

LECTURE #8 – CLASS ACTIONS, CIVIL LAW & TORT REFORM

Today we're going to talk about class actions and tort reform. A class action is where one plaintiff sues on behalf of all other people similarly situated. Maybe someone was taking medicine that was faulty or defective, someone has eaten food that was rotten or defective, and if you sue for yourself it is a small amount of money – you're going to win \$10, \$100 even \$1,000. For that amount of money you can't even interest a lawyer for 1/3 of the suit, for a percentage or contingency. You certainly can't afford to hire a lawyer, but if the lawyer knows he can get a million people or even 1,000 people as his clients and bring a class action for all the people injured in the same way without naming every one of them he will do that. So we have this situation in America where it's very widespread especially in drug cases where drug/pharmacy companies come out with drugs that are not thoroughly tested and they are used for a year or two and then all of a sudden someone gets injured and they take the drug off the market. We have lawyers advertising in the newspapers, advertising on the television, for people to join them in class action lawsuits.

This is actually a way that law helps protect people who have small damages but need to bring lawsuits to force the manufacturers of drugs, foods, faulty automobiles, defective products, and things like this to respond with money for injuries, changes in the product, or both. Plus, attorneys' fees are paid by the manufacturers and defendants responsible for numerous small defects.

TORT REFORM - Recently there has been a large movement in the US for Tort Reform because of all the litigation, and all the lawsuits, the large amounts of money won by the Plaintiffs, the large amounts of money won by the lawyers who own 1/3 to 40% sometimes of the lawsuits. Torts is the word for personal injury, the French word for wrongs or injuries. That's what we call injury law in America – Torts. I believe there is a popular novel called *The King of Torts*, which is actually about a lawyer who started out as a poverty lawyer and decided to make some money at law and he became a class action tort lawyer. He would bring lawsuits against manufacturers of faulty equipment, faulty toys, faulty clothes that would start fires and burn children, and drug companies for making defective drugs. Imagine making 1/3 of \$500 million. That's what some of these lawyers make. In tobacco cases, some of the settlements have been in the billions of dollars and the lawyers have been taking 10% to 30% in those cases and making hundreds of millions of dollars in some law firms. One of the biggest tort reform laws passed in the last 2 years is one to limit class actions. It allows any tort class action filed in a state court to be removed to a federal court if the parties are from more than one state and the amount is over \$75,000.

There's a large movement in the US to limit litigation, to limit torts, to limit personal injury law and to lower the litigation explosion for several reasons: 1.) it

has the tendency to bankrupt some companies and inhibit business - tort judgment could put a hospital or doctor out of business because they made a mistake injuring someone. So each state has a legislature which has made movements to reform tort law in differing ways. Here are some of the ways they are doing it: 1.) lower contingencies or percentages to lawyers. They are trying to lower anything over \$1 million that a lawyer receives to 10% instead of 1/3. A lawyer will usually take 1/3 or 33 1/3 % of the damages in a suit up to \$100,000 or a million dollars and many people want it limited to 10% over \$100,000 or \$1 million. 2.) There are other people who want to limit punitive damages and not allow anyone to win punitive damages. 3.) many states have passed laws limiting the amount of money you can win from a hospital or a doctor, so they don't put hospitals and doctors out of business. This is an area of law called medical or hospital malpractice and it's a very popular field of law because you can imagine a doctor makes a mistake or has an imperfect outcome in an operation or there's a problem in a hospital – someone falls out of a hospital bed – people get injured worse sometimes when they are in a hospital than before they went in – so there are many lawsuits against hospitals and doctors. People get worried about this because it could put doctors and hospitals out of business. The state of Texas, one of our large states, recently put a limit of \$250,000 as the maximum amount of money you can win from a hospital. Other states are limiting the amount of money that a court or jury can award, juries usually award these damages and these are jury trials, to \$250,000 because otherwise you have runaway juries coming up with verdicts in the \$10, 20, 30 million range. Even insurance companies say they can be bankrupt and put out of business with some of these verdicts these days.

There are limits on what is called joint and several liability. We have a system in the US where if someone sues 2 or 3 defendants – you get in a car accident and you sue 1.) the ambulance company for making a mistake when they picked you up and drove you to the hospital, 2.) the hospital for your injury for not sewing you up properly or not doing a proper job in taking care of you, and 3.) the doctor. You've got 3 different defendants there, a doctor, a hospital and an ambulance company. If you would win at the end a judgment of a million dollars against all 3 of them, joint and several liability, which has been the law up until very recently in most states in the US, the Plaintiff who won this million dollars, would have the option of going after any 1 of those 3 Defendants for the full million dollars. So you would find that the Defendant that had the insurance, which is usually the hospital, is the one you would receive the whole million dollars from. That has been eliminated in many cases. There's another rule, the collateral source rule. Many people receive insurance for their injuries while they are in the hospital – it pays for them. But at the same time they try to win money from the hospital to pay for all the damages and all the expense they had while they were in the hospital. Many states are starting to eliminate this ability to recover twice for the same injury. If you're paid by one type of insurance you are not allowed to recover in another type of insurance. I had a similar case involving the collateral source in real estate once. I sued both a lawyer for legal malpractice for making a

mistake in failing to discover a roadway and a ditch that went across a piece of land that my client had purchased and wanted to build a restaurant on and because there was a roadway and a ditch that went across it, my client was not able to build close enough to the highway for a successful restaurant. So we sued 1.) the lawyer for legal malpractice and 2.) we also had title insurance so we sued the title insurance company for not disclosing the title defect which existed. We were really suing for the same thing and we recovered from the title insurance company right away an amount of money under title insurance and under the collateral source rule then we would be barred from recovering for the same damage or damage we had already been paid for under one type of insurance.

RIDICULOUS LAWSUITS - The 4th thing they are trying to eliminate in America is frivolous, ridiculous lawsuits. The most ridiculous one everyone maybe has heard about is against McDonalds where a little old lady was drinking a cup of coffee and she spilled it and it was so hot she burned herself. She went to the hospital and she recovered \$750,000 for burns on her leg and arm from the hot coffee. This is kind of ridiculous. We have another lawsuit where a woman claimed to be a psychic. She was given a CAT scan, which is like an MRI or X-ray of your head, when she went to a doctor to try to discover what was wrong with something in her ear. After she had it she claimed she was no longer able to receive psychic messages and no longer able to receive and communicate by ESP with certain of her friends and being a professional psychic and card reader she brought a lawsuit. Believe it or not she was able to win from the hospital \$1 million. We have endless frivolous lawsuits in America and we have many people bringing those lawsuits. America is such a litigious country that almost anything people can think of they bring lawsuits for. One father recently went into a small town public library of his community and he found two books with nude women in them, and they were lesbian books about women who loved other women, and his young sons saw the books, boys 12 and 13 years old, and he actually brought a lawsuit on behalf of his 2 boys for being damaged for seeing pictures of 2 naked women with each other. Of course most people understand that young teenage boys go out of their way to try to find photographs like this, they are all over the internet, and it is doubtful they injure anyone, especially teenage boys. This man was silly enough to bring a lawsuit against his city library and against the city for this. I don't know how it is in Russia, whether you have what is called sovereign immunity where it is illegal to sue the government because there is the theory that the government would go broke and the government is just the taxpayers, so all the taxpayers would go broke, and you can't bankrupt the government. In any event, we allow lawsuits against our governments and against our municipalities. The lawsuit about the pictures of the nude women in the book was actually dismissed and thrown out as being ridiculous. So there are many movements for tort reform and one of them is to try to put a penalty against people who bring ridiculous and frivolous lawsuits such as this and to at least have to pay the attorney fees of the other side or a penalty for bringing a ridiculous, frivolous lawsuit. Sometimes even a judge can be allowed to add a penalty for bringing ridiculous lawsuits.

Let me state a rule of American Law that is different from that of most countries, both common law and civil law. The winning party in a lawsuit in the US does not receive his attorneys' fee. This, of course, is one of the reasons for the popularity of the contingency fee.

CITIZEN GROUP LAWSUITS - We've talked about class actions and their ability to allow consumers to correct small wrongs and to bring suits that maybe 1 person wouldn't bring or 2 or 3 people wouldn't bring, but where millions of people are injured by a small defect in an automobile, a small defect in clothes, or toys, or by a drug everyone takes, a class action is a way to protect a large number of people and to get a manufacturer to correct a wrong or pay for a wrong that he has created, when he has hurt a lot of people. There is another kind of suit that is similar and that is the Citizen Group Suit. In many cases you will have a wrong where there is no money to be collected. You just want to stop a factory from emitting smoke into the air; you want to stop a factory from putting dirty pollution into the water. You aren't going to win any money damages because hopefully it hasn't happened long enough to give a person in the neighborhood cancer because that would be a big money lawsuit. There are lawsuits like that against polluters and companies that put chemicals and dirty things into the groundwater. However, we have what's called Citizen Group Lawsuits and that is when a citizens group will be formed. We have a famous group to protect the wilderness called the Sierra Club. That is a citizen group who will bring lawsuits to stop lumber companies from cutting down too much timber in certain areas of the US. We have citizens groups that were formed: Citizens to protect the air, Citizens for Clean water. They will bring a lawsuit and there's often been a question as to whether they have the right to bring a lawsuit because they aren't injured economically and may just be a company or group that's formed. From the point of view of a factory, or manufacturer, an automobile manufacturer, or toy manufacturer, it is nothing but a harassing lawsuit by a group of people who think there's too much smoke in the air. But in fact that can become important to have a group of people who think there's too much dirt and pollution in the water, too much dirty smoke in the air, so in the US we've come to allow more and more citizen group lawsuits that are by consumers who enforce things like clean air acts and clean water acts. I see they are being allowed in European countries. France just recently allowed them. France has even just allowed very limited class actions because they realize they are suits necessary to protect consumers and are too small for just one or two consumers by themselves to bring.