

The failure to exercise reasonable care law company business partnership essay

[Law](#)



Introduction As a hospitality operator, we have various types of legal duties required and there are consequences of the failure to exercise reasonable care in fulfilling these duties. There involve two types of law, Contract Law and Tort Law. Contract law is that body of rules that govern contractual agreements between persons or merchants. A contract is basically an agreement between parties outlining their duties and responsibilities to one another. In contrast, tort laws govern situations where one person has harmed or injured another person. Tort laws cover violations where the party intentionally harmed the other person, such as in a battery claim. Contract Law A contract is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between or among them. The elements of a contract are " offer" and " acceptance" by " competent persons" having legal capacity who exchanges " consideration" to create " mutuality of obligation. Proof of some or all of these elements may be done in writing, though contracts may be made entirely orally or by conduct. The remedy for breach of contract can be " damages" in the form of compensation of money or specific performance enforced through an injunction. Both of these remedies award the party at loss the " benefit of the bargain" or expectation damages, which are greater than mere reliance damages, as in promissory estoppel. The parties may be natural persons or juristic persons. A contract is a legally enforceable promise or undertaking that something will or will not occur. The word promise can be used as a legal synonym for contract although care is required as a promise may not have the full standing of a contract, as when it is an agreement without consideration. Tort Law A tort, in common law

jurisdictions, is a civil wrong. Tort law deals with situations where a person's behaviour has unfairly caused someone else to suffer loss or harm. A tort is not necessarily an illegal act but causes harm. The law allows anyone who is harmed to recover their loss. Tort law is different from criminal law, which deals with situations where a person's actions cause harm to society in general. A claim in tort may be brought by anyone who has suffered loss after suing a civil law suit. Criminal cases tend to be brought by the state, although private prosecutions are possible. Tort law is also differentiated from equity, in which a petitioner complains of a violation of some right. One who commits a tortuous act is called a tortfeasor. The equivalent of tort in civil law jurisdictions is delicting. Tort may be defined as a personal injury; or as " a civil action other than a breach of contract." Torts, including negligence, intentional acts, assault, and more, are also relevant for the hospitality industry. Lodging operators need to be aware of their duties to guests in parking lots. Restaurant operators that serve alcohol should also be aware of their duties to their guests when patrons become belligerent or hostile to each other or to other guests. Negligence Failure to exercise the care toward others which a reasonable or prudent person would do in the circumstances or taking action which such a reasonable person would not. Negligence is accidental as distinguished from " intentional torts" or from crimes, but a crime can also constitute negligence, such as reckless driving. Negligence can result in all types of accidents causing physical and/or property damage, but can also include business errors and miscalculations, such as a sloppy land survey. Lodging operators have a duty of care to their guests. This duty does not insure the guests's safety, but does require the

operator to act prudently and use reasonable care. This means, among other things, that an operator can be held liable if he or she is found negligent. An operator also must ensure that all of the guests' personal information is retained and destroyed according to proper and recommended procedure. Common law held innkeepers liable for any loss of guest property when the guest was on their property. Nearly all states have abrogated that duty, placing limits on an innkeeper's liability, as long as the innkeeper complies with certain requirements. These requirements, usually regulated in the state's innkeeper statute, govern the placement of the law and the size of the text of the displayed statute. Generally, to be protected under the statutes, the innkeeper and his employees cannot be complicit in the theft or the loss of property. Lastly, the innkeeper usually has to provide a safe for the safekeeping of the guests' property.

Duties of Care

In tort law, a duty of care is a legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence. The claimant must be able to show a duty of care imposed by law which the defendant has breached. In turn, breaching a duty may subject an individual to liability. The duty of care may be imposed by operation of law between individuals with no current direct relationship, but eventually become related in some manner, as defined by common law. Duty of care may be considered a formalization of the social contract, the implicit responsibilities held by individuals towards others within society. It is not a requirement that a duty of care be defined by law, though it will often develop through the jurisprudence of common law.

Hospitality operators owe a duty of care to those individuals who enter their establishments. Some duties of care are rather straightforward. For example, a restaurateur has a duty of care to provide food that is safe and wholesome for guests. While hospitality operators are not required to be insurers of their guests' safety, and are generally not held liable for events they could not reasonably foresee, they are required to act prudently and use reasonable care, as defined later in this thread, to fulfil their duties of care. Because of the wide variety of facilities they operate, hospitality managers can encounter a variety of duties of care. Provide a reasonably safe premise, this would include all public space, the interior of guestrooms, dining rooms, and the exterior space that make up the operator's total physical facility.

Serve food and beverages fit for consumption, this duty of care is shared with those who supply products to a foodservice operator, and would also include the techniques used by an operator to prepare and serve food or beverages. Serve alcoholic beverages responsibly, because of its extreme importance, this duty of care will be examined separately in following thread,

◆Your Responsibilities When Serving Food and Beverages.◆Standard of Care
In tort law, the standard of care is the degree of prudence and caution required of an individual who is under a duty of care. The requirements of the standard are closely dependent on circumstances. Whether the standard of care has been breached is determined by the Trier of fact, and is usually phrased in terms of the reasonable person. It was famously described in *Vaughn v. Menlove* (1837) as whether the individual "proceed with such reasonable caution as a prudent man would have exercised under such circumstances." In certain industries and professions, the standard of care is

determined by the standard that would be exercised by the reasonably prudent manufacturer of a product, or the reasonably prudent professional in that line of work. Such a test known as the 'Bolam Test' is used to determine whether a doctor is liable for medical malpractice. The standard of care is important because it determines the level of negligence required to state a valid cause of action. In fulfilling the duties of care just detailed, you must exercise a standard of care appropriate to the given situation. An appropriate standard of care is determined, in part, on the level of services a guest would reasonably expect to find in a hospitality facility. For example, a guest departing on a seven - day cruise of the Pacific would reasonably expect that the ship's staff would include a full - time doctor. The same guest visiting a quick - service restaurant at 11: 00 P. M. would not expect to find a doctor on hand. In both cases, it is possible that a guest could suffer a heart attack and require medical care. The ship's standard of care, however, would include medical treatment, while the restaurants would not. Many disputes involving liability and negligence in the hospitality industry revolve around the question of what an appropriate standard of care should be. Reasonable CareIt is a simple concept, but whether or not it was used in a given situation is the stuff lawsuits are made of! Essentially, reasonable care is the amount of care that a reasonably prudent person would use in a similar situation. The doctrine of reasonable care places a significant burden on you as a hospitality manager. It requires that you use all of your skill and experience to operate your facility in a manner that would be consistent with that of a reasonable hospitality manager in a similar set of circumstances. It's just one more reason to keep up with changing industry standards and

guest expectations. Breach of Duty A defendant is liable for negligence when the defendant breaches the duty that the defendant owes to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. Thus, in the example above, a jury would decide whether the defendant exercised Conclusion To be a wise hospitality operator, we have to know about contract law and tort law. While we are working as a hospitality operator we actually formed a contract between employer and us. We have to understand every element in the contract. In tort law the most important part is negligence. We own every neighbour a duty of care.