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Track days and racing schools

The legal aspects of allowing the public to race on your track

There are many potential risks associated with allowing the public to race on your track. However, public track days and racing schools are an evermore present feature of life for circuit owners, and a profitable enterprise. In operating a circuit, owners need to be aware of the liabilities which they could face from claimants, should things go wrong. This paper will consider some of the potential liabilities which may occur, with illustrations from English law. It is essential to consult experienced lawyers as to the specific issues in any particular country; this paper will provide an overview of the likely things that circuit owners will need to consider to help manage their risk. It is also essential to consult with the various regulatory bodies to comply with their specific regulations.

Real life example concerning track safety

Sir Jackie Stewart's crash at Spa-Francorchamps on 12 June 1966

- During the 1966 Belgian Grand Prix, Sir Jackie ran off the track while driving at 165 mph in heavy rain crashing into a telephone pole and a shed before coming to rest in a farmer's outbuilding. His steering column pinned his leg, while ruptured fuel tanks emptied their contents into the cockpit. There were no track crews to extricate him, nor were proper tools available. There were no doctors or medical facilities at the track, and Sir Jackie was put in the bed of a pick-up truck, remaining there

until an ambulance finally arrived. He was first taken to the track's First Aid centre, where he waited on a stretcher, which was placed on a floor strewn with cigarette ends and other rubbish. Finally, another ambulance crew picked him up, but the ambulance driver got lost driving to a hospital in Liege. Ultimately, a private jet flew Sir Jackie back to the UK for treatment.

- Sir Jackie has become an outspoken advocate for motor racing safety. Commenting on his crash at Spa, he said: *"I realised that if this was the best we had there was something sadly wrong: things wrong with the race track, the cars, the medical side, the fire-fighting, and the emergency crews. There were also grass banks that were launch pads, things you went straight into, trees that were unprotected and so on. Young people today just wouldn't understand it. It was ridiculous. ... We were racing at circuits where there were no crash barriers in front of the pits, and fuel was lying about in churns in the pit lane. A car could easily crash into the pits at any time. It was ridiculous."*
- After his accident, he campaigned for improved emergency services and better safety barriers around race tracks. He pressed track owners to modernise their track, including organising driver boycotts of races at Spa-Francorchamps and the Nurburgring, until barriers, run-off areas, fire crews and medical facilities were improved. Safety improvements have been pursued through the Grand Prix Drivers' Association (GDPA).

Lessons?

- Motor racing has clearly moved on a long way since the accidents and deaths which were all too common in the sport in the 1960s. High levels of safety are now the top priority for circuit owners.

Specific areas of potential liabilities that circuit owners might face

There are many detailed statutory and regulatory requirements of English law. These include, but are not limited to: the Road Traffic Acts, Health and Safety Regulations, and limitations on contractual provisions (e.g. Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulations 1999). This paper will not discuss these in detail. Instead, this paper will consider the broader issues surrounding motor sport liabilities, some of which are common to many sports. These issues will be illustrated with examples from English law of tort, which concerns non-contractual obligations that one party (in this case, circuit owners) owe to another party (in this case, users of the track).

By way of background, a brief outline of the English law of negligence may be helpful. There are four main elements which need to be established to found a claim in negligence:

- that a duty of care exists and is owed to the claimant;
- that that duty has been breached;
- that the breach caused loss to the claimant; and
- that the claimant suffered foreseeable damage which is not too remote.

There are several defences which a party that is accused of negligence may raise, for example:

- wrongdoing by the claimant (*ex turpi causa non oritur actio*, 'from a dishonorable cause an action does not arise');
- contributory negligence;
- consent (*volenti non fit injuria* 'no injury is done to a person who consents'); and
- exclusion of liability.

Examples from English case law

1. Circuit owners owe a duty of care to racing drivers.

The duty of care is a legal obligation imposed on the circuit owner requiring that they adhere to a standard of reasonable care while performing any acts that could foreseeably harm others. A duty of care can either be imposed by the general law or by statute. In English law, the Occupiers' Liability Act 1957 concerns the duty of care that those who occupy property owe to people who visit or trespass. It deals with liability that may arise from accidents caused by the defective or dangerous condition of the premises. The case below illustrates the concept of 'duty of care'.

Wattleworth v Goodwood Road Racing Company Ltd and others [2004] EWHC 140 (QB)

Facts

- The claimant (C) was the wife of a driver killed whilst driving his motor car on a race track owned and operated by the first defendant. The second defendant was the UK's Motor Sports Association (MSA) who had licensed the track and been consulted by the circuit owner on the safety aspects of the circuit. The third defendant was the FIA, who had also inspected the circuit.
- The incident occurred during a track day. The driver had hired the track for a charitable track day event.
- The driver had lost control whilst driving and veered into a bank, which was intended as a guard rail, at the side of the track. The MSA and the FIA had examined the bank in the course of their inspections of the track.
- C claimed damages from the defendants.

Result

- The court ruled that the death of the driver was not caused by a breach of duty of care by any of the defendants.
- Goodwood owed a duty of care to users of the track, including the deceased, under the 1957 Act. However, it had taken a reasonable amount of care in all the circumstances of

the case to see that the deceased would have been reasonably safe, so there had not been a breach of that duty.

- The MSA but not the FIA owed a duty of care in tort to track users. The court found that there was no breach of MSA's duty.

Lessons?

- The following extracts from the judgment provides some advice to circuit owners: "Goodwood regarded all aspects of safety at the circuit as paramount...Goodwood devoted much time and attention to safety issues and set up an appropriate committee, including very experienced persons... to consider all aspects of safety and to ensure that all recommendations were implemented...Goodwood...knew that it was not itself expert in such safety matters. Accordingly it consulted and reasonably and foreseeably relied on the MSA (through Mr Symes) and to some extent the FIA also (through Mr Peart), those bodies both being the acknowledged experts in this field. Mr Symes attended the circuit on a number of occasions. Mr Peart also attended on occasion. Their inspections were thorough. Their subsequent reports and recommendations were also thorough. Certainly Goodwood itself had no reason to think otherwise or to think that what was being recommended was anything other than appropriate – and these were, in the eyes of Goodwood, the acknowledged safety experts." (para. 97).
- ...Mr Symes, knew precisely what the uses of the circuit at Goodwood were and what they were intended to be (including, among other things, driving of cars by amateur or inexperienced drivers being trained by instructors; testing; track days and corporate days; sprints, and so on; as well as national and international racing events)...It never occurred to them, nor were they told by the MSA or the FIA, that different precautions with regard to circuit or barriers might be needed for (say) track days, as opposed to (say) an international event such as the Revival Meeting. Besides, the practical reality is that in races such as those there may be many cars on the track at any one time and many will be straining for the very maximum

speed. As Mr Houghton put it, he took it that the safety precautions for the Revival Meeting were the "highest common denominator": and therefore were appropriate for all car racing and driving uses undertaken or allowed by Goodwood at the circuit. Lord March gave evidence to similar effect. As Mr Carter put it, if the circuit was safe for racing then provided it was not altered it was safe for other four wheeled activities, provided also drivers did not go out of the norm. (para. 100)

- "In my judgment therefore, Goodwood did discharge the common duty of care owed by it to Mr Wattleworth. It did so by properly instructing the MSA, the acknowledged experts in this field, and liaising closely with the MSA and FIA; it followed the detailed recommendations of the MSA and the FIA to the letter; and it had no reason to think that the barriers recommended as appropriate in 1998 by the MSA for the purposes of the licences were anything other than appropriate for the other motor racing and driving activities at the circuit, and every reason to think that they were" (para.106).
- On the facts of this case, the evidence showed that the crash barriers were safe for all driving purposes that the track was used for. Track owners need to be aware of what the highest levels of safety are and so how they can discharge the duty of care that they owe to users of their track, be they members of the public, or professional racing drivers.

2. Participants in a sport owe a duty of care to each other

The facts in the following case arose in the context of a football match, but the principles are applicable to motor sport.

Condon v Basi [1985] 2 All ER 453

Facts

- During the course of a football match, the claimant (C) suffered a broken leg as a result of a late and dangerous tackle by the defendant (D). D was sent off. C sued D for negligence.

Result

- There was a duty of care between those taking part in competitive sport which was objective according to all the circumstances. If a player breached the standard of care to be reasonably expected of those taking part in the game, he would be liable to anyone injured as a result.

Lessons?

- In a motor sport incident, it may be worth considering the level of duty of care that drivers owe each other and whether they have breached the reasonable standard to be expected of them.
- Although it can be said that participants in a sport consent to the normal rules of the game, they do not consent to negligence above and beyond these. Therefore, the defence of 'consent' (*'volenti'*) cannot apply.
- Although fellow drivers owe duties to each other, it will often be the track owner who is the first recipient of any claim for negligence, since the track owner is likely to have deeper pockets.

3. Drivers owe a duty of care to spectators

These facts arose in the context of horse racing (for similar legal points in the context of motor-cycle racing, see *Wilks v Cheltenham Homeguard Motor Cycle & Light Car Club* [1971] 2 All ER 369).

Wooldridge v Sumner [1962] 2 All ER 978

Facts

- The claimant (C) was a photographer who was injured at a horse show by the owner of the horse (D1) and the horse-rider (D2). D2 was a rider of great skill and experience, who was riding a heavy hunter of the highest quality at a horse show and was exercising every endeavour to win the event. He galloped the horse round a corner of the competition arena.
- A film cameraman, who was unfamiliar with, and inexperienced in regard to, horses was standing about twenty-five yards from the corner by one of the benches, although he had been told by the steward of the course

to go outside the competition area while the horses were galloping. The horse went into and behind the line of the tubs. When he saw the horse approaching him, he stepped back or fell into its course and was knocked down and injured.

Result

- A spectator attending a game or competition takes the risk of any damage caused to him by any act of a participant of adequate skill and competence done in the course of, and for the purposes of, the game or competition, notwithstanding that such act may involve an error of judgment or a lapse of skill, unless the participant's conduct is such as to evince a reckless disregard of the spectator's safety.
- If, in the course of a game or competition at a moment when he really has not time to think, a participant by mistake takes a wrong measure, he is not to be held guilty of any negligence, provided the mistake is not reckless or deliberate.
- Lord Diplock LJ said, at page 989:
- "A reasonable spectator attending voluntarily to witness any game or competition knows, and presumably desires, that a reasonable participant will concentrate his attention on winning, and if the game or competition is a fast-moving one will have to exercise his judgment and attempt to exert his skill in what, in the analogous context of contributory negligence, is sometimes called "the agony of the moment". If the participant does so concentrate his attention and consequently does exercise his judgment and attempt to exert his skill in circumstances of this kind which are inherent in the game or competition in which he is taking part, the question whether any mistake he makes amounts to a breach of duty to take reasonable care must take account of those circumstances."

Lessons?

- Drivers will not be liable for injuries to spectators as long as they drive in a manner as expected of them according to the standard of the competition.
- Claimants may then look to claim from circuit owners as their negligence in ensuring that appropriate safety precautions are present may be easier to demonstrate to a court.

4. Circuit owners must not breach their duty of care to racing drivers or spectators

There are multifarious ways in which circuit owners could breach the duty of care that is expected of them. The key is to identify as many risk possibilities and to manage these as effectively as possible. Examples of risks to consider include:

- track conditions, crash barriers, fencing, obstacles, medical personnel, fire marshals, safe working conditions for staff, emergency action plans in place and tested, procedures for handling fuel, procedures for moving race-cars when they are not under their own power, etc.

In the following case, the breach of duty occurred in respect of providing adequate medical treatment to a boxer.

Watson v British Boxing Board of Control Ltd [2001] QB 1134

Facts

- The claimant, Michael Watson, was a professional boxer who sustained head injuries during a fight with Chris Eubank for the World Boxing Organisation Super-Middleweight title at Tottenham Hotspur Football Club in London. The fight was regulated by the defendant, who was the sole body controlling professional boxing in the United Kingdom.
- He received medical attention from doctors present at the fight as required by the board and was then taken to hospital where, some half an hour after the end of the fight, he was given resuscitation treatment and suffered permanent brain damage.
- He brought an action in negligence against the board claiming damages for his injuries on the basis that the board had been under a duty to see that all reasonable steps were taken to ensure that he received immediate and effective medical treatment should he sustain injury in the fight, and that the board was in breach of that duty by failing to require immediate resuscitation at the ringside which would have prevented him from sustaining permanent brain damage.

Result

- The board owed a duty of care to the claimant of which it was in breach and awarded damages.
- Since the board set out by its rules, directions and guidance to make comprehensive provision for the services to be provided to safeguard the health of professional boxers taking part in a sport, the object of which was to inflict physical injury, a duty of care was owed by the board to the claimant.
- The claimant relied on the board to exercise skill and care in ensuring his safety during a fight.
- The board was under a duty to be prospective in its thinking and to seek competent advice as to how a recognised danger could best be combated.
- Serious brain damage such as that suffered by the claimant represented the most serious risk posed by the sport and one that required to be addressed by the board.
- There should be a resuscitation facility at the ringside. In failing to require the provision of such a facility, the board was in breach of its duty of care to the claimant.
- If ringside resuscitation had been available the outcome for the claimant would probably have been significantly better, which was sufficient to establish causation.

Lessons?

- It is vital to clearly establish which organisations are responsible for which areas of care, particularly as regards the health and safety of individuals. If circuit owners have such responsibilities, they must discharge them thoroughly and ensure that all necessary precautions are in place, other the potential liabilities they expose themselves to could be huge.
- The growing 'compensation culture' has transformed the attitude of potential claimants to circuit owners. The risk of claims being brought against circuit owners in respect of personal injury claims is greater than ever. Circuit owners must ensure that comprehensive, detailed procedures for safety are put in place, regularly updated and constantly adhered to.

5. Any negligence by circuit owners must be a cause of any accidents for liability to arise and damage suffered must be reasonably foreseeable

Green v Sunset & Vine and Others [2009] EWHC 1610 (QB)

Facts

- The claimant racing driver, C, was injured in a motor racing accident during the 2005 Revival Meeting at the Goodwood Circuit. He sued the race meeting organiser, the owners of the circuit, and the television production company that was filming the event for his injuries and also claimed for the damage to his car.
- C alleged that his car hit a kerb cam placed on the grass verge close to the edge of the track. This caused the car to spin out of control, colliding with a tyre barrier.
- C submitted that the defendants had been negligent in placing the camera at that corner or placing it there in an insecure manner.

Result

- The action failed because the judge held that the cause of the accident was the driver's own driving and not the placing of the kerb cam at the corner where the accident occurred. C had essentially lost control because he was driving too fast and on too tight a line around the corner. If contributory negligence had arisen, the judge would have assessed it at 80%.
- Therefore, to the extent that there was any negligence in placing the kerb cam, that negligence had no causal effect on the accident at all.
- It was not reasonably foreseeable that the contact between a one inch high camera with sloping sides designed to be run over could cause such a loss of control of the car.

Lessons?

- It was not reasonably foreseeable that the camera could have caused the accident in this case. However, the judge indicated that it would have been reasonably foreseeable that contact with the camera could render it airborne, and so become a "lethal missile".

- If the camera had hit other competitors and injured them or damaged their cars, then they could have sued and may have been successful in their claims.
- Circuits owners should take note and review their safety policy with regard to these cameras because if, in future, competitors are hit by such a camera which becomes airborne when someone runs over it, then courts are likely to take the view that the injury/damage is reasonably foreseeable and as such a claim for negligence may be successful.
- Be aware of what duties you are under and ensure appropriate procedures and checks are in place such that they are discharged to a reasonable standard. If there are applicable codes or regulations these must also be considered, for example, the International Sporting Code, the FIA Safety Barriers Standard, or the RAC Motor Sports Association's Track Safety Criteria.

Other legal areas to be aware of

Exclusion of liability

Circuit owners should try to exclude liability for loss and injury to as many persons as they are able to. This can be done with those that the circuit has a contractual relationship with by a clause in the contract, and with those who the circuit does not have a contractual relationship with by prominent signs or notices. However, these exclusions are not always legally effective. Under English law, the Unfair Contract Terms Act 1977 provides that it is not possible to exclude liability for death or personal injury resulting from negligence. Any other losses can only be excluded as far as the exclusion is 'reasonable'. With regard to members of the public, the Unfair Terms in Consumer Contracts Regulations 1999 provide that certain 'unfair' terms in contracts with consumers may be void, such as excluding all liability for death or personal injury. Legal advice should be sought as to what exclusions of liability are possible in any particular jurisdiction.

Road Traffic Acts

In English law, the Road Traffic legislation requires event permits and licenses, otherwise circuit owners may be liable for criminal prosecution. Appropriate safety standards need to be demonstrated to comply and obtain permits. These standards must be maintained

and audited to recognised standards for the police or other enforcement authorities. The police have the right to confiscate and crush vehicles used in contravention of the Road Traffic legislation. Circuit owners may even be personally charged with manslaughter in the event of a fatal incident. Advice should be sought as to compliance and circuit owners should consult with the various regulatory bodies as to the best means to ensure compliance with safety standards.

Conclusions

- Safety: meet regulatory and safety standards.
- Be aware of potential liabilities. Reduce them and spread the risk.
- Regulate by contract? Exclusions and limitations of liability where possible.
- Insurance: understand your potential liabilities in order to ensure adequate cover.
- Obtain local legal advice to ensure you meet liabilities specific to the jurisdiction you are in.

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For further information on our Motorsport practice, or to discuss any of the issues covered in this paper, please contact **Jonathan Lux** (jonathan.lux@incelaw.com) or **David Richards** (david.richards@incelaw.com).

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