



## **RA&MCO QUARTERLY** The Design and Construction Newsletter

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### **Professional Liability and the Law: Concepts in a Nutshell** Liability For Design Professionals and Consulting...

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Before we explain the concept of professional liability and the standard of negligence upon which it is based, you must understand the legal doctrine of "tort" - a private or civil wrong or injury, independent of contract, calling for compensation and damages.

It is under tort law that one person can sue another to recover damages for a claimed injury, whether physical, emotional or financial. While liability in tort may result from an intentional act, in most cases it arises because of negligence - in the ordinary sense, the failure to do what a reasonable man of ordinary prudence would do under the same or similar circumstances.

This is in contrast to a "crime", which is considered to be an offense against the state, or as it has been legally defined, "a breach or violation of the public right and of duties done to the whole community..."

Tort law, in other words, concerns the ability of the individual to recover damages from someone for that person's injurious act; prosecution of a crime, on the other hand, is a public action intended to protect society - by punishing the offender, trying to reform him or her and, ideally, using the punishment to deter others from committing a similar act.

Professional liability is a form of tort law under which an individual can sue for damages resulting from professional negligence - the negligent performance of a professional act, a concept that parallels the "reasonable man" standard with another "standard of care."

Tort law and criminal law, despite their distinct categorical differences, are felt by many authorities to overlap when "punitive" or "exemplary" damages are sought in a civil suit - ostensibly to punish the wrongdoer and thus make him or her an example...as if a crime were committed.

In reality, "punitive" damages are often a means to obtain greater monetary damages than a jury would normally award for a claimed injury - damages based upon what are seen to be aggravated circumstances.

Many states have held that "punitive" or "exemplary" damages are not insurable, and most policies exclude them from coverage.

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