

Professional Liability  
Chapter 15 Lecture Notes

### 15-1 Introduction

Regardless of the profession in which an individual practices, each should understand the effect of today's actions on tomorrow's liability. The courts have also imposed on land surveyors the certainty that they may be held liable for costs resulting from professional negligence.

The concept of personal liability, although a disadvantage to the individual surveyor, is in reality tied to history of professional negligence. Those surveyors who carelessly fail to inform or protect their clients in all surveying matters may find themselves burdened with alleged negligence and costs associated. There are seven principles related to liability we will discuss.

A client employs a surveyor to obtain a certain level of expertise. For the surveyor there is only one rule:

Bring to the client the level of expertise expected!

There is no such thing as a good survey or a poor survey, only adequate surveys! Surveys that purport to do the job intended. Keeping a client informed of possible problems will be a valuable asset. Liability laws and rules are inconsistent and constantly changing. It is important to keep abreast of current legislation to understand the consequences of your actions.

Liability results when a surveyor fails to do what he or she purports to do!

### 15-2 Discovery Rule

#### Principle 1

Began with the medical profession. Leaving things in the patient! Problems occur after the fact!

Statute of Limitations will affect the discovery rule. See the example in text about the BLM and the Doyle's (Page 451). They waited too long after the error was discovered to recoup their damages from the negligent surveyor.

### 15-3 Privity of Contract

Privity of Contract means only those parties to the contract may bring suit for negligence. This may open a Pandora's Box, those in privity of contract and those whom the surveyor can reasonably foresee as having a right to rely on the work he or she has done, can sue for damages.

### 15-4 Standard of Care

#### Principle 2

See the LS Act for definition of surveying practice. Only work in your area of expertise. The court may bring in an "expert" in a particular area when the work of the surveyor is questioned.

#### Minimum Standards

Manual of Instructions of 1973, ALTA standards, LSA, SMA, etc.

### 15-5 Negligence –vs.- Breach of Contract

#### Principle 3

Historically all negligence resulted in some form of a breach of contract.

Negligence...the omission to do something which a reasonable person, guided by those ordinary considerations which regulate human affairs, would do. Or the doing of something, which a reasonable and prudent person would not do!

To collect damages sometimes you must show malice or intent!

### 15-6 Expressed and Implied Guarantees

#### Principle 3 again!

Advertising oneself as a land surveyor carries with it implied guarantees that will be enforced by a court of law. Highest standards will also be imposed to those individuals. We hold certain groups of people to higher standards than others whether right or wrong. Guaranteeing the work of others by acceptance of that work. Be

careful of notes on the plat. They may not hold up in court, i.e. the boundary shown on this map is of record only. No survey was performed to locate. What people see they accept as gospel!

#### 15-7 Trespass Damages

##### Principle 4

All surveyors have the right to trespass on to an adjoiner's property to obtain necessary information. They are, however, held responsible for any and all damages that may occur on that property during the time of the survey or related to the surveying.

#### 15-8 Avoiding Liability

##### Principle 5

It is important for the surveyor to be very explicit in the decisions and information they give out. All parties shall be informed and everything should be in writing so as not to miss-communicate intentions.

#### 15-9 Elements of Liability

##### Principle 6

See the list of four things that must be proven in order to prove negligence.

#### 15-10 Damages

##### Principle 7

#### 15-11 Liability of an Abstractor

See four items of minimum standards by which the title company works