

protect bathers in case of accident, but are liable for ordinary negligence of the attendant in the performance of his duties. A life guard who goes to the rescue of a patron or guest owes the duty of exercising ordinary care; that is, such care as would be used by an ordinarily cautious life guard under like circumstances; and for a failure in this respect, with resulting injury, an action for damages will lie." And in Nolan v. Y.M.C.A. (1932) 123 Neb. 549, 243 N.W. 639, the court quotes the rules as to the duties of bathing resort keepers set out in Lyman v. Hall, supra. The case, however, was one in which the Y.M.C.A. gratuitously loaned the use of its swimming pool to Boy Scout troops.

In Swan v. Riverside Bathing Beach Co. (1931) 132 Kan. 294 P. 902, a suit for the wrongful death of a child patron of a swimming pool, it was held that no negligence was shown as against the proprietor of the pool, where life guards were on duty, and no indication that the child, whose body was later found in the pool was in danger, was brought to their attention or to that of numerous other patrons of the pool. A syllabus by the court reads as follows: "Where the parents of a nine-year-old girl sent her with friends to a modern swimming pool, providing her with the entrance fee and she had been there four times before and was a good swimmer and could go anywhere in the pool, it was not negligence to permit her to enter the pool without giving her the special attention of a guard."

In Quinn v. Smith Co. (1932) C.C.A. 5th 57 F. (2d) 784, the court said that the operator of a bathing pool was under a duty to exercise due care in policing and supervising the pool to protect patrons from the boisterous and injurious conduct of others; and that it might be liable to a patron who was thrown into the pool by those who were putting on a water carnival.

And in Hill v. Marrick (1934) 147 Or. 244, 31 P. (2d) 663, holding the proprietor of a swimming pool liable for injuries received by a patron when she was pushed by other children from a diving tower where she had gone to dive and fell on the cement edge of the pool, the court said: "For the defendant to fail to use reasonable care in furnishing a reasonably safe condition of the pool and high dive by permitting children to romp and play on the steps and platform of the high dive was negligence . . . It was the duty of defendant to use reasonable care in superintending the pool so as to furnish a reasonably safe condition. The plaintiff assumed the natural risk of diving from the high dive into the water, but did not assume negligence on the part of defendant in permitting children to jostle or push her off the high dive."

In Maehlman v. Reuben Realty Co. (1928) 32 Ohio App. 54, 166 N.E. 920, it was held error to direct a verdict in favor of persons maintaining a bathing beach, in a suit against them for injuries received by a patron when he stepped on a broken bottle under the shallow water along the beach. The court said that the defendants were under a duty to use ordinary care to make the beach safe for patrons, and that their failure to inspect the beach under the water and remove hidden and dangerous obstructions might be negligence, where, shortly before the accident, broken bottles had been found on the beach out of the water near the scene of the accident, and had been raked up, but no search had been made for broken bottles in the water.

And in Skelly v. Pleasure Beach Park Corp. (1932) 115 Conn. 92, 160 A. 309, the owner and operator of bathhouses and a bathing beach, who had fenced off a portion of the beach and required an admission charge, was held liable for injuries received by a patron from stepping into a submerged concrete block used as an anchor for a float. The court refused to accept the contention that, as the defendant's premises extended only to the low watermark, its duty to patrons was limited accordingly, and it was not liable for injury which occurred outside the low watermark, stating, "One who assumes to offer the use of public waters for bathing in connection with bathhouses and other appropriate appliances maintained by the owner of the shore owes the duty to exercise reasonable care to prevent injury to patrons who use the waters in the ordinary and usual way and consistent with the invitation extended."

In Kearns v. Steinkamp (1932) 184 Ark.1177, 45 S.W. (2d) 519, a suit for the wrongful death of a boy by diving into a raft provided by the owner of a swimming pool for the amusement, safety and convenience of patrons, the court held that the evidence was in conflict and that the question was properly submitted to the jury as to whether the owner permitted the raft to become water-soaked and thus submerged and not easily visible to swimmers.

But in Mikulski v. Morgan (1934) 268 Mich. 314, 256 N.W. 339, the proprietor of a bathing beach who furnished, for the amusement of bathers, an appliance consisting of a ladder fastened to a gasoline tank, was held not liable for injuries received by a bather from improper use of the appliance, where it was not defective in construction, or in disrepair and its nature was apparent to those using it. The gasoline tank was weighted down so that, when it floated on the surface of the water, the ladder would stand up perpendicularly from it and several bathers would hold to the rungs of the ladder, pulling it down parallel to the water, whereupon all but the top man would let go, throwing the ladder into the water on the opposite side. The plaintiff was one of the bathers holding onto the appliance and, when he let go, his thumb was torn off by being caught in the angle between the ladder and the brace supporting it. The court said that the defendant was under a duty to furnish a reasonably safe appliance, but that plaintiff's injury here was due to his own use of it in a way which he should have foreseen to be dangerous.

In Park Circuit & Realty Co. v. Ringo (1932) 242 Ky. 255, 46, S.W. (2d) 106, it was held improper to submit to the jury the question of the liability of the owner of a swimming pool to one injured while swimming therein, by another's falling on him from a water wheel of the type generally used in modern swimming pools, in the absence of evidence as to the cause of the other patron's fall. The evidence failed to establish the plaintiff's claim that the wheel had become covered with slime and water growth, and the court said that the mere fact that the top of the wheel was wet or damp from its use in the water did not render it dangerous.

And in Spitzkof v. Mitchell (1935) 114 N.J.L. 160, 176 A. 186, where a patron of a swimming pool was injured when she was struck by a person diving from a springboard in a diagonal and unusual direction a non-suit was held properly directed in an action against the proprietor of the pool for failure to furnish proper supervision of bathers, where it was not shown that it was customary for persons using the pool to dive in such a manner. However, in Esposito v. St. George Swimming Club (1932) 143 Misc. 15, 255 N.Y.S. 794, where one diving from a 10-foot springboard in a public indoor swimming pool was struck by another diver before he could emerge from the water, the proprietor of the pool was held to be under a duty to take some precautions to avoid such an occurrence. The doctrine of assumed risk was held inapplicable, since the obligation rested on the proprietor to take some measures to prevent a patron from diving until the previous diver had had time to emerge from beneath the water of the pool.

In Gerhardt v. Manhattan Beach Park (1932) 237 App.Div.832, 261 N.Y.S. 185, (affirmed in 1933) 262 N.Y. 698, 188 N.E. 126), a verdict was held warranted against the proprietor of a bathing beach in favor of a patron who was injured when struck by one of its beach umbrellas which was blown by the wind.

And in Foucht v. Parkview Amusement Co. (1933) ___ mo.App. ___, 60 S.W. (2d) 663, the negligence of the operator of a swimming pool in failing to furnish sufficient light was held a question for the jury, where a patron tripped over a timber across the doorway between the shower and locker rooms.

But in Sciarello v. Coast Holding Co. (1934) 242 App.Div.802, 274, N.W. S.776, the owner of a swimming pool was held not liable for injuries received by a patron who slipped and fell on the wet floor at the edge of the pool, the court saying: "The slippery condition of the platform surrounding the defendant's swimming pool was necessarily incidental to the use of the bath. There was no proof of the violation of any duty or obligation on the part of the defendant to provide a covering for the floor at the point where plaintiff fell."

In Waddel v. Brashear, 257 Ky. 390, 78 S.W. (2d) 31, a suit for the wrongful death of a patron at a bathing beach caused by diving from a swing into shallow water, the court said that it was the duty of the operator of a pool used to see that the water in it was sufficiently deep to make it reasonably safe for that purpose and, if it was not, to warn or caution patrons of that fact. It was held that the evidence of the operator's negligence was sufficient for the jury, where no signs were posted nor warnings given, and that the evidence did not show conclusively that the deceased had knowledge of the shallowness of the water so as to bar recovery.

So, in Gray v. Briggs (1932) 259 Mich. 440, 243 N.W. 254, the operator of a public bathing beach was held liable for injuries sustained by one diving from a springboard into too shallow water. The court said that it was not contributory negligence as a matter of law for the plaintiff to dive from a springboard, without knowing or making any effort to ascertain the depth of the water, and that, unless warned by signs or otherwise, the plaintiff had a right to assume that it was safe for him to use the diving board in the usual and customary manner.

And in Lake Brady Co. v. Krutel (1931) 123 Ohio St. 570, 176 N.E. 226, a finding of negligence on the part of the operator of a public bathing beach was held warranted, where it failed to post notices or to inform bathers that they could not safely dive from any side of a 10-foot platform except the side containing a springboard, because of the shallowness of the water, or otherwise to inform them of the depth of water, although the other three sides of the platform were surrounded by a hand-railing. Recovery was allowed for the death of a boy caused by diving from a side of the platform on which there was a hand rail, even tho he had been swimming at the beach before, where the evidence as to his knowledge of the depth of the water into which he dived was conflicting.

In Louisville Water Co. v. Bowers (1933) 251 Ky. 71, 64 S.W. (2d) 444, where a patron was injured by diving into shallow water while a swimming pool was being refilled and when it was only partly filled, the court said that it was the duty of the proprietor of a pool used for both swimming and diving "to use ordinary care to see that there was sufficient water in the pool to make it reasonably safe for diving purposes, or to warn patrons of the danger of diving while the pool was being filled." Since there was a conflict of testimony as to whether the plaintiff knew the depth of the water, by reason of the presence of other bathers and of markers on the sides of the pool, the question of assumed risk was held properly submitted to the jury and a verdict for the plaintiff warranted.

However, in Walloch v. Heiden (1930) 180 Ark. 844, 22 S.W. 2d) 1020, a suit for injuries sustained by one diving into a swimming pool, at a time when it was being refilled, and striking the bottom, a verdict in favor of the proprietor of the pool was held warranted, where the plaintiff was an expert swimmer and diver and was familiar with the pool. Instructions to the effect that it was the duty of the plaintiff to exercise ordinary care for his own safety when diving, but that it was not his duty to inspect the pool to determine its depth or the danger of diving and that he could only be charged with such knowledge in regard thereto as he actually possessed, unless the facts were so patent that an ordinarily prudent person could not have failed to observe them, were held proper.

And in Pinehurst Co. v. Phelps (1932) 163 Md. 68, 160 A. 736, the owner of a pleasure resort and bathing beach was held not liable for injuries received by a sixteen-year-old boy in diving from a pier into shallow water. The court said that the owner was not guilty of negligence in failing to post signs warning of the shallowness of the water, where there was no evidence that bathers were expected to use or did use the pier as a structure from which to dive. The boy, who had dived from the pier on a previous occasion and knew the circumstances, was held to have assumed the risk of the consequences of his act.

And in Sturgis v. Wavecrest Realty Co. (1933) 124 Neb. 769, 248 N.W. 78, the owner of a bathing resort was held not liable for injuries received by a bather in diving into shallow water from a water-wheel platform which was not designed for diving purposes. The plaintiff, a grown man, had previously dived from a diving tower, which was in a deeper part of the lake and farther from the shore, and had gone over the water-wheel several times before the accident.

It may be of interest to call your attention to a recent decision of the Supreme Court of Illinois in a case involving the operation of a swimming pool by a municipality. The opinion in this case (Gebhardt v. Village of LaGrange Park 354 Ill. 234) was written by Judge Stone and was rendered by the Supreme Court on October 21, 1933. The principal question discussed was whether the operation of a swimming pool is a governmental or a proprietary function. The court said that if it be a governmental function the doctrine of respondeat superior has no application, and that the village would not be liable for damages arising out of the negligence of its servants in that function, whereas, if the function be a proprietary one the village would be liable for damages resulting from the negligence of its servants in the operation of the pool. The court said that there is substantial contrariety of opinion in the courts of last resort in this country on this question; that Colorado, Missouri, New York, Pennsylvania and West Virginia held that the operation of a swimming pool by a municipality is not a governmental but a proprietary function and that the States of California, Kansas, Georgia, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, Rhode Island, Connecticut, Tennessee, Washington, Wisconsin and Iowa take the opposite view. The court concluded that the latter view was supported by the better reasoning and the weight of authority and reversed the judgment for the plaintiff who was injured while being conveyed, with a number of other children, from a swimming pool operated by the village, which also provided transportation to and from the pool, located about eight miles outside the village limits. The opinion of the court was not unanimous, however, as Justices Herrick and Farthing dissented, saying: "We do not think that this is a governmental function." My own view is that the better reasoning supports the latter view.

To summarize:

In the operation of a natatorium or swimming pool for profit, the operator is bound by the ordinary rules of negligence. It is his duty to be reasonably sure that he is not inviting patrons into danger and to exercise ordinary care for their safety. What constitutes the exercise of ordinary care varies with the situation and circumstances of each particular case. Regard must be had for the fair adaptability of the contrivances and facilities for their customary or reasonably anticipated use. This involves the duty of being diligent to see that the water in the pool is of sufficient depth to make it reasonably safe for the purpose, or if it be unsafe for that sport with the use of the facilities furnished, there arises the duty to warn or caution patrons by signs or otherwise of the hazards, particularly of any latent or hidden condition of danger, and injuries sustained in consequence of a failure to perform this duty are compensable. This grows out of the general rule of negligence that where a person provides accommodations of a public nature, he is required to use reasonable care and diligence in furnishing and maintaining such accommodations in a reasonably safe condition for the purpose for which they are apparently designed and to which they are adapted. If, for any reason, the accommodations are not reasonably safe and suitable for the purposes for which they are ordinarily used in a customary way, then the public should be excluded entirely, or appropriate notice of the unsafe and unsuitable condition should be given and persons warned of the dangers in using them.

"THE PROMOTION OF A YEAR ROUND SWIMMING PROGRAM"

By

A. B. Murphy, Assistant Director
of First Aid and Water Safety, Midwest Division American
Red Cross

The roll that the nations number one recreation plays in a communities health and social recreational activities is a subject which can be properly emphasized only by a person who has had the opportunity to study such problems on a broad scope. Through his activities with the American Red Cross, Mr. Murphy has had such an opportunity and has been in a position to bring out the real importance that swimming plays in our everyday life.

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The American Red Cross has been making Water Safety its business since 1914, when it started the pioneer national movement in this field. Since the beginning of this educational activity drownings in the United States have been reduced about 46% although the increase in the swimming public has been better than 400% along with a population increase of 12% the past ten years. However, the one dark spot in this otherwise hopeful picture is the number of people who annually lose their lives by drowning (some 7,000) and the thousands who manage to survive a terrifying experience of a near-water tragedy.

Within the past few years and with amazing rapidity, well regulated facilities have brought swimming into its own as America's number one recreation. Swimming is no longer that adventuresome pastime of small boys in the old swimming hole as nearly every community now has well equipped pools and beaches. The reason for this popular growth in healthful exercise is more and more Mother, Father, Sister, Brother and even Grandma have been learning to enjoy aquatic activity safely. In viewing these facts it is not surprising that the annual toll in water tragedies and the experiences of near-drownings have had no effect in putting a damper on the enthusiasm of literally millions of persons who take to the water annually.

The Red Cross Water Safety Service has grown from a membership of one in 1914 to about a million life savers now holding certificates. In addition, there are the countless thousands of beginners who have learned to swim through regular programs conducted by local Red Cross Chapters. Other great national organizations, such as the Scouts and the Y's closely cooperate with the Red Cross in promoting Aquatic Safety Education.

Let us consider briefly the manner of operation of Red Cross Water Safety Programs. The National Headquarters are in Washington, D.C. From there the 48 states are divided into three areas for the 3,700 chapters. The Eastern Area, with 24 states, operates from Washington. The Midwestern Area, with 17 states, has headquarters at St. Louis, Missouri, and the Pacific Area, with 7 states, operates from San Francisco. Within the Midwestern Area, of which Illinois is a part, there are 1,560 Red Cross Chapters and of that number about 565 have reported activity in promoting Water Safety Programs. The State of Illinois has 126 chapters of which 59 have reported as carrying Red Cross aquatic activity.

Under the Life Saving Program some 81,000 people have been trained in Illinois the past six years. A break-down of this number show 10,288 with Senior Life Saving Certificates. 12,165 Juniors, 35,255 Beginners, 20,252 Swimmers and 2,029 Examiners. However, under the broadened program of Life Saving and Water Life Saving and Water Safety Certificates since last September there are over 300, 200 Senior and 180 Junior Certificate holders in Illinois.

In order to keep abreast of the trends in increased facilities and to keep pace with the enormous increase in interest in swimming, the Red Cross last year released a 262 page textook on Life Saving and Water Safety. This year a 266 page textbook on Swimming and Diving has been introduced and received public acclaim. Naturally this new material has brought about the broadening of Red Cross aquatic activity to include definite teaching material for swimming courses and Life Saving and Water Safety Programs.

To further cut the drowning rate and to improve swimming standards, the Red Cross stresses skillful and intelligent participation in aquatics to escape the misery and sorrow that often characterizes ill-considered and unskilled performance. Water Safety education is that phase of education which has as its objective the prevention of accidents. In accomplishing this objective carefully

selected community leadership is trained through regular Water Safety Instructor Courses conducted by special Red Cross representatives for the chapter or through attendance at one of the National Aquatic Schools. Men and women at least 18 years of age in sound health and physical condition may qualify as instructors to relay knowledge and skills learned to thousands of people. The objectives thus accomplished in communities with this type of trained leadership are:

1. Teaching non-swimmers how to swim.
2. Teaching swimming beyond the beginner level.
3. Teaching common safety factors in small craft handling.
4. Teaching life saving in all its forms.
5. Teaching water safety in all its phases.
6. The promotion of water safety.

In promoting your swimming program let us consider you have your trained and qualified leadership. Beyond that, however, we know there are some natural teachers who make a success of their work because of certain personal characteristics joined with a keen interest and some initiative to adjust their teaching to the individual. Teaching of swimming is made easier, of course, when the staff is properly organized, sufficient equipment available, and the pool or beach so arranged as to facilitate teaching. Your leadership needs to maintain an atmosphere of cheerfulness, to develop infinite patience and to be encouraging at all times. Once the pupil understands that you understand his point of view and are sympathetic you gain his confidence. Be careful never to frighten a beginner. Swimming affords exceptional opportunity to inculcate the ideals of courage, self-confidence, leadership, good sportsmanship and self-sacrifice. The highest ideals of physical education should always be maintained through your swimming methods whatever they are. Think of your teaching in the light of teaching citizenship. In maintaining these ideals swimming affords an excellent opportunity to teach proper health habits.

The learning phases of functional skills in progressive order for the Red Cross Beginner Swimming Courses are:

1. Careful adjustment to water.
2. Breath holding.
3. Rhythmic breathing.
4. Seeing under water.
5. Elementary use of buoyancy.
6. Prone floating.
7. Jellyfish float.
8. Getting off and on your feet.
9. Propulsive movement.
10. Changing position.
11. Coordinated stroking.
12. Methods of entering the water.
13. Safety skills for,
 - a. Release of cramp
 - b. Assisting a non-swimmer to his feet
 - c. Reaching assistance.

The intermediate swimming course develops individual swimming and diving skills. Emphasis is placed largely on mastering three types of leg and arm stroking movements. Successful completion of the Beginner and the Intermediate Swimming Courses qualified one for the regular certificate.

In the swimmer swimming course the pupil is to master a series of swimming styles. The emphasis is placed on coordination of parts into whole strokes for the purpose of developing increased ease, balance, endurance and versatility in the water. In this course the practice sessions begins to change. Mass drill is still given in propulsive movements, plain diving and so forth, but the major part of the class period is divided between individual instruction and individual practice until the pupil establishes the proper relationship of arm strokes, leg strokes and breathing. The successful completion of the course also qualifies the pupil for the Red Cross Swimmer Certificate.

To complete the Advanced Swimmer course one has merely to develop out of the three basic styles, six others that are but variations, and add to them some miscellaneous water skills which will make of him an all-around swimmer. No pupil may qualify for an Advanced Swimmer Certificate unless he has taken and passed either the Junior or Senior Life Saving and Water Safety Course. It is our belief that this course will be of material assistance to high schools and colleges in conducting a full term or semester assistance to high schools and colleges in conducting a full term or semester swimming program. Successful completion of the course also entitles the pupil to the Advanced Swimmer Certificate.

The general content of Junior and Senior Life Saving and Water Safety shows that the original concept of Life Saving has changed materially. Water Safety is primarily based upon knowledge not to be acquired haphazardly and to be taught as a part of Life Saving. Personal safety and self-rescue skills have a new importance. An instructor who has conscientiously followed the outline is privileged to qualify a pupil as a Junior or Senior who should be quite capable of taking care of himself and have the ability to aid or rescue anyone in danger of drowning by the best and safest method applying to the situation.

In the courses of swimming, Life Saving and Water Safety only qualified and authorized Red Cross Water Safety Instructors may conduct the courses for Red Cross certificates.

An individual who fails to surround himself with the knowledge provided in a Water Safety Education Course but persists in a career of chance-taking in and about the water obviously is gambling with his life. An aquatic accident, logically, is not an accident when it is the manifestation of unnecessary chance, the result of which must surely lead to casualty. Thus the Red Cross dedicates itself anew in helping to make our communities safer and happier ones for the enjoyment of America's number 1 recreation, swimming. Lest we regret!