



Liability Management

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Work Experience

Law Office of David T. Dorr, PC (February 2003 through present)
Brown Consulting Services, Ltd. (July 2000 through February 2003)
Law Office of David T. Dorr, PC (May 1998 through July 2000)
Rimkus Consulting Group, Inc. (March 1995 through August 1997)
United Industries, Inc. (Metals Group) (January 1993 through June 1994)
University of Texas at Austin (August 1991 through December 1992)

Education and Training

Mediation Course, Dispute Resolution Center of Austin, 2003
Certified Indoor Environmentalist Training, IAQA
Juris Doctorate (JD), University of Houston Law Center, 1997
Master of Science Engineering (MSE), University of Texas at Austin, 1993
Bachelor of Science in Civil Engineering (BSCE), University of Texas at Austin, 1991

Licenses and Memberships

Licensed Attorney in the State of Texas, TXBN 24004622
Member of the State Bar of Texas
United States District Court of the Southern District of Texas, 22944
Licensed as a Professional Engineer in the State of Texas, TXPE 86706

Liability Management

The application of general liability principles, in conjunction with available tools, to minimize the potential economic impact of an incident.

Definitions
Potential Parties
Causes of Action
Damages
Guiding Principles
Tools
Examples

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Definitions

Liability*: The state of being bound or obligated by law or justice to do, to pay, or to make something; the state of one who is bound by law and justice to do something which may be enforced by action.

Incident: An incident, in any situation, involves the specific facts and circumstances that occur.

*Black's Law Dictionary, sixth edition, citing *Fidelity Coal Co. v. Diamond*, 310 Ill.App. 387, 34 N.E.2d 123; *Clark v. Lowden*, D.C.Minn., 48 F.Supp. 261, 263.

Potential Parties

“Clients”

“Non Clients”

architect

contractor

subcontractors

other engineers

developers

current owner

future owners

leaseholder

Causes of Action

VALID

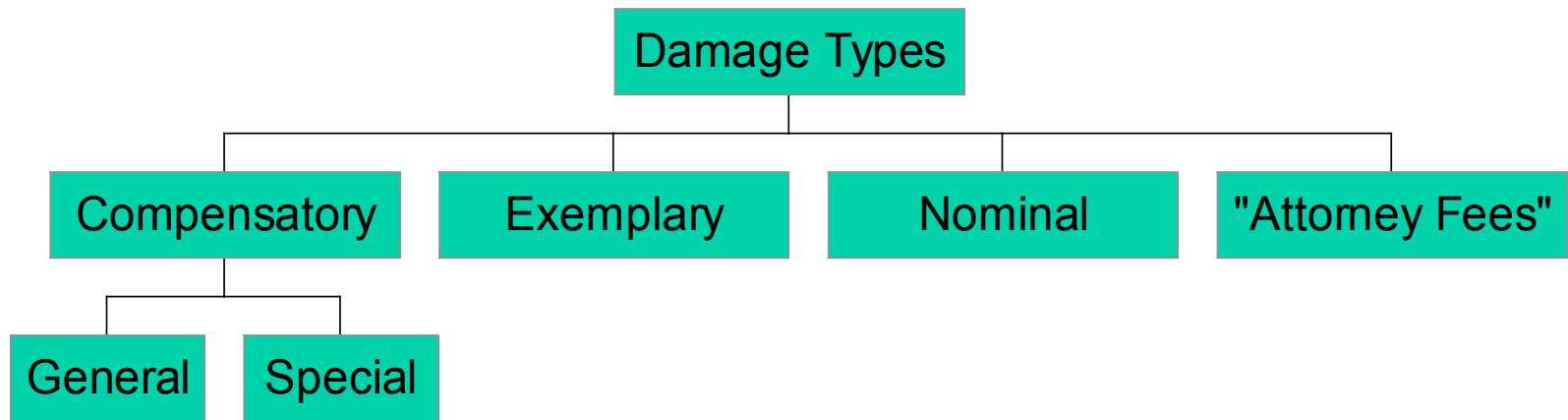
- Breach of Contract
- DTPA (Consumer Statute)
- Negligence
- Negligent Misrepresentation
- Fraud
- Breach of Warranty

INVALID

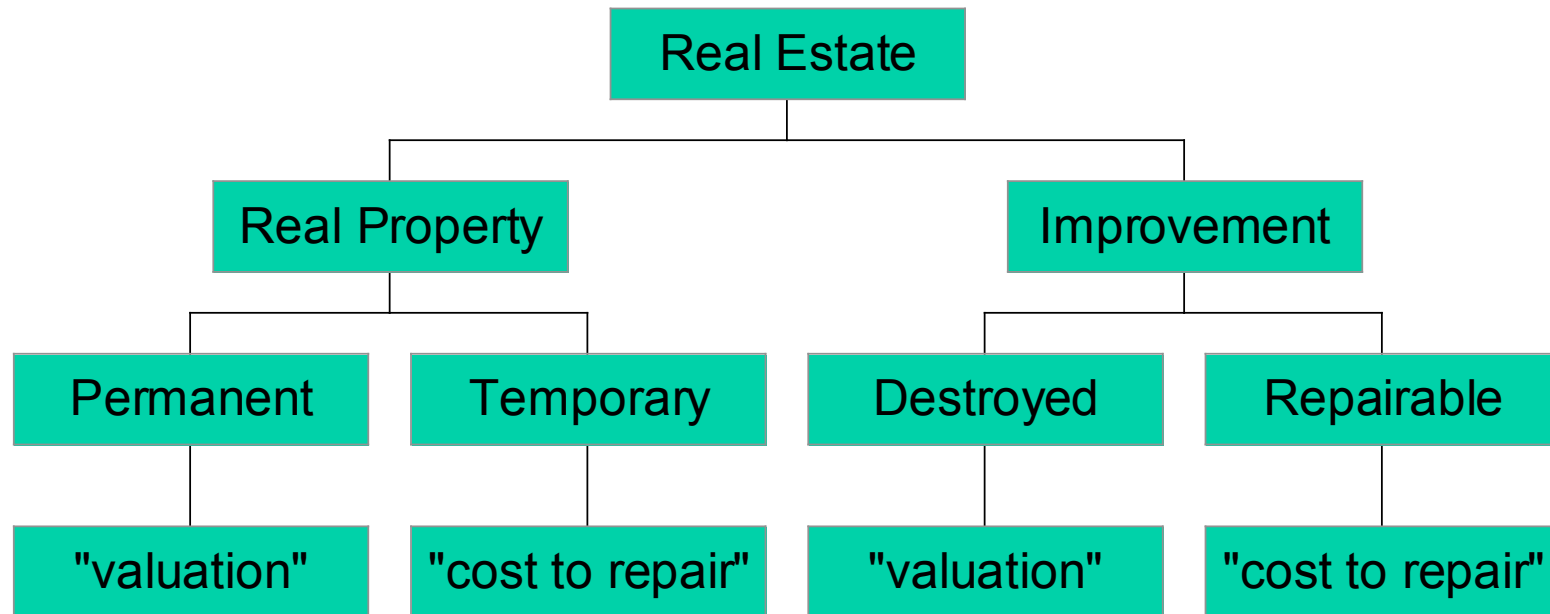
- Negligent Infliction of Emotional Distress
- Breach of Implied Warranty of Professional Services

DTD Comments: Some causes of action can be assigned to third-parties!

Damages



Damages: Real Property



Damage: Mental Anguish

- Past and future
- Available in personal injury case
- Must be physically injured; unless:
 - Intentional/malicious conduct
 - Breach of Duty arising from special relationship
 - “Disturbing events”
- Courts have held that plaintiff whose real property has been damaged by defendant’s negligence cannot recover mental anguish damages.

Guiding Principles: Caution

While case law is authority, court decisions and opinions can vary significantly!

Appeals cost money

JURISDICTION • JURISDICTION • JURISDICTION

Guiding Principles: Architect's Duty to Clients

In the absence of special agreement, *an architect is not liable for faults in construction resulting from defects in the plans, as his undertaking does not imply or guarantee a perfect plan or a satisfactory result*, it being considered enough that the architect himself is not the cause of any failure, and there is no implied promise that miscalculations may not occur. Thus, *an architect is only liable for a failure to exercise reasonable care and skill* [emphasis added].

DTD Comments: Dangerous! Expert testimony may have changed result.

Ryan v. Morgan Spear Associates, Inc., 546 S.W.2d 678 (Tex.Civ.App.---Corpus Christi 1977, writ ref'd n.r.e).

Guiding Principles: Professional's Duty to Non-Clients

The Court held that the independent adjusting firm hired exclusively by the insurance carrier, *had no relationship with, and therefore owed no duty to*, the Plaintiff-insured. The Court went on to state: Absent such a relationship and concomitant duty, the independent adjusting firm could not be liable to the Plaintiff for improper investigation and settlement advice, regardless of whether the Plaintiff-insured phrased his allegations as negligence, bad faith, breach of contract, tortious interference, or DTPA claims [*emphasis added*].

DTD Comments: Dangerous!

Dear v. Scottsdale Ins. Co., 947 S.W.2d 908, 916 (Tex.App.—Dallas 1997).

Guiding Principles: Engineer's Duty to Non-Clients

The Court held that no privity existed between the engineer and the Plaintiff. Thus, the Court held that the engineer did not owe the Plaintiff a duty of care in the preparation of the original plat of the subdivision, nor to correct of record any errors the plat contained.

DTD Comments: Very Dangerous! Could have alleged negligent misrepresentation.

Hartman v. Urban, 946 S.W.2d 546 (Tex.App.—Corpus Christi 1997).

Guiding Principles: Engineer's Duty to Clients

The court held that in contracting for personal services, an architect's or engineer's duty depends on the *particular agreement entered into with his employer*.

DTD Comments: Important

Cobb v. Thomas, 565 S.W.2d 281 (Tex.Civ.App.--- Tyler 1978, writ ref'd n.r.e.).

Guiding Principles: Engineer Ethics

Engineers Shall Protect the Public
Engineers' Actions Shall Be Competent
Engineers' Responsibility to the Profession

DTD COMMENTS: Not necessary a separate cause of action; BUT:
discipline action could be evidence of negligence; complaints can be
problematic.

Tools of Liability Management

Insurance contracts

Contracts with clients

Peer review

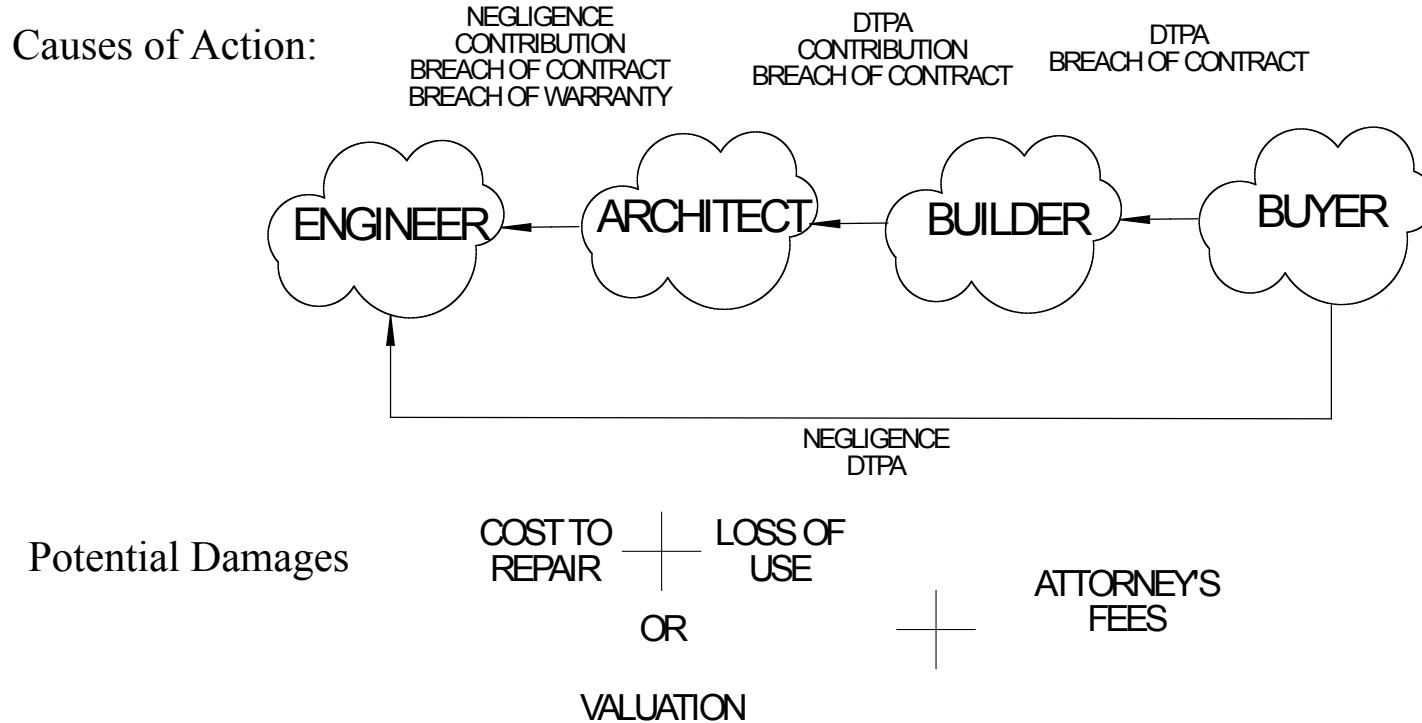
Others

Example #1: Situation

An *architect* retains an *engineer* to design a foundation for a residence for a *builder*. After the house is complete, it is sold to a *buyer*. Months after the sale, the foundation moves excessively interfering with normal use.

Example #1: Considerations

Potential parties: architect, engineer, builder, and buyer.



Guiding Principles: The *engineer's* duty to non-clients is limited. However, if the *engineer* was actually negligent, he would be liable to his client, the *architect*.

Example #1: Possible Plan

- Peer review to minimize design mistakes
- Written contract (1) to govern architect's claims, (2) to cap damages, and (3) to limit the third-party beneficiary (the builders and the buyers) claims
- E&O insurance to protect against negligence claims from client and from third parties.

DTD Comments: Specifics depend on typical project size, etc.

Example #2: Situation

An *architect* retains a *geotechnical engineer* to perform soil testing and provide recommendations that a *structural engineer* uses to design a foundation.

(considering only the geotechnical engineer's position related to the structural engineer)

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Questions

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Full text available on website: www.davidtdorr.com

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