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“A European Perspective on
Global Developments”

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Layout & Distribution: Valéria Kozakova & Bernadette Curty

The Changing Landscape of Liability

Geoff Lye

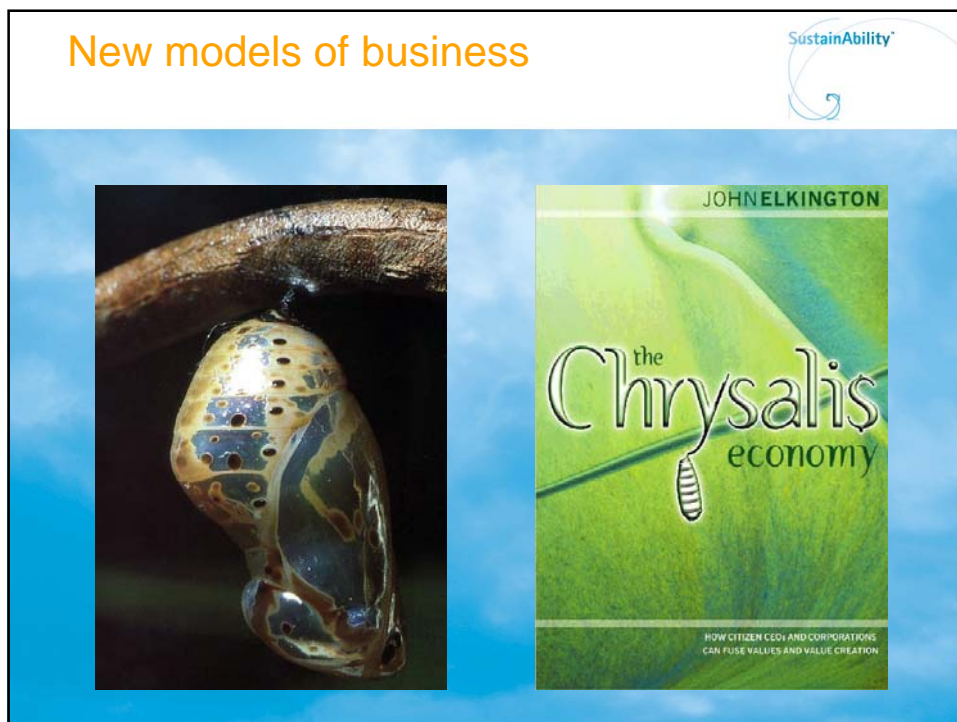
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The Changing Landscape of Liability



Annual Liability Regimes Conference

27-29 October 2004



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Think-tank

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Corporate Responsibility and Risk Management

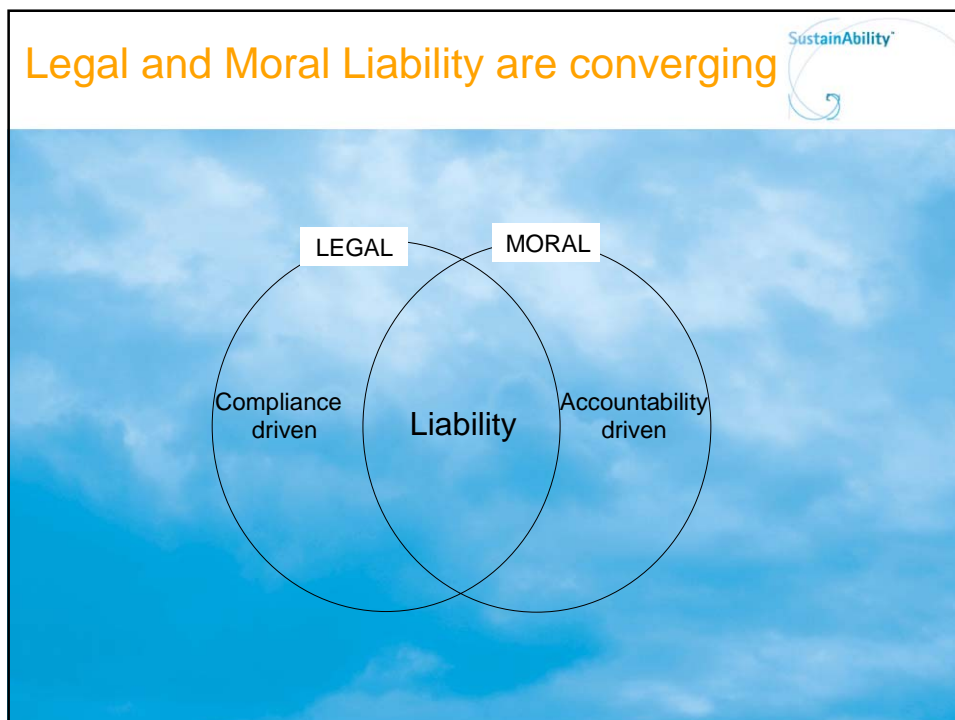
The Changing Landscape of Liability
A Director's Guide to Trends in Corporate Environmental, Social and Economic Liability

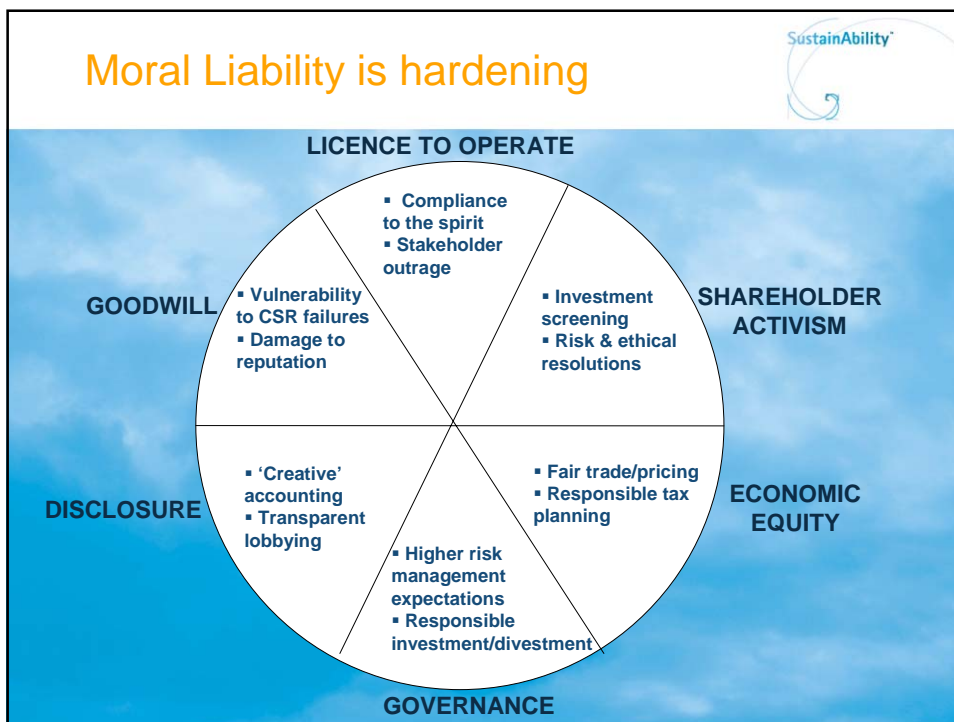
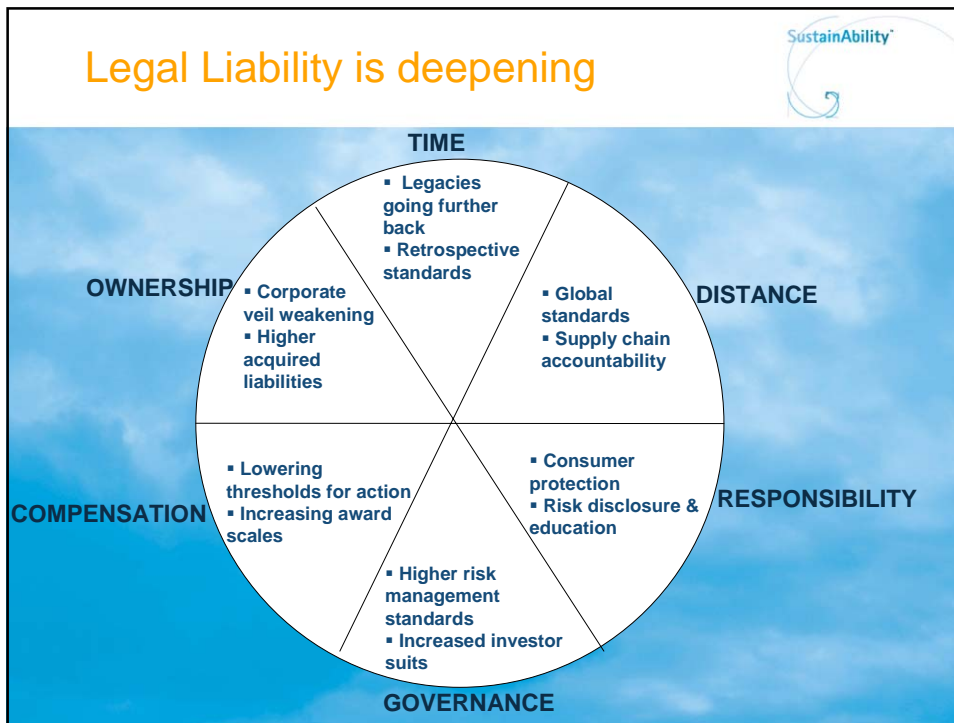
The shifting ground of liability



Existing (Legal)	Emerging (Moral)
Court of law	➤ Court of public opinion
Time-limited	➤ Time-unlimited
Compliance to letter	➤ Compliance to spirit
Ownership	➤ Association
Money	➤ Goodwill/badwill

Source: SustainAbility





Legal Liability



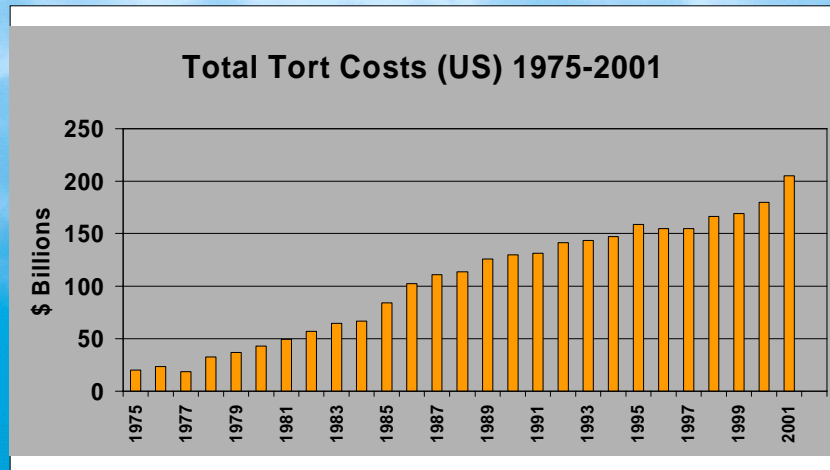
A formal and enforceable obligation under local, national and/or international laws and regulations

Legal liability: a growth industry



– Litigiousness is on the rise, globally

The Growing Cost of Litigation



Source: Tillinghast-Towers Perrin

Legal liability: a growth industry



- Litigiousness is on the rise, globally
- Activist lawyers are targeting companies
- Class action suits are spreading
- Cost of litigation to companies is escalating
- Securities litigation cases are increasing

Legal liability: boundaries are expanding



- Momentum is building for tougher laws on corporate transparency
- Accounting regulations are tightening
- Liability is expanding over time & distance
- Companies are being challenged across the supply chain
- Companies can be held responsible for consumer behaviour

Moral Liability



Arises when a company violates stakeholder expectations of ethical behaviour in such a way as to put business value at risk

Moral liability: a significant and rising business risk

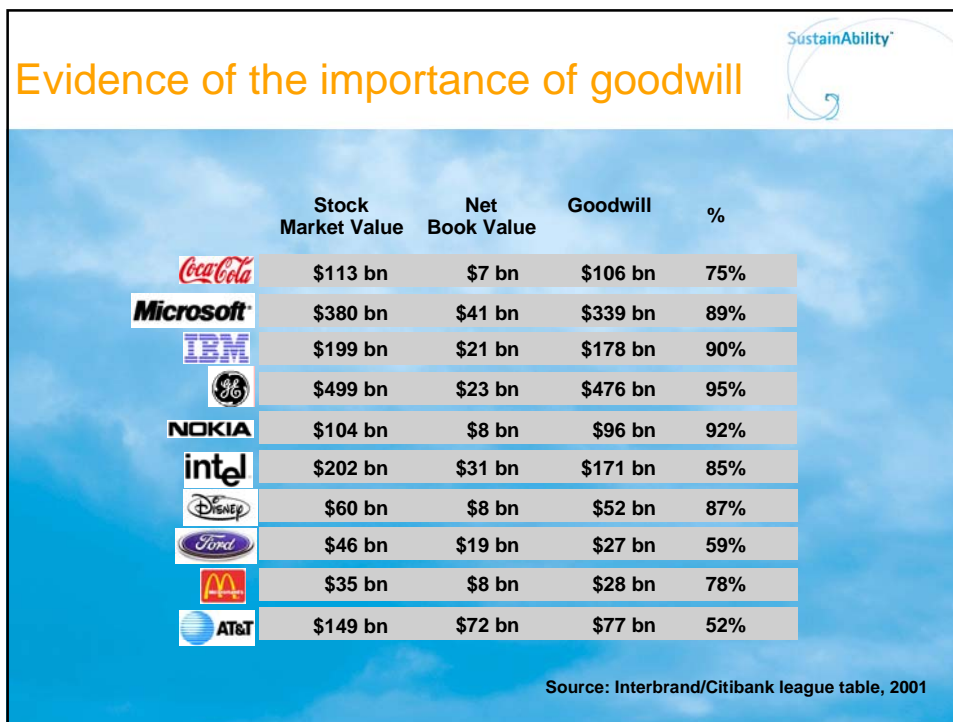


- **Nike:** falls in sales and share price
- **Shell:** fall in European sales, as well as a collapse in internal morale
- **Monsanto:** the CEO lost his job and the company its independence
- The **39 pharmaceutical companies** who brought a case to prevent cheaper generic HIV/AIDS drugs

Moral liability: growing risk to business value



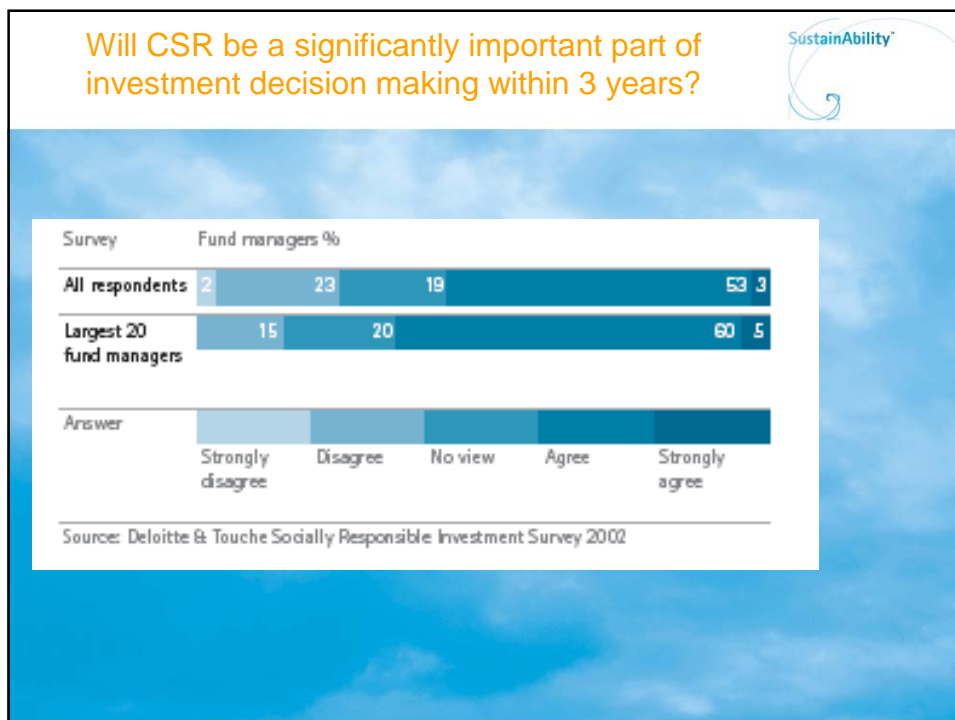
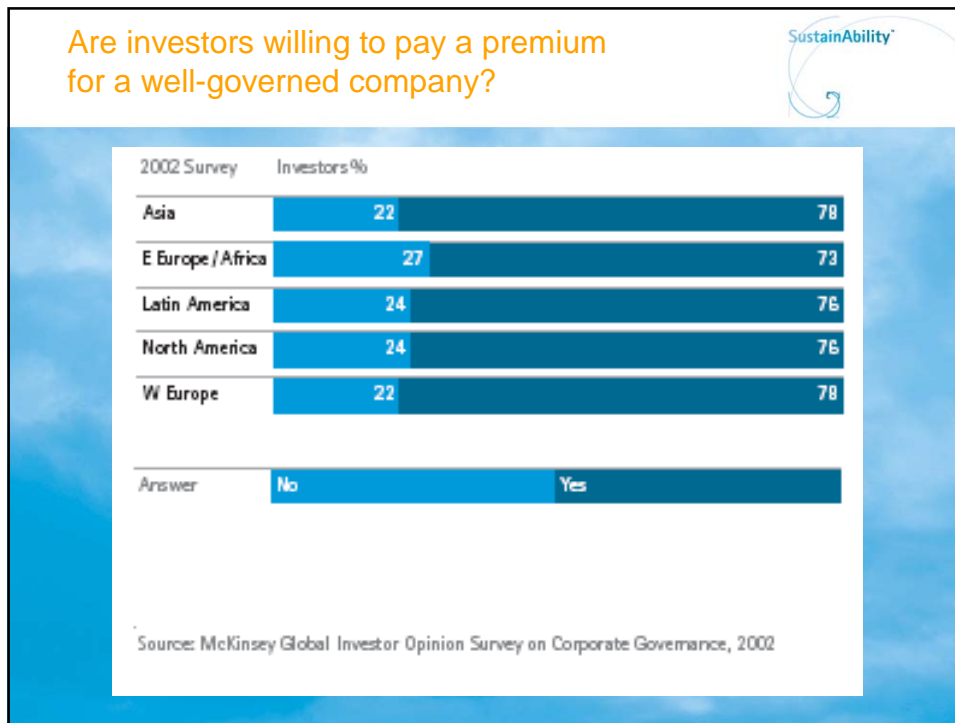
- Scale of societal damage from business-related activities is enormous
- Reputation and brands are first casualties when a company is deemed morally liable



Moral liability: growing risk to business value



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- Reputation and brands are first casualties when a company is deemed morally liable
- Shareholder activism is on the increase



Moral liability: growing risk to business value



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- Shareholder activism is on the increase
- Off-balance sheet risks, such as climate-related liability, are being targeted

Moral liability: growing risk to business value



- Scale of societal damage from business-related activities is enormous
- Reputation and brands are first casualties when a company is deemed morally liable
- Shareholder activism is on the increase
- Off-balance sheet risks, such as climate-related liability, are being targeted
- Companies face increased premiums and even risk loss of insurance cover

Expanding boundaries of moral liability



- Transparency and disclosure
- Following the spirit and the letter of the law
- Accepting responsibility for legacy issues
- Responsible divestment
- Ethical sourcing
- Economic equity, including fair trade, fair pricing, and fair taxation

Report recommendations



1. Shift from passive to active corporate responsibility



From passive to active Corporate Responsibility

	PASSIVE	ACTIVE
HONESTY	Not lying/factually true Correct to the letter	➤ The whole truth ➤ True to the spirit
TRANSPARENCY & DISCLOSURE	'Need to know' Compliance disclosure	➤ 'Right to know' ➤ Complete disclosure
DEMONSTRATION & ENGAGEMENT	Information Exclusive/narrowly defined	➤ Engagement ➤ Inclusive/broadly defined
RESPECT	Compliance driven Messages to suit the moment	➤ Responsibility driven ➤ Clear and consistent messages

- 
- ### Report recommendations
1. Shift from passive to active corporate responsibility
 2. Pursue the highest standards of corporate governance
 3. Ensure alignment of standards and behaviours
 4. Use stakeholder engagement to help identify and address current/emerging risks
 5. Recognise and prepare for growth in 'legal activism'
 6. Review on/off Balance Sheet accountability risks
 7. Apply new diligence to 'due diligence'

Summary



- Companies are at growing risk from litigation and liability trends
- Irreversible pressures for greater accountability reflect new and emerging areas of risk and liability
- Social and environmental risks will increasingly have to be assessed and disclosed through shareholder/stakeholder pressure
- Beyond legal liability, companies face a powerful and accelerating range of risks if they breach societal expectations
- Expect 'softer' moral liability to harden and ultimately convert to law
- Anticipate rapid convergence between CSR/SD and strategic risk management
- The optimum route, therefore, to protect/enhance shareholder value is to shift from *passive* to *active* corporate responsibility

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