

# **Industrial Health and Safety**

## **Lecture 8: Legal Issues, Regulations/Liability**

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# Three Types of Laws In the US

**Statute laws, common law, and administrative laws.**

- » **Statute laws are promulgated by royal edict or a ruling body, the highest governing power in any jurisdiction.**
- » **Common law is not established by statutes but follows precedents set through judicial decisions.**
- » **Administrative law is established by an executive in prescribing the criteria under which any statute or desired control will be carried out.**

# **Common Law**

**The common law, is derived principally from past usage, customs, opinions, and decisions.**

**The common law of the US derived from that of England with one exception. The State of Louisiana based its laws on the laws of France.**

**Common law is unwritten law in the sense that it has never been fixed by statute, can be changed by judicial interpretation.**

# **Statute Law**

**Statute law is law prepared and enacted by the elected representatives of the people in their legislatures.**

**Under both common law and statute law, everyone has obligations to safeguard others (and oneself) and to pay for injuries or damage.**

**e.g. every employer has obligation to prevent personal injuries or damage to two (or three) broad categories people of people:**

**The general public**

**Employees**

**Customers**

# Product Liability

## Some Fundamental Legal Terms and Principles

- Care and Great Care
- Reasonable care, Slight care
- Exercise of due care
- Standards of reasonable prudence
- Proximate cause
- Liability and Strict liability
- Negligence
- contributory negligence
- Negligence per se
- Gross negligence
- Willful or reckless conduct
- Assumption of risk
- Tort, Joint tort liability
- Dangerous compensatory
- Dangerous punitive
- Safe promises
- Dangerous instrumentality
- Foreseeability
- Foreseeability applied to rescue
- Ultrahazardous operations
- Fright without physical contact

# Changes of Common law

**Most of our present laws regarding to obligations of a person to prevent injury to others or damage to their property are based on common laws developed in Britain and the United States.**

## **Definition of Accident:**

**Past: A sudden, adverse, unexpected event**

**But, certain types of occupational injuries, such as silicosis, dermatoses, cancer, and those from radiation are, or may be the result of long time exposure. There is no “sudden onset.”**

**Now: adverse, unexpected event**

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# **Master, Strange and Servant**

**Master, Servant, and Strange--In today's language**

**“employer”, “employee”, and “guest/visitor”**

**Common law obligation between a master and stranger  
are greatly different from those between a master and  
a servant.**

**No major activity today would be undertaken without  
insurance to cover liabilities that could result from  
accidents involving strangers.**

# Obligations to Employees

Historically, employer has been obligated to provide employees with:

- » A safe place to work
- » Safe tools with which to perform the work
- » Knowledge of any hazards
- » Competent fellow employees and supervisors
- » Rules to follow to perform safely and the means to ensure that the rules were observed



# Obligations to Employees

**Prior to enactment of workers' compensation laws, only one means by which a worker could obtain indemnity from his/her employment--by proving in court.**

**Proof that the employer was negligent:**

**Difficult**

**Time consuming**

**Costly.**

# Obligations to Employees

## Three defenses of the employer:

1. There had been contributory negligence.
2. A fellow employee had been negligent.
3. There had been an assumption of risk.

# Obligations to Employees

**Five objections to the employer's liability system:**

- 1. Insufficient compensation.**
- 2. Wastefulness**
- 3. Delay**
- 4. Employee-employer antagonism**
- 5. Inconsistency of awards**

# **Workers' Compensation laws**

- » **The first workers' law, which applied to railroad workers only, was adopted in Prussia in 1838.**
- » **The first state to pass a compulsory workers' compensation law was Montana, which in 1909 passed a law limited to coal miners.**
- » **A compulsory law, which applied to eight especially dangerous occupations, was passed in 1910 in New York.**
- » **It was not until 1917, that the U.S. Supreme Court decided affirmatively on the validity of workers' compensation laws.**

# **Workers' Compensation Laws**

**Six basic objectives underlie workers' compensation laws:**

- 1. Provide sure, prompt, and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault.**
- 2. Provide a single remedy and reduce court delays, costs, and work loads arising out of person-injury litigation.**
- 3. Relieve public and private charities of financially draining incidents associated with uncompensated industrial accidents.**

# **Workers' Compensation Laws**

- 4. Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals.**
- 5. Encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism.**
- 6. Promote frank study of causes of accidents, reducing preventable accidents and human suffering.**

# **Workers' Compensation Laws**

**Workers' compensation laws, are predicated on the principle of “liability without fault”.**

**Each part must give up something so that each can receive a benefit it desires.**

**Workers' give up the very uncertain possibility ⇄ More certain benefits from the employers.**

**An employer is required to pay benefits to his/her employees without the need for the employer's negligence to be proved.**

# **Workers' Compensation Laws**

**The principal benefit derived from workers' compensation laws is the medical coverage.**

**Did Workers' Compensation Laws do what they were expected to do?**

**An information system which leans heavily upon dramatic and publicized disasters to stimulate governmental progress, workers' compensation in America continues to be a national disgrace.**



# **Occupational Safety and Health Act**

**Why the OSHAct was enacted by the federal government?**

**The OSHAct was predicated on the following basic factors:**

- 1. State administration of safety laws, regulations, and codes were inadequate.**
- 2. The optimal means to eliminate or control the cause of accidents.**
- 3. New concepts of accident prevention.**

# **Occupational Safety and Health Act**

**Where did the new concepts of accident prevention come from?**

**Both in industrial safety and in other areas of safety.**

**New engineering discipline--System safety**

**Accident causes:**

**personnel error**

**malfunctions & failures of equipment**

**dangerous characteristics of equipment**

**adverse environmental conditions**

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# **Occupational Safety and Health Act**

**What is the fundamental system safety concept about?**

**If that unsafe condition can be eliminated or suitably controlled, there will be no accident even there is an error on the part of any personnel involved.**

**Example of an interlock.**

# Purpose of OSHAct

**The OSHAct is attempting to reduce the number of accidents and the severity of injuries from those accidents which cannot be eliminated by making safe designs and procedures mandatory.**

**The OSHAct and the standards that have developed as a result ensure that employers will observe their common obligations to their employees.**

# **Further Legal Aspects**

**Did the passage and enforcement of safety legislation put a stop to the legal process?**

**Comparative negligence:**

- » **Under the comparative negligence concept, the injured worker could recover damage to the degree that his or her actions did not contribute to the accident or injury.**

# **Fundamental Difference Between OSHA and workers' compensation Laws**

**Under the workers' compensation laws, workers gave up most of their right to sue their employers if they were injured as a result and during the course of their employment.**

**Since the OSHA standards, an increasing number of accident suits for damages are being brought against employers.**

# Environmental Laws

**These laws are intended to:**

- » **Protect ecological resources**
- » **Prevent unacceptable risks to human health**
- » **Minimize the effect of hazards**
- » **To control transportation of hazards substances**
- » **Prevent or limit pollutant releases**
- » **To provide means to clean up or remediate pollutant releases**
- » **Notify appropriate authorities and the public of pollutant releases**
- » **To provide compensation for damages of pollutant releases**

# **Environmental Laws**

**The major laws forming the environmental law system include:**

- » **National Environmental Act (NEPA)**
- » **Endangered Species Act of 1973 (ESA)**
- » **Resource Conservation and Recovery Act (RCRA)**
- » **Clean Water Act (CWA)**
- » **Safe Water Drinking Act (SDWA)**
- » **Clean Air Act (CAA)**
- » **Toxic Substances Control Act of 1976 (TSCA)**



# **Environmental Laws**

**The major laws forming the environmental law system include (Continued):**

- » **Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Superfund Amendments and Reauthorization Act (SARA)**
- » **Occupational Safety and Health Act (OSHA)**
- » **Noise Act of 1970**
- » **Emergency Planning and Community Right-to-know Act (EPCRA)**
- » **The Energy Policy Act of 1992**