured
Lesson Wrap-Up

You should see by now that there is no secret to this—no magic formula. Take notes; review this lesson several times before proceeding to your lesson Driller-end of chapter open book quiz. Learn the information, don’t just memorize Driller questions.

Before you leave this lesson, make sure that you can do the following:

- Define tort, and negligence
- Describe the four factors used to establish negligence
- List legal defenses against negligence
- Compare and contract absolute liability and vicarious liability
- Explain who the first-, second-, and third-parties are in a loss situation
- Describe the types of damages that may be awarded for a liability loss
- Define bodily injury, property damage, and personal injury
- Explain how supplementary payments are paid in a liability policy
- Compare and contrast occurrence vs. claims made policies
- Describe common liability policy exclusions
- Explain what Med Pay does and does not cover