

DUTY OF CARE

A Hillwalkers Club Perspective

In our every day life, we all have a duty of care to those we have a connection with. There is no simple definition but could be stated thus: “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour” – who would in turn be defined as a “person who is so closely and directly affected by your act that you ought to have had them in contemplation.”

Any legal liability is limited to “the consequences of their acts which a reasonable person of ordinary intelligence and experience so acting would have in contemplation.”

There is no absolute definition of what is reasonable. It will be determined by what was just and reasonable to do in the actual facts of that particular case.

But it is not all one way; a person might be guilty of contributory negligence if they ought reasonably to have foreseen that if they did not act as a reasonably prudent person they might hurt themselves and that they ought to have taken into account the possibility of others being careless.

Therefore, looked at from the perspective of a Hillwalking Club, it might be stated as follows: Clubs have a common law duty of care to exercise a reasonable degree of prudence and caution while performing acts that could foreseeably harm others. But this responsibility is reciprocal in that each person is responsible for him or herself in relation to their own EXPERIENCE. Thus a more experienced member of a group owes an extra duty of care to its less experienced members but in turn these members also have a duty of care to conduct themselves on the hill and not attempt anything outwith their own reasonable experience – or clearly they could be contributing unreasonably to the danger and those decisions will be largely in their own knowledge. Climbing, hillwalking and mountaineering are activities with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own action and involvement.

Important Note for Members

These comments are for their guidance only and should not be construed as legally definitive. Each member is wholly responsible for their own actions or omissions in any given circumstances. If in any doubt, members are strongly advised to speak to a member of the committee. Members are also strongly advised to read the article on Safety and Liability for Clubs by the Mountaineering Council of Scotland, which is available at <http://www.mcofs.org.uk/safety-liability-clubs.asp> or obtain a copy from the club.