



Reasonable Care

Presented by

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When is it reasonable to

- Leave the keys in the car at the petrol pump?
- Leave windows open at home?
- Leave your bags in a hotel lobby?
- Leave your handbag on the front seat of the car?
- Leave your watch and wallet on the beach?





It always depends on the circumstances





A reasonable care clause

“...has to be construed in a way that is not repugnant to the commercial objectives of the policy which include protection of the insured ... against [his/her] own negligence ... ” Neazor J in *MMI Insurance (NZ) Limited v PD Davis Limited* (1998) 6 NZ BLC 102,605





Reasonable Care

**Test: What would a reasonable person do in the same circumstances as the insured?
(subjective/objective test)**





To be in breach of the duty, the insured must be grossly careless, grossly negligent or reckless; the insured must disregard a significant risk which would have been obvious to a reasonable person, who would not have taken the risk.





Mere inadvertence will not amount to gross carelessness, gross negligence or recklessness e.g.

- **You leave you keys in the car ignition and forget to lock it.**
- **You leave the windows in the house open and forget to shut them.**
- **You leave your bag in the taxi.**
- **You leave your wallet on a shop counter.**





Reasonable Care

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Facts - Case 1

- While in S E Asia, C took a tuk-tuk to the train station.
- On the train from Thailand to Laos, C realised his backpack, containing a laptop, PSP and cellphone, had been left on the tuk-tuk.
- C made a claim for the lost items.
- The claim was declined, because C *“Failed to act in a responsible manner and exercise all reasonable care for the safety, security and supervision of [his] property.”* The insurer also said the backpack was left *“unattended in a Public Place.”*





Facts - Case 2

- **C's cellphone was stolen from a restaurant where he was working.**
- **The cellphone was left on a table for a “*couple of minutes*”, 3-4 metres from where C was intending to mount a stepladder to fix an awning.**
- **The cellphone was left on the table, because C did not want it to accidentally fall out of his pocket from a height.**
- **It was essential to the running of his business.**
- **There were no patrons in the restaurant when the theft occurred.**
- **C made a claim which was declined, because the cellphone was “*left unattended in the open air or in any public place*” and C did not take “*all reasonable precautions to prevent loss, or damage*” to the cellphone.**





Facts- Case 3

- C was playing squash at his gym and left his cellphone in his bag outside the squash court.
- The cellphone was stolen from C's bag, which was not secured in any way.
- The game of squash took approximately 30 minutes.
- C made a claim which was declined on the basis that the cellphone was "*left unattended in the open air or in any public place*" and C did not take "*all reasonable precautions to prevent loss, or damage*" to the cellphone.





Facts - Case 4

- **C was travelling by taxi to Bangkok airport and he only had large denomination Baht notes to pay the taxi fare.**
- **The taxi driver indicated to C that he could not change such large denomination notes.**
- **C asked the driver to stop the taxi while he went to a shop to get change for the taxi fare. He left 2 large suitcases and other bags in the taxi.**
- **When C returned from the shop the taxi was gone.**
- **C made a claim which was declined on the basis that the policy did not provide cover for:**
“Property left unattended in a Public Place or in any unlocked and unattended building or vehicle.”
- **Under the policy C there was an obligation to *“Act responsibly and use reasonable care for the safety, supervision and security of Your property.”***





Facts - Case 5

- In October 1998, C's house was burgled. The house was on a back section and entry was made through a window which had been left slightly open.
- In February 2000, C's house was burgled again. The police concluded entry was gained through the same window as in the 1998 burglary. The window had been left on the safety catch and was easily dislodged by the offender/s.
- C admitted he usually left the window open to ventilate the house.
- C made a claim which was declined under the policy exclusion, which stated:
 - *“You must take reasonable care to protect your property and to prevent loss or damage.”*





Facts - Case 6

- C and her partner decided to swim in a local river.
- They parked in a public carpark and, because it was a hot day, C decided to leave the passenger front window about half-way open.
- C removed the jewellery she was wearing and placed it with her other jewellery in a suitcase in the boot of the vehicle.
- The vehicle's doors were locked and C and her partner went to the riverbank.
- The vehicle was unattended for about 2 hours.
- When they returned to the vehicle, it had been broken into and property, including all of C's jewellery, had been stolen
- C made a claim. The claim was declined, because C did not comply with her duty under the policy which stated:

“You must take reasonable care at all times to avoid any loss or liability covered by this policy.”





Facts - Case 7

- After visiting a café at a private Zoo, C left his camera at the café.
- C did not realise the camera had been left behind until the following morning. He immediately reported the matter to the Zoo management and the police. The camera was not recovered.
- The policy required that all losses in respect of luggage, personal effects and travel documents be reported within 24 hours of the loss.
- C made a claim for the camera.
- The claim was declined under the following provision in the policy:
 - ***“Safety of Your Belongings - You must take all reasonable precautions to safeguard your property. Leaving personal belongings unattended in public places encourages theft and as such is not a reasonable precaution.”***
- The policy exclusion for ***“Luggage, personal effects or travel documents left unattended in a public place”*** was also used to decline the claim.





Facts - Case 8

- C had gone to the bank to withdraw money from her aunt's account.
- C's aunt had suffered a stroke and had difficulty walking. Therefore, she remained in the vehicle.
- While the bank provided C with the money, it required her aunt's signature and, therefore, C's aunt had to go into the bank. She was assisted by C.
- Unfortunately, C left the keys in the vehicle's ignition and, while she was assisting her aunt, the vehicle was stolen.
- C's claim for the vehicle was declined under the following exclusion in the policy:

“Unattended Car

There is no cover for Loss which results from the theft or illegal conversion of the Car while it is left unattended unless it has been fully locked and the keys have been removed whenever the Car is in a public place.”

- At the time the policy was arranged, the above exclusion was not in place. There was simply a requirement that *“the insured shall take all reasonable steps to safeguard from loss ... any vehicle...”*. The new exclusion was never specifically notified to the insurer's customers.





Facts - Case 9

- C's golfing equipment, which was usually kept in his house was left in his garage until he had time to clean it.
- The garage was situated a few metres from the house and about 30 metres from the road. The front roller door on the garage was closed, but never locked unless the family was away from the house for an extended period.
- The golfing equipment was stolen from the garage while C and his family were in the house.
- C worked evening and night shifts and was usually at home during the day.
- C's claim for the stolen golfing equipment was declined on the basis of the following policy requirement:
*"You must take reasonable care at all times:
to make sure that all property covered by this insurance is kept safe and protected, and is kept locked and secure when unattended;"*

