

TORT AGREEMENT AND GOOD SAMARITAN LAW

The Tort Agreement that is part of the Volunteer Agreement does not cover us if we act beyond the description of volunteer activities. These activities do not include providing emergency medical treatment or becoming involved in a dispute between two or more visitors even if such dispute becomes violent.

It is more likely that a volunteer will come across a medical emergency such as an apparent cardiac event. If the volunteer performs CPR such action is beyond the scope of the activities and the Tort Agreement is voided. If some unanticipated result occurs as a result of over enthusiastic CPR, such as broken ribs, or lung puncture the Good Samaritan Law protection might not be available if the victim (who is now a Plaintiff) claims Gross Negligence. Despite the language of that law the definition of Gross Negligence frequently is a question for a jury to decide. Win or lose, the volunteer will have to hire a lawyer at his personal expense.

A discussion of negligence follows for your edification:

A principle of tort law that provides that a person who sees another individual in imminent and serious danger or peril cannot be charged with [negligence](#) if that first person attempts to aid or rescue the injured party, provided the attempt is not made recklessly.

The Good Samaritan doctrine is used by rescuers to avoid civil liability for injuries arising from their negligence. Its purpose is to encourage emergency assistance by removing the threat of [liability](#) for damage done by the assistance. However, the assistance must be reasonable; a rescuer cannot benefit from the Good Samaritan doctrine if the assistance is reckless or grossly negligent.

Three key elements support a successful invocation of the Good Samaritan doctrine: (1) the care rendered was performed as the result of the emergency, (2) the initial emergency or injury was not caused by the person invoking the defense, and (3) the emergency care was not given in a grossly negligent or reckless manner.

Assume that a person has slipped on ice and broken a vertebra. The victim is unconscious, the accident has occurred in a desolate area, and the weather is dangerously cold. A passerby finds the injured person and moves the person to warmth and safety, but in the process aggravates the spinal injury. In a civil suit by the victim seeking damages for the additional injury, the passerby may successfully defeat the claims under the Good Samaritan doctrine.

The Good Samaritan doctrine is also used as a defense by persons who act to prevent or contain property damage. Assume that a passerby notices a fire has started just outside a cabin in the wilderness. If the passerby breaks into the cabin to look for a fire extinguisher, the passerby will not be liable for damage resulting from the forced entry. However, if the passerby runs down the cabin with a bulldozer to extinguish the fire, this will probably be considered grossly negligent or reckless, and the Good Samaritan doctrine will not provide protection from a civil suit for damages to the cabin.

The line separating negligence from [gross negligence](#) or [recklessness](#) is often thin. *Hardingham v. United Counseling Service of Bennington County*, 672 A. 2d 480 (Vt. 1995), illustrates the negligent acts that the Good Samaritan doctrine protects. In this case, the plaintiff, David Hardingham, sued United Counseling Service (UCS) when he became blind after drinking windshield wiper fluid. Hardingham, a

recovering alcoholic, was employed by UCS as an emergency services counselor. When Hardingham began drinking again, employees of UCS went to his apartment and discovered him in an inebriated condition. During their visit, they saw Hardingham drink windshield wiper fluid. They called the police, who took Hardingham to a hospital. At the hospital, none of the UCS workers informed medical authorities that Hardingham had drunk the dangerous fluid. Doctors did not learn until the next day that Hardingham had overdosed on methanol, a component of windshield wiper fluid, and Hardingham eventually lost his sight.

Hardingham never got a chance to present his case to a jury. The Chittenden Superior Court granted [summary judgment](#) to UCS, holding that there was insufficient evidence to support an allegation of gross negligence by the organization. The Supreme Court of Vermont affirmed this decision. According to the court, the actions of the defendants "probably saved plaintiff's life." Although the defendants may have been negligent in failing to disclose that Hardingham had swallowed enough methanol to threaten his life, "no reasonable person could conclude that defendants showed indifference to plaintiff or failed to exercise even a slight degree of care."

Justice John Dooley dissented, arguing that the case presented a [question of fact](#) for a jury to decide. The defendants "failed to tell the emergency room physician the most significant fact that wasn't obvious from plaintiff's condition — that plaintiff had consumed windshield wiper fluid." Dooley lamented that "the greatest difficulty plaintiff faces in this case is to persuade us to accept that 'good samaritans' should ever be liable."

Section 324 of the Second Restatement of Torts describes the Good Samaritan doctrine in an inverse fashion. According to section 324, a person is subject to liability for physical harm resulting from the failure to exercise reasonable care if the failure increases the risk of harm, if the rescuer has a duty to render care, or if others are relying on the rescuer.

Many states are content to follow the Good Samaritan doctrine through their [common law](#) or through similar previous cases. Some states have general statutes mandating the doctrine. Utah, for example, has a Good Samaritan act, which provides in part that

[a] person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. (Utah Code Ann. § 78-11-22).

Some states have enacted statutes that protect specific emergency care or assistance. Indiana, for example, protects the emergency care of veterinarians (Ind. Code § 15-5-1.1-31). Alabama provides [immunity](#) to those who assist or advise in the mitigation of the effects of the discharge of hazardous materials (Ala. Code § 6-5-332.1). Some states also provide protection to those participating in the cleanup of oil spills. In 1990, Congress passed the Oil Pollution Act (Pub. L. No. 101-380, 33 U.S.C.A. §§ 2701-2761 [1994]), which gave immunity from liability to persons who participate in oil cleanup efforts. Like any Good Samaritan law, the statute does not protect a person who is grossly negligent or reckless.