

## 1 **WE WOULD BE NEGLIGENT NOT TO EXPLAIN IT!** **PERSONAL INJURY CLAIMS**

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Steve Fenske

MAT General Counsel

## 2 **Personal Injury Matters**

- Two types – (1) Intentional Injuries and (2) Negligence
- Townships are liable for the injuries they cause or contribute to, with some exceptions.
- Civil liability – not Criminal
- Town officers generally not personally liable for civil wrongs of the Town. They are liable for their own, non-town, actions.
- Torts (the legal term) = Personal Injuries.
- We EXCLUDE: employment law matters; worker's compensation matters; statutory claims;

## 3 **Nothing New Here**

In the beginning, .... there were lawyers and thus, personal Injury laws allowing them to become indispensable.

Regardless of culture, there is a common belief that people owed some duty to each other, and could be held accountable for failing in the duty. Think of it as a reflection of what we think is required conduct for all people, no matter what you think of other people.

## 4 **Code of Hammurabi**

- Personal injuries resulting in loss of use of a body part: Eye for an eye 'justice', except when people of 'lower' status were harmed, then only payment of money.
- Assault of a 'superior': 60 blows with an ox whip in public
- Assault of an equal: Say "I did not injure him wittingly" and pay the medical expenses
- Assault on a pregnant woman: If the baby dies, payment of money. If the woman dies, then the assaulter's daughter is put to death.
- Medical Malpractice: Cut off the hand of the surgeon.

## 5 **Intentional Injuries**

- Assault
- Battery
- Conversion (civil theft)
- Defamation
- Emotional Distress
- Fraud
- Nuisance

## 6 **Defamation – Slander/Libel**

1. Defendant made a false & defamatory statement about the plaintiff;
  - True or False statement? Opinions or allegations of Fact?
2. When public official is the declarant, the Statement must be made with malice – made when knowingly false or with reckless disregard for truth
3. Statement was in an unprivileged publication to a third-party;

- Qualified Privilege - Statement made upon proper occasion from a proper motive.

4. The statement harmed the Plaintiff's reputation.

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Defamation Example 1: Several firefighters write a letter to their chief, asking one of the captains be removed from office. Letter includes statements like, "has a bad attitude", "is rude to others", "doesn't follow safety protocols", "no personnel skills", "lacks leaderships and responsibility at fire/rescue scene"; "No Respect!". Chief passes the letter to the town board, assistant fire chiefs, and a fire department advisory board.

Captain is removed from his office and claims the statements defamed him. He sues the town and the firefighters that signed the letter. Is the town liable?

Answer: No, but its complicated. Were the statements true? Where they matter of opinion? And, were they made with knowledge they were false or reckless disregard of truth?

1. Statements? Were they opinion or allegations of fact?

- Actionable Allegations: (1) he didn't follow protocol and safety procedures; and (2) firefighters wouldn't follow him into a burning structure. Not mere opinion.
- Non-actionable allegations: (1) he was rude; (2) thought himself better than others; and (3) no respect from fire fighters. Mere opinion.
- Not obviously false, but could be false.

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2. Malice?

- No malice found. They were not made with belief they were probably false, or by avoiding the truth.

3. Privileged & Third Party

- Privilege – Yes, to the board, but No to the Assistant chiefs and advisory board. Board had an employment complaint that it had to address. But the Assistant chiefs and advisory board didn't have any employment responsibilities. No reason for them to have the complaint.
- Third party – Yes, given to the chief, and then the board and an administrator.

4. Harm to the claimant

- Yes, removed from his position.

9  **Negligence - A little boring, but bear with us!**

- Failure to do something you were supposed to do or act as you were fairly expected to. Often an oversight or careless act.

- Four Elements of Negligence

1. Duty: An obligation or expectation that a person do or not do something.
2. Breach or Failure of the Duty: Person fails to do or not do
3. Causation: The failure of duty must be the legal cause of the injury or harm.
4. Damages: There must be a damage, loss, or injury to the claimant.

Examples Will Help

10  **Slip & Fall – Snow & Ice**

Example: A mother is walking into a community center for a basketball tournament. She slips on black ice, injuring her ankle. Thought it was a sprain and attended the tournament. Later, she found out the ankle was broken and it caused injury to her knee requiring two surgeries. Community center staff treats the sidewalk with salt each day, and did so this day. Is the town liable?

Answer and Risk Management: No, because Recreational Immunity applies.

- Recreational immunity: Towns are immune from claims based on construction, operation, or maintenance of property owned/leased the town that are open to public use as a park or rec area (except duties owed to a trespasser).
- Town didn't create the ice, so not a condition maintained by the town.

#### 11 **Slip & Fall – Premise Liability**

Example: A man in his 80's is attending the monthly board meeting at the town hall. He walks with a cane and usually has someone help him walk, but today his son dropped him at the door. There is snow on the ground, but the walkway is shoveled. The man enters the town hall. The floor is wet inside the door and he slips and falls, sustaining a serious injury to his hip. He sues the township for negligence. Is the town liable?

- Answer: Likely yes
  - Duty: Is there a duty to prevent his fall? Was there a duty to place a rug or mop? Does the town know that water pooled there? Should they have known?
  - Legal Cause: Did he fall because of the water or because of his limited mobility? Where was his aid? Did he exercise due care in walking?
- Immunity: No, recreational immunity;
- Risk Management: A rug! A mop!

#### 12 **Vehicle Collisions**

Example: Town grader is blading a road. Grader operator's practice is to take one pass for one lane, then a second pass for the other lane. (You may do this differently – its not a question of grader technique!) Grader begins backing up to turn around, lights flashing, backing sound on, and the operator has checked mirrors and looked behind him. Moving very slowly, the grader collides with a car that was feet from the grader. Operator did not and could not see the car. Car has damage. Is the town liable?

Example: Town snowplow strikes a mailbox while plowing. Mailbox is not a swing or break away post, but is an ornate brick structure that violates the mailbox law. Mailbox was visible, but the driver got too close to the box. Is the town liable? For how much?

#### 13 **Vehicle Collisions**

Example: Town grader is operating in the left lane of the 2-lane road (against traffic or "wrong lane"), but operator believes he needs to do so to effectively grade the road and avoid a 'deadhead' pass. This is an acceptable practice in the town. Its been considered by the Town Board and the maintenance staff, and allowed when needed. It was November, with sunset at 4:44 pm. While grading at about 3 mph, operator sees an oncoming car – the car doesn't slow down. Operator slows, then tries to move to the right to avoid collision. The car collides with the grader, killing the car's driver. The collision was between sunset and 5:15, but the exact time is disputed. The family sues for negligence and produces a witness who alleges the grader's headlights were not on while he was operating in the left lane. It is undisputed that the flashing light was on all day, since the beginning of the shift in the morning.

#### 14 **Statutory Immunity**

- Municipalities (towns) are immune from liability for "any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused." Minn. Stat. § 466.03, subd. 6 (2004)
- Discretionary duties are those that offer choice to the local government – they are not required or

proscribed by law (called ministerial duties). A planning level decision.

- Was grading against traffic a 'discretionary duty'?
- Yes, board and managers considered this practice, and decided the most efficient method, balanced against possible harms, was to allow it.
- Helps that a statute 169.035 gives maintenance vehicles engaged in work exceptions for some expectations.

#### 15 **Official Immunity**

- Common law official immunity generally applies to prevent "a public official charged by law with duties which call for the exercise of his judgment or discretion" from being held personally liable to an individual for damages.
- The mere existence of some degree of judgment or discretion will not necessarily confer common law official immunity; rather, the focus is on the nature of the act at issue. Official immunity does not apply: (1) when a ministerial duty is either not performed or is performed negligently, or (2) when a willful or malicious wrong is committed.
- Vicarious Official Immunity – transfer of immunity from the Official to the local government.

#### 16 **Lets Stop Here**

- Infinitely more to learn about these topics.
- Cannot stop all losses or injuries, but trying can go a long way.
- Did not cover all persona injuries. Nor immunities.
- Did not cover employment claims, worker's compensation, statutory claims.
- Questions?