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**OUTDOOR PURSUITS PROGRAMMING:
LEGAL LIABILITY AND RISK MANAGEMENT.**

Edmonton: University of Alberta Press, 1991.

256 pp. \$24.95 cloth, \$16.95 paper.

The author, a non-lawyer though an educator, has undertaken a very ambitious project – to write, "not an absolute legal reference," but nevertheless "a guide for outdoor education/recreation practitioners, based on statutory, common and case law [in so far as there exists a distinction between the last two categories of law] as they exist at this time [presumably 1990-91]" (Disclaimer, p. iii).

Undoubtedly, there is a need for books and monographs which make the law more accessible and understandable for non-lawyers in all walks of life – after all, ignorance of the law is no excuse, when people run afoul of it in their daily activities. Moreover, legal language tends to be notoriously impenetrable; much legal writing is stodgy, pedantic, rule-oriented and inflexible; and many legal concepts, rules, and procedures can only be truly appreciated by non-lawyers when discussed against a background with which they are familiar. Members of the legal profession, both practitioners and academics, have not been conspicuously anxious to make the law more accessible and understandable – to remove the confusion and mystery commonly associated with the law – for non-lawyers. Therefore, it should come as no surprise that non-lawyers should seek to fill the void left by lawyers and embark on an exposition of aspects of the law which are either of pertinence to their, and their colleagues', professional lives or of particular interest to them.

However, it is a daunting task to attempt to popularize, if not to vulgarize, the law on any given subject. To effectively and accurately carry through such a project an author must possess both a detailed knowledge, and an intimate understanding, of the relevant issues and sources of law, legal terminology, and the rules and concepts pertinent to the field of activity being discussed. That is, such a project demands not that one necessarily be a lawyer or have undertaken legal training, but that one have developed an expertise in and of the law on which one is writing.

To attempt to popularize the law without such threshold expertise is a risky business – but as the author notes in the opening sentence, "Humans have always been risk takers" (p. 1).

The title to the book *Outdoor Pursuits Programming: Legal Liability and Risk Management*, unqualified as it is as to the nature of the legal liability which is discussed therein, suggests that one can expect a comprehensive coverage of various categories of legal liability to which outdoor education/

recreation practitioners may be exposed. Thus, one would expect to find a meaningful discussion of such practitioners' tort and contractual liability, and their liability for breach of the numerous federal and provincial statutes, including the Criminal Code, which impact on their activities. But this is not to be.

Although it may be implicit in chapter 1, "Is the Risk Worth Taking?", that it is not the author's intention to canvass all the potential legal liabilities of outdoor education/recreation practitioners, it is not until the discussion of "Divisions of Canadian Law" in chapter 2, "An Overview of the Canadian Legal System," that some express guidance is provided as to the scope of the book. There the reader is told that the "only type of private law this book will deal with is tort or negligence law..." (p. 15). This statement, however, leaves the reader somewhat perplexed as "tort" and "negligence" are not synonymous terms, with the former embracing a much wider range of liabilities than the latter. Moreover, nothing is said as to whether the book will deal with the public law liabilities (i.e., liability for breach of statute and criminal liability) of outdoor education/recreation practitioners.

Thus, in the end, one has to read the book to learn what legal liabilities the author in fact attempts to cover. Such reading discloses that, apart from an excursion into the fields of occupiers' liability and vicarious liability, the book is primarily concerned with only the negligence liability of outdoor education/recreation practitioners to participants. Virtually ignored is their negligence liability to third parties, as are their other tort liabilities to both participants and third parties. And, while a number of statutes are discussed, there is no informative treatment of practitioners' public law liabilities.

It may be noted in passing that the title to chapter 7, "Vicarious Liability," also is inappropriate. While vicarious liability is discussed in the chapter, the discussion occupies only about half of the chapter and is sandwiched between a discussion of other issues. Moreover, from time to time one encounters such observations, to give but two examples, as: "In simple terms, this body of law is primarily concerned with compensating victims who have sustained injury as a result of the conduct (or misconduct) of others" (p. 22). Well, which is it – conduct or misconduct? Surely it is crucial to liability and risk management for a reader to know whether tort/negligence is concerned with mere conduct, misconduct, or both. Elsewhere, it is observed: "In the Rudko case, the trial judge dismissed the action based on the absence of fault under the *Crown Liability Act* or the *Occupiers Liability Act*..." (p. 64). One is left to wonder what was the holding – in so far as it might have a bearing on the point being made. On the other hand, where the author does attempt to be precise the book is not always accurate. Thus, for example, it is suggested that 18 is the age of majority in all provinces (p. 36), which it is not (and no mention is made of other "ages" of relevance to the legal liability of outdoor education/

recreation practitioners); that "married spouses may not sue each other in tort for personal injuries" (p. 37), which has not been the case for some time; and the "gratuitous passenger" provision given as an illustration of the law "remaining in a few provinces" (p. 162) was in fact repealed a number of years ago.

At the end of this book, one finds a bibliography (pp. 237-249) and an index (pp. 251-256). The bibliography contains a listing of books, articles, and other writings (pp. 237-243) which should be of interest to one who wishes to read further on various issues discussed. However, the list of statutes (pp. 247-248) is of little use to the reader since many of the citations provided (and, unhappily indeed, used throughout the book) for the statutes are to versions which are and, well before this book was published, were no longer in force. This alone prompts the rather serious question, to what extent does the book provide a guide to relevant statutory law as it exists at this time? In view of the foregoing, it might be trite also to point out that the list is incomplete and a number of citations provided are incorrect.

Similarly incorrect and incomplete are the citations provided for a number of cases listed in the bibliography (pp. 243-247); and the attempt to list the cases according to country of origin is not entirely successful, in part because of the apparent failure to appreciate that, for many decades, the Privy Council was the supreme appellate court for Canada.

The index is replete with case names (notwithstanding the inclusion of the aforementioned list of cases) and, more puzzling, the names of judges and other persons. The former provide little, the latter no, guidance to any of the substantive topics likely to be of interest to the non-lawyer to whom the book is addressed. On the other hand, what topical information is included in the index is incomplete. For example, though the defences to a negligence action (e.g., voluntary assumption of risk, or *volenti non fit injuria* as it is also known, and contributory negligence) are discussed in several places in the book, the index does not contain an entry for "defences" or "contributory negligence" or "voluntary assumption of risk." Similarly, no entries are found for "licensee" or "invitee," two categories of entrants discussed under the section dealing with occupiers' liability; nor for "causation," "gratuitous passengers," "*in loco parentis*," "negligent misrepresentation," and "vicarious liability," to cite but a few other examples, though all also are discussed. It is true that a few of these terms appear in the table of contents – but the table of contents, understandably, does not signal all places in the book where they are discussed.

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