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.

Legal, RM and Your Program

Value - Legal

➢ ENDEAVORING TO:
  ➢ Be enlightened by its role
  ➢ Understand its significance
  ➢ Incorporate into operations
  ➢ Prepare for incident or lawsuit
**Other options:**

![Image of a horse]

**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)

**Or:**

![Image of people]

**Climate – Adventure Activities**

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

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

Perspective - WRMC

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

Perspective - WRMC

- And legal will be considered and addressed…?
Legal system in U.S.

• Courts
• Administrative Agencies
• *Alternative Dispute Resolution

Civil Law

➤ Focus on CIVIL law

Contract and Tort

Legal System in U.S.

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

Focus: Civil – Contract

➤ **Contract** - an enforceable promise

* Can be oral or written; express or implied
Civil Law - Contract

Elements:
- Mutual agreement
- Consideration
- Competency
- Contract ‘purpose’ not prohibited

Breach and damages

Focus Civil - Tort

A private wrong to person or property.
The most common tort is negligence.

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)

Zeroing In - Negligence

Why is the standard of care important?
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.
Negligence

Common claims - negligence in:
- Hiring and training staff
- Supervising participants
- Instructing participants
- Warning
- Maintaining equipment

Duty

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

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

Factors – Duty/Breach

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

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

*Information exchange

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

Defenses to a Negligence Claim

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

Duty/Breach potential

- Where is duty/breach potential?
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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