

Business

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LEGAL CHECK ✓

LEGAL CASE
STUDY #2

Funeral Home Negligence

Scenario: Ibanez Family Funerals & Cremations has been a successful family-owned funeral home business in Texas for the past 17 years. Due to the continued rising cremation rates in his market, Richard Ibanez decided to build out and expand his prep room space along with having a cremation area and retort installed about three years ago. Along with being licensed funeral directors, Richard's two sons, Bill and Ricky, are also responsible for managing the prep room and the crematory, respectively. The Ibanez family has continued to serve their community extremely well with both their funeral and cremation service offerings.

Unfortunately, Ibanez Family Funerals & Cremations has been dealing with two very angry families who might threaten to bring lawsuits against them. Both families have the last name of Smith. Adam Smith was a 28-year-old male who died in the line of duty as he was active military. Adrienne Smith was a 17-year old female who died in a cell phone texting automotive collision. Both Adam and Adrienne were cremated by Ibanez, and both Smith families had full services for their loved

ones a day apart in Ibanez facilities – with services for Adam being on Thursday, while services for Adrienne were held on Friday.

The issue came to light when, after Adrienne's service, her mother commented to Richard Ibanez that her daughter's urn felt "heavier" than she had expected, given that Adrienne barely weighed 100 pounds. That same evening, when Bill Ibanez was hand-delivering the American flag in its new flag case that Adam's family had ordered to their home, Adam's

father had coincidentally shared with Bill that his son's urn felt unusually "light," given that Adam weighed over 220 pounds and was 6 feet, 3 inches tall. When Bill returned to the funeral home just as Adrienne's services had ended, he recounted his visit with Adam's family when delivering the flag, and this immediately caught Richard's attention. Richard told his older son that Adrienne's mother had commented that she felt her daughter's urn felt lighter than expected.

Richard and Bill went and pulled both files for Adam and Adrienne to inspect since Ricky had not been scheduled to work that Friday. They both then realized that in his management of the cremation process, Ricky had been using decedents' first name initials along with spelled out last names throughout the various identification and verification process – and that this likely was the issue that might have caused Ricky to erroneously place Adam's cremated remains in Adrienne's urn and vice versa. Since they both were "A. Smith," both were likely cremated closely in time from one another, and had services scheduled a day apart. Richard and Bill immediately called Ricky, but he could not specifically remember anything in particular or peculiar when he cremated both Adam and Adrienne in succession of one another.

Richard decided that they needed to inform the families that there very well could have been a mix-up and that Adam's family could very well have Adrienne's cremated remains in their son's urn and that Adrienne's family likely had Adam's cremated remains in their daughter's urn.

Ultimately, this caused much consternation and anger with both Smith families. And while Richard is still trying to work things through with both families to make things right, both Smith families have verbally threatened that they might still sue the funeral home.

So, What Is The Law on Negligence?

Since every state has slightly varying definitions of negligence and how the elements are litigated as a wrongful act, we will use the Common Law definition. *Negli-gence* is typically defined as *failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstance*. It often applies to actions but can also consist of omission or failure to act when there is some duty to act. There are four elements required to establish a case of negligence:

1. Whether there is a duty of care,
2. Whether there was a breach of that duty,
3. Whether there was causation (also known as proximate cause), and
4. Were there injuries or harm, i.e., damages?

Some more common instances of negligence in relation to funeral home operations include, but are not limited to:

mishandling of remains, embalming errors, burial errors, cremation errors, etc.

So, let us apply this to our scenario above. Did Ibanez have a duty of care to both Smith families? The answer is almost obviously yes. Taking someone's loved one into our care, as funeral professionals, is ingrained into our language, practice and beliefs when we serve families. Did Ibanez breach that duty of care? By giving Adrienne's cremated remains to Adam's family and vice versa, I would say that yes, Ibanez did breach their duty of care.

And while there does not appear to be commingling of cremated remains, it still appears that this falls under the cremation error category, common to funeral home negligence. Was there proximate cause of this breach to the families' harm or injury? The answer again is yes – but not for Ibanez's mistake, both Smith families would not be in their states of anguish and anger. Finally, were there damages? Ah, this is where this element is more difficult to prove in a court of law given the limited facts of the scenario that we currently know. Were the Smith families' emotionally hurt? Anguished? Angry? Yes, yes and yes. However, were there damages? The answer is maybe.

Damages are essentially court-ordered compensation for personal injury, property damage and associated expenses caused by the negligence. The idea is to attempt to make the injured party "whole" when a court awards damages to a plaintiff. Some of the possible damages, commonplace with funeral home negligence cases, include:

- **Nominal damages.** Awarded when a plaintiff was not injured but legally wronged. Rarely ever awarded because it is extremely difficult to quantify when there are no physical injuries, damaged property, or some other harm.

- **Actual or compensatory damages.** Awarded for actual injuries and designed to return the plaintiff to the same situation before the negligence occurred. This could include medical bills for injuries, loss wages, and monetary values for caskets, urns, etc. in cases where property was damaged.

- **Emotional distress.** Awarded if a funeral home's negligence caused additional undue stress leading to depression, anxiety, or PTSD. Must be well-documented by medical records and

expert opinions.

- **Punitive damages.** As the name suggests, these damages are designed to punish actions proven to be reckless, wanton, or purposeful in completely disregarding others or actions that any reasonable person would find egregious, abhorrent, or shocking in behavior.

In application to our case at-hand, we can eliminate nominal and punitive damages right away. Nominal damages are rarely awarded when there are no injuries-in-fact but that there may be a legal wrong. The facts illustrate that Ibanez did not act recklessly or egregiously for there to be punitive damages. Given this stage of what we know, there may be emotional distress that could manifest later in time, but we cannot be certain right now. And as it relates to actual or compensatory damages, there was no indication of property damage nor was anyone physically injured.

Mistakes Made by Funeral Home

The main mistake made by Ibanez Family Funerals & Cremations was not establishing sound and tight enough controls and procedures to keep this mistake from occurring in their cremation processes. Ricky utilizing the first initial and spelled out last name of decedents to be cremated was not enough to mitigate or prevent the mistakes that were made – regardless of how unlikely that two "A. Smiths" would both be in the same funeral home's care and were cremated with services roughly at the exact same time. Ibanez needs to implement a cremation process with more redundancies for review and verification as well as not abbreviating steps in the process of continued identification.

Keeping Away from Legal Entanglements

The Ibanezs did the right thing in disclosing their error and informing both Smith families. While mitigation of damages is a contract law concept, Richard is attempting to get out in front of this in order to make things right for both Smith families to possibly avoid litigation. Perhaps, Richard offering concessions such as not charging/fully refunding both families and offering additional customized cremation merchandise could go a long way in mending the relationships and keep this situation from becoming litigious. •