# Unit 2 Assignment

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# Herzing University

BU 642-8 Business and Labor Law

# **Hypothetical**:

# You are an employer of a mid-size business. You receive notice from the sheriff’s department that one of your most trusted and responsible employees hit and killed a pedestrian who was lawfully in a crosswalk. According to the sheriff’s reports your employee ran a red light going at a speed of 50 mph in a 35 mph zone. The employee was driving your company vehicle and was on official company business. Can any liability be imposed against you as the employer? How do you know?

# Liability is defined by Cornell University as “A legally enforceable claim on the assets of a business or property of an individual. In business, liability results from a breach of duty or obligation by act or failure to act. Liability also refers to the debt or obligation of a business in contrast to its assets.” ("Liability", n.d.)

There are 4 commonly used legal forms of business.

1. Sole proprietorship
2. Partnership
3. Limited liability company
4. Corporation

The liability of each form of business does not have an effect on the liability of the owner/employer. The business structure of each form of business defines how the distance in which effects of liability will travel, i.e. business vs personal assets.

The liability of sole proprietorship is the riskiest business form in the sense of liabilities. The owner is totally responsible for the liabilities of the business. Business and personal assets are totally at risk.

Partnership businesses carry he same liability as sole proprietorship but involves two or more people. All parties are liable for the actions of the other partners. Business and personal assets are also totally at risk for all partners of the business.

The LLC (Limited Liability Company), limits the reach of liability, under normal circumstances, to the business only. The business is treated as a separate entity and personal assets are not considered to be business assets.

Corporations have the same restraints on liability just as limited liability companies. In the course of business, liability usually lies with the company.

Now that scope of liability in terms of business structure has been established, does this liability extend to the actions of an employee? Afterall, an employee is a person unto his or herself and all adults should be responsible for their own actions. In our individual and unofficial capacity, this, is certainly true. When acting in an official capacity does liability extent further encompassing employee and employee/business. Is the company responsible for the actions of an employee that acts recklessly or deliberately?

“If a business conducts operations on and from its premises using employees to transact its business, it may be held responsible if a negligent employee harms a member of the public. This employer responsibility is based on the employer-employee relationship, sometimes called the master-servant rule. Stated differently, the employer takes on responsibility because he or she directs the employee's activities. This concept is well-understood.” (Brooks, 1993) When acting as an agent of a business or conducting work-related business, an employee is acting on behalf of the business. The business is therefore held responsible for the actions of the employee, but this liability is limited only in the course of company business. An employee that is acting outside working hours and/or not conducting company business is not acting as an employee of the business.

“Drivers and pedestrians are expected to obey traffic laws and the "rules of the road" when using the streets, highways, crosswalks. If Person A fails to act with reasonable care and ends up causing harm to Person B, the law considers Person A negligent, regardless of who was driving and who was walking.” (Withers, 2014) In order to establish liability, it is first necessary to establish fault. Is the accident the cause of the behavior of my employee or on the part of the pedestrian?

The facts of the issue are as follows:

* An employee of my company hit and killed a pedestrian.
* The pedestrian was lawfully in a crosswalk.
* According to the sheriff’s reports, the company employee ran a red light.
* According to the sheriff’s report, the company employee was going at a speed of 50 mph in a 35 mph zone.
* The employee was driving the company vehicle
* The employee was on official company business.

The sheriff’s report claims no fault on the part of the pedestrian. The only action of the pedestrian is that of being in a crosswalk and the pedestrian was doing so in a lawful manner. The actions of the pedestrian exhibits him/her acting in a manner that in no way contributes to the accident. The behavior of the employee is to the contrary. The report claims my employee was acting in a reckless and unlawful manner. First, the employee was speeding 20 miles over the speed limit as reported by the sheriff. Secondly, the company employee is reported to have ran a red light. These two acts, committed by the employee, places the cause of the accident on the behavior of my employee. If the employee was travelling at a lawful speed, he/she may have been able to stop and avoid striking the pedestrian, even take evasive measures to avoid the fatality. Additionally, if my employee had stopped at the red light, perhaps the outcome would have been different for the better. The accident is clearly the fault of my employee.

Lastly, is my company liable? The employee was driving a company vehicle, during company hours, and was on official company business. These three facts place liability on my company to held for the actions of the employee. The remaining question is how far reaching will the liability be? That will depend on the legal structure of the company.

## References

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