**Chapter 4: Professional Liability**

Professional liability may be considered under three headings:  
 - contractual duty  
 - fiduciary duty  
 - duty in tort

**1) Contractual Duty** – agreement to provide professional services to a client  
- contains a promise to perform those services with due care

**2) Fiduciary Duty** – a duty imposed on a person who stands in a special relation of trust to another  
- if fiduciary duty is found to exist, the professional must act honestly, in good faith, and only in the best interests of the client

**Conflict of Interest** – a situation where a duty is owed to a client whose interests conflict with the interest of the professional, another client, or another person to whom a duty is owed

**3) Duty in Tort** – a duty may be owed to people other than the client who is paying for the services  
- ex. when auditor expresses an opinion on the fairness and accuracy of the client firm’s financials  
- ex. when a lawyer prepares a will for a client who intends to leave property to a beneficiary

**Third Party Liability** – liability to some other person who stands outside a contractual relationship

**Duty to Account** – the duty of a person who commits a breach of trust to hand over any profits derived from the breach

**Deceit** – the making of a false statement with the intention of misleading another person  
- makes an untrue statement, knowing it to be untrue

**Fraudulent Misrepresentation** – an incorrect statement made knowingly with the intention of causing injury to another

**Negligent Misrepresentation** – an incorrect statement made without due care for its accuracy

Fraudulent misrepresentation requires at least some guilty knowledge but negligent misrepresentation requires only a breach of the duty of care and skill.

**Disclaimer** – an express statement to the effect that the person making it takes no responsibility for a particular action or statement

**Code of Conduct** – rules of a professional organization setting out the duties and appropriate standards of behaviour to be observed by its members

**Privilege** – the right of a professional to refuse to divulge information obtained in confidence from a client