

Report on Possible Liability

This must not be regarded as advice, merely representing the author's own understanding as an Architect, and is based on 'Architects Engineers and the Law' by J.R.Cooke. Second Edition. 1997.

The Project

Organising receipt of *donations* to be forwarded to the Gush Etzion Foundation, Israel (Via Land of Promise Foundation, and arm of the JNF USA)

The Gush Etzion Foundation is an Israeli non-profit organisation established since 1993, and also a tax-exempt organization registered in the U.S.A.

Donations For the following:

A hostel including sleeping and ablutions facilities only for between 10 (and up to possibly 50 people)

No kitchen or dining area and no administrative areas will be included.

Up to 100m² in floor area, possibly with ancillary covered outdoor area.

To be located on a site in *Masu'ot Yitzhak* Gush Etzion (precise location on site as determined by future operators)

Design, Documentation (including any required engineering) to local laws and co-ordination by the Gush Etzion Development Company, Etzion Junction, Israel 90433 Tel: 972-52-888-3025, for the Gush Etzion Foundation.

Structure, installation and connection to services to be made by a local company procured by tender in a government regulated process.

Background on Legal Issues

As we are crossing from Australia to Israel the following considers both.

Australia has Britain's heritage of 'Common law' which based on previous cases "case law", with rules of equity. Much of British case law may be applicable in Australia, even dating back *centuries*. But the British House of Lords and the High Court may vary in decisions, in certain areas applicable to local conditions.

Israel was formed at the end of a considerable British colonial period, and as a result law overall has many features in common with Australia. Israel's legal system is based in part on English common law. In addition there is civil law (as in Europe) and Jewish law (relating to marriage & divorce issues). But overall it is based on the parties in the suit bringing their evidence before the court.

Overview of all possible Liability Areas (in Australia)

Liability is not vague, but is focused on a few specific areas where one might have liability. It is not enough someone is annoyed that a case is begun. Such action is 'thrown out', before it goes anywhere.

Contract: The first area is in Contract. Once a contract is formed, written and signed (or in force) the conditions are legally binding. One is liable to do what one agreed to.

Criminal negligence: This is only if gross carelessness is considered a *criminal* offence such as where ones direct actions or non-actions provably lead to manslaughter.

Equitable Estoppel Restitution: Has to do with unjust enrichment relating to where work is done without a contract, or an inequitable contract.

In Australia only: Breach of Trade Practices Acts: where due to misrepresentation acting as a company (or business) a loss is incurred, or harm results to a consumer.

Tort: Where lack of care by a person or company/Authority, when in a position of care, is allegedly responsible for death, or personal injury, damage to property or financial loss. It may be to a neighbour, and be public or private nuisance, but mostly is concerned with *Negligence* 'you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour'. It seems that proximity is important. Generally the one injured must be owed a duty of care, and there must have been a breach of the duty of care. Then they must prove damages, and a legal link between the alleged

breach and the alleged damages. The one suing must prove they did not themselves contribute to their own damages. In addition in many countries there is a limit to the time such an action may be begun. Duty of care requires only ordinary competence. Even errors of judgment may not make one liable, if someone of ordinary skill might have made the same error. Effort is made to avoid hindsight. There is great emphasis on 'accepted practice'. Duty of care must meet the tests of reasonableness, proximity and foreseeability. The only redress in British based law is payment of damages.

Failure to comply with legislation: Relates to the person, company or Authority who might be expected to comply with the legislation.

In Australia

- Contracts will require insurance for the building (in case of fire, or loss even due to burglary) at a rate commensurate with the increasing value of the works on site. This is mostly carried by the contractor (but paid for by the owner)
- In addition it is expected that the workers are insured against injury while working on the site.
- And in addition it is usual that public liability be carried in case a member of the public is injured.

In Israel

It is common practice to insure buildings in Israel. Insurance of the structure is not the market value but the cost to rebuild in case of damage. <http://www.insurance-in-israel.co.il/questions-home-insurance-israel.html#Q6>

There is evidence that the Israeli government, requires registration of Building Contractors and Engineers, and enforces their compliance with laws.

<http://147.237.72.113/Moch/English/Registrar+of+Contractors/>

In discussion with an engineer in Israel it was found that engineers might be limited in where they may work by knowing what was required by the laws varying from Local area to area.

There is evidence that Professionals in construction would carry Professional Indemnity Insurance

<http://www.madanes.com/en/content/general-insurance-business-and-industry>

Business and companies seem to have a structured environment.

<http://www.nbn.org.il/aliyahpedia/employment-a-entrepreneurs/business-and-entrepreneurship/422-legal-aspects-of-running-a-business-in-israel.html>

Work will not be done by unskilled migrants.

As of May 2005, construction workers are only employed in Israel through employment agencies (LMC's, "Licensed Manpower Companies"). The LMC is your employer in Israel, and it assigns you to work with various building contractors.

<http://www.gov.il/FirstGov/TopNavEng/EngSituations/ESMigrantWorkersGuide/ESMWGComing/>

Any migrant worker expected to be insured,

National Insurance (*Bituach Leumi*) fees are deducted from your salary and cover the following:

- *Work-related injuries*
- *Sick pay and maternity allowance*
- *Unpaid wages or severance pay in case your employer goes bankrupt (see below)*

<http://www.gov.il/FirstGov/TopNavEng/EngSituations/ESMigrantWorkersGuide/ESMWGRights/>

Israel maintains legislation in place to minimise work place and construction accidents. It has an Institute for Occupational Health and Hygiene. It is acknowledged that in the PA territories where Arabs run a site they sign the forms to say they have been given the safety equipment but then not be given it. (see http://www.wac-maan.org.il/en/article_216). Israel now since 2008 has regulation which is commensurate with Australia regarding working from heights.

How safe is Building in Israel?

To compare how safe it is to have a building built in Israel compared to work in Australia or areas we may be more familiar with

In regards to safe work practice on construction sites, the government regularly publishes statistics on injuries and deaths. In 2008 they reported 1.96 fatalities per 100,000 insured workers. They reported 23

deaths in construction in 2008. The thumb rule is about 1,000 injuries per death. (In Israel and areas subject to Israel's rule presumably not the PA). http://www.osh.org.il/site/english_main.html
 This is a useful comparison as the USA reports
 The rate of fatal work injury for U.S. workers in 2010 was 3.5 per 100,000 full-time equivalent (FTE) workers. <http://www.bls.gov/news.release/cfoi.t02.htm>

Europe wide reports 13 fatalities workers per 100,000 http://en.wikipedia.org/wiki/Construction_site_safety
 Also substantiated with 2005 figures with Italy and Spain 14 per 100,000. Australia at 5.9 per 1,000 and the USA at 11.1 per 100,000
http://www.cpwr.com/pdfs/CB%204th%20Edition/31_50%20Safety%20and%20Health.pdf
 Injury rate indicates in 2006 an injury rate of 22.9 per 1,000 workers. The USA reported 23.9 per 10,000 in 2005. http://www.cpwr.com/pdfs/CB%204th%20Edition/31_50%20Safety%20and%20Health.pdf
 In other words it seems comparable to work in Israel or in the USA. Though it might not be totally comparable Australia was reporting 86 per 1,000 of which half required more than 5 days off work. http://safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/220/WorkRelatedInjuries2005_2006_Construction_2009_PDF.pdf
 It might be that Australians report more injury due to easy access to workers compensation, or the works sites are less safe. Serious injuries (which might be more comparable) in 2005 were 29 per 1,000
 In summary, even given allowance for counting Israel is at least comparable to the USA and may even have a safer construction environment than Australia.

Liability in donation

The only liability that was found for donations was that due to personally donating food you have. http://www.thejewishchronicle.net/view/full_story/12477692/article-How-Israel-can-feed-more-people-without-spending-a-shekel-?instance=secondary_stories_left_column
 In parts of the USA this is covered by law, but it appears such a law has not been introduced in Israel. Food may of course easily perish, or go bad, and injure or kill people. If you were to provide money to someone who gave food, it proximity and duty of care would relate to the direct provider.

The Specifics

Due to the passive and distant role, unless there is a contract the areas that even remotely may be applicable are much more limited. They are limited by the issues of Reasonableness, Proximity, Foreseeability

It seems that Proximity and Foreseeability are related in our case, due to the distance. If we cannot see physically the site, or work, we cannot be liable. It is not reasonable we are liable for breaches of the local laws which we cannot know, let alone prevent. The Christadelphians are very distant, as the chain shows.

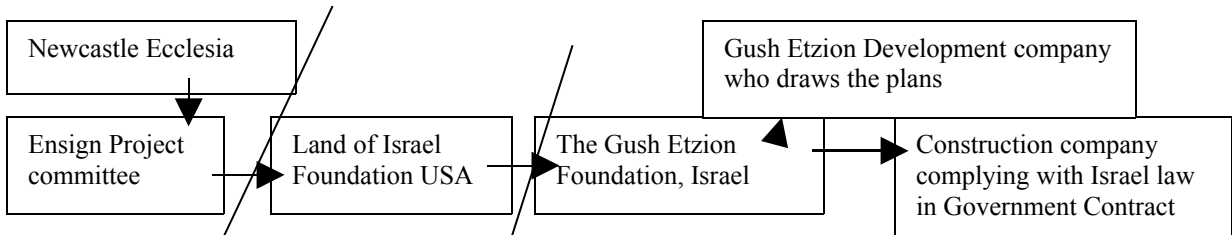


Diagram of proximity: The lines show distance, and country demarcation.

Proximity is often related to foreseeability. At this stage we may say due to data we have available that it may be somewhat safer for workers to build in Israel than in Australia. Also there has to be significant, or clearly identifiable, damages to be claimed for anyone to bother going to law.

Comment is welcome: please direct it to hej@ensignproject.com