

# Emerging Legal Issues

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1 – 5 p.m.

# Emerging Legal Issues

This presentation contains general information and is not intended to provide specific legal advice. Adventure and recreation providers should consult with legal counsel, experienced in recreational law, regarding matters specific to their business or operation, and aware of the laws in their jurisdiction.

# Jeopardy!

A program using equipment (manufactured by another) in its operation can be found liable to a person injured by that equipment.

True

False

# Jeopardy!

A program must offer its release form to participants in their native language.

True

False



# Jeopardy!

An outdoor program should never inquire about a program applicant's disability.

True

False

# Jeopardy!

If a minor forges a parent's signature on a release agreement, can the parent be legally bound to its terms? Can the minor be bound?

Yes

No

# Jeopardy!

A participant can be legally bound by 'clicking yes' – electronically - to a release of their right to sue for negligence.

True

False

# Jeopardy!

An organization cannot be found legally liable for the employees of a contractor it hires to provide services to its program participants.

True

False



# Jeopardy!

'In Loco Parentis' means that a program must (like a parent would) ensure the safety and well being of minors in their care.

True

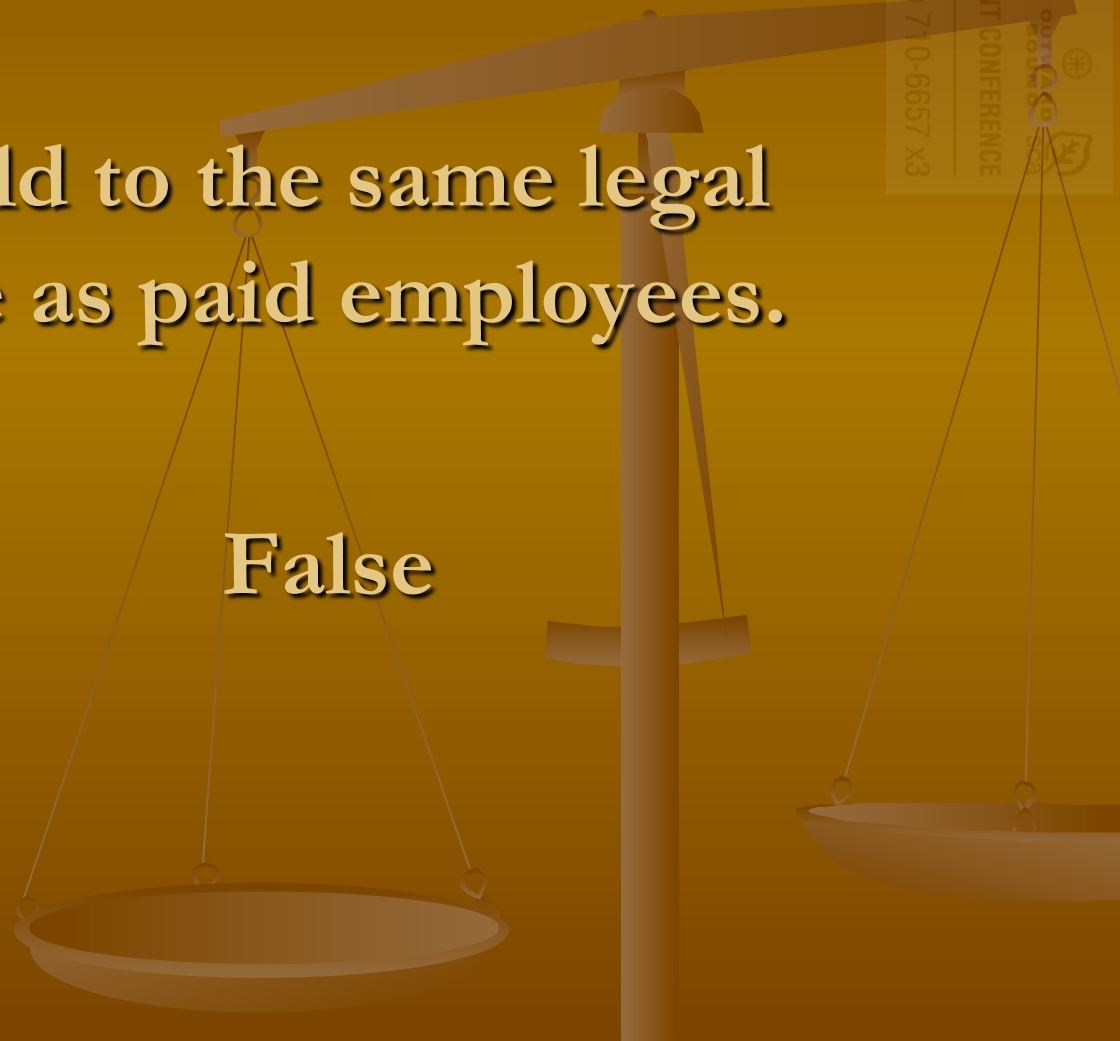
False

# Jeopardy!

Volunteers are held to the same legal standard of care as paid employees.

True

False



# Jeopardy!

A participant's agreement to assume risks provides (to the organization) the same protections as a participant's agreement to release the organization from liability.

True

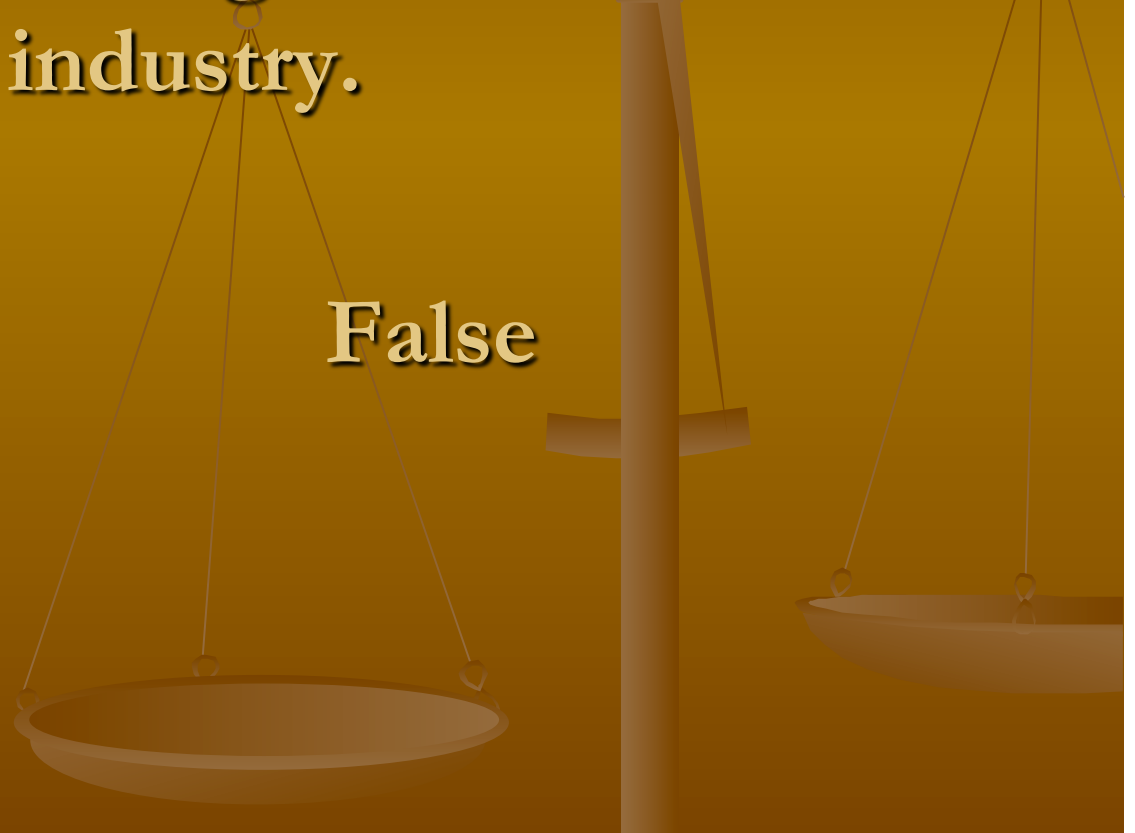
False

# Jeopardy!

A program's practices will – in litigation – always be measured against the 'best practices' in the industry.

True

False



# Jeopardy!

In most states a minor can be legally bound by a pre-injury release signed by a parent or guardian on behalf of the minor.

True

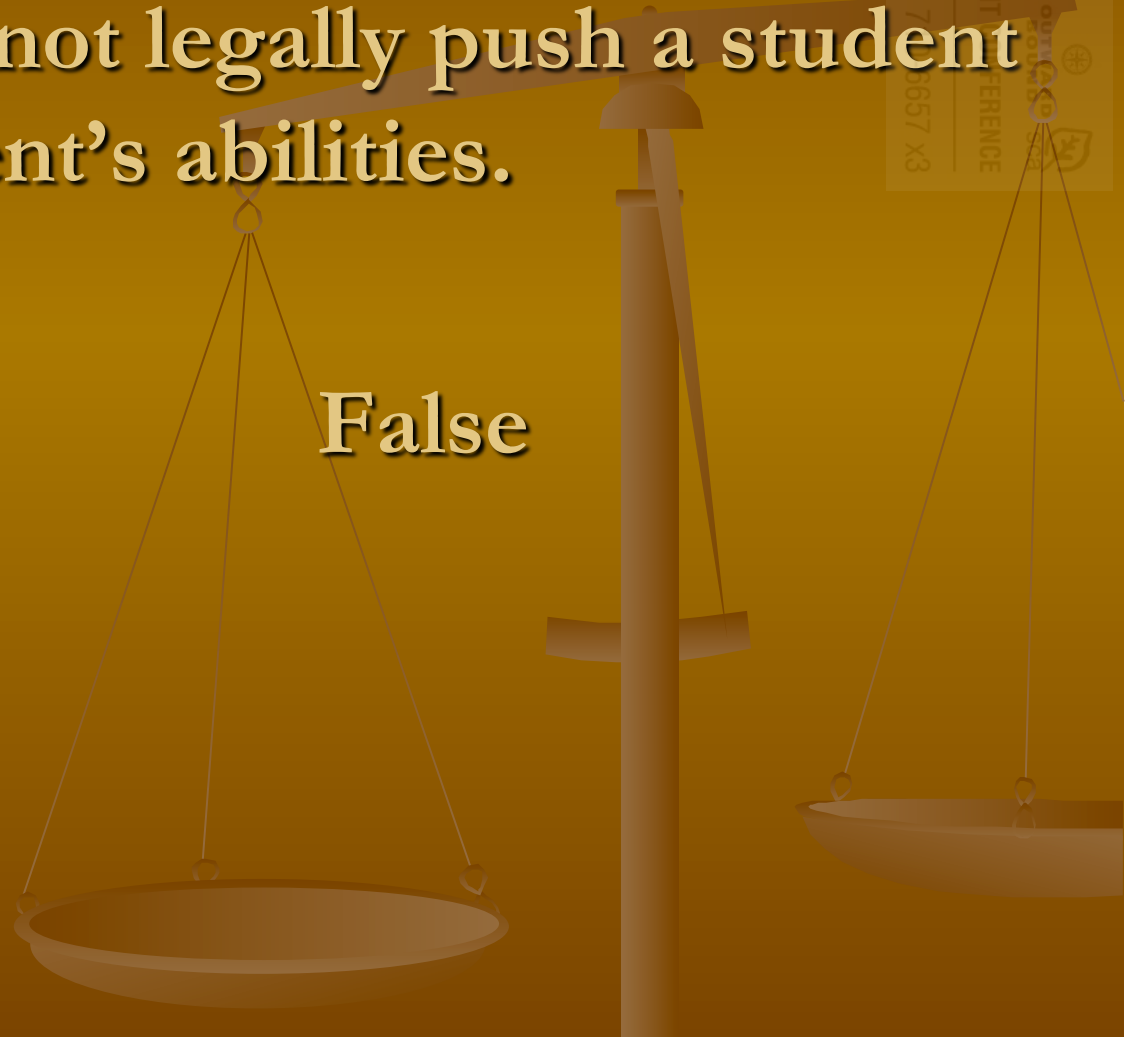
False

# Jeopardy!

An instructor may not legally push a student beyond the student's abilities.

True

False



# Jeopardy!

All persons providing recreational services to the public are subject to the ADA “access to program” requirements.

True

False

# What You Say & Write Down Practical Value and Legal Impact

**Goal:** *Run a quality operation!*

- Manage, not eliminate risks
- Proactive, not reactive
- Addresses practical and legal
- Fundamental fairness to participants and staff



# Introduction

## Information Exchange Concept -

### Focus on Program information:

- External – Intended for public
- Internal – program staff or other

# Perspective

One Piece of Risk Management Picture!

Addresses risk of loss:

\*to participants

\*to program

# External Information

Intended for public: (e.g.)

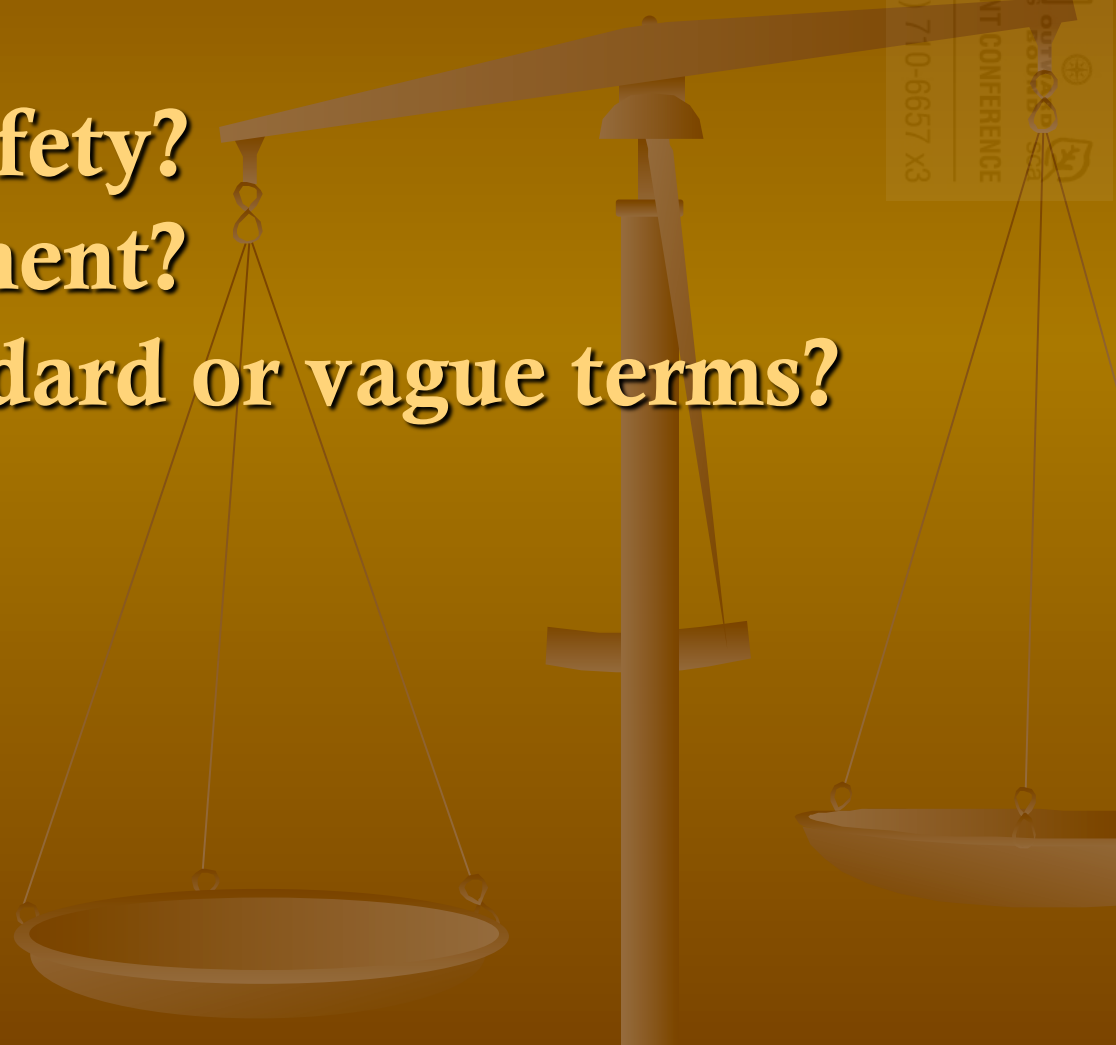
- Website
- Brochure
- Participant agreement
- Photos or DVDS
- Press Releases
- Oral statements by staff!

# External Information

- **How much information?**
- **Accurate – BALANCE of information**
- **Write for the reader (your audience)**
- **Beware different drafters!**
- **Overall information consistency**

# External Information

- Assurance of safety?
- Absolute statement?
- Undefined standard or vague terms?
- Untrue?
- Incomplete?



# External Information

- **What result? Practical and Legal issues**
- **Implications before and during program and after an incident**
- **Case examples and TIPS (handout)**

# Internal Information

Intended for program: (e.g.)

- Staff policies or practices (written or unwritten)
- Risk management plan
- Training video
- Oral directives

**BUT...can or will the public see it?**

# Internal Information

- Great concept, but are you ready?
- Craft and define words carefully  
(guideline, practice, standard, policy....)
- Beware different drafters!
- Consistency with other documents
- Is it overwhelming?



# Internal Information

- **Incomplete or inaccurate?**
- **Rigidity or flexibility? Staff in a box**
- **Document on a shelf**
- **Staff discontent with policies**
- **Industry standards or practices?**

# Internal Information

- **What result? Practical and Legal issues**
- **Implications before and during program and after an incident**
- **Case examples and Tips (handout)**

# Take Aways

- Craft words carefully
- Be internally consistent
- LISTEN to your staff – take input
- Review and revise – live documents!
- Go to the Mock Trial!

# Contact Information

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