

# **Your Responsibilities and Liabilities**

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# A whole hour!

- To stay awake after lunch the session will be interactive
- Explore the murky world of responsibility
  - Responsibility and Liability to employees
  - Responsibility and Liability to Third Parties
  - Corporate Responsibility to the public
- Tea- we will need it

# Duty of Care

- Definition of Duty
  - Donoghue v Stevenson - snail in bottle of ginger beer
  - British Legion - maypole case, `they don't like it up em"

# Duty of Care

- Who owes a duty
  - Employees to employers
  - Employees to each other
  - Employers to employee
  - Third parties
- What is foreseeable
  - Man on top of the Clapham omnibus

# Duty of Care

- What is the impact for Emergency Services
  - Patient carrying
  - Treatment
  - Driving both normal and under blue light
  - Rescuers
  - Public control/order

# Duty of Care Practical

- At a violent rugby match, a player smacks his opposite number in the mouth, he swallows his tongue and you are called to assist, you resuscitate the now unconscious player and stretcher him to the ambulance.
- On the way to hospital you proceed cautiously through a red traffic light but are hit by another vehicle.
- Relatively undamaged you proceed to hospital you are entering the access road when a dog owner allows their dog to stray into the road causing another ambulance to swerve and collide with you. Who owes whom a duty of care and why.

# Duty of Care Practical

- You are a traffic officer on patrol when you receive a report of a stolen vehicle, which overtakes you at high speed. You give chase using blue lights only as your siren has just stopped working.
- On reaching the high street travelling at speed both vehicles just miss a force driving instructor using a zebra crossing.
- Later the vehicle you are pursuing loses control on a bend and hits a tree killing the driver and passengers.
- You later discover that the driving instructor has died from a heart attack brought on by the near miss.
- Who is liable to whom and is corporate manslaughter an issue.

# **Responsibilities and Liabilities to Employees**

- **What responsibility do you owe to drivers**
  - **The duty of care**
  - **Health and Safety factors**
    - **Training**
    - **Maintaining Vehicles**
  - **Employment law issues**

# **Responsibilities and Liabilities to Third Parties**

- **What can happen when you breach the  
Duty of Care**
  - **Criminal prosecution of Driver and  
Employer**
  - **Health and Safety prosecution of Employer**
  - **Civil Liability claims**
    - **Road Traffic Accident liability claims**
    - **Employers liability claims**

# **Corporate Responsibility to the public**

- **The Corporate Manslaughter Bill**
- **The offence**
  - **focus on senior management failures either individually or collectively**
  - **Will require the organisation to owe a duty of care to the victim**
  - **Will require evidence that the management failure amounts to a gross breach of duty to take reasonable care**

# **Corporate Responsibility to the public**

- **Management Failure Criteria**

- **The test is the way in which a particular activity is being managed or more likely mismanaged**

- **Responsibility of individuals who have a `significant role` -where management responsibilities bear on the organisation as a whole or a substantial part of it.**

# Section 2 Meaning of "relevant duty of care"

- (1) A "relevant duty of care", in relation to an organisation, means any of the following duties owed by it under the law of negligence-

- (a) a duty owed to its employees or to other persons working for the organisation or performing services for it;

- (b) a duty owed as occupier of premises;

- (c) a duty owed in connection with-

- (i) the supply by the organisation of goods or services (whether for consideration or not),

- (ii) the carrying on by the organisation of any construction or maintenance operations,

- (iii) the carrying on by the organisation of any other activity on a commercial basis, or

- (iv) the use or keeping by the organisation of any plant, vehicle or other thing;

# Section 6 Emergencies

**(1) Any duty of care owed by an organisation within subsection (2) in respect of the way in which it responds to emergency circumstances is not a "relevant duty of care" unless it falls within section 2(1)(a) or (b).**

**(2) The organisations within this subsection are-**

- **(a) a fire and rescue authority in England and Wales;**
- 
- **(b) a fire and rescue authority or joint fire and rescue board in Scotland;**
- 
- **(c) the Northern Ireland Fire and Rescue Service Board;**
- 
- **(d) any other organisation providing a service of responding to emergency circumstances either-**
- 
- **(i) in pursuance of arrangements made with an organisation within paragraph (a), (b) or (c), or**
- 
- **(ii) (if not in pursuance of such arrangements) otherwise than on a commercial basis;**
- 
- **(e) a relevant NHS body;**

# Section 6 Emergencies

- **f) an organisation providing ambulance services in pursuance of arrangements-**
  - 
  - **(i) made by, or at the request of, a relevant NHS body, or**
    - 
    - **(ii) made with the Secretary of State or with the Welsh Ministers;**
      - 
      - **(g) an organisation providing services for the transport of organs, blood, equipment or personnel in pursuance of arrangements of the kind mentioned in paragraph (f);**
        - 
        - **(h) an organisation providing a rescue service;**
          - 
          - **(i) the armed forces.**
            - **(3) For the purposes of subsection (1), the way in which an organisation responds to emergency circumstances does not include the way in which-**
              - **(a) medical treatment is carried out,**

# Section 8 Factors for jury

**(1) This section applies where-**

- **(a) it is established that an organisation owed a relevant duty of care to a person, and**
- **(b) it falls to the jury to decide whether there was a gross breach of that duty.**
- **(2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so-**
- **(a) how serious that failure was;**
- **(b) how much of a risk of death it posed.**
- **(3) The jury may also-**
- **(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection (2), or to have produced tolerance of it;**
- **(b) have regard to any health and safety guidance that relates to the alleged breach.**
- **(4) This section does not prevent the jury from having regard to any other matters they consider relevant.**
- **(5) In this section "health and safety guidance" means any code, guidance, manual or similar publication that is concerned with health and safety matters and is made or issued (under a statutory provision or otherwise) by an authority responsible for the enforcement of any health and safety legislation.**

# **Investigation of Management Failings**

- **Police investigation**
- **Investigation of Road Death Manual**
  - **Interview of senior Directors/managers**
  - **Seizing of vehicles**
  - **Seizing of health and safety records**
  - **Interview of staff**

# Compliance and audit trails

- **Need to demonstrate `working` health and safety procedures**



- **Ability to demonstrate**
  - Initial assessment of risk
  - Identification of hazardous activities
  - Management strategies
  - Training
  - Continual monitoring

# **Compliance and audit trails**

- **Practicalities**

- **Organisational- risk assessment**

- **Driver- assessment, training**

- **Vehicles- servicing, insurance, own user**

- **Accidents- reporting, lessons learnt**

# Legal ramifications

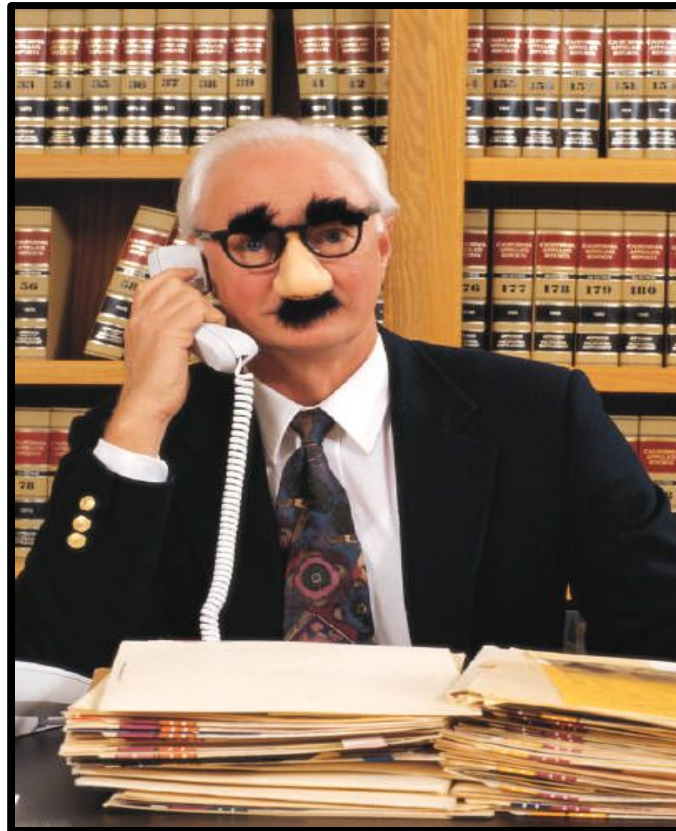
- **Individuals**
  - **individuals may still be prosecuted for gross negligence manslaughter**
  - **Drivers can be prosecuted for driving offences**
  - **Civil claims can follow from negligent driving**

# Legal ramifications

- **Employers**
  - **Health and safety prosecutions under existing health and safety law**
  - **Civil claims for employees negligent driving**
  - **Civil claims by employee injured whilst driving – Eyres v Atkinsons Kitchens and Bedrooms**
  - **Criminal prosecution - under mobile phone legislation or aiding and abetting**

# Legal ramifications

- Remember the old adage



- `the individual who acts for himself in a court of law has a fool for a client and an idiot for a lawyer`