



Civil Liability for Alpine Rescue Teams

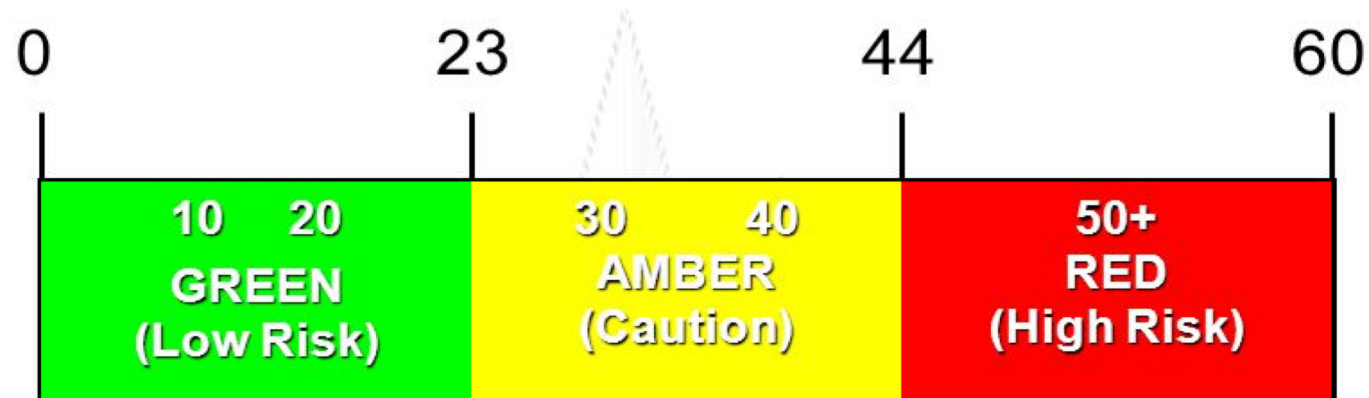
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This presentation will review the situation in the USA and other ICAR countries, and provide teams with possible ways to **assess the risk** and help **mitigate or reduce the risk of civil liability** for their activities.



The GAR Model

Color Coding the Total Level of Risk



Although the Risk scale starts at Zero, is there ever Zero Risk? Discuss!

An individual risk assessment is **personal and subjective**. One individual may perceive the risk to be **acceptable** but another, faced with the same conditions, may find the risk to be **unacceptable and may choose to not participate in the activity**.

Questions on the **scope of risk** for each rescuer should be referred to the experts and legal advisers in the home jurisdiction.

This presentation should not be considered as **legal advice** to any rescuer or organization.



Consequence & Probability

Risk assessment is commonly used in many fields of endeavor, and generally based on the functions of **Consequence** and **Probability**.

The consequences may be rated from **insignificant** to **very serious** and the probability from **unlikely** to **probable**.

Risk Matrix

Likelihood		Very Likely	Likely	Unlikely	Highly Unlikely
Consequences	Fatality	High	High	High	Medium
	Major Injuries	High	High	Medium	Medium
	Minor Injuries	High	Medium	Medium	Low
	Negligible Injuries	Medium	Medium	Low	Low

Civil Liability

- A **civil action** is a lawsuit or court action filed by a private person (not the government) against another private person or government entity.
- Usually these lawsuits seek **monetary damages** for injury or loss that the party suing (the plaintiff), making a claim that the defendant caused.
- By contrast, a **criminal action** is a prosecution by the government (usually the state) of an individual for violating a provision of a criminal code.

This presentation does NOT cover:

- claims by rescuers against their own organizations or the government for damages resulting from their own injuries.
- the **standard of care** expected from rescuers in the event of a claim.

For example, ICAR makes certain recommendations related to alpine rescue. If a team or individual fails to follow that recommendation, we will not discuss if there might be a claim based on that failure.

Civil Liability

In the **alpine rescue environment** **civil claims** would usually be **based** on some form of **negligence**, a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances.

NEGLIGENCE

This presentation **will only cover** possible **civil claims by third parties** such as climbers or skiers who are subjects of rescues (not rescuers themselves.)

Common Law & Civil Law Systems

Common Law Systems

Roughly 80 countries have
Common Law Systems
(such as UK, USA, Ireland)

Civil Law Systems

Roughly 150 countries have
primarily **Civil Law** Systems (such
as France, Germany)

Main Difference:

Case law — in the form of published judicial opinions — is of primary importance,
whereas in civil law systems, **codified statutes** predominate.

Volunteers & Professionals



Volunteers & the Duty to Respond

Common Law Systems

There is **generally no duty to respond** or initiate a rescue, unless some special relationship exists.

Civil Law Systems

In civil law countries a more extensive **duty to rescue** can be found.

“Good Samaritan” Laws

A Good Samaritan in legal terms refers to someone who renders aid in an emergency to an injured person on a voluntary basis.



If a Good Samaritan makes an error in many **Common Law** jurisdictions, he or she cannot generally be held legally liable for damages in court.

In **Civil Law** jurisdictions, where a duty to respond can often be found, **good samaritan laws may be unnecessary** to protect the responder.

Individuals & Organizations

The law provides different levels of protection for individual responders and their organizations in some common law countries.

Rescuers in **Civil Law** countries seem to have greater degree of protection against civil claims because they have the “**duty to respond**”.

However:

⋮

Ireland (common law) has a statute that clearly protects volunteers but does not mention volunteer organizations.

As a result, mountain rescue teams in Ireland do not enjoy the same level of protection... a team may be held liable if it fails to follow a “**duty of care**” to the public.

Mountain Rescue Organization in the USA

MRA includes 90 volunteer rescue teams and more than 3000 members.

See www.mra.org



M O U N T A I N
RESCUE
A S S O C I A T I O N

All teams are **certified by the national organization.**

Individuals are **certified in the necessary skill level** by their teams.



Pacific Northwest USA:

The local sheriff is typically responsible for coordinating the response under state and federal law

MRA teams are “activated” as one of the available resources under the **National Incident Management System (NIMS)** see <https://www.fema.gov/national-incident-management-system>

Washington and Oregon Law

- The State Good Samaritan laws seems to provide a reasonable level of protection against claims.
- The statute mentions “any person” but does not specifically mention volunteer rescue organizations.

A recent court case in the US raised concerns about the risk of liability resulting from a failed rescue.

In May of 2019 a local county in Oregon paid \$25,000 to the family of a man who died in 2017 as the result of a fall on Mount Hood. The claim was based on a four - hour delay by the county officials in sending a helicopter.



How to assess and mitigate risk for alpine rescue teams?

1. Do you live in a country that has a **robust and functioning legal system** that can provide civil compensation to injured third parties in the mountain environment?

If the answer is **no**, you need to go no further. If the answer is **yes**, you can continue.

Do you live in a country that has a **significant number of private lawyers** and might be considered to have a higher rate of litigation or court cases for compensation?

Some Risk?



The US has one of the highest number of lawyers per capita than any other nation. Washington State has 26,000 lawyers for 7 million people, or one for every 300 people. By contrast, Germany has about one lawyer for every 600 people and Sweden one for 1200.

What accounts for this? There are complex historical and economic factors, but people may be looking outside of family and community to solve problems. The courts are seen as a solution for disputes we used to settle among ourselves.

Culture: Do citizens of your country expect that injured parties should be **responsible for their own risk in the mountains**? Do injured parties in your country look to find fault or responsibility for every loss, even when they are at fault?

Do you have a **high personal net worth** that might justify special concerns? Remember that assessment of risk can be subjective and is always a matter of personal choice.

Some Risk?



2017 Irish Case: The High Court overturned the Circuit Court decision to award a hillwalker Teresa Wall €40,000 for injuries she sustained after she tripped and fell on a boardwalk on the Wicklow Way.

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- Are you a **volunteer or a professional rescuer**?
Professionals seem to have a higher degree of protection.
 - Are you part of a larger **rescue organization** that **covers its individuals**? Do you expect that they will **“indemnify”** or come to your aid in a legal case
 - **Some Risk?**

Conclusion:

- If your own net risk analysis is **green**, you should have little to worry about in terms of financial risk.
- If your own net risk is **red**, you should probably not be in the field of alpine rescue. In Washington State USA a few individuals are reported to have quit mountain rescue because of the risk.
- If your own net risk is **yellow**, you should look into mitigation measures. This might include buying insurance or working for protective legislation in your jurisdiction.

Thanks for your
attention!

Questions and
comments welcome to
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