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## Legal Issues in Emergency Management

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# Legal Issues in Emergency Management

February 16, 2011

Disaster Resistant University  
Workshop

Presented by:

William M. Moorhead, JD



# Administrative Issues



- Questions
- Participation
- Disagreement
- Test
- Collective Experience

# Goals



- Review the fundamentals of liability
- Examine common legal issues
- Discuss best practices
- Analyze situations

# Objectives



- Define liability and discuss how it can be incurred
- Recognize principles of Standard of Care
- Review basic legal issues within common situations

# Topics



- The systems of laws
- Overview of liability
- Contracts/MOUs/Agreements
- Who is in charge
- FOIA
- Case studies

# The Threat



- Case filings increasing
- Claims against government are dramatically increasing
- Plaintiff's chances of winning are increasing
- Award sizes have increased

# Deep Pockets



Government bodies assumed to have deep pockets

- Faceless
- “I paid”
- Revenge



# The System of Laws



- Law vs. Regulation
- Federal Law
- State Law
- Local Law/Ordinance
- Federal/State Guidelines
- Organization Guidelines/Rules
- Court Decisions

# Liability



## A Preview

- Define Liability
- Four Elements
- Standard of Care
- Practical Considerations

# Tort



Action that harms another person, business, or group. It occurs when a person or group of people act, or fail to act, without right and thus harm another directly, or indirectly.

# Tort Liability



- Strict Liability
  - Always liable
- Intentional Liability
  - Known violation
- Negligent Liability
  - Reasonable Man Standard
- Warrant Liability
  - Promised service not delivered
- Civil Rights Liability
  - Constitutional Rights violated

# Elements of Liability



Four Elements must be present

- **Duty** or standard to act
- **Breach** of duty (act or omission)
- **Cause** of injury from breach
- **Injury** that is measurable

# Liability



- **DUTY**

- **What is a Duty?**

- Existence of duty establishes standard of conduct

- **Where does the Duty come from?**

- Laws/guidelines/other

# Liability



- **BREACH**

- Was the duty fulfilled?
- Breach by omission or commission?
- Breach required for negligence

# Liability



- **Cause**

- Causal connection between breach and injury
- Did the failure to perform duty result in direct or indirect harm?



# Liability



- **Injury**

- Measurable harm caused by damage
  - Property, physical injury, mental anguish
- There must be an injury

# Liability



All four elements must be present to  
prove that liability exists

# Incident Study



- Recruit dies during training
- Woodworking class injury
- Assets improperly allocated during community-wide disaster

# Standard of Care



- What does it mean?
- Where does it come from?
- Who does it apply to?
- How often does it change?

# Standard of Care



## Considerations

- Cost/benefit analysis
- Capabilities of in-place systems
- Capabilities of similar systems
- Court decisions/rulings
- Reasonableness

# Standard of Care



Influenced by

- Federal
  - Documents/suggestions/standards
- National
  - Standards organizations/groups

Are you current?

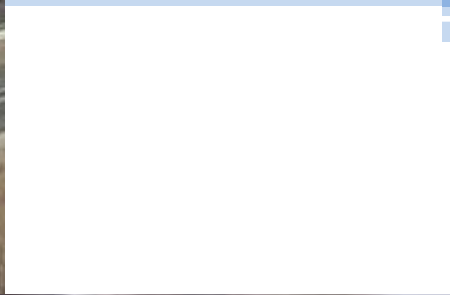
What is reasonable under same or similar circumstances?

# Incident Study



- AED
- Weapon Training
- Active Shooter Preparedness

# What can you be sued for?







Wednesday, December 08, 2010

## **UCLA Stabbing Victim Files Lawsuit Against UC Regents**

A UCLA student who was stabbed by her mentally ill classmate in a chemistry lab on Oct. 8, 2009, has filed a lawsuit against the University of California regents and her attacker. Katherine Rosen claims faculty and university administrators were aware of Damon Thompson's violent tendencies but did not take the necessary steps to protect her.



Wednesday, November 24, 2010

## **Court Allows Va. Tech Officials to Be Sued Over Shootings**

Virginia Tech President Charles Steger and former Executive Vice President James Hyatt do not qualify for absolute immunity to civil liability claims. This decision, which was rendered by Special Justice William Alexander of Franklin County, means that two \$10 million wrongful death lawsuits filed by the families of students slain in the April 16, 2007 shooting at Virginia Tech could go to trial as soon as September.



## [Va Tech critics frustrated by report response](#)

By LARRY O'DELL - Dec 10, 2010 3:59 PM ET

**By The Associated Press**

RICHMOND, Va. (AP) — Critics of how Virginia Tech handled the 2007 campus massacre said Friday they are frustrated but not surprised that the university still refuses to acknowledge mistakes, despite a federal report that concludes officials broke the law by failing to promptly warn students a gunman was on the loose.

# Practical Considerations



- Planning
  - Poor plans
  - Outdated plans
  - Unrealistic plans
- Training
  - No training
  - Undocumented Training
  - Unsafe Training

# Practical Considerations



- Problems with Notice (Identification of Hazards)
  - Hazards not identified
  - Hazards not prioritized
  - Hazards ignored
- Problems with Duty to Warn
  - Warning not given
  - Improper warnings given
  - Warning systems not fully utilized

# Practical Considerations



- Problems with Negligent Operations
  - Equipment not employed properly
  - Plans/procedures not followed
  - Equipment not maintained
- Problems with Vicarious Liability
  - Personnel not trained
  - Standards not present/enforced

# Practical Considerations



- Problems with Attractive Nuisance
  - Remember Murphy's Law
  - Take special precautions
  - Be aware of children's actions

# Potential Liability



- What are some specific issues that could create emergency management liability for universities?
- What are some specific issues that could create liability for the leadership within emergency management?





## Unqualified College Police Force Under Investigation

The Morris Brown College police department is under state investigation after it was discovered that the college employs 27 officers for a campus of just 63 students. Of those 27 officers, 17 have been placed on probation, investigated or publicly reprimanded by the POST Council.



## **College Freshmen Emotional Health at All-Time Low**

A study released by UCLA's Higher Education Research Institute surveyed 200,000 college freshmen and found that only 52 percent of them rated their emotional health as high or above average.



## **Officer Claims Order to Remove Protesters Was Unconstitutional**

A University of Pennsylvania police officer made an appeal in federal court, claiming that an order he had been given to remove anti-abortion and anti-gay protesters from campus was unconstitutional.

# Protection



Is there protection for those serving  
the community?

# Government Immunity



Sovereign Immunity has been steadily eroding since the 1960s.

Every state in the union and their municipal sub-units are subject to various forms of liability.

# Statutory Immunity



- Created by legislation
  - Good Samaritan provisions
  - Legislated immunities
  - All are limited
- Proof may be required
- Does not equal reckless

# Incident Study



- Emergency exercise corrective action
- Emergency response vehicle accident
- Under-utilized assets during a disaster

# Contracts and MOU



- What is a contract?
- What is a MOU?
- What are the practical considerations when entering into either of these?



# Contract/MOU Considerations



- Who are the parties entering into the agreement?
- What will the agreement ask or require each party to do?
- Does each party have the authority to enter into the agreement or fulfill the obligations?
- Are there legal hindrances (i.e. states can't utilize indemnity clauses)

# Who is in Charge



- What are the roles of the Federal, State, and local governments?
- What are the responsibilities of the first responders?
- What authority does a mayor, the governor, or the President have during a disaster?

# FOIA



- Open meetings
- Post/advertise notification of meetings
- Make information available
- Exemptions for investigations, employment matters, and miscellaneous other items
- Conduct business in formal meetings only

# Legal Assistance



- Legal Counsel (City or County Attorney)
- Attorney General's Opinions
- Associations and Groups

# Summary



- Legal issues can be complex and varied
- There should be more questions than answers

# Contact



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