

Legal Issues Pre-Conference

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 minor can be legally bound by a pre-injury release of liability for negligence, signed only by the minor.

True

False

Jeopardy!

In most states, a parent can release, in a written agreement, his or her minor child's right to sue for negligence.

True

False

Jeopardy!

An instructor or leader is protected from liability for negligence in the context of instructing students on learning recreation or adventure skills.

True

False

Jeopardy!

A volunteer leader can be included as an insured under your company's workers' compensation policy for injuries occurring to the volunteer within the scope of his 'volunteer activities'.

True

False

Jeopardy!

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

True

False

Jeopardy!

A physician may prescribe meds for the first aid kit of a tripping organization.

True

False

Jeopardy!

An employee cannot be found personally liable for an act committed in the course of his or her employment.

True

False

Jeopardy!

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

True

False

Jeopardy!

A non-profit organization is legally liable for the acts of its volunteers, acting in the course of their duties to the non-profit.

True

False

Jeopardy!

A non-profit volunteer is legally liable for his or her own actions, when acting within the course of his or her assigned duties.

True

False

Jeopardy!

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

True

False

Jeopardy!

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

True

False

Jeopardy!

Landowners who allow others to use the landowner's property for recreational purposes, without charge, will not be legally liable to persons injured while using the property.

True

False

Jeopardy!

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

True

False

Virtual Kids – Real Risks

Charles R. Gregg and Catherine Hansen-Stamp
Tuesday, September 30, 2008.

The Virtual Kid

- Over Managed
- Out of Shape
- Risk and Accountability Averse
- Elevated expectation of care

*Can this person be trusted in the woods?

Managing the Risks

- Protecting the kid
- Protecting the program

Where Are the Risks?

- Information Exchange
- Screening
- Staff Selection and Training
- Sequencing
- Participant Supervision

The Duty Owed - General

“To exercise reasonable care to protect the child from unreasonable harm”

“Reasonable” will vary: Consider participants, activities and relationships

The Duty Owed - Specific

- A heightened duty, because they are children?
- Maybe not: Active sports and recreation (The Primary Assumption of Risks Doctrine – sword and shield)

The Duty (continued)

- Exploring the tension
- Cases on point – a cultural war?
- Conclusion

Practical

Defenses to negligence claims - minors:

- Running a Quality Program!
- Good 'Information Exchange' with parent and child

Legal Defenses

Defenses to negligence claims - minors:

- The loss was caused by an inherent risk
- Classic versus enhanced

(A provider has **no duty** (states vary) to protect participants, including minors, from inherent risks)

Legal Defenses

Defenses to negligence claims - minors:

- The child expressly assumed the risk
(written or oral)

(This can also eliminate a program's duty
(though less likely with minors))

Legal Defenses

Defenses to negligence claims - minors:

- The child's contributory fault was the cause of all or part of the harm.

(reduce or eliminate ultimate liability - comparative fault (negligence, including 'secondary' assumption of risks))

Legal Defenses

Defenses to negligence claims - minors:

- Releases (waivers) *Covered in later session

(Shift liability already allocated under the law)

Legal Defenses

Releases - Issues with minors:

- Minor competency and ratification
- Parent releasing rights of child?
- Parent releasing own rights
- Ethics of the release?

Legal Defenses

Issues with minors:

- Larger agreement – evidence of minor's understanding of and assumption of risks?
- Parent's agreement of indemnity
 - For claims brought on behalf of child?
 - For claims brought by non-signing parent or others?

Take Aways

- Dealing with minors is just one part of your risk management/legal picture.
- Thoughtfully dealing with this issue is part of running a quality program!

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