

## CONDITIONS FOR THE DETERMINATION OF LIABILITY

### FOUR (4) CONDITIONS THAT MUST BE MET TO DETERMINE LIABILITY:

#### 1. DUTY: THE OBLIGATION TO PERFORM

- WRITTEN DUTIES: Examples include traffic laws and school board policies.
- UNWRITTEN DUTIES: Examples include acts performed by a *reasonable person* with the best interest of other persons, life, or property in mind.

#### 2. BREACH OF DUTY: FAILURE TO PERFORM AN OBLIGATION

- Failure to perform either written or unwritten duties.
- *FORSEEABILITY*: The ability of a *reasonable person* to predict or foresee the outcome of any act or omission relating to a specific situation.

#### 3. CAUSE: THE FAILURE TO PERFORM AN OBLIGATION MUST BE THE PROBABLE CAUSE OF INJURY OR DAMAGE

#### 4. DAMAGE OR INJURY: THE ACTUAL EVIDENCE OF DAMAGE OR INJURY

- *VISIBLE*: This is the most easily identified. The evidence of damage to persons or property is physically evident.
- *INVISIBLE OR DELAYED*: Difficult to identify and prove. Physical or mental damages may surface sometime after the incident.

## AN EXERCISE IN LIABILITY

Apply the four conditions shown below to determine if liability is present in each of the following situations described.

### FOUR CONDITIONS WHICH MUST BE PRESENT TO DETERMINE LIABILITY:

- DUTY
- BREACH OF DUTY
- CAUSE
- DAMAGE OR INJURY

#### **SCENARIO #1:**

A student, who was a passenger in a moving school bus, left his seat and walked to the front of the bus. The driver told the student to return to his seat just as the bus proceeded into a curve in the roadway. The student lost his balance and grabbed the door-opening mechanism. The door opened and the student fell out of the bus. The student was fatally injured.

#### **SCENARIO #2:**

It was dusk as a school bus approached a pupil's rural home. The student lived on the right side of the roadway, however, she told the bus driver she was going to the mail box, which was located directly across the roadway from her home.

The driver instructed the student that she was not to cross the roadway until after the bus had left the loading site.

Moments after the bus began to move, the girl was struck while crossing the road by a vehicle approaching, without lights, from the direction in which the bus was proceeding.

The parents of the student filed suit against the bus driver and school district claiming that the bus driver should have warned the student of the approaching vehicle.

#### **SCENARIO #3:**

A school bus had just stopped at a child's home using all procedures correctly. There was more than adequate visibility to both the front and rear of the school bus.

A seven year old girl exited the bus and proceeded to cross in front of the bus as required by school board policy. As she crossed the highway to her home she was struck by an automobile which passed the bus from the rear without stopping. The child died as a result of injuries received.

#### **SCENARIO #4:**

A grain truck, not a semi, rounded a sharp curve in the roadway and immediately approached a narrow bridge. At the same time a 54 capacity school bus approached the bridge from the opposite direction.

As the two vehicles passed each other on the bridge, a box fell from the truck and struck a school bus passenger properly seated next to the window, seriously injuring his arm.

## WHO'S LIABLE? QUICK QUIZ

1. Name the four conditions which must be present before you can be held liable for injuries resulting from negligence.

A. \_\_\_\_\_ B. \_\_\_\_\_

C. \_\_\_\_\_ D. \_\_\_\_\_

2. You may be held liable if any one of the four above conditions exists.  True  False

3. Only written duties, laws, regulations and school board policies are applicable in determining driver liability.  True  False

4. Your personal judgment is not a factor in determining driver liability.  True  False

5. Loading and unloading sites are the location of a substantial number of bus related accidents.  
 True  False

6. In the event of an accident involving injury, your legal counsel will be provided by:

- Yourself
- The Legal Aid Society
- Your employer (i.e.: school system or contractor)
- None of the above

7. Under legislation passed in the late 60's political subdivisions became responsible for liability claims. By what name is this legislation known?

\_\_\_\_\_

8. Under this act, a school bus driver cannot be held liable for punitive damages no matter what causes an accident.  True  False

9. A willful or wanton act or omission is intentionally contrary to organization rules. Such an act can subject a driver to assessment of punitive damages.

True  False

10. A driver's best possible protection against liability for punitive damages is to:

- Have a good attorney
- Know how to break the rules and not get caught
- Become fully familiar with all school district rules and policies relating to pupil transportation
- Follow school district rules and exercise sound judgment in all transportation related circumstances
- Have good connections in the school administration.

**WHO'S LIABLE?  
QUICK QUIZ (TRAINER'S ANSWER SHEET)**

1. Name the four conditions which must be present before you can be held liable for injuries resulting from negligence.

- A. DUTY B. BREACH OF DUTY  
C. CAUSE D. DAMAGE OR INJURY

2. You may be held liable if any one of the four above conditions exists.  True  False

3. Only written duties, laws, regulations and school board policies are applicable in determining driver liability.  True  False

4. Your personal judgment is not a factor in determining driver liability.  True  False

5. Loading and unloading sites are the location of a substantial number of bus related accidents.  True  False

6. In the event of an accident involving injury, your legal counsel will be provided by:

- Yourself  
 The Legal Aid Society  
 Your employer (i.e.: school system or contractor)  
 None of the above

7. Under legislation passed in the late 60's political subdivisions became responsible for liability claims. By what name is this legislation known?

TORT CLAIMS ACT

8. Under this act, a school bus driver cannot be held liable for punitive damages no matter what causes an accident.  True  False

9. A willful or wanton act or omission is intentionally contrary to organization rules. Such an act can subject a driver to assessment of punitive damages.

- True  False

10. A driver's best possible protection against liability for punitive damages is to:

- Have a good attorney  
 Know how to break the rules and not get caught  
 Become fully familiar with all school district rules and policies relating to pupil transportation  
 Follow school district rules and exercise sound judgment in all transportation related circumstances  
 Have good connections in the school administration.