

UNDERSTANDING YOUR LEGAL DUTY OF CARE

R. Gregg

713/982-8415

rgregg@gregglaw.net

Disclaimer

This presentation is designed to deliver general information only – not to provide opinions regarding specific state law. For such opinions seek the counsel of your local or otherwise qualified attorney.

GETTING FOCUSED

Some duty cases.

Our subject:

One's LEGAL duty of care (more/less than ethics?)

One's legal duty OF care (“Protect - even if you do not love - thy neighbor”)

One's legal duty of CARE (other duties may be owed)

Why this is important:

It's good to take care of folks; and

One's legal duty is the core of an analysis of a suit for negligence

Negligence revisited

Negligence as a description of conduct

Negligence as grounds for liability :

Duty

Breach

Loss

Causation

And so.....

No duty? No negligence.

A party claiming negligence must show a
duty.

Is a (any?) duty owed?

- The universal duty – to not cause unreasonable harm.
- Special relationships -- to protect from unreasonable harm. (Think: custodial and fiduciary relationships).

The duty - commonly stated:

To act as a reasonable person would under the same or similar circumstances
EXCEPT when a statute or common law requires a different degree of care.

Note: 1) objectivity, and
2) reasonableness (not perfection – not “best practices”).

Factors influencing the existence and nature of the duty:

a) Disparity in knowledge, experience, mental and physical competencies (professionals, minors).

(Consider “higher” and “highest” duties of care. “In loco parentis”?)

Factors influencing (continued):

- b) A relationship of control or dependency (common carriers, manufacturers and renters of goods, premises owners; camps, guides, instructors).
- c) Standards, policies, practices.

Factors influencing (continued):

d) Statutes

Recreation Use Statutes

Recreation Safety Statutes

No liability for inherent risks

May specify duties

e) Volunteer, charitable and government immunities

Factors influencing (continued):

- f) Violation of laws, and the doctrine of “negligence per se”.

Eliminating the legal duty of care:

- a) A release from claims of ordinary negligence (understand the limitations).
- b) The expressed assumption of the loss-causing risk.
- c) The inherency of the loss -causing risk

Primary Assumption of Risks:

The inherent risks of a sporting or recreation activity are assumed - no duty of protection is owed.

In a number of states such risks include the negligence of co-participants , instructors and even organizers.

A Risk Management Plan:

- What are you doing, and why?
- What can go wrong?
- How to reduce the chances of something going wrong?
- What to do when it does go wrong?

- Analyze, manage and inform!

Protecting the Participant

- Disclosures
- Understanding the environment
- Emergency protocols
- Practices and Policies

Protecting the Participant

- Gear
- Records
- Administrative support
- Selection, supervision, separation
(staff and participants)

Protecting the Program

- Contracts (releases, indemnities, etc.)
- Understanding applicable laws
- Insurance
- Wise use of professionals
- A risk management plan
- Awareness of industry standards and prevailing practices

Conclusion

The relationships among participants, staff, activities and environments will determine the duty of care owed.

The bundle of duties will change as these relationships change.

Understand your duty of care, even as it shifts.

If you adhere to the standard of reasonableness you will survive to work and play another day!