

CHAPTER

9

NEGLIGENCE IN THE TOURISM AND HOSPITALITY INDUSTRY

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9.1 INTRODUCTION

The tourism and hospitality industry is inherently service-orientated, prioritising guest satisfaction and safety. However, the dynamic nature of this sector presents numerous challenges, particularly concerning legal liability arising from negligence. Negligence, in legal terms, refers to the failure to exercise the standard of care that a reasonably prudent person would in similar circumstances, leading to harm or injury to others. In the context of tourism and hospitality, this encompasses a range of scenarios, from inadequate maintenance of facilities to insufficient safety measures during activities.

A pertinent example illustrating the severe consequences of negligence in this industry is the 2019 Whakaari/White Island volcanic eruption in New Zealand. The island's owners were convicted of failing to protect visitors, as they did not adequately assess and mitigate the known risks associated with the active volcano, resulting in 22 fatalities. This case underscores the critical importance of comprehensive risk management and adherence to safety protocols in order to prevent such tragedies.

In Malaysia, the legal landscape governing negligence in the tourism and hospitality industry is shaped by common law principles and statutory regulations. Establishments owe a duty of care to their guests, requiring them to maintain safe premises and operations. Failure to uphold this duty can lead to legal repercussions, including liability for damages arising from injuries or losses suffered by guests. For instance, if a hotel neglects to repair a known hazard, such as a broken staircase, and a guest is injured as a result, the hotel can therefore be held liable for negligence.

Effective risk management is essential to mitigate potential liabilities. This involves identifying possible hazards, implementing preventive measures, and ensuring compliance with relevant laws and regulations. Regular staff training, routine safety audits, and clear communication of safety policies to guests are integral components of a robust risk management strategy. By proactively addressing these aspects, businesses can not only safeguard their patrons but also protect themselves from legal and financial consequences associated with negligence claims.

This chapter discusses the negligence in the tourism and hospitality industry by focusing on the elements of negligence, food and security health violations, transportation and tour operator liability, and lastly security and guest safety. In conclusion, negligence in the tourism and hospitality industry carries significant legal liabilities and underscores the necessity for diligent risk management practices. By prioritising safety and adhering to legal obligations, establishments can foster a secure environment for guests and minimise the risk of adverse legal outcomes.

9.2 NEGLIGENCE IN THE TOURISM INDUSTRY

Negligence is a legal concept that refers to the failure to exercise reasonable care, resulting in harm or damage to another party. In legal terms, negligence occurs when an individual or entity breaches a duty of care, leading to foreseeable harm to another person. The key elements of negligence include duty of care, breach of duty, causation, and

damages. These principles are widely applied in tort law, and businesses operating within the tourism and hospitality industry are expected to uphold them (Lee & Detta, 2021).

In the tourism and hospitality industry, negligence refers to the failure of businesses such as hotels, restaurants, airlines, and tour operators to provide a safe environment for their guests and employees. This industry is highly customer-centric, meaning that ensuring safety and well-being is paramount. A negligent act in this sector can occur due to poor maintenance of premises, lack of proper safety measures, inadequate staff training, or failure to comply with industry regulations. For instance, if a hotel fails to repair a broken handrail in a stairwell and a guest falls, suffering injuries, the hotel could be held liable for negligence. Similarly, if a tour operator does not properly maintain vehicles used for excursions and a mechanical failure results in an accident, the company may face legal action for failing to ensure passenger safety.

An example from Malaysia is the 2016 tour bus accident in Johor, where multiple passengers lost their lives due to a mechanical failure in the vehicle. Investigations revealed that the operator had neglected regular vehicle maintenance, making them legally responsible for the accident (Star Online, 2016). Another example is food poisoning cases in Malaysian hotels and restaurants due to improper food handling, which violates the Food Act 1983. When customers suffer from foodborne illnesses due to negligence, businesses face lawsuits and potential shutdowns by health authorities (Ministry of Health Malaysia [MOH], n.d.).

Negligence in the tourism and hospitality industry does not only result in legal consequences but also damages a company's reputation, leading to loss of customer trust and financial setbacks. Therefore, businesses must implement proper risk management strategies, train employees, and comply with legal safety regulations to prevent negligence claims.