

Institutional Liability



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Sources of Liability

- **Direct Liability**
- **Indirect Liability**
 - Respondeat Superior
 - Apparent Authority
- Immunity: no longer applicable

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Direct Liability

- Immunity: no longer available
- **Showing Negligence by**
 - Supervision & Monitoring
 - Selection
 - Unreasonable Utilization Review

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Respondeat Superior

- Required Elements to prove Respondeat Superior:
 - Physical Harm to person or property
 - Scope of Employment
 - Employee Status (as opposed to Independent Contractor)

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Respondeat Superior

- Independent Contractor versus Employee
 - Traditional Views
 - Nurse & Staff – Employees (but Borrowed Servant)
 - Doctors – Independent Contractor
 - Changes in Delivery -> New Approach
 - Focus on Control
 - Look at 2 cases to see how court applies control
- This is Secondary Liability – must show underlying Negligence of Employee

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Apparent Authority

- In tort context, requirements
 - Manifestation by Principal
 - Reasonable Belief by Third Party that someone is Apparent Agent
 - Justifiable Reliance on Skill of Apparent Agent
- Important in Health Care context if not enough control to be liable under Respondeat Superior
- This is Secondary Liability – must show underlying Negligence of Apparent Agent

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