

Setting the Table – Fundamental Legal Issues

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10:30 a.m. – 12 p.m.

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Legal Fundamentals

This presentation contains general information and is not intended to provide specific legal advice. Organizations should consult with appropriate legal counsel, regarding matters specific to their business and aware of the laws in their jurisdiction.

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Legal, RM and Your Program



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Value - Legal

➤ ENDEAVORING TO:

- Be enlightened by its role
- Understand its significance
- Incorporate into operations
- Prepare for incident or lawsuit



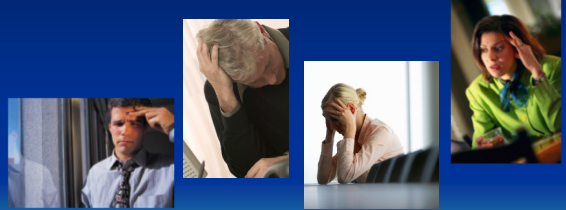
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Other options:



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Or:



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But understand what the law isn't*

- I have a release so I am protected, right?
- We have a risk management plan, so now we are set!

(*Black and White)

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Climate – Adventure Activities

- Nature of activities – inherent risks
- Lure of unique activity; push for challenge
- People expect more and tolerate less



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Addressing law – in this Climate

- Running a Quality Program! 
- Choosing to responsibly manage risks rather than just avoid lawsuits



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Perspective - WRMC

- Risk management – *not risk elimination*
- Goal: responsibly managing risks (www) *considering risk of loss to participant and to operation*



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Perspective - WRMC

- *And legal will be considered and addressed...?*



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Perspective

But incidents will occur.
So let's gain perspective.



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Legal system in U.S.

- Courts
- Administrative Agencies
- *Alternative Dispute Resolution



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Legal System in U.S.

- Civil and Criminal Law
- Case Law (lawsuit)
- Statutes & regulations



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Civil Law

- Focus on CIVIL law
- Contract and Tort

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Focus: Civil – Contract

- **Contract** - an enforceable promise
- *Can be oral or written; express or implied



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Civil Law - Contract

Elements:

- Mutual agreement
- Consideration
- Competency
- Contract 'purpose' not prohibited



Breach and damages

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Focus Civil - Tort

A private wrong to person or property.

The most common tort is negligence.

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Tort - Negligence



- Most common measuring stick - standard of care:

That degree of care that a reasonably prudent person would exercise in the same or similar circumstances (Reasonable care)

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Zeroing In - Negligence

Why is the standard of care important?



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Zeroing In

The standard of care forms the basis for the duty owed in a negligence claim:

The duty to exercise reasonable care to protect others from unreasonable risks of harm.

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Permeation



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Tort of Negligence

Elements:

- Duty
- Breach
- Proximate cause
- Damages



There must be all 4 elements!

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Liability for Negligence

- Organization:
 - direct liability
 - liability for acts of staff (or others)
- Staff member direct liability

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Negligence

Common claims - negligence in:

- Hiring and training staff
- Supervising participants
- Instructing participants
- Warning
- Maintaining equipment



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Duty

Judge determines if duty exists.

Fact-finder determines if there is a breach of duty.

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Duty/Breach

- A variety of factors can *create, eliminate or influence* the duty
- These factors impact the basis for a negligence claim and any defenses to a claim

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Factors – Duty/Breach

- Control or oversight
- Nature of relationship (e.g.: “special”)
- Statutes and case law
- Standards and practices
- Gratuitous undertaking

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Factors – Duty/Breach

- Your internal policies (oral or written)*
- Staff words or conduct*
- Representations in your external materials*
- Your contracts*

*Information exchange

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Perspective: Defenses to Negligence

- Absence of any element
- (including) no duty or eliminating the duty
 - Inherent Risk doctrine (PAR)
 - Release of Liability (in larger agreement)
 - Immunities - e.g.: governmental, volunteers

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Defenses to a Negligence Claim

- Reduce or eliminate ultimate liability
 - Comparative Fault laws: Plaintiff's contributory negligence or secondary AR

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Duty/Breach potential

- Where is duty/breach potential?



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Interaction - examples

- Volunteer teaching top roping course
- Website: “Our guides are experts – the best in the industry”
- In loco parentis
- Staff member to parent: “Don’t worry, sign it - it is just a formality. Your child will be safe.”

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