

Field Trips - Liability of the University and its staff

University members of staff who are organising and/or accompanying field trips have understandably asked how far they are personally liable should something go wrong.

Helpful guidance on this subject has been produced by the Universities and Colleges Employers' Association (UCEA): *Guidance on Safety in Fieldwork*. This booklet gives clear analysis of the legal background, requirements for supervision and training, conduct of fieldwork, health matters and emergency action. Copies of the booklet can be obtained from UCEA by telephoning 020 7383 2444 or via the website www.ucea.ac.uk.

1. **To what extent are members of staff personally liable while teaching away from the University, most especially while on undergraduate field courses? Are they *in loco parentis*? Do their responsibilities extend beyond the working day?**
 - A. Members of staff are **not** *in loco parentis* except as regards any students aged under 18 at the time of the trip. The University owes a duty of care to its students in the law of tort¹ e.g. negligence. In summary, this means the University is obliged to exercise reasonable care in order reasonably to protect its students from reasonably foreseeable harm. The tort principles of causation, remoteness, mitigation etc apply.
 - B. The responsibility of the University and its staff to students does not extend into unsupervised leisure time. The defining characteristic of "unsupervised leisure time" appears to be whether the University is in control of the student activities (e.g. if a university employee is the coach in a sporting accident then the University's responsibilities continue, notwithstanding it is "leisure time"). UCEA strongly recommends having and bringing to the students' attention a code of behaviour before the field trip begins (see page 19 of *Guidance on Safety in Fieldwork*):

Students are young adults and it is unreasonable to expect staff to be responsible for their behaviour 24 hours a day. As long as warnings about behaviour and dangerous activities are given and recorded (i.e. written warnings and witnessed verbal warnings) then staff cannot be held responsible for any accident or incident that occurs during unsupervised leisure time.

The case law supporting this statement is *Ratcliffe v McConnell* [1999 1 WRL 670]. In that case a student dived into the shallow end of a closed and locked swimming pool on campus at night, broke his neck and was unsuccessful in his claim for damages from the college. The Court said that drunken young men whether students or not recklessly engaging in dangerous pranks must live with the consequences no matter how dire without expecting compensation from the owner of the premises.

Similarly in a recent Scottish case *Erin Leigh McLean v University of St Andrews*, [25/2/4A1143/01] a student sent to Odessa for a compulsory period abroad in her Russian degree course was raped and sued her HEI for allegedly not doing enough by way of warnings about the crime rate locally. The court found for the defendant university, which could not have been expected specifically to spell out to an adult student that walking along the beach in the early hours might well be inviting trouble.

There is also a statutory obligation to make a "suitable and sufficient" risk assessment under the Management of Health and Safety at Work Regulations (MHSWR) 1999. This is relevant in deciding if the university has met its duty of care: if the risk assessment did (or should have had it not been negligently prepared) identify a risk that the University via its staff then fails to address (by instruction, training, provision of suitable equipment, systems, warnings and so on) then liability for a resultant accident is likely to follow. Issuing appropriate warnings is particularly important. In the *Erin McLean* case the advice given to the student in writing that *the law and order situation in the capital if not in Odessa itself, may leave something to be desired. In particular, you should not wander the streets by yourself at night or attend*

¹ Tort: a legal wrong

nightclubs which are infested by members of the mafia gave great weight to the court's decision to find that St Andrews had not failed in its duty of care towards her.

Of course, the fact that warnings of risk have been given will not be grounds enough on its own to defend an action. The court of session in the Erin McLean case said: *No doubt if the University had required her to go to a battle zone, say Baghdad or the Gaza Strip, they might render themselves responsible for her becoming the victim of foreseeable acts of violence.*

This means that were the University negligent in applying appropriate safety precautions for a field trip then notwithstanding risk warnings a student will almost certainly succeed in a tort action.

Another Scottish case is relevant: in *Tuttle v Edinburgh University* [1984 SLT172], Edinburgh University was held negligent in not properly preparing students for tree climbing when specimen-collecting on a field trip. Warning that tree climbing was hazardous was no substitute for proper training. In the Erin Leigh McLean case the court indicated that their result may well have been different had the rape taken place in the residential accommodation to which the student had been assigned by the local HEI, with which her home HEI had an arrangement, (for example, if the local HEI had been negligent in maintaining the security of that building). Again, a warning that the city was a dangerous place for a young woman would have been no substitute for having proper security locks on the student residences.

University staff on field trips need also to be aware that they and the University can assume a duty of care where the law would not imply one, by stepping in and beginning to assume responsibility where no such responsibility existed. For example in *Barrett v Ministry of Defence* [1995] 1WLR1217 the Army assumed a duty of care by its employees intervening negligently to take responsibility for a very drunk student "squaddie" whom they failed to put in the recovery position and check frequently with the result that he inhaled vomit and was brain damaged. Similarly in *Jebson v Ministry of Defence* [2000] 1 WLR 2055 the Court of Appeal held the Army liable when it provided transport in connection with a social evening out for its soldiers but, having thereby inadvertently assumed or impliedly undertaken a duty of care, then neglected to discharge that duty by supervising the inevitably drunken and rowdy soldiers as they returned to base at the end of the evening in the open-backed lorry - Mr Jebson tried to clamber onto the roof and fell out.

In summary the message from these cases seems fairly clear: provided the University has taken reasonable care to protect the students, neither the University nor its staff can be responsible for accidents and injuries happening during student leisure time unless they step in and assume responsibility and then discharge that responsibility negligently.

2. To what degree does the University insurance cover staff liability in relation to field trips? Is there any residual financial liability for which staff members are effectively uninsured?

The common law concept that an employer is vicariously liable for the actions of its employees is usually applied where the employee's actions lead to the injury of a third party. The employer may well also be liable for the wrong/tort and the injured party can sue both the employer and employee: in practice the employer or its insurers will be the "deep pocket" worth targeting.

If therefore a student sues as a result of injury suffered on a field trip, alleging breach of a duty of care they may include both the University and the relevant member of staff as defendants. The University would have a vicarious liability for their employee's actions unless the staff member in doing whatever led to the accident, loss or damage was at that point not acting in the course of their employment but was, as one judge memorably put it, on *a frolic of his own*.

In other words, the negligent member of staff would have to be undertaking a task which clearly he or she had no authority to tackle or be carrying out an unauthorised function, either in a way already expressly forbidden or in such a bizarre and dangerous way that no reasonably careful employer could have predicted an employee would behave like that (which would be difficult to prove). Examples would be a drunken assault by a member of staff on a student or theft of a student's property.

The University's insurance provides an indemnity to staff, except in circumstances as outlined above where the University is not vicariously liable i.e. the member of staff was at the time *on a frolic of their own*. UCEA recommends that students be advised to take out additional personal insurance to cover those incidents for which university cover does not extend e.g. a personal accident type insurance policy that would pay a lump sum were a student permanently disabled. Limited personal accident protection is normally provided under a travel insurance policy and travel insurance cover for medical costs and emergency repatriation is essential for all trips abroad.²

The University's insurance includes the cost of defending legal proceedings whether civil (tort) or criminal (although it does not extend to paying fines for breach of criminal law).

The insurance cover would apply to include liability arising where the University or members of its staff inadvertently or impliedly undertake a duty of care where the law would not apply one (see the answer to question 1 above). The indemnity of staff is co-extant with the University's own direct cover in these circumstances. The areas where staff are not effectively covered by the University's insurance are therefore very narrow: for criminal penalties and for civil liabilities where staff were not acting in the course of their employment in circumstances where the University itself could not be successfully sued.

3. What penalties are staff exposed to for failure to comply with the responsibilities the law imposes on them beyond liability in damages for breaching a duty of care?

The University's statutory duties in relation to fieldwork are set out in sections 2 and 3 of the Health and Safety at Work Act 1974 and in the Management of Health and Safety at Work Regulations (MHSWR) 1999. This legislation sets out the responsibilities of employers and employees with regard to safety in the workplace and extends to risks to health and safety of persons not in the employment but arising out of or in connection with the conduct by the employer of his undertaking i.e. including students on field trips. The requirement to carry out risk assessment arises under regulation 3 of the MHSWR Regulations 1999. Failure to comply with these provisions exposes the university to criminal penalties - fines and the remote possibility of imprisonment for the "controlling mind" i.e. very senior executives. The legislation is intended to fix with criminal liability *only those who were in a position of real authority, the decision makers within the [organisation] who had both the power and the responsibility to decide corporate policy and strategy* (R. v Boal [1992]2 WLR 890).

The creation of a new offence of "corporate manslaughter" is proposed in the Corporate Manslaughter and Corporate Homicide Bill (with the House of Lords in March 2007 and proposed to come into effect from summer 2007). The new offence will extend criminal penalties to apply to organisations where a gross management failure by that organisation at a senior level has caused death. The Bill does not create any new offences as regards individual employees.

4. What is the relationship between the University, staff and the owners of premises used during field trips?

If the University books the accommodation (as opposed to simply acting as agent for the students who contract directly with the third party owner) then the University will be responsible to the owner of that accommodation for any breach of contract relating to its use; for example, if the students damage the property or disturb other users, (assuming covenants not to do this are expressly or impliedly included in the contract). The practical consequences of this liability will be that University staff accompanying the students are inevitably in the front line for sorting out the problems when they arise, which can be at any time of the night or day. Staff members have no personal liability to the owners (unless of course for "frolicking" -see 2. above) but it would be hard to argue that they were not, as the University's agents, obliged to step in to try to avoid or mitigate the University's liability for breach of contract.

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² The EU health card for EU-member citizens only provides protection for medical costs to the extent that the EU country where the incident occurs provides free care for its own citizens; for example, visits to a GP are mostly chargeable. The EU health card will not pay for the cost of emergency repatriation e.g. by air ambulance.