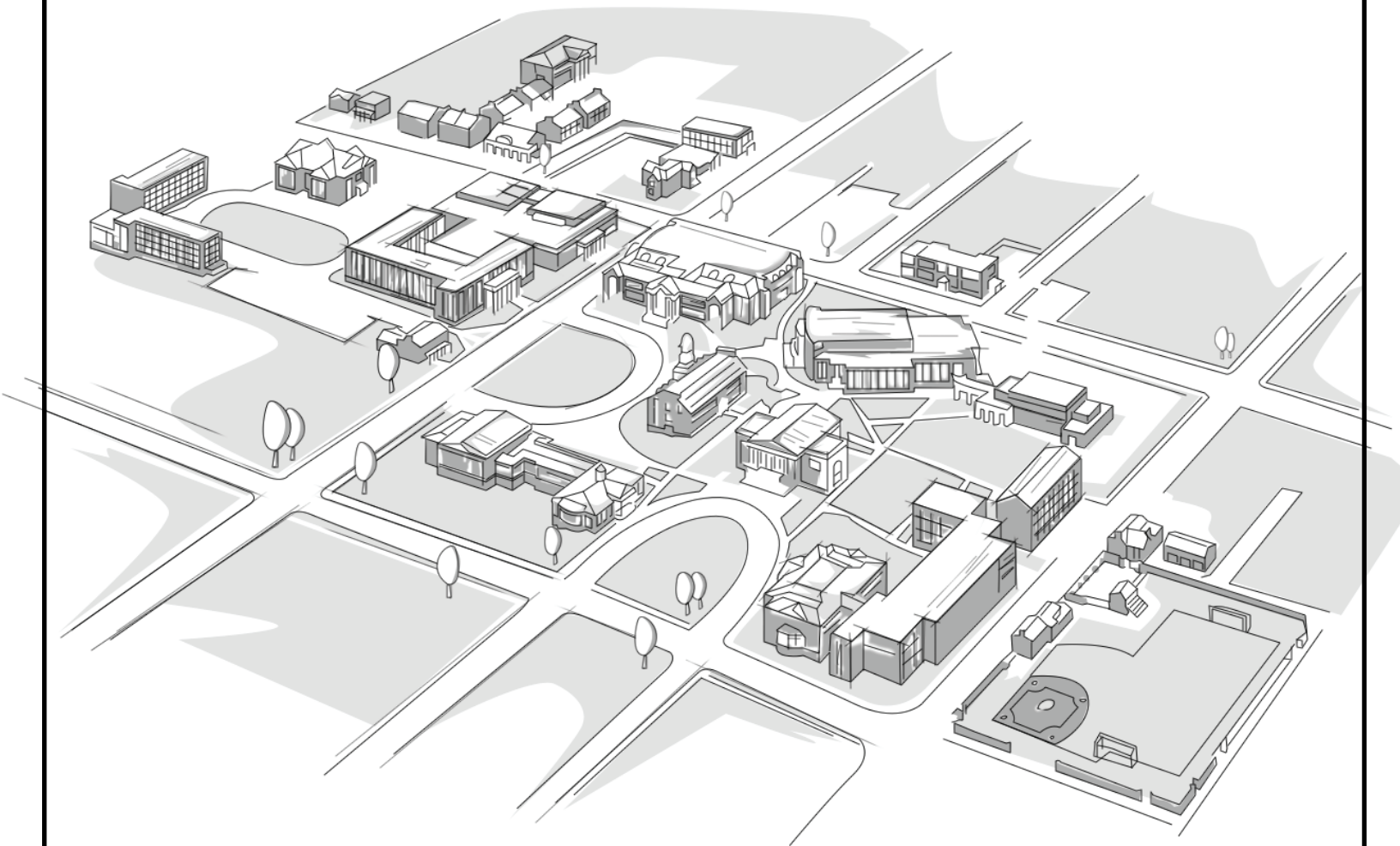


# LIABILITY 101

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## WHY IS LIABILITY INSURANCE IMPORTANT?

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It acts as a risk transfer mechanism in which businesses and individuals can transfer to their insurer the financial risk associated with a legal liability arising out of claims from third parties in the conduct of their daily business.



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## HOW CAN A 'LEGAL LIABILITY' ARISE?

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A Liability policy will cover amounts that the Insured business becomes **Legally Liable** to pay.

In practice, a legal liability arises under three broad areas:

- 1) Contract - Agreement between two or more parties this is enforceable in law
- 2) Tort - A 'civil wrong' which is perpetrated by one party against another. The most common tort is "Negligence". In tort law, a 'duty of care' is a legal obligation which is imposed on an individual (or business) requiring adherence to a standard of



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## HOW CAN A 'LEGAL LIABILITY' ARISE?

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reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence.

- 3) Statute - An enactment by the sovereign parliament that regulate behaviour in commerce, industry or private activity (WHS / OH&S Act, Competition and Consumer Act 2010 or old TPA Act )



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## WHAT DOES A 'GENERAL LIABILITY' INSURANCE POLICY COVER?

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There are two fundamental covers within a 'General Liability' policy for Businesses. They are:

- 1) Public Liability cover and
- 2) Products Liability cover



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## WHAT IS 'PUBLIC LIABILITY' INSURANCE COVER?

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Public liability insurance protects individuals and business against the financial risk of being found liable to a third party for:

- death or injury, or
- loss or damage of property or
- economic loss resulting from negligence.



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## WHAT DOES 'PRODUCTS LIABILITY' INSURANCE COVER?

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If you sell, supply or deliver 'goods', you may need cover against claims where those 'goods' cause:

- injury,
- death or
- damage.

Product liability insurance covers a business if any of these events happen to another business or person by the failure of the product



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## HOW DOES A GENERAL LIABILITY POLICY OPERATE?

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As we know, the GL policy covers all amounts that the Insured business becomes **Legally Liable** to pay as a result

- Injury, death or
- Damage to property

The following must occur for the policy to come into **operation**. The circumstances must:

- 1) Happen during the period of insurance



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## HOW DOES A GENERAL LIABILITY POLICY OPERATE?

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- 2) Be in connection with the insured business, and
- 3) Relate to an insured 'occurrence' (i.e. not excluded by the policy)



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## PERSONAL INJURY DEFINED

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Under a Liability Policy the trigger of personal 'Injury' usually includes:

- Bodily injury
- Death
- Sickness
- Disease
- Illness
- Disability
- Shock
- Mental anguish and/or injury
- The effects of libel, slander or defamation
- The effects of discrimination as a result of race, sex, religion etc



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## PROPERTY DAMAGE DEFINED

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Under a Liability Policy the trigger of 'Damage to Property' generally includes any of the following:

- 1) Physical damage, or
- 2) Destruction, or
- 3) 'Loss of use' of

"tangible property". The tangible property involved must be that of a third party to which the Insured owed a 'duty of care'.



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## 'COMPENSATION' UNDER A LIABILITY INSURANCE POLICY

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Once a Liability policy comes into operation (i.e. triggered by an insured event / circumstance) the policy responds by way of 'Compensation' of the third party involved.

It generally means monies paid or payable by the insured by either:

- Judgement
  - Award, or
  - Mutual agreement or settlement
- Which is usually determined by a Court or Tribunal.



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## 'COMPENSATION' UNDER A LIABILITY INSURANCE POLICY

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The amount of 'Compensation' under the policy is capped by the 'Limit of Liability'. This is the maximum amount that the Insurer will pay under the policy out of an insured occurrence.



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## KEY SECTIONS OF THE LIABILITY INSURANCE POLICY

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Section	Definitions
Definitions	Key words with special meanings (e.g. You, Your, Insured, Occurrence, Bodily Injury etc.)
Insuring / Operative Clause	Trigger the events that activate the policy (Liability for Personal Injury or Property Damage)
Limit of Liability	<p>Specified in the schedule represents the maximum amount insurer shall be liable to pay in respect of any one claim or series of claims arising out of any one occurrence.</p> <p>Note: Products liability claims are limited to any one claim or series of claims arising out of any one occurrence and in the annual aggregate any one policy period.</p>

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## KEY SECTIONS OF THE LIABILITY INSURANCE POLICY

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Section	Definitions
Additional benefits or automatic extension	Claim preparation costs, Defence costs and supplementary payments and automatic inclusion of new subsidiary
Exclusions	What is not covered in policy or more specific insurance required (Employers Liability, Vehicles and Terrorism)
Claims Conditions	Conditions relating to a notification of a liability claim
General Conditions	Conditions of policy (Jurisdiction, Cross liabilities)



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## WHAT DOES A LIABILITY INSURANCE POLICY EXCLUDE?

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Some of the things that are commonly excluded under a Liability policy:

- **Liability under agreements**  
i.e. assumed or enforced on the insured
- **Employers Liabilities**  
Workers Compensation or other liabilities as an 'employer'



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- **'First Party' Injury of Damage**  
Injury or damage to the insured  
themselves or their property
- **Professional Duties**  
Essentially "Professional Indemnity"  
risks

