

# Legal Considerations for Volunteers and Staff

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What obligations for tort liability do volunteers have in connection with a public service program? In general, volunteers aren't aware of the serious nature of tort. Being aware of such information can help protect the rights and interests of the volunteers who assist youth, and at the same time develop reasonable self-protection against the liability involved in public service programs.

## DEFINITION OF TORT

Tort is defined as a civil wrong, outside a contract, committed by one person against another. Liability is a broad legal term including almost every type of hazard or responsibility, both absolute and contingent. A court action that allows legal recourse against someone who causes injury is a tort suit. Whether the wrong is seen as unintentional, negligent or deliberate may have little bearing. In a tort suit, the defendant may have to pay for: medical bills, lost earnings, damages for pain and suffering, replacement of damaged property, and punitive damages that may include both compensation and punishment.

## CAUSE-OF-INJURY QUESTION

Receiving personal injury, doesn't always guarantee collection for damages. The courts must first decide the cause of injury. In making such a determination, five questions are usually asked by the courts:

1. Was there an accident in which a person was injured?
2. Did another individual have a duty to care for the injured person?
3. Did the other individual fail to exercise that duty?
4. Was the failure to exercise that duty the main cause of the injury?
5. Was the accident foreseeable?

If it can be shown that carelessness was the direct cause of the injury, then the defendant may be liable.

## TEN COMPONENTS

The nature of tort liability consists of 10 components:

1. Due care.
2. Physical defects (inspection of premises).
3. Instruction and supervision.
4. First aid and medical treatment.
5. Foreseeability.
6. Causation.
7. Defamation (slander and libel).
8. Assault and battery.
9. Contributory negligence.
10. Notice of claim (statute of limitations).

## DUE CARE

Before liability can be attributed to a volunteer (defendant), a determination must be made to see if the defendant exercised due care. Whether the defendant foresaw a potential problem, or should have seen the potential of a problem, and tried to prevent it, must be established. That is, did the person exercise sufficient foresight and take appropriate measures to prevent the accident? If a defendant failed to exercise such care, and if the failure was the main cause of the injury, then the plaintiff—the one bringing the tort suit—may recover damages.

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Being informed and aware of tort liability enhances the credibility of youth professionals and their volunteers and potentially diminishes the number of accidents.

What constitutes due care and adequate supervision depends on the circumstances surrounding the incident, such as: (1) the number and age of the clientele, (2) the activity in which the clientele was engaged, (3) the duration of the supervision, (4) the ease of providing some alternative means of supervision, and (5) the extent to which written and implemented guidelines were used.

In the case of minors, the courts have held that the following care of duty was reasonable and prudent: The duty to exercise ordinary care with a minor child would be properly measured by what a person of the same age, capacity, intelligence, and experience would have done under the same or similar circumstances, or the failure to do so.

Youth professionals and volunteer leaders are expected to exercise a reasonable degree of care to prevent such an accident or injury from occurring. Traditionally, the standard of care that one owes another has been judged as that which any reasonable person would exercise under similar circumstances. Determination of the standard of reasonableness is established by the court.

#### PHYSICAL DEFECTS

Although youth professionals and volunteers can't ensure the safety of another from physical injury, they can be expected to inspect the premises, note any dangerous conditions, and take the necessary steps to correct any physical defects.

For example, negligence could be shown if an individual allowed a known hazard to exist without measures being taken to correct the hazard.

#### INSTRUCTION AND SUPERVISION

One of the most frequent causes of an accident is the failure of supervising personnel to instruct and supervise effi-

ently. Youth professionals and volunteers are expected to provide proper instruction and adequate supervision to prevent accidents and injuries.

When a person has been derelict in the instruction and/or supervision and it causes an accident, then the injured party may recover damages. However, if failure to instruct and/or supervise wasn't the main cause of an accident, there wouldn't be liability.

The two determining factors in assessing liability for adequate instruction and/or supervision are usually: (1) the danger level with which the individual has been working, and (2) the person's relative maturity in an unsupervised situation.

#### FIRST AID AND MEDICAL TREATMENT

The plea of "Good Samaritan" won't excuse a youth professional or a volunteer from liability as a result of giving medical attention when they should have recognized that the injury and proper treatment were beyond their skills. Due care in these circumstances would be to summon necessary help as quickly as possible. Depending on circumstances, medical attention might range from calling a nurse, a doctor, a first aid expert, or contacting a medical emergency unit. In any event, the child's parents or guardians should be promptly notified.

#### FORESEEABILITY

Foreseeability is defined as being aware of possible danger and taking appropriate measures to eliminate it. To be held liable for negligence, an individual must have been able to foresee the danger. Defendants often use absence of foreseeability as a defense in accident suits. To limit the opportunity for negligence under foreseeability, youth professionals and/or volunteers should report any known dangerous defects or hazardous situations to the proper authorities.

#### CAUSATION

Before a court can determine if a defendant is guilty of negligence, the court

must first establish the cause of the injury. In assessing the facts, the court places great responsibility on the plaintiff to prove that negligence was the main cause of the injury.

For one to be liable, the defendant's action must be both the cause in fact and the main cause of the plaintiff's misfortune. If other external circumstances contributed to the plaintiff's injury, the court often won't hold the defendant liable for damages.

An effective formula for determining cause of injury is:

1. Was the action in question the cause of the injury?
2. Would the injury have occurred if not for the negligent action?
3. Was there an intervening independent cause? If not, the action probably was the main cause.

If other circumstances did exist, the court must determine whether the injury could have been reasonably foreseen even if that specific cause hadn't occurred or if the cause itself was foreseeable. If the injury was predictable, the original action is considered the cause of the accident.

#### DEFAMATION—SLANDER AND LIBEL

Defamation is defined as communication about a person designed to harm the person's reputation. If written or printed, it is libel; if oral, it is slander. One can recover for damages under tort action for either libel or slander.

Statements to a third person that damage another's reputation may constitute defamation of character.

Youth professionals and volunteers generally haven't been liable for defamation provided remarks relate to the respective job description and are within the scope of their authority. Youth professionals and volunteers may be held liable for false and malicious statements made outside their scope of authority.

#### ASSAULT AND BATTERY

Assault and battery are two actions for which one may recover damages for. His-

torically, assault and battery have been viewed as companion suits. However, they may be separate actions.

*Assault* involves an overt act designed to injure or give the appearance of injuring another person. The person to whom the assault was intended must have been placed in a position of peril or threatened harm. Assault may involve words, actions, or both. In contrast, *battery* is actual physical contact with another person. A suit for liability under assault and/or battery probably wouldn't exist unless there was proof of malice.

#### CONTRIBUTORY NEGLIGENCE

Negligence has been the most common tort. Negligence presumes a duty of care owed by one person to others, the breach of that duty, and the resulting damage or injury. The question of liability also arises where an injury or damage has been caused by an act of omission.

In a negligence suit, one of the defenses used is contributory negligence. Contributory negligence exists when the injured party's action or inaction in part caused the accident. In that case, the plaintiff can't collect from the defendant. The defendant, to prove contributory negligence, must show that: (1) the plaintiff violated his/her duty of due care and acted below the standard of a reasonable person, and (2) the plaintiff's lack of care was the main cause of the accident. One should note that circumstances play a crucial role in the determination of negligence.

Tort is defined as a civil wrong, outside a contract, committed by one person against another (see definition on page 12).

In contributory negligence suits, the *assumption of the risk doctrine* and the *concept of the last clear chance* have been two important factors.

The assumption of the risk doctrine has been used in situations where one voluntarily exposed himself/herself to danger that the person was fully aware of. In such cases the plaintiff can't recover for

injuries sustained as a result of the exposure. For example, when a person attends a hockey game, the person assumes the risk of being hit by a puck, but doesn't assume the risk of a boiler explosion, although either injury could be sustained as a result of the person's exposure at the hockey game.

By contrast, the concept of the last clear chance means that even if the plaintiff were guilty of contributory negligence, the defendant would still be liable if the defendant could have saved the plaintiff, but failed to do so. The last clear chance has also been used as a direct defense—for example, when the plaintiff had a last clear chance to avoid an accident.

The term comparative negligence is used, but on a more limited basis than contributory negligence. In comparative negligence cases, liability for an accident is assigned by the court according to the degree of fault of both the plaintiff and the defendant.

## NOTICE OF CLAIM

Most states have statutes that disallow a suit filed after a stated period of time has elapsed following an injury.

The late filing of claims hinges on two factors: (1) exempting a minor from the restricted period for filing, and (2) determining what constitutes a filing of a claim.

## SUMMARY

The purpose of the information presented in this article has been to help develop an increased awareness regarding the serious nature of tort liability. Being informed and aware of tort liability can enhance the creditability of both youth professionals and volunteers, and it can diminish the number of accidents and injuries for the children being served as our clientele.