

# AVOIDING LEGAL LIABILITY FOR ADULT EDUCATORS, HUMAN RESOURCE DEVELOPERS, AND INSTRUCTIONAL DESIGNERS

John Sample

*reviewed by Roger Kaufman, CPT*

John Sample, SPHR, has his PhD from Florida State University, where he was an associate professor in human resources development. He has 35 years of experience as a consultant, educator, and administrator in human resources management, training, and development. He has served as an expert witness. *Avoiding Legal Liability for Adult Educators, Human Resource Developers, and Instructional Designers* (ISBN 13: 978-1-57524-273-6 and 10: 1-57524-273-7) is published by Krieger Publishing Co. This publisher may be reached online at <http://www.kreiger-publishing.com>.

LEGAL LIABILITY? WHO? ME? The title of this book might scare some people. Don't let that stop you. It should be bought and used by all in our field of human performance technology (HPT). It tells us what we should know even if it might make us uncomfortable.

This book can save you a lot of grief. It is well written and well documented. It provides references to actual cases where practitioners did not provide due diligence in what they used, did, and delivered. This book will not allow us the personal fantasies of "if we do what we are asked to do, everything will be all right." Because we see ourselves as professionals, it turns out that we are individually responsible for what we use, do, deliver, and the consequences all of that has. That means potential legal liability. And if we are not responsive and responsible, it may result in lawsuits, lawyers, and wrenched guts.

The book is very clear that "ignorance of the law is no excuse." The harsh reality is that we impact the lives of individuals and groups by the very nature of being in

the performance improvement and human performance technology business, and with that comes potential legal liability. So listen up.

What is the book about and what is in it? John Sample aptly and competently covers the following topics in this book:

- Liability and the training development enterprise.
- Equal employment opportunity and related liability.
- Occupational safety and health related liability.
- Adventure training and New Age experiential learning liability.
- Intellectual property: copyright and trade secrets.
- Corporate ethics and the federal sentencing guidelines.

In addition, there are 13 appendixes that define terms and provide summaries of relevant laws, policies, and appropriate checklists, along with guidance on such basic things as writing a permission letter to register a copyright—all use-

ful material for avoiding legal liability. This material is not usually available in convenient and reader-friendly terms.

Most are not prepared about potential liability. Our field and those of us who work in it are charged with delivering useful performance to internal and external clients. We have academic and published guidance on fundamental HPT concepts and tools plus a rash of how-to-do-its for doing our business: assessment, analysis, design, development, implementation, evaluation, and continual improvement.

We usually assume that if we follow standard practice—including the ISPI Performance Technology Standards—things will sort out satisfactorily. Well, being competent in standard and conventional HPT alone will not necessarily make us safe from lawsuits. We have liabilities just by coming to work and doing our business, and this book provides due notice of those risks so that we can *both* improve performance and stay out of lawsuits.

Think about it. How much guidance have we received about this sticky and uncomfortable area?

To their peril, most people convince themselves that they only have to do what is assigned and what they are told to do (recall the almost slavish devotion to subject matter experts and so-called “best practice”), and they don’t have to consider (or we may even reject) formally taking into account such things as workplace violence (see pp. 86–89 in this book) and other threats to our success as we align what we use, do, produce, and deliver, and the impact on external clients and our shared society.

The author provides chapters, verses, and cases in point and documents possible sources of liability for our work. He also notes how to avoid liability with clear advice and guidance.

The book is clearly organized to guide us. The book, as the author notes, is not meant to be a page turner in which one chapter is read and then the next one. The chapters and topics frame the discussion for anyone who cares about his or her professional safety. And each chapter provides clear examples of things that have gone wrong for practitioners and organizations that do not understand the legal ground rules. In each chapter, there are statements of purpose and a summary, as well as ample references and examples.

Chapter 1 lists “essential steps to follow in reducing liability” (pp. 23–26) and the rest of the book documents considerations for doing just that in specific areas of practice.

Of special usefulness on pages 26–28 is an index (inappropriately called a “needs assessment”) for the reader to know where in the book to look in terms of what one’s organization does and a practitioner’s specific interests and areas of activity. Here are a few examples:

<i>This organization:</i>	<i>If Yes, see Chapter</i>
<i>—makes decisions about who will or will not attend training and development programs</i>	2
<i>—will likely have participants who have learning or physical disabilities apply for and attend HRD programs</i>	2
<i>—requires employees or contract personnel to use equipment that could result in injury or death if not used properly</i>	3 & 4
<i>—uses experiential exercises in a classroom setting in which participants may be expected to reveal and discuss personal beliefs and values</i>	5
<i>—produces training and development programs using print, computer-based instruction, multimedia applications, or e-learning software applications</i>	6
<i>—has employees who are required to follow strict ethical guidelines during the performance of their job duties</i>	7

**Immediate application.** I found much in this book that I can immediately use in my own work. For example, it is often difficult for me to get people to understand and use the basic elements of Mega thinking and planning (cf. Kaufman, 2006) that we have to add measurable value to all internal and external stakeholders. I see doing so as an ethical as well as practical issue; ethical and, perhaps in the future, legally responsible professional conduct as we move from conventional practice to ethical practices.

The author documents why “Mega/Ideal Vision” criteria such as “no murder, rape, or crimes of violence, or destruction of property” is an essential element in any legal professional practice by citing data that homicide and workplace violence happens, and happens a lot more than we might think or want. When I introduce this to professionals, most people don’t readily see this as a reality, and as Dr. Phil would say, “you can’t fix that which you don’t acknowledge.”

**Recognizing and dealing with threats to liability.** Sample provides reality and supporting data to help us be successful and legal. The topics of professional and legal responsibilities are not usually on people’s radar screens,

putting those who ignore this in jeopardy, a jeopardy that this book can help reduce.

**Personal liability.** Can this subject make you uncomfortable? Absolutely. But let us not have “ostrich optimism” where we stick our heads in the sand and assume that everything is going well. Forewarned is forearmed.

So, my recommendation is to (1) buy and use this book, (2) buy personal liability insurance, and (3) im-

prove individual and organizational performance and value added. 🐘

## Reference

Kaufman, R. (2006). *Changes, choices, and consequences: A guide to mega thinking and planning*. Amherst, MA: HRD Press.

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