

II EXPEDITIONS: THE LEGAL FRAMEWORK

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This chapter covers expeditions organised and undertaken by private individuals over the age of 18 with or without the support of third party sponsors. Its purpose is to give a brief outline of the legal framework within which such expeditions operate, and to highlight areas where expedition members should be on guard and, if appropriate, take professional advice.

It does not cover expeditions organised by schools (see Chapter 12), or those organised or funded by other institutions such as universities or commercial organisations; nor, save tangentially, does it deal with different types of insurance (see Chapter 13).

It is offered as a general guide to the legal aspects of organising an expedition; it is not intended to be comprehensive, and it is no substitute for independent legal advice.

STATUS OF EXPEDITIONS

An expedition is not recognised as such by the English legal system. It has no independent legal status; it is simply a collection of individuals who each have the same rights and obligations as any other individual.

You should bear in mind the following:

- an expedition cannot enter into a binding contract in its own name: contracts should be in the name of one, some or all of the members (see paragraph on contracts below);
- the sharing of consequential liability and/or losses is likely to be, and indeed should be, a matter for discussion between the expedition members;
- an expedition cannot sue or be sued in its own name;
- an expedition cannot own property;
- there are no rules governing the relationship between expedition members, unless of course they are agreed between all of them (preferably in writing and signed by each member).

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These difficulties can be resolved by forming a company. This will take time and cost money and thus is more likely to suit major or long-term undertakings. The requirement to comply with the Companies Act Regulations (e.g. the filing of annual returns and accounts) is a nuisance but manageable. You will probably require a solicitor's advice, and there will be formation fees and associated expenses.

Expeditions are not charitable as such; the scope of charitable status is currently under review, and it may be worth seeking the advice of a solicitor specialising in charitable status as to whether a particular expedition would qualify.

CONTRACTS

Assuming that the expedition is not incorporated, all contracts with third parties such as insurers, photographers, shipping companies and sponsors should be in the name of one or more members of the expedition. Contractual obligations can be created verbally or in writing, and those who enter into them are obliged to comply with those obligations, and are personally exposed to a claim for damages in the event of a breach.

If the membership of the expedition and its purpose are sufficiently well defined, the member who signs an agreement may have an implied right to be indemnified by the other members. But it would be safer to ask all the members of the expedition to sign such an indemnity at the outset.

If significant sums of money are likely to change hands in the course of the expedition it would be foolish not to have such an agreement in place. The agreement can conveniently include other areas of potential dispute such as ownership of property, including photographs, and publishing deals (see below). It would be sensible in these circumstances to invite an independent solicitor to prepare a draft and advise on what it means.

FUNDRAISING

If sponsors provide financial support they will want something back – usually publicity. They, or you, may retain a public relations agent. Licensing the use of photographic images will be an issue, as will the ultimate ownership of equipment, if any, supplied by the sponsors. You should read any agreements covering these issues extremely carefully. If you have any doubt as to the appropriateness of their terms, or as to their meaning, you should take professional advice.

MAINTAINING RECORDS

For the avoidance of argument before, during or after the expedition the following suggestions may be helpful:

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- If expedition members delegate tasks to a small group – in effect, a committee – the committee should keep notes of meetings and circulate them to members.
- If the expedition opens a bank account a limit should be placed on the amount that can be withdrawn from it under one signature.
- The task of maintaining records of contributions or donations and expenditure should be delegated to a member.
- Watch out for the taxman. It is conceivable that he will decide to treat donations (in cash or in kind) from sponsors as income in the hands of the recipient, and to tax you accordingly. If significant sums of money are involved you may have to register for VAT.
- The maintenance of accurate records could get you out of trouble. Keep them for at least seven years.

LIABILITY FOR NEGLIGENCE

Accidents are an occupational hazard for expeditions. For some expeditions the taking of risk is an explicit objective, and for others it is an implicit by-product. This approach sits uneasily in a society in which the attribution of blame for accidents is (increasingly) embedded in our culture and legal system. What follows is arguably the most important section in this chapter; the suggestions outlined below are designed to reduce the risk of an accident taking place, and, if it does, to reduce the risk of being blamed for it in a law-suit.

The law, in short, is that members of the expedition owe a duty of care to each other and to all those with whom they come into contact during the expedition. The standard of care is a matter of judgement, but ultimately a person will be considered negligent if they are held by a court of law (who will call relevant expert evidence) to be in breach of the duty of care, and a person has suffered injury or loss as a (reasonably) direct consequence of the breach.

Having regard to the following may give you some protection:

- A leader should be appointed and his/her role and responsibilities defined.
- The qualifications of those with expertise in specific fields, and their role and responsibilities on the expedition, should be accurately described in expedition literature/letters/emails etc.
- The extent to which those responsibilities can be delegated, and to whom, should be agreed.
- The relevant expert should complete a written risk assessment along the lines referred to in Chapter 10.
- The completion of such a risk assessment is no excuse for not continuing to review risks as the expedition unfolds.

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- Do not overstate (directly or by inference) the level of expertise of any member of the expedition.
- If persons joining the expedition rely on the specialised knowledge or expertise of members held out as experts, make certain that they have a clear understanding of the scope of the knowledge and expertise relied on.
- Each member of the expedition should confirm in writing that he or she subscribes to the expedition objectives, understands the risks inherent in the nature of the undertaking and agrees to actively participate in steps taken to reduce or control the risk.

It is important that each member of the expedition takes out a policy of insurance to cover the risk that he or she will be found negligent. The fact that the person who is injured is insured for personal injury makes no difference: an insurer who has paid compensation to an injured party is entitled to stand in the shoes of its insured and pursue a claim against the person responsible.

DEFAMATION

The publication, whether written or spoken, of words which damage the reputation of a third party or a member of the expedition will expose the writer or speaker to a claim for damages. This has been known to happen on expeditions. You can insure against the risk of doing so, but it is cheaper to say nothing. Bear in mind that while truth is a good defence against defamation, you may have difficulty proving it in court.

COPYRIGHT

Ownership of copyright in photographs or written material is a topic of considerable importance to expeditions intending to derive income or sponsorship out of articles and photographs. The law in this area is not free of difficulty, but in broad terms the position is as follows:

- Copyright in the written word belongs to the person who wrote the words.
- Copyright in a photograph or video-film belongs to the “person who created it”. In practice this will probably be the person who took it.
- An assignment of copyright must be in writing.
- Permission for other expedition members to use photographs does not have to be in writing, but it will avoid arguments later if it is.
- If the photographer wants a credit, he should inform other members in writing.

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If it is intended to sell reproduction rights in photographs, film or written material to magazines, newspapers, book publishers or TV production companies, care should be taken over what reproduction rights you are granting them so that the income from subsequent publication or syndication is protected.

All expedition members should be asked to consent in writing to the publication of any material in which they appear or are capable of being identified.

Potential arguments will be avoided if these points are agreed in advance. An exchange of letters will suffice for smaller groups, and for larger expeditions a more formal agreement would be appropriate.

APPLICABLE LAW

As a general rule a contract is interpreted in accordance with “proper law” – i.e. that law with which the agreement and the parties have the most connection. However, you should check the jurisdiction clause, if any, in any contracts which you enter into. Ideally the agreement will state that the contract will be interpreted in accordance with the law of England and subject to the jurisdiction of the English courts. If it invokes another legal system you may not be able to do much about it, but at least you will know in advance.