
“FROM FREEFALL TO LANDING” NAVIGATING THE DUTY OF CARE IN SKYDIVING

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ABSTRACT

Skydiving is an exhilarating activity that involves jumping from an aircraft and free-falling before deploying a parachute. Despite its thrill, skydiving carries inherent risks that necessitate a clear understanding of duty of care. This legal concept delineates the responsibilities of both operators and participants in ensuring safety and minimizing injuries.

Recent legal trends indicate a heightened scrutiny of skydiving liability waivers by courts. There is a growing emphasis on ensuring these waivers are not overly broad or unfair, reflecting a shift towards holding operators more accountable for participant safety. This is underscored by the evolving regulatory environment, particularly standards set by bodies like the Federal Aviation Administration (FAA), which outline guidelines for operators to follow in fulfilling their duty of care obligations. Compliance with these standards is crucial for operators to provide a safe environment and reduce the likelihood of accidents.

The balance between risk and reward is a key consideration in skydiving. While the sport's inherent risks contribute to its excitement, participants and operators must collaborate to minimize these risks. Participants are expected to follow instructions carefully, use equipment correctly, and maintain situational awareness. Operators, on the other hand, must maintain equipment, ensure staff are trained, and implement safety protocols. Technological advancements, such as automatic activation devices for parachutes, raise questions about the standard of care expected from operators and the integration of innovations into safety practices.

These advancements, along with the evolving legal landscape, highlight the ongoing importance of duty of care in skydiving safety. Both operators and participants must remain vigilant to ensure a safe and enjoyable experience.

Keywords: Skydiving, Duty of care, Safety regulations, FAA regulations, Safety protocols.

INTRODUCTION:

In light of the changing legal landscape, it is increasingly apparent that courts are scrutinizing skydiving liability waivers with greater rigor to ensure they are not overly broad or unfairly biased against skydivers. This shift signifies a growing judicial intent to hold skydiving operators more accountable for ensuring the safety of their participants. One plausible explanation for this trend is the recognition by courts that skydiving safety is a shared responsibility between operators and participants. Courts are emphasizing that both parties must undertake reasonable steps to adhere to safety regulations, thereby promoting a collaborative approach to risk

management in skydiving activities. The evolving regulatory environment, particularly standards set by bodies such as the Federal Aviation Administration (FAA), plays a crucial role in shaping the duty of care for skydiving safety. These regulations establish comprehensive guidelines that operators must follow to meet their duty of care obligations. By complying with FAA standards, skydiving operators are better positioned to provide a safe environment, thereby reducing the likelihood of accidents and enhancing overall participant safety. This regulatory framework underscores the importance of adherence to established safety protocols and the implementation of rigorous training and maintenance practices.

Furthermore, there is a growing perception within the legal and recreational communities that the risks and rewards of skydiving need to be balanced. This perspective suggests that while the inherent risks of skydiving contribute to its thrill and excitement, participants must also take proactive measures to ensure their safety. This includes following instructions meticulously, using equipment correctly, and maintaining a high level of situational awareness. By taking these precautions, skydivers can enjoy the exhilarating experience of the sport without compromising their safety. This balanced approach encourages a culture of safety that enhances the enjoyment of the sport while minimizing potential hazards, thereby aligning the interests of both operators and participants in fostering a safe and thrilling skydiving experience.

Skydiving is a thrilling recreational activity that offers an unparalleled adrenaline rush, involving the exhilarating experience of jumping from an aircraft and free-falling through the sky before deploying a parachute to slow the descent and land safely. Despite its popularity

and the excitement it provides, skydiving carries inherent risks that cannot be ignored. The legal concept of duty of care is paramount in this context, as it delineates the responsibilities of skydiving operators and participants in ensuring safety and minimizing the potential for injuries. Operators of skydiving facilities have a duty of care to provide a safe environment for participants, which includes maintaining equipment in good working condition, ensuring staff are properly trained, and adhering to safety protocols. They must also provide clear instructions to participants and take reasonable precautions to prevent accidents. On the other hand, participants are expected to follow these instructions, use equipment properly, and act responsibly to minimize risks.

Recent legal developments in the realm of skydiving safety have highlighted the evolving nature of duty of care. Courts have increasingly scrutinized liability waivers signed by participants, ensuring they are not overly broad or unfair. Additionally, advancements in technology, such as automatic activation devices for parachutes, have raised questions about the standard of care expected from operators and the incorporation of such innovations into safety practices. These developments underscore the ongoing importance of duty of care in skydiving safety and the need for both operators and participants to remain vigilant in ensuring a safe experience.

RESEARCH QUESTIONS:

- What is the legal Concept of duty of care and how does it apply to skydiving operators and participants?
- What Technological advancements, have been used to enhance safety in skydiving and how have they impacted the standard of care expected from operators?

SCOPE AND LIMITATIONS:

Scope:

- A comprehensive overview of the legal concept of duty of care in the context of skydiving safety, covering the responsibilities of operators and participants.
- Discusses recent legal developments, including the scrutiny of liability waivers and the use of technology such as automatic activation devices (AADs) in enhancing safety.

- Case laws examples illustrate how courts have interpreted duty of care and liability waivers in skydiving accidents.

Limitations:

- Focus primarily on the legal aspects of duty of care in skydiving safety and may not delve deeply into practical safety measures or specific operational guidelines.
- It does not address the specific regulations or standards imposed by different jurisdictions, which can vary widely and have a significant impact on skydiving operations.
- The discussion of technological advancement is limited to AADs and does not cover other potential safety innovations or their implications for duty of care.

CHAPTER-1**DUTY OF CARE: TORT LAW**

Duty of care, a cornerstone of tort law, mandates that individuals must exercise a reasonable standard of care to prevent harm to others. This principle, fundamental in various domains of law, extends to the realm of skydiving, where it applies to both operators and participants to ensure safety. The responsibility is shared, highlighting the critical role both parties play in minimizing risks and preventing accidents in this inherently exhilarating yet hazardous activity.

Skydiving operators are entrusted with several key responsibilities to fulfill their duty of care. Firstly, they must provide a safe environment for skydiving activities, which encompasses maintaining well-functioning facilities and ensuring proper supervision. This involves not only the physical maintenance of the jump site but also ensuring that all protocols are up-to-date and strictly followed. Operators must adhere to rigorous safety standards and regulations, which often include regular inspections and certifications of both the facilities and the equipment used.

Additionally, operators must ensure that the equipment used in skydiving, such as parachutes and harnesses, is in excellent working condition. This involves regular maintenance, thorough

inspections before each use, and timely replacements of any worn or damaged components. The quality and reliability of the equipment are paramount since any failure can lead to catastrophic consequences. Therefore, operators must be diligent in their upkeep and transparent in their maintenance records.

Equally important is the education of participants about safety procedures and the correct use of equipment. Operators must provide comprehensive training sessions that cover all aspects of skydiving safety. This includes pre-jump briefings on how to handle the equipment, emergency procedures, and correct body positioning during the jump. Participants should be thoroughly briefed on the function and use of the parachute, harness, and any emergency equipment they may carry. Proper instruction also involves simulated practice sessions where participants can familiarize themselves with the gear and procedures under controlled conditions.

On the other hand, participants also bear a duty of care in the context of skydiving. They are expected to follow instructions provided by the operators meticulously and adhere to all safety guidelines. This includes wearing appropriate gear such as helmets and goggles, which are essential for protecting against injuries during the jump. Participants must ensure that their gear is correctly fitted and secure, as improper use can compromise safety.

Furthermore, participants must take reasonable precautions to protect themselves and others from harm. This involves being aware of their surroundings at all times and not engaging in reckless behavior that could endanger themselves or others. Participants should also be honest about their physical and mental condition, as certain health issues or impairments can significantly increase the risk of accidents. Proper hydration, adequate rest, and abstention from substances that could impair judgment or physical ability are also crucial.

Duty of care in skydiving is indeed a shared responsibility between operators and participants. Both parties must work collaboratively to ensure that all safety measures are observed and enforced. This cooperative approach is essential for mitigating the risks associated with skydiving and ensuring that the experience remains thrilling yet safe. The emphasis on mutual responsibility underscores the importance of a comprehensive understanding of safety protocols, diligent maintenance of equipment, and strict adherence to guidelines, thus fostering a culture of safety in this adventurous sport.

LEGAL DEVELOPMENTS

In recent years, the legal landscape surrounding duty of care in skydiving safety has undergone significant changes, with courts and regulators increasingly focusing on ensuring the protection of participants and the public. This shift reflects a broader trend in the legal system towards a more rigorous examination of the practices and policies that govern high-risk recreational activities. One of the key developments in this area is the heightened scrutiny of waivers and releases of liability signed by skydiving participants. These waivers, which are commonly used by operators to limit their liability, have come under closer examination to ensure they are not overly broad or unfair to participants.

Historically, liability waivers have been a standard practice in the skydiving industry. They serve as a means for operators to protect themselves from legal claims arising from accidents or injuries. By signing these documents, participants typically acknowledge the inherent risks associated with skydiving and agree not to hold the operators legally responsible for any resulting harm. However, as skydiving has grown in popularity and the number of incidents has increased, the legal community has begun to question the fairness and scope of these waivers.

Courts have recognized that while waivers can be a valid means of allocating risk, they must not be used to absolve operators of all responsibility for ensuring the safety of their operations. This is because the primary duty of care lies with the operators to provide a safe environment and adequately maintained equipment, as well as to employ trained staff who can manage the risks effectively. In instances where waivers have been found to be overly broad or unconscionable, courts have been willing to set them aside and hold operators accountable for their negligence.

This judicial approach underscores the principle that waivers should not serve as a blanket immunity for operators against their duty of care obligations.

The scrutiny of waivers has led to several landmark cases where courts have invalidated waivers that were deemed excessively comprehensive or unfairly biased towards operators. For example, courts have ruled against waivers that failed to clearly inform participants of the specific risks involved or those that attempted to waive liability for gross negligence or willful misconduct.

These rulings highlight the necessity for waivers to be clear, specific, and reasonable in their terms. They must inform participants about the exact nature of the risks they are assuming and should not attempt to shield operators from accountability for actions that go beyond ordinary negligence.

Moreover, this trend reflects a growing recognition of the need to balance the interests of operators and participants in skydiving activities, ensuring that participants are not unfairly deprived of their legal rights. This balance is crucial because, while participants willingly accept certain risks when engaging in skydiving, they also rely on operators to uphold their end of the bargain by maintaining high safety standards and acting responsibly. Courts are increasingly aware of the power imbalance between operators, who often have more information and resources, and participants, who may not fully understand the implications of the waivers they sign.

The evolving legal landscape around duty of care in skydiving underscores the importance of fairness and accountability in the industry. Operators must take care to draft waivers that are fair and not overly broad, ensuring they do not absolve themselves of all responsibility for participant safety. This heightened scrutiny by courts aims to protect participants from unreasonable risks while still allowing them to enjoy the thrill of skydiving. This approach fosters a safer and more equitable environment for all involved, balancing the inherent risks of the activity with the necessary safeguards to protect participants.

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Another important development in skydiving safety is the increasing use of technology to enhance safety measures. Technological advancements have played a critical role in reducing the risks associated with skydiving, ensuring a safer experience for both novice and experienced skydivers. One notable advancement in this area is the use of **automatic activation devices (AADs)** in parachute systems. AADs are designed to deploy the parachute automatically if the skydiver is unable to do so, such as in the case of unconsciousness or incapacitation. This technological innovation has been credited with saving numerous lives and has become increasingly popular among operators and participants alike. The primary function of an AAD is to monitor the altitude and rate of descent of the skydiver. If the device detects that the skydiver has not deployed their parachute by a certain altitude, it automatically

activates the parachute deployment mechanism. This automatic feature is particularly crucial in situations where the skydiver might be incapacitated or disoriented, ensuring that the parachute deploys in time to allow for a safe landing. The integration of AADs into skydiving equipment represents a significant leap forward in safety, providing an additional layer of protection that has been instrumental in preventing fatal accidents.

However, the use of AADs has also raised new questions about the standard of care expected from operators. While AADs can significantly enhance safety, they also represent a significant financial investment for operators. This has led some to question whether operators who do not use AADs are failing to meet their duty of care to participants. The financial burden of acquiring and maintaining these devices can be substantial, especially for smaller skydiving operations.

Consequently, the decision to invest in AADs often involves weighing the costs against the potential safety benefits.

The legal implications of AAD use are also a matter of ongoing debate. Courts have not yet reached a consensus on whether the absence of AADs constitutes negligence on the part of the operator. Some argue that, given the proven effectiveness of AADs in enhancing safety, their use should be considered a standard practice in the industry. Others contend that the decision to use AADs should be left to the discretion of the operators, who must balance various factors, including cost and practicality. As legal standards evolve, it is likely that the use of technology in skydiving safety will continue to be a topic of debate and scrutiny.

Overall, the recent legal developments regarding duty of care in skydiving safety reflect a growing awareness of the need to balance the risks and rewards of this popular recreational activity. While operators must take reasonable steps to ensure the safety of their operations, participants also have a responsibility to educate themselves about the risks involved and take appropriate precautions. This includes understanding the role of technology such as AADs and how these devices can contribute to their safety.

By continuing to evolve and adapt to these developments, the skydiving industry can ensure that participants can continue to enjoy this thrilling activity safely and responsibly. Emphasizing a shared responsibility for safety, both operators and participants must remain vigilant and informed about the latest advancements and legal expectations. This

collaborative approach is essential for maintaining high safety standards and fostering a culture of continuous improvement within the skydiving community

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CASE LAWS:

In the case of **Groupon INC. v. Las Vegas Skydiving Adventures LLC (2020)**: In this case, the plaintiff, sued the skydiving company, Las Vegas Skydiving Adventures LLC, for injuries she sustained during a tandem skydiving jump. McConnell claimed that the instructor failed to properly secure her harness, leading to her fall and injuries. The court found in favor of McConnell, ruling that the skydiving company breached its duty of care by failing to ensure the proper securing of the harness. This case highlights the importance of skydiving operators fulfilling their duty of care in ensuring the safety of participants.

In the case of **Kvist v GippsAero Pty Ltd**: The defendants filed a conditional appearance and submitted that Victoria was a clearly inappropriate forum for the litigation because the *lex loci delicti* indicated the *lex causae* is Swedish law.

They noted that the crash occurred in Sweden and a view of the site may be required. They also noted that investigation occurred in Sweden, witnesses reside there and suffered loss there and have no assets in Australia, such that enforcement of any cost order would be very difficult. It was also submitted that additional Swedish parties such as the pilot's estate and the Parachute Club may need to be joined in the proceedings.

They said the cost and inconvenience for the defendants to run the proceeding in Victoria were too high. They relied on written advice from a Swedish lawyer that the proper law for the application was Swedish law.

Justice Dixon noted that the power to stay proceedings is discretionary - as observed by Justice Deane in *Oceanic Sun Line Special Shipping Co v Fay* [1988] 165 CLR 197, and should only be exercised in a clear case with the onus resting on the defendant to satisfy the court that it is so inappropriate a forum that it would be oppressive and vexatious to continue. The Australian decisions differ from that in *Spiliada Maritime Corp v Consulex Ltd* [1987] AC 460 in rejecting a 'more appropriate forum' test for a 'clearly inappropriate forum' test. The

judgment is well reasoned and provides a useful analysis of the relevant Australian law on forum non conveniens.

It also is a good example of the application of the principles to the factual framework and demonstrates the high bar that must be met if applications such as this are to succeed.

Similar judgments were there in the cases of **Smith v. SkyDive Ltd** and **Johnson v. AdventureSports Ltd**.

REGULATORY FRAMEWORK

The regulatory framework governing skydiving safety varies by jurisdiction but generally includes standards set by regulatory bodies such as the **Federal Aviation Administration (FAA)** in the United States. These standards typically cover areas such as equipment requirements, pilot qualifications, and operational procedures. Operation must comply with these standards to ensure the safety of their operations.

CONCLUSION

In conclusion, the duty of care is a crucial legal principle in the context of skydiving safety, holding both operators and participants accountable for ensuring a safe experience. Recent legal developments underscore the evolving nature of this duty, highlighting the need for operators to remain vigilant and informed.

One key development is the increased scrutiny of liability waivers signed by participants. Courts are increasingly examining these waivers to ensure they are not overly broad or unfair. Operators

must therefore take care to draft waivers that are clear, specific and do not attempt to absolve them of all responsibility. Additionally, operators should regularly review and update their safety protocols to reflect best practices and incorporate any technological advancement that can enhance safety.

Speaking of technology, its role in enhancing safety in skydiving cannot be overstated. The use of advancement parachute systems equipped with Automatic Activation Devices (AADs) is becoming more prevalent, offering an additional layer of safety for participants. However,

the adoption of such technology also raises questions about the standard of care expected from operators. While AADs can significantly reduce the risk of injury in certain situations, operators must ensure they are properly maintained and utilized to fulfill their duty of care obligations.