

Dear William:

We had a situation at our church yesterday that we need advice on. We have a beautiful mango tree in the grass on the back of our lot. Right now, the mangoes are nice and big, but still green and hard. The tree is well away from the paved parking area, which has plenty of parking spaces for those who attend our services. Yesterday was hot and sunny, and one of our dear members decided to drive off the paved parking area, over the grass, and park in the shade of the mango tree. During the Divine Service, one of the mangoes dropped on the member's car and cracked their windshield. They have asked the church to pay for the damage and threatened to sue the church if we do not pay. How do we address this?

Blessings,

Elder Smith

Good afternoon, Elder Smith:

Your situation has some of the little twists and turns that would start to make an entertaining torts law school exam. Unfortunately, that means the answer is not at all cut and dry.

The first issue is the church's potential negligence. Did the church know, *or should it have known* that the tree presented a hazard? If so, did the church have a duty to warn and protect visitors? (Maybe yes, but more on that later!) If so, did the church fail to do what a reasonable church in a similar situation would or should do to warn and protect a visitor? If not, the church probably has limited or no liability. If we did fail in this regard, did the failure to warn and protect cause the damage? (Maybe to some extent, and again, more later.) If all of the above, then the church has some liability.

Is there a history of people parking under the tree? If so, the church might anticipate that this would continue, and have a policy requiring members to park in the parking area. If there is such a policy, and the members are aware but continue, maybe we need some signs posted saying no parking. Is the church aware of other instances of mangoes falling and doing damage to people or property? If so, then we would want to be aware of this possibility and try to prevent such damage. All of this might go to the church's duty to warn and whether we reasonably fulfilled our duty in that regard. If we failed in our duty, then the church might legally be found "negligent."

The next issue is the driver's own negligence. If the church was negligent, then our responsibility would be offset to the extent the driver might also have been negligent. Did the driver know they shouldn't park in the grass, under a mango tree? Did the driver ignore policies or warnings? Even if the church might not have had a policy or warned visitors, was the driver parking in an unreasonable manner where they shouldn't have? Maybe this is the first time the church is aware of anyone deciding to park on the grass under the tree? In other words, was the driver doing anything a reasonable driver in a similar situation shouldn't have, which contributed to the damage? If so, she would share liability "comparatively" under Florida law, and in a lawsuit we would have to try decide how much the parties' relative negligence contributed to the overall damage.

The liability here is for negligence, so if insurance were to apply, it would be our general liability policy, not property insurance, vehicle insurance, or premises medical. Given the amount of damage (\$2,000) I would suggest it is probably not something the church wants to submit to your insurance.

So the next question comes from the fact that the damaged party is not a casual visitor but a member. Since the church is an unincorporated association, the obligations of the church are really the obligations of the individual members. As a member, was the driver aware, *or should they have been aware* of the potential problem? And if so, did they personally do what a reasonable member would or should do to warn and protect others from the hazard? And then, assuming the driver maybe didn't know and actually wants to sue the church for damages, does the member really want to sue all their fellow members to try to recover?

But on the other hand, if the church shares some liability, do all the other members really want to make this member have to try to sue them to make it right?

As with so many legal questions (and law school exams!) the answer depends on the facts. Hopefully this helps your consideration of the circumstances. If you will share more details, I will be more than happy to help further.

With thanks for your ministry,

-William