LEGAL LIABILITY IN RECREATION, SPORTS, *and* TOURISM

Fourth Edition

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For Caroline and Matthew

For Sylvia

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Foreword

We practice our professional recreation, sport, and tourism management skills in a different world than we experienced a few decades ago. There is a propensity for people to sue if they are injured or receive property damage. Extensive litigation has resulted in significantly increased insurance rates while organizations and agencies are becoming increasingly unwilling to provide some high-risk recreation and tourism services that they provided in the past.

Recreation, sports, and tourism activities contain all the elements necessary to make those activities subject to accidents and subsequent lawsuits. Sports and recreation activities generally are competitive, fast-paced, use equipment and facilities, and include physical and/or social contact. Tourism places people in unfamiliar locations with varying safety standards.

When these elements are combined, they can result in accidents. This text provides guidance for students to study risk management principles that will increase their management skills. The book provides practitioners the understanding necessary to manage the activities in such a manner that it will minimize the potential of a successful plaintiff suit.

This book provides a legal structure by which students can best learn liability and risk management principles, and professionals can protect themselves and their organizations from those seeking to take advantage of the judicial system for personal gain. In order for recreation, sports and tourism managers and practitioners to be successful in preventing accidents and litigating issues, they must have knowledge of risk management and legal principles.

The authors, John Spengler and Bruce Hronek, not only have a rich legal background, but also have practical on-the-ground experience that provide a no-nonsense approach to the problems associated with legal liability in recreation and sports. They are practitioners, teachers, and researchers in the field of risk management and legal liability.

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Efforts have been made to make this book as accurate as possible. This book covers many general facets of legal liability. In order to give the readers a general understanding of the law, the book does not include all aspects of each legal situation. There are differences in the law in various jurisdictions, and there are legal nuances and differing interpretations of the law by individuals and organizations. Application of the principles and statements made in this book may be not be applicable in all circumstances and jurisdictions.

This book is not intended as a substitute for legal counsel. Readers should consult with legal counsel whenever a legal question occurs.

Introduction

The subject of legal liability conjures up thoughts of high costs, fiscal devastation, difficult legal language, attorneys, myriad legal papers, and time-consuming litigation. People generally fear those things that they don't understand. The major purpose of this book is to provide recreation and sports students, practitioners, and professionals in the field with a body of knowledge that will help them manage the legal risks that are an everyday part of their lives.

In the past, the field of recreation appeared to be sacrosanct when it came to people wanting to sue for damages. Prior to 50 years ago, when lawsuits were filed, the courts considered leisure pursuits as frivolous, and therefore counter to the good of society. The social structure and so-called "Protestant ethic" of the time called for hard work, not recreation. Only the very rich were privileged to have "leisure time." In the past decades, the average citizen's opportunity for leisure has increased significantly, and so has the extent of recreation, sport, and tourism litigation. Times have indeed changed!

There was a time when suing someone was not so common in the field of recreation, sports, and tourism. A young forester, graduating with a degree in forestry, reported to his first professional assignment with the U.S. Forest Service. His professional career started in the back country of the Salmon River in Idaho. The mountains of central Idaho were beautiful, the air was clean, and the work was interesting and challenging. There was little else that a young professional forester needed or wanted.

Early one evening a few weeks after he had reported to work, he heard a knock on his cabin door and a rather excited man reported that a woman was "in trouble" at a nearby campground. The man said the woman had entered the campground restroom (a polite name for an old-fashioned smelly single-seat outhouse) and had fallen through the floor into the pit that had been dug beneath the toilet to hold the refuse. The young forester hurriedly loaded the pickup with what turned out to be mostly useless equipment and rushed to the rescue. The site where the accident occurred was an old campground that had been built by the Civilian Conservation Corps in the mid-1930s.

Upon arrival at the scene of the accident, he found a large woman in the toilet pit with only her head above ground level. She was unable to extract herself from the hole, even with people trying to lift her out. The old floorboards and cross supports had been weakened by wood rot, and the floor collapsed under the woman's 250-plus pound weight.

The small group of people appeared to be relieved when "the forest ranger" arrived. Unknown to the campers, he did not have the faintest notion as to what to

do. The toilet was built and used in an era when deep holes were dug to hold the waste. Whenever the pit was full of waste it was covered with dirt, and another pit was dug. The toilet building was then skidded to the new location. Pits were sanitized by maintenance crews using large amounts of highly caustic white powdered lye. The lye did little to reduce the unpleasant odor, but it was used anyway for "sanitation purposes."

The caustic lye burned the skin of the unfortunate woman. She had abrasions and was in pain from the downward plunge and was very embarrassed by her predicament. The women graciously awaited her rescue without a complaint.

With the help of some of the people in the campground, the toilet building was sawed down and removed using a deafening power saw that also covered the woman with sawdust and debris. The rescuers then rigged an "A" frame, and a block, and a tackle over the pit. After she was wrapped in rope, the rescuers slowly lifted her out of the pit.

She apologized for all the problems she had caused and walked down to the river to clean up after her ordeal. That was the last time the young forester saw or heard from the woman. The possibility of a suit or damage claim was never mentioned nor was a suit ever filed. The year was 1959.

A serious review of what is now a rather humorous occurrence could result in sleepless nights if it occurred today. An accident of this type today would be highly likely to result in a negligence suit with a potentially substantial court award. Attitudes and the propensity to sue have changed.

The fear of being sued is an ever-present part of American society. A number of years ago, many of these cases would have been considered minor incidents or accidents, and suing would not have been a solution. Today, however, people appear not to want to accept the normal dynamics of living in a world of bumps and mishaps.

In the 19th century and into the 20th century, the courts tried very few cases involving recreation, sports, and tourism. Our culture, especially since World War II, has gradually evolved into a very litigious society. Many, if not most people, feel that someone owes them something if they are injured or have lost property.

Highway billboards, the yellow pages, and newspaper ads encourage and entice people to file suit by advertising legal services with bold headlines that generally state: "INJURED?" followed by statements such as, "IT COSTS YOU NOTHING TO TALK TO US. WE ARE PAID ONLY IF YOU COLLECT." These are tempting statements for someone who has mounting medical bills or is angry about an accident or property loss.

On the other side of the issue of excessive litigation, it should be noted that not all negligence suits are frivolous. The civil courts serve an important service to our society in providing all citizens a means by which disagreements can be settled and wrongs righted without personal revenge and physical violence. The access to civil courts by an average citizen can right a wrong committed by the largest and most powerful institutions, organizations, and individuals. This right to litigate must always be protected and made available to our citizens as part of our democratic form of government.

Because many accidents result from unintentional, but nevertheless negligent and thoughtless acts, a wise and prudent organization or individual should try to settle

justifiable legal claims for compensation out of court. Suits should be the last resort for claims and disagreements.

This book was developed to help posture individuals and organizations to prevent accidents and property loss and to counteract excessive legal claims. It is written in an informal manner to enhance the learning process and particularly to facilitate the understanding of a rather complex body of law. General areas of law discussed in the text include a legal foundation, negligence, intentional torts, constitutional law, personnel risk, recreation and event management, recreational sports, playgrounds, and aquatics liability, as well as other subject areas related to recreation and sports legal liability. The authors believe that knowledge of legal liability subject areas is critical to implementing a good risk management program. This book focuses on identification of legal risks, evaluation of the risks, and the implementation of an action plan to manage the risks.

This book is not a substitute for good legal counsel. While the book will cover many general facets of liability, the law may vary among the various jurisdictions. Readers should consult with legal counsel whenever a legal question occurs.

All recreation, sports, and tourism activities have some degree of risk. Legal liability related to parks, events, and recreational sports come in many forms and statistical probabilities. Legal liability is most obvious in terms of physical risk (accidents and injuries), financial risk (loss of property and potential income), psychological risk (mental health and personal well-being), and political risk (public support and financing).

Kayaking is a popular recreational activity that contains an element of risk.

When many individuals think about their personal experiences with recreation and sports, they soon conclude that many of their most memorable recreation experiences included a strong element of personal risk. Activities such as river running, mountain climbing, wilderness use, hiking, bicycling, football, skydiving, baseball, ecotourism, driving for pleasure, and wildlife watching are very popular activities with increasing numbers of participants. And they all contain a relatively high level of risk. Increasing numbers of people participate in high-risk activities because they consider the risks to be manageable.

Implementing risk management plans make all recreation, sports, and tourism activities manageable and more enjoyable, but some element of risk will always be present in any activity. Even a child's swing in a park has some of the factors conducive to an accident: immature physical coordination, speed, and height. Risk management reduces the potential of accidents and lawsuits but it does not eliminate the possibility. Recreation, sports, and tourism observers might conclude that activities without some level of risk are dull and lack excitement. *Taking the risk out of life is tantamount to taking the pleasure out of life.*

The question of whether to warn people of a hidden danger is both legal and ethical in nature. It is very true that you cannot warn people about every conceivable risk. Some legal counsel may believe individuals and organizations should not inform people of a

danger that is not obvious. For example, there is an ethical and legal dilemma associated with warning people that there is "thin ice" on a lake. If the danger is known and you do nothing about it, there is an element of foreseeable danger and negligence if an accident occurs. The quick answer to the problem may be protective fencing of the area. However, the reality of fencing an entire lakeshore is likely to be an economic impossibility. The posting of "Danger—Thin Ice" warning signs may be another alternative. However, this type of sign does not adequately warn the very young, those who do not read, or those who do not read English. "How far do I need to go?" and "What should I do to keep people safe?" will always be ethical and legal questions for a risk manager. The courts will decide whether you went far enough. It may be wise to personalize a risk decision by asking the question, *"If my family were visiting the area or engaged in the activity, what warning of danger would I want them to have in my absence?"*

Having a policy of warning people about all hazards is neither wise nor possible. The reason it is not wise is somewhat subtle; when the average person sees a large number of warning notices and signs, dangers lose their significance in the long listings and mere volume of information. Behavioral scientists indicate that more than five information and warning signs in the same location tend to be ignored.

Some managers want to sign the obvious. Within a recreation site, one can find signs and brochures stating "no littering," "stay on path," and other warnings that should be assumed by the visitor in that setting. Signs and printed materials informing or warning about items and hazards that are not obvious may be most useful to the participants and visitors. Signs that inform visitors and participants about hidden hazards, fire regulations, and rules are also helpful and useful for a good recreational experience.

When a risk management program is focused on serving the public interest, then it will likely be ethical and effective. Judges and juries recognize programs that are aimed at providing a safe program for the visitors and participants. When accidents do occur, they are more defendable in a court of law. The risk management focus should always be visitor- and employee-oriented.

When risk management programs are defensive in nature, they lose creativity and broad support. *A good safety and risk management program focused on the visitor or participant is good public policy.*

All employees in an effective risk management-oriented organization must have a common risk management attitude. There are many organizations that designate specific positions within their organizations as "Safety Officers" or "Risk-Management Directors." While it is good to have someone to track safety records or follow up on complex Occupational Safety and Health Act (OSHA) requirements, the designation of a safety officer or risk manager might have the unintended consequence of making employees feel that someone other than themselves is responsible for safety within their work environment. Every individual in an organization, from the president or CEO to the custodian or clerk, should feel a strong obligation to identify and take actions to reduce potential risks. Every member of an organization should be a risk manager or safety officer. Effective risk management requires that all employees be empowered to take actions to prevent accidents from occurring.

Part One

FOUNDATION

Chapter One

INTRODUCTION TO RECREATION LEGAL ISSUES

SECTION 1: TRENDS

Professional managers need to know what is happening around them in regards to trends, risk, and legal liability. It is difficult to keep current in a field that changes with new legislation, precedent-setting court cases, the introduction of new products, and the development of new recreational activities. The emergence of new outdoor recreation activities has resulted in significant risk management concerns and management adjustments. Within the last 25 years, we have seen the appearance of recreation activities that include inline skating, hang gliding, skateboarding, wind sailing (wind surfing), snowboarding, geocaching, mountain biking, and the re-emergence of orienteering, to name a few. Equipment development, such as GPS, has allowed people to access areas that most would not have ventured into a decade ago. Each activity has brought about new concerns related to risk and participant safety. There is reason to believe that new activities and products will be developed requiring prompt responses from professional managers.

Risk management was born of necessity—human, legal, and political. As early as the late 1800s, the American Labor movement, particularly the coal mining unions, saw their union miners endangered by careless mining practices. Underground explosions, collapsed mines, toxic gasses, and black lung disease were common and considered simply a fact of life in the mines.

Factory assembly line work was not much better, with dangerous machines, no medical insurance, and little concern for the fate of the worker. Laws were passed and strikes were called as a result of the mining and factory safety problems. While there are still significant dangers, the combination of safety laws, protective equipment, federal and state safety inspections, and labor demands have resulted in safer conditions in modern underground mining operations and factories. The owners and operators of mines and factories now are faced with expensive litigation if an accident occurs.

During a forestry school field trip in 1957, a group of students heard a timber company executive proclaim that he would rather have a logger killed in an accident than permanently injured. His stated rationale was that the cost of a permanent injury was much higher than "paying off" a death. The students were stunned by the callous remark, but reluctantly realized that the cost factor was correct; however, a significant moral and ethical question remained.

A risk management program must serve three entities: the customer (user/visitor), the employee, and the organization (company).

A good safety and risk-management program is good public policy. Risk management should be part of the training of each employee in the recreation and sports work environment. The home smoke alarm is an example of a limited but important application of risk management. The home smoke alarm senses the presence of smoke and emits a sound, warning the residents that there is the potential of fire, thus saving lives. It does not, however, prevent the fire from occurring. Only an inspection of home maintenance (wiring, heating appliances, etc.) and proper storage will reduce the potential of fire. In the same sense, a risk manager should not only "sound the alarm," but do something to prevent a harmful incident.

For example, the issue of safety is critical in situations where locker rooms are used by recreation and sport participants. There is a duty to provide adequate security and supervision, particularly when children are present. Failure to do so may constitute negligence. The following case provides an example of a situation where a sound risk management and safety plan may have helped avoid a tragic outcome.

In *S. W. and J. W. v. Spring Lake Park District #16* (1999),[1] a 15-year-old girl was sexually assaulted in a girls' locker room adjacent to a school complex swimming pool. She was at the pool to take a swimming test. After the swimming test, she went to the locker room to take a shower and change clothes. It was at this time that she was sexually assaulted. The predator was later caught and convicted of first-degree sexual assault and kidnapping. Prior to the incident, the school secretary, a janitor, and the assistant pool

director all saw the man as he exited the girls' locker room. He was neatly dressed and carried what appeared to be flower boxes. They did little in response to the man's presence, given their belief that he was on the premises for a harmless purpose and that he had merely lost his way and ended up passing through the girls' locker room by mistake. The school district had no security policy in place. Additionally, the employees had no official guidance in how to deal with non-students who were on the premises.

The parents sued, claiming the school district was negligent in failing to provide adequate supervision, protection, and security. The court held that the attack upon the girl was foreseeable because three employees were aware the attacker had been in the girls' locker room and understood that he was not a student and did not belong on school premises. Foreseeability, reasoned the court, requires actual knowledge of a dangerous condition which imposes a special duty to do something about that condition. The court found the defendant to be guilty of negligence and not entitled to governmental immunity.

It has been noted that the United States has less than 10% of the world's population and over half of the world's attorneys. In 2010, there were nearly 350,000 civil court cases filed in federal courts alone. Suits related to recreation and sports have increased steadily for three decades and are expected to continue to increase in the future. Society's apparent desire to be compensated for any loss or injury that occurs, attorney advertisements that appeal to a "something for nothing" mentality, and easy access to our nation's courts provide reasons for people to sue. While many of the cases have a just cause, some suits are marginal at best.

Often the media both reflects and influences the values and beliefs of a society. We often hear of cases receiving media attention that pull on our emotions. For example, the famous McDonald's coffee spill case, or more recent suits claiming that "fast food" was responsible for health and weight problems. In the field of recreation, sports, and tourism, types of lawsuits are plentiful, extremely interesting, and quite varied. One lawsuit was brought because a man was bitten by a fish. In another, a baseball spectator was distracted by a dinosaur mascot, then turned and was hit in the face by a baseball. Other suits filed include incidents where people were attacked by cougars in parks, golfers were struck by lightning, and swimmers were attacked by sharks.

Trends in the individual state courts mirror the federal court system. The courts in all jurisdictions are experiencing increasing utilization of resources to litigate civil matters and prosecute criminal cases. Settling disputes and prosecution of criminals is up in most jurisdictions. In 2010,

more than 1,950,000 civil, criminal and bankruptcy cases were filed in the U.S. federal courts, approximately one-million more cases than were filed in 1980, mostly due to bankruptcy cases. Likewise, the number of civil cases has more than doubled in that same 30-year time period. The following statistical table shows how the federal court activity has grown in a very short time period.

Table 1.1

Trends in Civil and Criminal Cases Filed in U.S. District and Appellate Courts (1885-2010)

Year	U.S. District Court Civil Cases Filed	U.S. Court of Appeals Civil Cases Filed	U.S. Criminal Cases Filed	Authorized Federal Appeal Judges	U.S. Bankruptcy Cases Filed
1885	2200	200	250	No Data	100
1980	112,734	24,122	38,781	No data	763,072
2001	250,907	57,697	62,708	167	1,437,354
2003	252,962	60,847	70,642	167	1,661,996
2005	253,273	68,473	66,561	167	1,702,693
2007	257,507	58,410	67,851	167	801,279
2009	258,635	61,358	76,655	166	1,202,395
2010	292,307	56,790	78,428	167	1,531,997

Source: Administrative Office of U.S. Courts, Federal Judicial Workload Statistics, Washington, D.C.

The court system, both federal and state, is jammed with pending cases. It is little wonder that there is a tendency to settle claims out of court or through arbitration.[2] Time and patience become important factors in determining what cases come before the courts.

The information in Table 1.1 is from the U.S. Courts.[3] These figures also reflect the trends and general situation that exists in the states' court systems. There are as many as 90,000 product liability cases alone filed in the state courts each year.[4] Seventeen percent (17%) of all product liability cases involve toys or sports and recreation equipment.[5]

SECTION 2: CATEGORIES OF LEGAL LIABILITY

Wrongs committed that violate rules of society are called crimes. When people who commit crimes are identified, they are brought before the criminal justice system.

Through the legal system, wrongs can result in either punishment or compensation by criminal sanction or the imposition of civil liability. Wrongs that are deemed crimes are prosecuted by the government and convicted culprits can be punished through imprisonment or the issuance of fines. However, anyone in this country who is wronged has the opportunity to bring a civil action against the person or persons who wronged them. The primary goal of civil lawsuits is to provide compensation to the victim. The courts are guided by criminal and civil procedure rules, and the classifications of wrongs are governed by statutes[6] and case precedents.[7]

When a wrong occurs, it may become subject to the jurisdiction of the criminal or civil courts, or a special court, such as a court of contract appeals or juvenile court. If the subject area involves federal law, federal land, or federal questions, the case will be heard in a federal district court. If the subject area relates to state statutes or local ordinances, the case will be heard in a state court.

The standard of judgment in criminal courts dictates that if there is "reasonable doubt"[8] as to the guilt of the defendant, the courts must declare the individual not guilty. The standard of judgment in a civil court is a preponderance of evidence.[9]

These two standards of evidence have a significant interrelationship. For example, if a person is convicted of assault and battery in a criminal court, the victim of the attack could be compensated for his/her injury through the civil courts. The question of double jeopardy[10] does not apply if a civil suit follows a criminal conviction.

Once a defendant has been found guilty under the criminal "reasonable doubt" standard, the "preponderance of evidence" standard found in civil courts will be much more easily established. In the vast majority of cases, judges determine that *prima facie*[11] evidence is established as a result of a criminal conviction. This means that a plaintiff has an excellent chance of succeeding on a claim for civil damages.

In our society there is a constant threat of legal entanglements. In developed and civilized countries, all citizens are expected to live within the law. We simply cannot steal that which belongs to others, intentionally injure others, fail to pay our debts, or fail to keep our contractual promises. We must conform to a myriad of rules established by our governing bodies for

the benefit of order in society. We must keep our hands out of cookie jars that do not belong to us!

In a broader sense, legal liability goes beyond the categories shown in Figure 1.1. There are risks selecting, supervising, evaluating, and training people; insurance coverage, contracts, concessions, leases, record keeping, waivers, community relations, intellectual property,[12] and many other categories.

Please note that the classifications in Figure 1.1 are not all-inclusive. The categories under each title in bold represent only examples of liability subject areas.

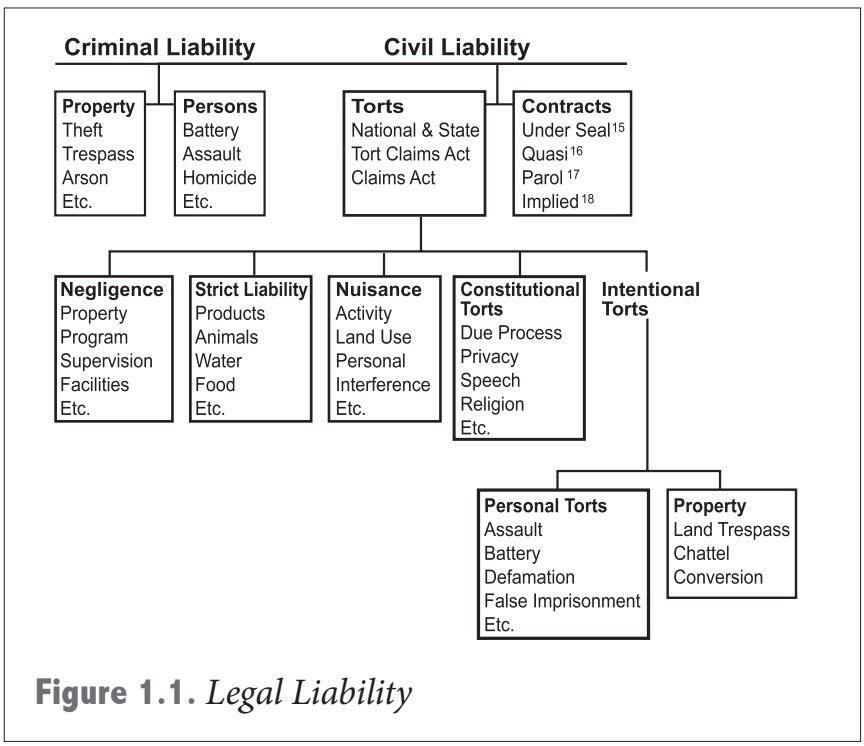


Figure 1.1. *Legal Liability*

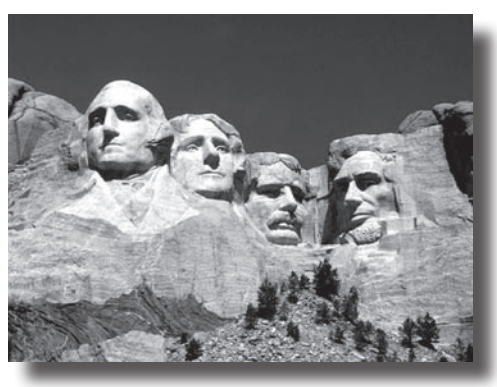
Notes

1. *S. W. and J. W. v. Spring Lake Park District*, No.16, 580 N.W.2d 19 (Minn. 1999).
2. Arbitration is the process of resolving a dispute through a third party chosen by both parties to the litigation.
3. Federal Judicial Workload Statistics, 1991, 1992, and 1993. *Annual Report of the Administrative Office of the United States Courts.*

4. Mergenhagen, P. (1995/June). Product Liability: Who Sues?, *American Demographics, 50*.
5. *Rost v. United States,* 803 F.2d 448 (9th Cir.1986).
6. Statutes are acts by legislative bodies declaring, commanding, or prohibiting something. Black, H. C. (1979). *Black's law dictionary* (5th ed.). St. Paul, MN: West Publishing, p. 1264-1265.
7. Precedent is a decision by a previous court used to persuade courts to follow the same rationale to determine future cases.
8. Reasonable doubt is the amount of doubt, based upon the evidence presented, needed to acquit in a criminal case or that needed for a reasonable person to hesitate before acting. Black, H. C. (1979). *Black's law dictionary* (5th ed.). St. Paul, MN: West Publishing, p. 1138.
9. Preponderance of evidence is evidence that is more convincing than evidence offered by the other litigant. In civil cases it refers to greater weight or credibility to the evidence.
10. Double jeopardy refers to Fifth Amendment (U.S. Constitution) prohibition to being tried twice for the same crime.
11. Sufficient evidence to get plaintiff past a motion for directed verdict or summary judgment. Evidence that is sufficient to render a reasonable conclusion in favor of allegation. Black, H. C. (1979). *Black's Law Dictionary* (5th ed.). St. Paul, MN: West Publishing.
12. Intellectual property law relates to copyrights, trademarks, and patents.

SECTION 3: INTERNATIONAL ISSUES

As recreation, tourism, and amateur sports competitions expand in a global environment, more international visitors will participate in international recreation and sports and will utilize park resources. Individuals tend to be apprehensive or fear situations that are outside their comfort levels and cultures where they cannot be understood because of a language barrier. Many international activities involve unfamiliar languages, sights, and sounds that are quite different from an individual's normal environment.



A strong element of risk, both perceived and real, does in fact exist in some international settings. International high risk recreation activities, such as white water rafting

in Asia, are becoming increasingly popular among high-risk recreationists. Many developing countries have few safeguards protecting the interest of the customers.

International courts and court systems in most nations serve an important service to our global society in providing people a means by which disagreements can be settled and wrongs righted. Most countries want to protect their economies by protecting the international visitor. They want to assure visitors that they will be legally protected. Recreation programs marketed to international tourists must place a high emphasis on visitor safety and protection. When local laws do not protect the interests of the visitor, those that have suffered loss or injury may choose to file suit against those who arranged the trip or the travel agent.

Each year, the number of recreation-related civil lawsuits filed in various courts throughout the world increases.[1] Most of these cases seek monetary damages for wrongful death, personal injury, or damage to property that occurred as a result of travel, using a recreation facility, or participating in an activity. Regardless of safety measures and risk management activities, accidents will occur. International claims and lawsuits result in a great deal of individual frustration, high cost in personal time, and significant expenditure of financial resources. Because of the unknown aspects of dealing with foreign legal systems, there will always be apprehension and feelings of futility in pursuing claims or litigating in a foreign nation.

There are some basic concepts that need to be understood when dealing with legal liability in an international setting. Nations have significantly different legal systems; some legal systems function to protect both the citizens and visitor. On the other hand, some legal systems benefit the rulers or government of the country. Human or individual rights have secondary importance. Tourism is recognized as an important factor affecting the gross national product of most nations. Nations with thriving economies usually have a significant tourism industry.[2] When nations are involved in civil war, have unsafe travel conditions, lack tourism facilities (infrastructure), and do not recognize that legal recourses and personal protection are necessary, they will not be able to attract visitors. When the government of the small tourist destination island of Aruba, a Dutch protectorate, failed to thoroughly investigate the disappearance of a missing Alabama teenager, passionate appeals were made by governors to boycott the island as a tourist destination. The Aruba tourism industry responded with increased cut-rate travel offers. Some reduction of visits to Aruba, especially by Americans, has been noted.[3]

International cruise ships present a particularly complex legal problem for tourists. Crime on the high seas has been routinely ignored, dealt with by the ship's officers, or with the offender simply expelled on the next port of call. Some claims have been made against local travel agents or those who arranged the trip for failure to warn of a known danger.

Maritime law is a complex area of law. In recreation and tourism activities, cruise ships and ocean fishing activities are under the jurisdiction of admiralty laws unless the incident takes place in the territorial waters of a nation. In the "close to shore" cases, the laws of the nation may apply. The basis for maritime law in the United States is known as the Jones Act. Under admiralty law, the ship's flag determines the source of law that applies to the crime (e.g., property loss or tort on high seas).

In *James and Sheila Mack v. Royal Caribbean Cruises Ltd.*,[4] a customer sued the cruise ship line claiming that the ship's doctor failed to exercise the proper care of an injury and that the cruise line negligently maintained the swimming pool area on the ship. They also claimed that Royal Caribbean Cruises was liable to Sheila Mack for loss of consortium.[5] The defense moved for dismissal of the complaint claiming that under admiralty law, there was no cause of action for negligence (pool area) and vicarious liability caused by the ship physician's negligent treatment of injury. The court had to determine whether or not the state court (Illinois) was bound to apply federal admiralty precedent, precluding vicarious liability claims for the alleged negligence of shipboard doctors or if the state court was free to permit a vicarious liability claim against the cruise line. They also had to determine the validity of a waiver on a ticket where the passenger claimed that he did not read the waiver nor was he given time to read the waiver. The lower court, later sustained by the appeals court determined that the plaintiff could claim vicarious liability as a result of the negligent actions of the ship's doctor. Using a state court, rather than the admiralty court, the plaintiffs prevailed in the case.

Also, in *Spector v. Norwegian Cruise Line*,[6] disabled customers alleged that the cruise line, operating under a foreign flag, violated Title 3 of the Americans with Disabilities Act (ADA). The cruise line's customers claimed that the ship's architectural design violated the "public accommodations" aspects of the act and the cruise line did not make "reasonable modifications in policies, practice, or procures to accommodate disabled persons." The Supreme Court reversed the decision of the Fifth Circuit Court in determining that the ADA does not apply to foreign flag cruise ships in United States territorial waters.

As an example of the basic structure of international law, the following is provided:

English Common Law System

The English common law system forms the basis of the legal system in Australia, Canada, England, Ireland, New Zealand, South Africa, the United States, and other nations that were once part of the British Empire. English common law is a system of laws derived from centuries of experience, study, and traditions. The laws are based upon Judeo-Christian beliefs starting with the biblical Ten Commandments. English common law deals with legal relationships, liabilities of individuals and organizations, and limits the power of government over the people. It recognizes that the power of government is limited and places power in the hands of the people, not an elite or aristocratic group. Under English common law, a judge is an impartial referee of a dispute. A judge is bound to protect the rights of the parties and to follow prescribed procedure in protecting the interests of the litigants and society.

Australia is governed by the English common law system.

Civil Law System[7]

The civil law system is applicable to France, Germany, Belgium, Netherlands, Denmark, Spain, Portugal, Italy, Poland, Czech Republic, Slovenia, Sweden, Norway, Switzerland, and some countries in South and Central America, Africa, and other countries. Additionally, Louisiana in the United States and Quebec in Canada both have civil law systems despite being located in common law countries. Each nation or jurisdiction under civil law varies in its legal structure in some way; however they have a common base that was part of the early Roman legal system. The laws are codified (written). In the civil law system, the law is completely governed by statutes and judges are not free to interpret the law or establish law through case precedent. The non-criminal European legal system protects human rights, property, and allows actions in tort. There are some differences in interpretation, application, and basic law among various nations using the European legal system.

Japanese Legal System

The modern legal system in Japan was initially based on the European legal system, but was significantly modified using the American common law legal system following World War II. The Japanese system includes a bill of rights with 31 articles related to human rights. There is one Supreme Court, eight high courts (appellate) and 50 district courts, plus a number of family courts. The Japanese are not litigious by nature, even though Japan has many codified laws that allow lawsuits. Japanese society is dominated by social mores and traditional ways which value harmony and subjugation. These social conditions have tended to limit suits in tort.

Chinese Legal System

China's legal system is made up of a complex group of custom and statutes concentrating on criminal law with a rudimentary civil code. During recent years, China has passed many new laws and regulations to protect the interest of foreign investors, trade partners, and tourists. This was done to protect their economic interests. Foreign investors appear to have more legal protection than their own citizens. The Chinese constitution (1954) is the basis of the codified legal system. The Chinese system is best described as a "Rule of Law"[8] system and is currently a legal system in transition.

Islamic Legal System

The Islamic legal system (*Sharid*) is based upon rules and requirements found in the Muslim Holy Scriptures (*Quran*). The Sharia system dominates the legal system of the Muslim world. It forms the basis for relations between man and god, and among individuals. The *Hadith* and *Summa* are codified laws and basically follow generally accepted western jurisprudence. The *Figh* includes rulings by Islamic scholars to direct the lives of the Muslim faithful. The Council-of-State (Supreme Court) or *Majlis al-Dawla* is the highest administrative court, usually headed by a leading Muslim cleric.

International Courts of Arbitration

Special international Courts of Arbitration exist to settle disputes where national interests will likely dominate over fair legal decisions regarding the issues. As an example, there are specialty courts for maritime, intellectual

property, trade, sports, and other specialized legal areas. The International Court of Justice, also known as the World Court, is located in The Hague, Netherlands.

There is a Court of Arbitration for International Sports (CAS). This court is intended to be athlete oriented. It is an independent court for arbitrating disputes and deals with athletes, sports organizations, or a countries. This court was created in 1993 to bring about the resolution of sport-related disputes which are submitted to it through ordinary arbitration or through appeals against the decisions of sports federations or the International Olympic Committee (IOC).

International sports federations have statutes, practices, and activities that must conform with the Olympic charter. Subject to the authority of the IOC, each international sports federation maintains its independence and autonomy in the administration of its sport.

Notes

1. *International Court News.* (2005, Dec.). Mealy Publications, December 2005, Mealylnfo@LexisNexis.com.
2. Tourism and World Economy. (2006, Jan. 17). World Tourism Organization, International Monetary Fund, *Highlights 2004 edition*.
3. "Aruba Tourism Concerns," *USA Today*, Associated Press Article, November 9, 2005.
4. *James and Sheila Mack v. Royal Cruises Ltd*, No.2-0402168, Cook County Circuit Court, Affirmed by 1st District Appellate Court, 4th Division, Illinois (2005).
5. Lack of consortium is defined as the marriage fellowship of husband and wife, and the right of each to company, society, cooperation, affection, and aid of the other in every marriage relation. Black, H. C. (1979). *Black's Law Dictionary* (5th ed.). St. Paul, MN: West Publishing Co., 280.
6. *Spector v. Norwegian Cruise Line Ltd.* No. 03-1388 125 S. Ct. 2169, (U.S. 2005) Court of Appeals for the Fifth Circuit, 356 F.3d 641, United States District Court for the Southern District of Texas.
7. Roman law comprises all the laws which prevailed among the Romans, without regard to the time of their origin. It is sometimes referred to as the "Law of Justin." In the United States, Roman law sometimes refers to the term *Corpus Juris Civilis*, or civil law. Black, H. C. (1979). *Black's Law Dictionary* (5th ed.). St. Paul, MN:West Publishing Co., 1194.

8. Rule of law is a legal principle based upon logical conclusions. It is sometimes called the supremacy of law and provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application. Black, H. C. (1979). *Black's Law Dictionary* (5th ed.). St. Paul, MN: West Publishing Co., 1196.

SECTION 4: LEGAL RESEARCH

A basic understanding of legal research is important to those entering the recreation field. Regrettably, the chances are good that you will experience some legal issue firsthand during your lifetime, possibly through a lawsuit brought against your organization and/or you personally. Even though you will most likely have an attorney handling your case, understanding legal issues relevant to your situation can empower you and hopefully lessen the possible intimidation and stress that you may encounter. Understanding legal research begins with knowing the basic structure of the judicial system. The following figure illustrates the types of courts in which a case might be brought and decided.

As seen in Figure 1.2, there are two important things to remember for the purpose of legal research. First, all published court decisions that you will find in libraries and that you might be using in your class are from either federal court decisions or state court decisions above the trial court

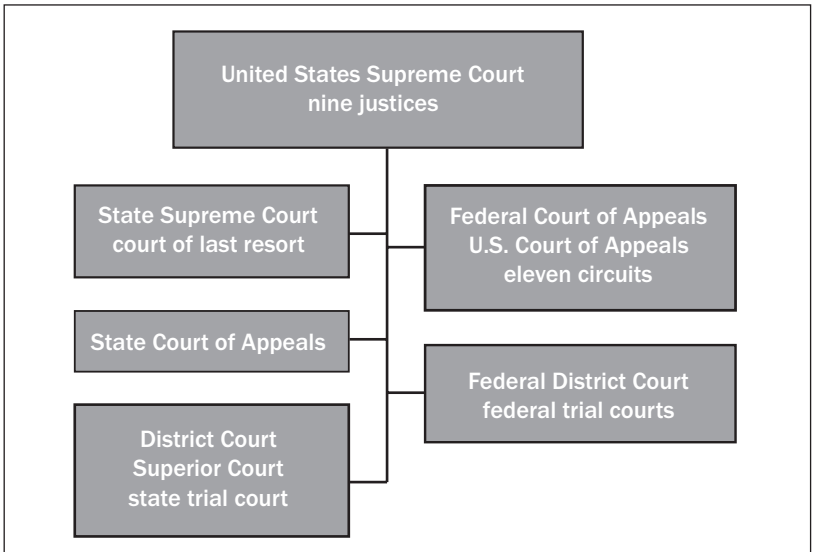
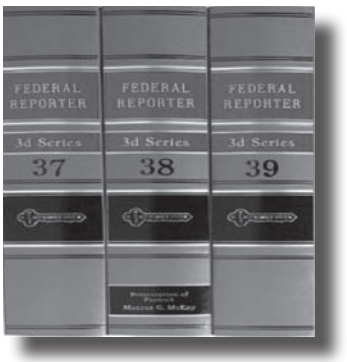


Figure 1.2. *Court System*



The spine of a Federal Reporter.

level. Trial court (also sometimes referred to as district court or superior court) decisions are not published and information from those trials in not readily available.

Second, cases are brought either in federal court or state court. The following chapter provides further detail on the judicial system, but in general, cases are brought in federal court if the parties are from different states (e.g., a person from Iowa is injured while visiting an amusement park in Georgia), or a federal question is involved. A federal question (e.g., federal law) is usually involved in cases where someone is injured on federal park property. Therefore, outdoor recreation cases involving search and rescue of a mountain climber, injury or drowning in a park stream or lake, or an attack on a human by a wild animal in a park would likely be brought in federal court.

Legal decisions from state courts of appeal, state supreme courts, federal district courts, federal courts of appeal and the U. S. Supreme Court, are published in books called reporters. Reporters comprise a collection of state and federal cases, and cases within them are found using case citations. A case citation is the key to locating cases in reporters.

Case citations look something like this: *Doe v. United States*, 38 F.3d 122 (1998). In this citation, *Doe v. United States* is the name of the case. Case names are abbreviated to include only parties to the case. They are also usually underlined or italicized when cited.

Doe v. United States	**38**	**F.3d**	**122**	**1998**
Case Name	**Volume**	**Reporter**	**Page**	**Year**

The first number shown in the citation refers to the volume number of the reporter. The middle letters refer to the name of the reporter (e.g., Federal Reporter in this instance), and book series (3d in this example). The last number refers to the page number followed by the year. The system is logical and easy to follow once understood. The process used to find a case by citation is as follows:

1. Find the reporter [Federal Reporter, 3d Series (F.3d)].
2. Find the volume (38).
3. Find the page number (122).
4. Look for the case name and be sure that it is correct (*Doe v. United States*).

Abbreviations for Regional Reporters are intuitive and listed as follows:
Southern Reporter (So.)
Atlantic Reporter (A.)
Northeastern Reporter (N.E.)
Northwestern Reporter (N.W.)
Pacific Reporter (P.)
Southeastern Reporter (S.E.)
Southwestern Reporter (S.W.)

Two states, California and New York, have so many cases that they have their own reporters. They are abbreviated as follows: California Reporter (Cal.) New York Supplement (N.Y.S.) These reporters are sometimes held at a separate location in the library.

Federal court cases also have their own reporters, and as with California and New York, are often located in a separate part of the library. The federal reporters are:

Federal Supplement (F.Supp)—federal district court's cases and Federal Reporter (F.)—cases from U.S. Federal Court of Appeals.

The challenging and often interesting part of legal research comes when you don't have a citation and must begin from scratch with ideas. In that case, for example, if you are given an assignment to research a legal topic and supplement with case law, first you must find sources that will lead you to case citations. These sources are available in books that allow you to search by key terms and topic areas. You can think of them as "encyclopedias of cases." A good place to start is state and federal digests. These books contain information by topic area that explain the topic of interest and provide case citations. Other reference books that allow you to search by topic are *American Jurisprudence* (commonly referred to as *Amjur*), and *Corpus Juris Secundum* (*CJS*).

Another method of finding cases and better understanding legal topics is to research law reviews and law journals. Law journals are usually edited and/or written by law students and legal scholars. They are usually quite lengthy and offer an in-depth discussion of a particular legal topic. Some law schools that publish law journals with topics of interest to our field include *Marquette* (sports law) and *Lewis and Clark* (natural resource law). Other journals such as the *Journal of Legal Aspects of Sport*, and *Entertainment Law* are published outside of law schools and are an excellent source of legal information for those in the field of recreation and sport. Finally, there are publications that offer a discussion of the latest and most relevant cases. The *Journal of Physical Education, Recreation and Dance* (*JOPERD*), and *Parks & Recreation Magazine* both provide very good discussions of recent cases. Citations are also provided so that the reader can find and read the cases for themselves.

You might also find that you have access to online legal research sources through your university or at your workplace. The two most common online sources are Lexis and Westlaw. Both services allow you to research cases by topic, citation, or case name. Online searches are efficient and convenient but also costly once you leave a university or place where you have might have free access. When using these online services, it is important to read and understand the terms and conditions of use.

Legal research is logical and often also interesting and fun. There is much more to be learned about legal research but this brief section should be enough to get you started and on your way. It is important when approaching this subject that you explore beyond any class assignments given to better understand how to navigate your way.

Discussion Questions

1. Briefly describe a case that has received media attention and that involves recreation, tourism, or sport. Give your personal opinion of the case.

2. Why do you think that we live in a "litigious" society?

3. Choose two international legal systems mentioned in the text and briefly compare and contrast them.

4. Briefly summarize a case you have found in *Parks & Recreation Magazine.*