

## REASONABLE PERSPECTIVE ON RECREATIONAL INJURY LIABILITY

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Driving an automobile  
carry sufficient insurance  
life is a risky business.

recreational injury liability is viewed in the proper perspective  
not the picture of doom and gloom portrayed in the newspapers and other popular  
media.

lawyers won't let us do it."

recreation administrator told me, "the legal tail should not wag the agency dog."  
liability should be just one area of concern for administrators.

many legal issues start out as public relations problems.

lawsuits can be avoided through a strong public relations program which generates  
individual and community support

Sensationalism, not reasonableness, makes good news copy.  
"Man Bites Dog" story which gets headlines

perception of liability is much worse than the reality.

case is settled, there is no admission of liability

## AGENCY INDEMNIFICATION FOR INDIVIDUALS?

individual is liable for his own torts

tort is a civil wrong (as opposed to a criminal wrong) outside of contract in which the  
defendant injures the plaintiff.

recreational injury liability involves the tort of negligence.

Negligence is unreasonable conduct under the circumstances which causes injury.  
Other torts which may be familiar are: assault, battery, libel, slander, etc.

"Can I be sued?" You can always be sued.  
If sued, will you be liable?

determine whether their agencies will indemnify its agents or employees named as  
individual defendants in a lawsuit?

some jurisdictions, it is at the discretion of the agency as to whether it will indemnify its  
agents or employees for torts committed within the scope of their authority.

Agency indemnification of the individual can not be assumed.

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attorney representing a public agency, the client is the city or some other public entity; it is not the individual administrator or employee.

individual may want to have his own professional liability insurance.  
real target of such lawsuits is the agency.

high cost or unavailability of insurance has little or nothing to do with the likelihood of recreational injury liability

### REASONABLENESS APPROACH

Law is based upon the concept of reasonableness.

law will change over time to meet the changing needs and attitudes of society.

good common sense invariably makes good legal sense.

best defense is "due care." Due care is defined as that care which is due under the circumstances.

do it right, or don't do it at all.

field of Recreation and Parks, not the lawyers, will define that degree of care which is due under various circumstances to avoid recreational injury liability.

jury will determine whether reasonable care was exercised in a given situation.  
Liability for negligence will be imposed for creating an unreasonable hazard, not reasonable hazards.

reasonable hazards ordinarily associated with recreational activities which will not impose liability on the provider of such services.

providing recreational facilities and programs, an agency is not the insurer of safety  
liability is based upon fault, i.e. a failure to act reasonably under the circumstances.  
reasonableness standard

foreseeable risk of serious injury is balanced against the corresponding burden of precaution necessary to alleviate that risk.

Foreseeability is not a mere possibility.  
foreseeability is a probability.

your actual knowledge or the common understanding of people similarly situated in your field, this injury causing situation has happened before and, therefore, is likely to happen again unless something is done to alleviate the hazard.

address the foreseeable hazards, rather than worrying about every conceivable mishap.

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aware of such a situation, the common sense approach would tell you to do something about it, fix it or get rid of it.