



## **Duty of Care, Disclaimers & Insurance**

### **RYA Training Principals' Conference 2016**

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# Introduction

- Duty of Care
  - Cases
- Disclaimers
  - Risk Statements
- Insurance



# Duty of Care

- Negligence
  - Existence of Duty of Care
    - Duty not to cause injury carelessly
    - In practice, usually by reference to precedent
    - Occasional novel scenario
  - Breach of Duty of Care
    - Standard of care
      - Reasonable and prudent person
      - Objective, modified by subjective factors
      - Relates to office, rather than office holder
      - Takes into account likelihood and severity of possible harm



# Duty of Care

- Negligence
  - Causation / proximity of damage
    - “BUT FOR” test
    - Novus Actus Interveniens
    - Reasonable foreseeability of damage
  - Compensation
    - Places victim in position would have been but for breach
    - Take victim as found



# Duty of Care

- *Darby v. National Trust* (CA 2001)
  - “In my judgment there was no duty ... to warn against swimming in this pond where the dangers of drowning were no other or greater than those which were quite obvious” May L.J.



## Duty of Care

- *Tomlinson v. Congleton Borough Council* (HL 2003)
  - “... it is not, and should never be, the policy of the law to require the protection of the foolhardy or reckless few to deprive, or interfere with, the enjoyment by the remainder of society of the liberties and amenities to which they are rightly entitled. Does the law require that all trees be cut down because some youths may climb them and fall? Does the law require the coast line and other beauty spots to be lined with warning notices? ... The answer to all these questions is, of course, no.” Lord Hobhouse



# Duty of Care

- Compensation Act 2006
  - 1. A court considering a claim in negligence ... may, in determining whether a defendant should have taken particular steps to meet a standard of care ... have regard to whether a requirement to take those steps might
    - (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
    - (b) discourage persons from undertaking functions in connection with a desirable activity.



## Duty of Care

- *Evans v. Kosmar Villa Holidays (CA 2007)*
  - “... people should accept responsibility for the risks they choose to run and there should be no duty to protect them against obvious risks ...” Lord Justice Richards
- *Harris v. Perry (CA 2008)*
  - “It is quite impractical for parents to keep children under constant surveillance or even supervision and it would not be in the public interest for the law to impose a duty upon them to do so.” Lord Phillips





# Duty of Care

- Social Action, Responsibility and Heroism Act 2015
  - When considering a claim that a person was negligent or in breach of statutory duty, the court must have regard to whether that person:-
    - was acting for the benefit of society;
    - demonstrated a predominantly responsible approach towards protecting the safety of others;
    - was “acting heroically” by intervening in an emergency.



# Duty of Care

- Individual responsibility
- Competitors
  - RRS 4
- Organisers
  - Event delivery
- Some roles may give rise to greater exposure
  - Training
  - Safety boats
  - Race management



# Disclaimers

- Background
- Legislation
  - Unfair Contract Terms Act 1977
  - Unfair Terms in Consumer Contracts Regulations 1999
  - Consumer Protection from Unfair Trading Regulations 2008
  - Consumer Rights Act 2015
- Attitude to risk



# Disclaimers

- Risk Statements
  - Inform rather than disclaim
- Risk Assessment
  - Identify hazards
  - Evaluate risks
  - Mitigate / manage risks
  - Periodic review / revise
  - Process rather than document
- Booking Forms





# Insurance

- Insurance founded on *risk*
- Risk of damage to own property
  - Comprehensive
- Risk of injury to self
  - Personal accident
- Risk of liability to others and/or their property
  - Third party / public liability
- Specific liabilities
  - Professional Indemnity, Employers' Liability, D&O