

As a LAME you have legal obligations beyond complying with the Civil Aviation Regulations.

the

LAME

& the

LAW

of negligence



Graphic: P. Markmann

“ If a pilot approaches you at the workshop or by telephone in your capacity as a LAME, and asks for some quick off-the-cuff advice about a particular engineering concern, you could be held liable if you provide negligent advice that is incorrect and some loss is suffered as a result. ”

JOHN LANGMEAD

IF YOU ARE A PRACTISING LAME, THE law affects every aspect of your work. To simply classify a particular task performed by you as a LAME as either legal or illegal simply by reference to the CARs and CAOs is an unsafe oversimplification.

The law makes a significant distinction between criminal and civil liability.

Ways of incurring criminal liability are well known. At the bleak end of the spectrum, if you were sufficiently incompetent and reckless in performing engineering work on an aircraft, and as a result it crashed and killed some or all of the occupants, you could face manslaughter charges.

But in the more typical situation, you might find yourself facing the prospect of less serious criminal liability for a regulatory breach. For example, Parts IV, IVA and IVB of the CARs contain many regulations which if breached can attract criminal conviction and fines.

But even if you comply fully with the provisions of the CARs and related legislation, while you will avoid criminal liability, you may still find yourself liable to pay damages under the principles of civil law. That is, you might be sued for damages by someone who has suffered a loss as a result of your conduct. While such liability might attach to you under the law of contract, or perhaps under the *Trade Practices Act 1974*, or various State Acts, the law of negligence is frequently used as a basis for claiming damages.

Negligence: The law of negligence provides that you owe a duty of care to those who might reasonably be foreseen to be adversely

affected by your conduct.

The law does not precisely define the limits of this group, but it is certainly safe to say that, as a LAME, at the very least you owe a duty of care to the owner of the aircraft upon which you work, the pilot and passengers who will fly in it and the owners of freight which will be carried on it.

If you breach your duty of care, and someone suffers loss (physical injury or purely economic loss) as a result, you could be held by a court to be negligent and therefore liable to pay compensation. This is so whether you have charged for your services or not.

While the amount of such compensation will obviously increase with the size of aircraft, remember that a Cessna 172 in private operations may carry passengers who have dependents who might sue for millions of dollars. You are not immune from damages claims of significant size just because you work on small aircraft.

The law of negligence does not require that you achieve a standard of perfection or some impossible or impractical standard. For example, when you issue a maintenance release, you are not promising that the aircraft will perform satisfactorily for the next 100 hours. You are simply certifying that the aircraft is fit to fly until either the next defect which grounds it, or the completion of 100 flying hours or the expiration of 12 months.

You are not necessarily negligent if the aircraft suffers some major defect or failure which grounds it during its first 5 minutes of operation after the periodic inspection.

Reasonable conduct: If a court was required to determine whether you had been negligent as a LAME, it would take into account the opinion of another LAME as to what the required standard of the reasonable LAME was in the circumstances of the particular case, and whether you met or exceeded that standard, or fell short.

Accordingly, if you wish to assess whether particular conduct of yours as a LAME is negligent or not, a useful preliminary guide will be whether or not your LAME peers approve of the conduct as reasonable. If they unanimously endorse your conduct, it is probable that a court would agree that you were not negligent.

As a LAME you can be negligent in circumstances well beyond those occasions when you have a spanner in your hand. Negligent advice is a prime example.

Pre-purchase inspection of second hand aircraft: These inspections are frequently conducted by LAMEs without charge, often to keep an existing customer happy, or to attract a new customer. If a brief walk around the aircraft and an examination of the log books



THE DUTY OF CARE

"Whenever a person gives information or advice to another upon a serious matter in circumstances where the speaker realises, or ought to realise, that he is being trusted to give the best of his information or advice for action on the part of the other party and it is reasonable in the circumstances for the other party to act on that information or advice, the speaker comes under a duty to exercise reasonable care in the provision of the information or advice he chooses to give."

— *Mason, J. Shaddock v. Paramatta Council (1982).*

does not reveal a problem, you may be negligent if you advise that the aircraft is in excellent condition, even if that is your honestly held belief.

If the aircraft turns out after purchase to be less than excellent, you could be held liable for the difference between the purchase price and the actual value of the aircraft with its various defects and shortcomings, and possibly for other consequential losses.

But you will not be liable in this situation if you advise as to what you have inspected and what you have not inspected, and qualify your advice accordingly by stating in detail what you know and what you do not know. The degree of confidence with which you can advise as to condition and value is in direct proportion to the extent and thoroughness of the inspection you undertake.

It is better to provide your advice in writing to avoid later dispute about what was actually said. As purchasers clearly place reliance upon such advice, and in light of your expo-

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sure to liability for damages if your advice is negligent, pre-purchase advice should be treated with the same thoroughness as your other engineering tasks.

Casual advice: If a pilot approaches you at the workshop or by telephone in your capacity as a LAME, and asks for some quick, off-the-cuff advice about a particular engineering concern, you could be held liable if you provide negligent advice that is incorrect and some loss is suffered as a result. This is so whether or not you have inspected the actual aircraft, or chosen simply to rely on the pilot's description.

As you owe essentially the same duty of care

in giving casual, free advice as you owe to a paying customer who pays for that advice, you must discharge it with the same degree of care.

Certification of engines: If you certify an engine beyond manufacturer's TBO and that engine then suffers a failure due to wear or breakdown of a component which would have been checked or replaced at the manufacturer's recommended TBO, you will need to be able to justify your certification to avoid liability in negligence.

The fact that such certification was permitted by, for example, the mooted AD/ENG/4 amendment 7, will not necessarily prevent a court from holding you negligent. What you need to know to safely give such certification, and the extent of inspection required to achieve that level of knowledge, are questions only an engineer can answer. It may well be that you can only have the requisite level of information in an exceptional case.

The law of negligence indirectly enforces the maintenance of reasonable standards of work by LAMEs. The trained LAME is fully capable of discharging the duty of care owed to his or her customers and others. The law of negligence imposes liability not in relation to the risks necessarily and unavoidably inherent in aviation, but in relation to risks unreasonably and unnecessarily incurred.

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