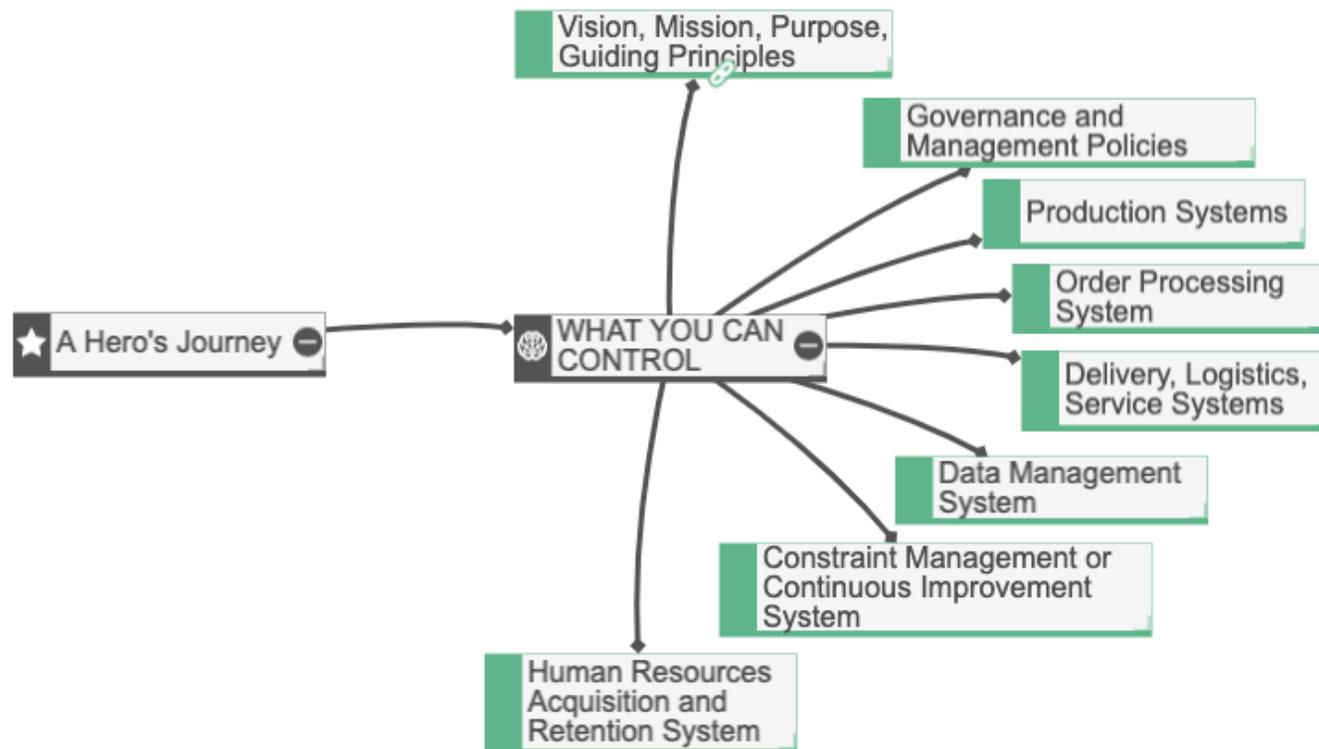
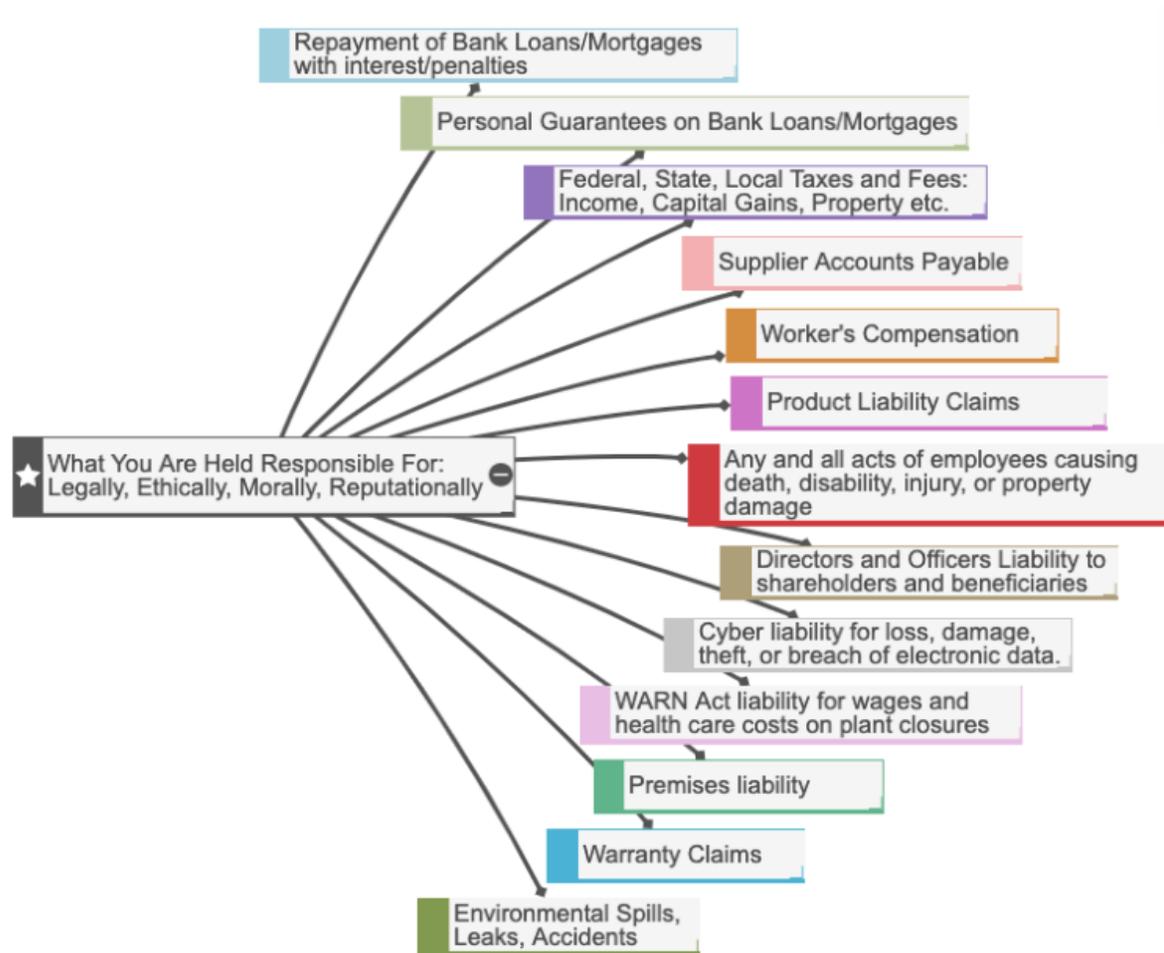


A HERO'S JOURNEY

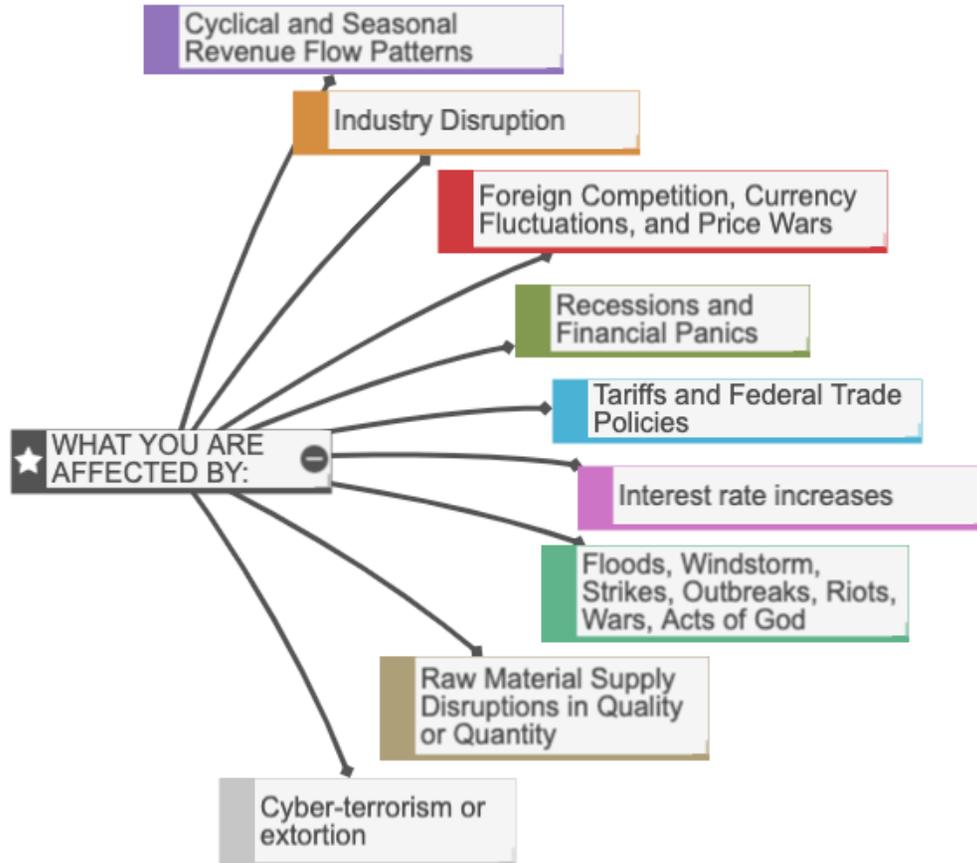
These are the primary levers under your control as an owner of a business.



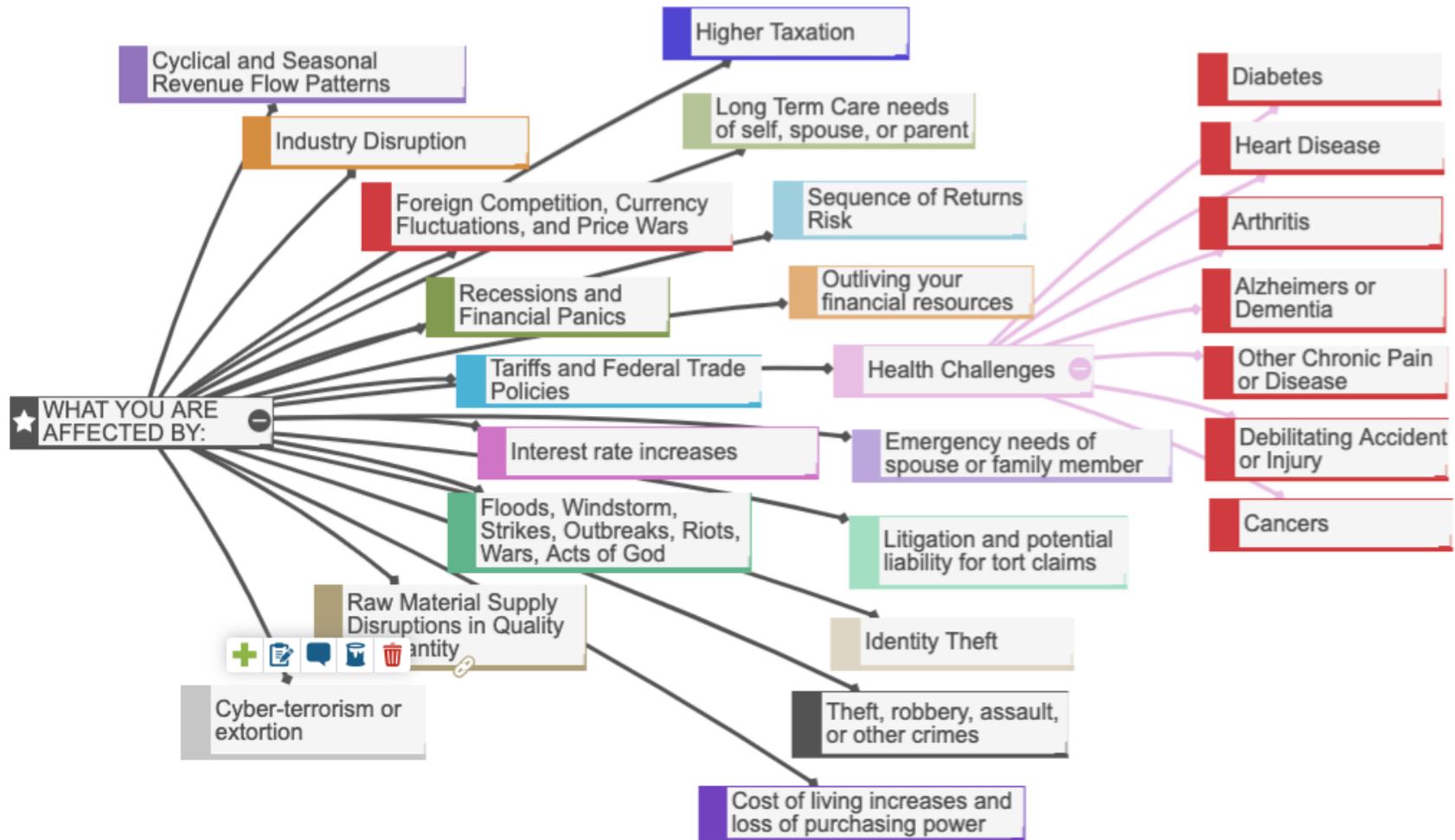
Under the Legal Principle of *RESPONDEAT SUPERIOR*, this is **what you are held responsible for by law.**



As a business owner, these are circumstances that could negatively impact the financial performance, viability, transferability, and longevity of your business:



In addition to business challenges, you face personal challenges along the way, often with little notice or chance of preparation:



Risks from any of these 3 major arenas can emerge in rapid fire or even simultaneously. These events can be completely unforeseen by the owner of the business, emerge suddenly and without adequate warning, and yet result in financial ruin and hardship. Indeed, owning, managing, and being responsible for the success of a business over time is truly a hero's journey.

As a captain of industry, you face periods of periodic revenue doldrums, harsh changes in the business climate, sudden calamities requiring a jettison of prior business policies and strategic direction, a sometimes disgruntled or disillusioned crew abandoning ship, hot battles with foreign pirates stealing market share by undercutting prices, periods of confusion in thick fog, running aground on a reef of new regulations or tariffs, a tsunami of disruptive change on the horizon, and even mutineers plotting against you. Thus, owning and managing a business day to day requires the steadfast focus of a Captain Bligh, the human resource skills of a Fletcher Christian, and the cunning of a Long John Silver.

Let's begin with risks coming from the last arena: **Circumstances you are affected by, but largely or entirely outside of your control.** Look at these risks again. Some could have been insured against—like cyber-liability, windstorm or fire, vandalism or riot damage, business interruption from damage to premises or governmental fiat, slips and falls on your premises, automobile insurance with adequate umbrellas, whole life insurance on key executives with a chronic care rider, or formation of a captive insurance company to cover gaps in available P&C coverage.

In other cases, risk could have been reduced or modified by contract provisions written into your sales or purchase agreements, better planning and prioritization, better life balance and healthier eating and exercise habits, or better training. Others are simply a part of the human condition.

Since individual case risk can never be predicted, we must spread that risk among a large cohort to avoid catastrophic financial ruin. What happens if one or more of these risks suddenly emerge and cause your business irreparable damage? Responsible leadership entails addressing these risks, protecting the company's future throughput by insuring those risks that cannot otherwise be covered with a sinking fund or captive insurance company, and ensuring a high level of communication throughout the organization about safety precautions and adherence to standard operating procedures.

What about the second arena: Circumstances within your **indirect control that entail Legal Responsibility**? Let's take a closer look at those risks imposed under the legal principle of *respondeat superior*.

Take the case of an employee driver who is delivering your products and rear-ends a passenger vehicle while texting or falls asleep at the wheel and crashes. Ignorance of this driver's particular job skills, driving record, and personal habits here is not bliss, because the law will hold you to a "foreseeability" standard, using the benefit of 100% hindsight, to determine whether you **should have** seen, known, heard, or done something differently than you did. There will be claims of negligent hiring, negligent training, negligence in keeping the vehicle properly maintained, negligent background checks, negligent managerial oversight, etc. Deep pockets will be found, and they will be yours, and/or those of your insurance company.

Or, take the case of an environmental spill or toxic leak from an underground storage tank. You will have continuing liability for clean-up, and all consequential damages to your neighboring properties.

The law usually demands a scapegoat. Under our society's legal framework, it is oftentimes the only way to preserve some societal sense of justice under difficult scenarios where there is tragic, innocent human suffering. Yet, some accidents just do happen—but in their wake, the search is always on for the deep pockets under some applicable or even tenuous legal theory that can seem so compelling in hindsight, but so impossible a standard to live up to minute by minute, hour by hour in the present.

So, just by being a business owner today places you in potentially precarious **circumstances, as you are held responsible under the law for the acts of your employees in the normal course of business, even if those circumstances were outside of your direct control.** These liabilities can greatly diminish or completely ruin **the viability and value of your business and even expose you to personal liability.**

Now let's examine the worst case: Let's say your business fails due to the **lack of effectiveness of your company's own policies or strategies, or inefficiencies, or due to some internal political conflicts, or some machine that was spitting out bad parts**—you would likely be blamed for the business closure, since these matters **were under your direct control**, as business owner or CEO. It happened on your watch, and you apparently failed to timely address the situation. At least some section of society will probably judge you quite harshly as either **"being bad" or "being incompetent", not just doing something bad or doing something negligently.**

Let's take the case of a price war with a foreign competitor who intrudes upon your market with deep pricing discounts enabled by national subsidies and a weak foreign currency. If you happen to lose the price war due to declining sales and financial losses in your domestic market, and are unable to raise capital to keep your business alive, you could, under the WARN Act, **be held personally**

responsible for 60 days of unpaid wages, benefits and unpaid health claims, by reason of a liquidity crisis or insolvency. This could total millions of dollars of potential personal legal exposure, and Plaintiff counsel will always seek to pierce the corporate veil and go after the business owner's accumulated personal assets and related business assets, such as your commercial real estate, other companies you have an equity interest in, and even your investment accounts. In the event of a plant closure under these circumstances, you will have to defend against the presumption that you could have given 60 days prior notice of closure, unless you can prove you were a faltering company in search of capital. You will bear the burden of proof in this regard—not the Plaintiffs. In this circumstance, you will likely experience bad press, and one-sided reporting in a half minute spot that fails to tell the whole story. In a word, you may experience the SHAME of an unfortunate business closure and the BLAME for throwing your employees out of work and sticking it to your suppliers.

According to Brene' Brown, a widely followed speaker at TED Talks, a feeling of SHAME is highly correlated with addiction, aggression, depression, violence, bullying, suicide, and eating disorders. And it is a growing “under the radar” epidemic, especially in this age of social media.

Don't let this happen to you. You can do the smart thing. You can seek guidance from outside expert resources who can help you navigate around the reefs and avoid the tempests as much as humanly possible. It is not shameful or a sign of weakness to acknowledge your inherent vulnerability as a business owner. It is not embarrassing to seek outside guidance in matters beyond your or your management team's expertise. Rather, it is a sign of **wisdom** to know that the pace of change today requires continuous learning at an ever-increasing pace, and that your best ROI may be in the experts you engage to help you identify and address your current constraints to increased revenue growth and profitability.