

Peter: Okay. As I mentioned, we have Neville Friedman in the studio, from Friedman Lurie Singh & D'Angelo Hi Neville.

Neville F.: Hello Peter, how are you going?

Peter: Not too bad.

Neville F.: Hey, just think about that. If you turn you [inaudible 00:00:13] upside-down, and you put ... use it like a helicopter, you could fly around. Instead of being on the ground, you'll [crosstalk 00:00:25], I suppose.

Peter: Pretty powerful, aren't they? There's been quite a few sightings of these modified bikes out [00:00:30] there. What's been happening in your world, Neville? And if you'd like to ring in, if you've got a legal question, now is the time. It'll fill up very very quickly. You can ring in with any of your questions or queries, 922-11-882, and Neville Friedman will do his best to answer your questions. What's been happening in your world?

Neville F.: Peter, just an interesting thing I found occurred a couple of days ago. There was a decision in Jersey in the United States regarding texting. Now, we all know what happens, you see it every day when you sit at the traffic lights. [00:01:00] You can see the heads are down, and they're not looking at the steering wheel, you know what's going on, everybody's texting. It's obviously a criminal offense to do that.

Peter: Yes, it is. Oh yup, everyone understands and realizes why.

Neville F.: And fairly significant fines too. Never mind the fines, there are demerit points which also apply, which is not so great. What happened in America was that there was a couple who got injured in a motor vehicle accident. Each one lost a limb, a leg, in the accident, and they sued the driver of the car [00:01:30] who had been negligent and injured them, but they also sued his girlfriend who was texting him at the time that the accident occurred.

Peter: So let me get this right, the person in the car was sued but also the person who texted the person driving the car.

Neville F.: Correct.

Peter: Because that caused that person to look at the text and then have the accident, and [crosstalk 00:01:53] lost their limbs.

Neville F.: Interestingly, in that particular case, the court found that the girl [00:02:00] who was texting the guy wasn't liable for any damage to these guys, these occupants of the car. But they did say that if you text somebody and you know that they are likely to answer

it, and there is an accident, you can be held liable. It's caused a furor in America, but be warned for us here in Australia. About ten years ago when mobile phones started becoming popular, I had a [00:02:30] client who had a number of reps out on the road, and he called me and he said, "What is my obligation as an employer in relation to WorkSafe and mobile phones?" I did a little bit of research at the time, there's some High Court cases in England and some on WorkSafe.

This is going in fact in the same direction. Can you imagine, you have three or four staff members driving around, reps and the like, and you give them a ring because you've got a call, and they're on their way and they can go off and service a [00:03:00] client. And they answer that phone and an accident occurs. You can see that the employer would also potentially be liable. The interesting question there is, do employers now ... and I'd certainly recommend it ... have a look at their employment contracts and ensure that systems are set up that employees are not allowed to answer or use their mobile phones, specifically work mobile phones, whilst they're on work.

Peter: Yeah, you've got to provide ... they've got the hands-free systems and [00:03:30] the bluetooth systems, the legal ones there. Yeah.

Neville F.: I even have a question mark about that. We know that not paying attention to the road potentially exposes you to an accident, and so if at some stage somebody can persuade a judge ... it would be novel case law but it's coming ... and a judge will say one day, "You should have recognized the possibility that making a phone call to a person [00:04:00] whilst they're in the car distracts them, even if it's just to switch off the phone."

Peter: Yeah.

Neville F.: So really the answer is you should have your phone off while you're in the car.

Peter: Right.

Neville F.: And then it doesn't ring, and then when you get to your destination on the other end, you switch your phone on. That is in fact what my previous client required his staff to do. It was a protocol in the office. When they got into the car they had to switch the phone off, and they were only then allowed to switch it on again once they got to their destination. No interruptions during the trip.

Peter: It would make a big change to the way [00:04:30] that the sales people operate. I'm thinking of couriers, those sorts of people that-

Neville F.: Correct.

Peter: -they can't accept a phone call, because in that first example that came from the United States, you're talking about ... I was thinking ... in what circumstances are you going to

consider that it's likely that the person you're ringing or texting is going to look at the phone, and that is one circumstance, isn't it? With the boss-employee relationship.

Neville F.: Yup.

Peter: Because you just know, "Oh, it's the boss ringing, I'd better answer it."

Neville F.: Exactly.

Peter: So that is one circumstance where possibly-

Neville F.: Yeah.

Peter: -things could get [00:05:00] legal here in Australia in the future.

Neville F.: And I suppose if their evidence was that your boyfriend or husband traditionally used the phone despite it being illegal, but you know in your family who ... or your friends ... are likely to be ... if they're driving, would still answer the phone; and I think that's the distinction that this case makes as to any others, that there wasn't the requisite knowledge-

Peter: Yeah.

Neville F.: -that the party was going to answer the phone [crosstalk 00:05:24].

Peter: Okay, yeah. If you've got a question for Neville, 922-11-882. Wayne in Port Kennedy [00:05:30] joins us. Hi, Wayne.

Wayne: G'day, hi Neville, hi Peter.

Neville F.: How you going, mate?

Wayne: Just a question if I may. My mom on Sunday went to a walking club, and was in a car park. Unfortunately she, when leaving, put on the accelerator and went into another car. Lucky that the lady has insurance, but mom hasn't got any third-party. Is there a [inaudible 00:05:59] ... [00:06:00] Look, this might be really clutching at straws, but I thought where a car park, there was a law that people had to pay for their own damage, the Australian road laws didn't apply or the police didn't get involved. Is that the case or am I out of order there?

Neville F.: Wayne, no, it's just not quite right. The accident which occurs in a private premises is not something that the police will get involved in, but the damage which is occasioned [00:06:30] by somebody who by mistake, negligently or even recklessly or deliberately, causes to another person or a car, will be the responsibility of the driver. So the other driver's insurer will look to mom for payment of the damage, and if mom's insured, than

her insurer should take that function over, but as you say if she is not insured then unfortunately [00:07:00] she's on the hook for the damage which is being occasioned. If the person has been personally injured ... in other words if there's been injury to the other driver or a passenger, then the motor vehicle insurance liability will kick in though. So she won't have to pay for her personal injury, but certainly the damage, there is an exposure there.

Wayne: Look, I appreciate that, Neville. Thanks Peter.

Peter: No worries at all, Wayne.

Neville F.: Drive carefully.

Peter: Up next will be [Antil 00:07:27] and also Elaine. If you've got a question for Neville [00:07:30] Friedman from Friedman Lurie Singh & D'Angelo, 922-11-882.