

## Liability for Geographic Data, Products and Systems

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[http://www.spatial.maine.edu/~onsrud/  
Courses/SIE525/SIE525syllabus.htm](http://www.spatial.maine.edu/~onsrud/Courses/SIE525/SIE525syllabus.htm)

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### Public Sector vs. Private Sector Liability

Traditional case law:

Government has immunity if  
“discretionary in nature”  
(i.e. political decisions)

No immunity if “ministerial” in nature  
(i.e. administrative or technical  
decisions)

Common law sovereign immunity largely  
replaced by statutory provisions

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### 1. Liability: a harm based concept

Responsible for some level of:

- competence in performance
- fitness in the product offered

In commercial settings, reduce exposure  
through:

- communications
- contracts
- business practices

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2. Perfection is not required.

No practical database will ever be:

- complete for all potential purposes
- accurate for all conceivable uses
- free of all errors and blunders

Liable only for harms you have a duty to prevent.

3. Nature and extent of rightful duties

- contract law
- tort law
- legislation

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4. Fundamental Contract Issues

Warranties?

- express or implied

Parallel tort claim?

- expand types and extent of damages
- broader range of duties
- statute of limitation differences

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5. Fundamental Tort Issues

- intentional harms, negligence, strict liability
- come to forefront when goal of law is to prevent harm to public generally
- may be invoked by third party users

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6. Relevant Legislation

Infringement of:

- antitrust
- intellectual property
- personal privacy
- access to government information

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**Scenario 1** - Individual purchased off-the-shelf prepackaged spreadsheet software from a merchant. Leaves store, tries software, disappointed in her expectations of the capabilities of the software.

Regardless of store policy, does law allow her return of purchase price? Additional damages?

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**Scenario 1 Analysis:**

Sale concerns “goods” and seller is a merchant. Article 2 of UCC applies.

UCC helps define when express or implied warranties have been breached.

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**Express warranties** by the seller created by:

- (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
- (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
- (c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

"It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee"

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**Implied warranties** by the seller:

***Implied warranty of merchantability***

Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and ...
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity ...; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promise or affirmations of fact made on the container or label if any.

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***Implied warranties of fitness for a particular purpose***

"Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose."

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Scenario 1 Conclusions

Contract Law:

In the typical business-like sale of prepackaged software or data it is unlikely that UCC warranties have been breached.

Legislation apply? Consumer laws

Custom in the trade?

Shrink-wrap license waiving implied warranty of merchantability?

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**Scenario 2** - Individual engaged in business of selling health care products by mail. Sales literature says data and software will allow her to better profile customers.

Signs license with clause:

“software and data are supplied AS IS without warranties of any kind, either expressed, implied, or statutory, including but not limited to warranties of merchantability and fitness for a particular purpose”

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Signs form, uses GIS to do directed mailings, suffers worst sales in ten years of business.

Non-intentional defect in latest update of software caused all mailings to go to least likely purchasers rather than most likely purchasers.

What theories might be pursued to collect damages?

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Scenario 2 Analysis -

1. Contract Claim

- contract as a whole unconscionable?

2. Tort Action

- in lieu of or in parallel
  - negligence
  - misrepresentation
  - fraud
  - strict liability

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**Negligence**

defendant has a duty to act reasonably to avoid foreseeable risks of physical injury

purely economic loss is not typically recoverable in a negligence action

duty to avoid solely economic injury runs only to those with whom producer had “special relationship”

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Parallel tort action allowed?

Traditional test:

misfeasance (improper performance) versus nonfeasance (failure to perform)

Special relationship?

- P relatively unsophisticated
- P needed to depend on D’s expertise
- P did depend on D’s expertise
- D held himself out as having the required expertise

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Fraud in the inducement?

Purpose: avoid discussion of and deference to contract

show fraud involving separate and distinct actions prior to and extraneous to contract

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**Scenario 5** - Manufacturer installs a vehicle routing system in latest line of autos. CD contains geographic data, GIS optimizes routes, GPS tracks position.

Oral instructions from system direct driver down a major one-way street in wrong direction. Major physical injuries result.

Negligence and strict liability arguments?

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**Strict Liability**

Restatement of Law (Second) Torts §402A states:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

- (a) the seller is engaged in the business of selling such a product, and
- (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

- (a) the seller has exercised all possible care in the preparation and sale of his product, and
- (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

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**Did design defect exist?**

Courts typically resort to one of three risk-utility methods depending on case-law or legislation of the state:

- (1) pure negligence standard
- (2) state-of-the-art analysis
- (3) consumer expectations test

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**Summary:**

Liability is a creation of the law to support important social goals:

- (1) avoid injurious behavior
- (2) encourage fulfillment of obligations established by contracts
- (3) distribute losses to those responsible for them

In most instances, liability for GIS services and products involves resort to contract and warranty issues.

When preventing physical harms to the public arises, tort theories more germane.

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**Liability for Harmful Communications**

(Chap. 4, Perritt)

**Originator --> Intermediary --> User**

**1. Liability of originators**

- unchanged with digital era?

**2. Liability of intermediaries**

Are most intermediaries protected from liability exposure from the wrongs of others?

- fault-based liability?
- copyright liability?
- strict products liability?

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**Fault-based liability for intermediaries**

- Defamation
- Invasion of privacy
- Negligence

**No fault liability**

- **intellectual property rights**
- Direct infringement
  - intermediaries have immunity?
- Indirect infringement

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**Question:** (if we get to it)

List a situation in your life or business relationships in which you thought someone should have been responsible for the damages incurred by someone else.

Discuss in class or send to First Class

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