Lecture 2: Monday 2/9/04

1. Bhopal
2. Negligence
3. Mills/Fiduciary duties
4. cause/harm

Non-contractual liability

“Torts”
- duty to respect protected interest (reasonable care)
- failure to meet the duty
- harm to another
- caused by the failures

Liabilities/damages

UCC
India built a plant

- What do we want to know if how UCC U was negligent?
  - Perhaps the design was negligent?
  - Failure to exercise due care = negligence

  a.) working relationship
  b.) information

2.) How do you find out what as reasonable care?

Tort law is common sense:
  a.) look at UCC practice elsewhere
  b.) look at industry standards
  c.) safety regulations—compliance
  d.) internal policies

FDA Case:
- has many gaps
- only the “clunkers” don’t get through
- representative of other agencies
- gov’t has limited resources and chooses to focus its attention on specified things
- gov’t regulation won’t save you

What if you do comply with safety regulations?
• Safety is highly a matter of negotiations with gov’t regulators (fundamentally different type of inquiry, but you can win on a cost-benefit analysis)
• Internal policies are like New Year’s Resolutions → fleeting.
• You have to have reasonable standards.

Question by student; “How do you live with standards?”
Ans: Some companies have problems articulating why they have different standards. In general, as prosperity goes up, so do standards.

Companies tend to decentralize the decision process.

Limited liability: A shareholder is liable only for its investment. Is this a problem?

UCC US can say you are interfering with the essence of a corp. (II)
Yes: passive shareholder (II)

UCC US set the whole thing up and is heavily involved. Shareholder will not protect them.

Wickline:
HMOs

Prospective review: you first consult your consultants

Polznsky: attending physician
Glassing: works for HMO

Arguing that Polensky didn’t ask.

• HMO loses the holding, but they won.
• You can’t write out specific rules.
• Fiduciary rules (2 kinds)
  o Care
  o Train doctors
  o Research

• Fiduciary duties are to patients, but they are not absolute.
• Conflicts are not necessarily tempting. (they can be structured)
• Fiduciary in Mills (collegial)

• Manage the corporation (but, what does this mean?)
• “non-delegable duty”
• “delegation” in the Mills Case

• Loyalty to Board (but lawyers say to the “Firm”) v. loyalty to management.

• Inside Directors v. outside Directors.

• Business Judgment Rule (see page 19, second paragraph)