

DUTY OF CARE: COMMON LAW NEGLIGENCE

This document contains a very general and basic view of negligence. It sets out and hopefully answers the questions that you ought to be asking. The term 'injury' used herein means primarily physical injury and consequential financial losses.

1. WHERE DOES NEGLIGENCE FIT INTO OUR SOCIAL FABRIC?

- 1.1 All of us understand that deliberately causing injury to others is a criminal offence ordinarily resulting in punishment of the perpetrator.
- 1.2 All of us understand that some injuries are accidental, i.e the circumstances giving rise to them are wholly unforeseeable. No one is responsible. No compensation is payable.
- 1.3 In between those two ends of the spectrum are 'negligent acts', i.e they are not deliberate, but the injury is foreseeable. The negligent person will not be punished however, the injured party may seek financial compensation as a result. The compensation is paid by the individual who has caused the loss and could amount to millions of pounds!

2. WHAT DOES IT DO?

- 2.1 The system of laws is designed to determine in any incident of injury whether the negligent act actually caused injury, whether compensation should be paid and if so how much.

3. HOW DOES IT AFFECT ME?

- 3.1 Each of us owes a 'duty of care' to our 'neighbours' not to cause them injury by our negligent acts and omissions.
- 3.2 In order to satisfy or 'discharge' that duty of care you must behave as a 'reasonable person' would but taking into account your specific skill, knowledge and experience. For example, 'reasonable' non medically qualified 'rescuer' might be forgiven a medical mistake which a reasonable qualified paramedic would be expected not to make.
- 3.3 Your neighbours are those people whom, if you thought about it might be injured by your negligent acts and omissions.
For example:-
 - a) When driving a motor car your neighbours would include:-
 - any passengers in your car
 - other road users, drivers and their passengers
 - pedestrians, cyclists etc
 - owners of property adjoining the road
 - b) Anyone for whom you have accepted responsibility (see later for the effect of being a group leader/club's officer).
- 3.4 The duty of care requires you to consider the consequences of your acts and omissions and to ensure that those acts and/or omissions do not give rise to a foreseeable risk of injury to any other person. Clearly, one is not expected to guarantee the safety of others, merely to act reasonably.
- 3.5 In short, all of us owe a duty not to injure other people by our negligent acts and omissions and that is an individual duty which each of us owe all of the time to our 'neighbours'.





4. DOES ORDINARY MEMBERSHIP OF A CLUB OR SOCIETY AFFECT MY ORDINARY DUTY OF CARE?

- 4.1 Not usually. You still owe the individual duty of care to your neighbours. However, the people who are your 'neighbours' might alter and/or increase to include other club members and others with whom you may now come into contact as a result of membership of that club.

5. WILL BEING A GROUP LEADER OF A CLUB OR OTHER ACTIVITY MY ORDINARY DUTY OF CARE?

- 5.1 It may do. As a group leader (or team captain) you have accepted the responsibility of leading others. You owe them a duty to ensure that they are not exposed to a foreseeable risk of injury as far as you reasonably can.
- 5.2 It should be noted that on any outing where a group leader has not been appointed the most experienced and or qualified person there ought reasonably to intervene and at least advise if a foreseeable risk of injury arises.

6. WILL ACCEPTING OFFICE IN A CLUB AFFECT MY DUTY OF CARE?

- 6.1 Yes it may well do so. If you accept a position you are likely to agree to carry out certain functions which may affect the safety of others both inside and outside the club. You are accepting responsibility and you must fulfil those duties to the best of your ability without negligence. That is, you must not create a foreseeable risk of injury and you must take reasonable steps to deal with any foreseeable risk of injury which exists or arises.

For example: If you agree to be the equipment officer you must make reasonable inspections of the equipment to see that it is reasonably safe.

7. CONCLUSION

- 7.1 The law of negligence seeks to ensure that as individuals we are responsible for our actions and inactions and that we consider those who might be injured by those acts and omissions.
- 7.2 The actual standard varies according to an individual's skill and experience and requires us all to behave reasonably.
- 7.3 It is not possible to lay down golden rules which if followed will preclude the possibility of a successful civil claim. However, behaving responsibly and considerately is likely to mean that no injury will be occasioned in the first place.
- 7.4 The safety net that we all hope will never need is third party liability insurance. If a compensation claim is successfully brought then this insurance should pay out. All members of the Students Union automatically have such cover. Members of certain clubs may have additional cover where affiliated to NGB's with that facility.

c P.J. Debney, Partner, Cartwright and Lewis, Solicitors 1998
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