

## **4. WHAT CAN YOU BE LIABLE FOR AND WHY?**

### **4.1 Negligence**

Liability for negligence is a civil, not a criminal, matter. It is for the victim to prove that the defendant owed them a "duty of care", that that duty was breached, and that they have sustained either foreseeable harm or economic loss as a consequence of the negligence alleged. If successful, the victim will be awarded damages assessed on the basis of the harm caused or loss sustained.

In practice this means that a water chemist must avoid any act or omission which would adversely affect those whom he should reasonably expect could be so affected. This is a far-reaching duty.

For example, a water company digging a hole in order to lay pipes beneath a pavement should protect the hole against the possibility of not only a normal pedestrian falling into it but also a blind person doing so. Another example is analysing a sample so poorly that a wrong result is obtained, someone acts in reliance of that result and suffers damage, perhaps by not taking action that would otherwise have been taken.

### **4.2 Contractual matters**

All business relationships involve a mass of contracts. These can include contracts of employment, leases, buying stationery, and of course contracts for professional services. Failure to perform a contract can lead to an action for breach of contract. If successful, the outcome could be an award of damages and/or an injunction and/or an order for specific performance (an order to perform the contract). It is therefore very important before entering into any contract to consider the terms of it in detail. It is no defence to an action for breach of contract to say that you did not read the terms of the contract.

Another aspect of the problem is that the law implies terms into certain types of contract and, on the other hand, forbids other types of clauses from being enforced. For example, in a contract for the supply of services there is an implied term that the services will be undertaken with reasonable skill and care. An example of an illegal provision is a term excluding liability for causing personal injury or death.

It is also important not to be intimidated because the contract comes as a supposedly "standard" set of terms and conditions printed, for example, on the back of an order form. It is vital to remember that once you have signed a document that you are committed to all the terms of it, subject to the provisos above.

Of course, the same incident can give rise to an action both for breach of contract and for negligence.

Evidence is important in any dispute. From your own viewpoint, it is important to be able to prove that a client gave you instructions to do the work in question. This would usually be a letter from the client to you, or an order for services to be provided.

### **4.3 Saying the wrong thing**

When writing reports or other documents, attention must be paid to the possibility of causing harm to an entity through either negligent or fraudulent misstatement, or defamation (libel). More details are given in section 5.7 below. It should be borne in mind that in defamation trials the burden of proof is reversed, so that the defendant has to prove that his statement was true. There are some defences available, such as for the contemporary reporting of court proceedings.

#### **4.4 Taking other people's property**

While visiting premises for any authorised purpose it is a criminal offence (theft) to remove ANYTHING "dishonestly" (or in a manner that could be so misinterpreted) save in certain circumstances, e.g. spoil resulting from diverting a water course. Plants belong to the person in whose soil they grow. An exception to this are things growing wild such as fruit, flowers or mushrooms, unless they are to be sold for profit. Obtaining consent to removing the item or sample is a wise course of action. See also section 4.5 below.

A civil right of action would also be relevant under the tort of "conversion of goods". The persons whose goods had been taken could sue for recovery of the goods or the value thereof.

#### **4.5 Entering premises or going on to land**

##### **4.5.1 Access to premises - trespass to land**

Trespass to land consists of entering on to someone else's land or remaining there or placing an object on the land. Even persons who have statutory rights of entry will sometimes need to obtain a warrant or court order to enter premises or go on to land but there are exceptions.

Trespass is not, in itself, criminal. There is an assumption of consent to be on the land if a visitor is going up to the front door of the premises, for example, but such consent can be revoked verbally. An occupier can ask the trespasser to leave by the shortest route. Refusal to do so, or continuing trespass by way of personal entry or leaving things on the occupier's land do, however, constitute a criminal offence for which the trespasser may be prosecuted.

The Criminal Justice and Public Order Act 1994 introduces the criminal offence of aggravated trespass. This occurs if a person trespasses on land and does anything which is intended to intimidate, disturb or disrupt people in adjoining land, in which case the trespasser can be removed by police. Re-entering the site as a trespasser then becomes a further offence.

##### **4.5.2 Statutory rights permitting entry to premises**

The Water Resources Act 1991 and the Water Industry Act 1991 list a number of grounds under which an authorised person (typically an employee of the Environment Agency) may enter any premises or vessel.

##### **4.5.3 Damage to property**

The principal criminal offences of damage to property are governed by the Criminal Damage Act 1971. Damage need only be very slight for the Act to apply. For instance, crops can be damaged by trampling them down, or fences damaged by distorting the wire. However, liability will depend on the owner being able to show that the perpetrator either intended to damage property or else was reckless as to whether damage resulted. Damage resulting from powers of entry granted under the Water Resources Act 1991 will constitute a lawful excuse to a charge of criminal damage, but it is the duty of the Environment Agency, under the Act, to make full compensation to any person who has sustained loss. Similarly, if damage has been done to gain access to premises, the site must be left as secure as when found.

The injured party could also sue in civil law for damage to his property.

## **4.6 Nuisance - use of land and enjoyment of land - noise, smell and escaping substances**

In law, "nuisance" is taken to mean disruption of private rights to the enjoyment of land. Nuisances are divided into public and private.

### 4.6.1 Public nuisance

Public nuisance is one which materially affects the comfort and convenience of life for a significant number of people in the vicinity. Public nuisance is a criminal offence. For instance, if work is carried out resulting in obstruction of a public highway and there was no statutory permission for the work, prosecution may result if sufficient numbers of people have been inconvenienced by it.

### 4.6.2 Private nuisance

A claim for a private nuisance can only be brought by an occupier of the land affected. Private nuisance is a civil matter. An individual may bring a civil action where the use of his property is continuously or recurrently affected by a "disturbance". This may be a smell, noise or an escape of effluent, for example. Notwithstanding that many nuisances are the result of public bodies acting under statutory powers, this only absolves the relevant body of liability if they can show that the nuisance was the inevitable consequence of the work and that the work was carried out with all reasonable care. Therefore, a water chemist performing a repetitive operation likely to cause a nuisance must be sure that (a) they have the necessary statutory authority to do so, where relevant, and (b) do so as professionally as possible and with the minimum disturbance to the locality.

The leaking of substances on to neighbouring property, for example from a heating oil or fuel oil tank, would constitute nuisance. The owner of the polluted property would have a right to sue the polluter. Nuisance is of wide application in environmental law, not least as no negligence is required on the part of the offending party and it is thus easier to prove.

Statutory nuisance under sections 79 to 83 of the Environmental Protection Act 1990 is a simplified procedure for requiring an offending party to cease - that is to "abate the nuisance".

## **4.7 Occupation of premises**

### 4.7.1 Liability for dangerous things

Where dangerous things are brought onto land, care is required to prevent accidental escape. In civil law, a person is answerable for all the damage that is the consequence of the escape. This would include, for example, the consequences of flooding downstream if a dam should give way through poor siting or construction, or dangerous substances escape and cause pollution or injury.

This is quite distinct from duties under statutory law. The Environmental Protection Act 1990 covers liability for the deposit or accumulation of waste on land and the Radioactive Substances Act 1993 addresses liability for radioactive waste located on premises. Violation of environmental statutes may well result in prosecution (i.e. a criminal offence would have been committed). Also, orders can be made under the 1990 Act to require the removal of waste.

There is legislation concerning the safe storage of flammable substances. Advice on requirements can be obtained from the Health and Safety Executive.

### 4.7.2 Safety of Premises

Under the Occupiers Liability Acts 1957 and 1984, it is an occupier's responsibility to ensure that visitors to premises will be reasonably safe in using the premises. In practice this means displaying sufficient warning signs, ensuring that premises are in safe repair and, where necessary, accompanying the visitor while they remain on the premises. In addition, any proprietor also owes a common duty of care to those using or visiting his premises. The Defective Premises Act 1972 covers premises that have been leased. The landlord has a duty to protect all who might reasonably be expected to be affected by defects in the state of repair of the premises.

The duty of care covers not only invited visitors but extends, in a diminished form, to include trespassers. The law here does not require the owner to take nearly such stringent protective measures. So long as the owner displays prominent warnings and takes no measures designed to inflict wilful harm on a trespasser, he will have effectively discharged his duty.

There are various requirements concerning fire precautions in work premises which have to be complied with, primarily under the Fire Precautions Act 1971 and associated regulations.

#### **4.8 Health and Safety at Work**

The Health and Safety at Work Act 1974 (HSWA) governs the provisions necessary for securing the health, safety and welfare of people at work including controlling the storage and use of dangerous substances. The HSWA imposes general duties on employers. Under section 2, an employer is to safeguard the health and safety of his employees. Under section 3, there is an equivalent duty to contractors and members of the public.

All employers must provide and maintain a safe place of employment, with adequate facilities for their employees' welfare, and implement all necessary procedures and training for the safe use and handling of dangerous articles. The requirement for the premises to be safe and without risk to health extends also to non-employees.

Employers with five or more employees must prepare a written statement of their policy regarding health and safety at work.

Regulations which have come into force since 1974 concern a vast range of activities including manual handling operations, display screen equipment, work equipment and personal protective equipment. Under the Management of Health and Safety at Work Regulations 1992, an employer is required to assess risks to health and safety which arise in connection with his work and take any necessary preventative measures. The Control of Substances Hazardous to Health Regulations 1994 (COSHH) require that an employer assess the risks to employees from exposure to specified substances.

Failure to comply with the provisions of the HSWA may result in the HSE or Local Authorities issuing an improvement notice for a specific defect to be remedied, or a prohibition notice to stop all activities, and/or bringing a prosecution. If the offence was committed with the knowledge of a Director or a Manager, both the organisation and the individuals concerned face possible prosecution.

An employer has duties for maintaining a safe place of work under common law as well as under the HSWA. The requirements are broadly similar. The employer's duty of care to his employees is to act as a reasonable and prudent employer. Failure to meet this requirement renders the employer negligent. The employer may, furthermore, be responsible for the negligent acts or omissions of managers acting beneath him if it can be shown that the manager was following the employer's established practice when harm resulted.

When an employer appoints staff to managerial positions, their promotion should be accompanied by appropriate training to ensure that the manager is able to discharge his health and safety duties effectively. Employers must have competent assistance to help them meet the provisions of health and safety legislation. This may mean employing approved experts from outside, or training employees. If the competent person fails to provide necessary services the responsibility for complying with legal requirements still lies with the employer who should have ensured that the person was competent.

Duties under health and safety legislation are wide and are not confined to the safety of the work premises.