Independent Contractors vs. Employees

- Independent contractors are self-employed personal trainers.
Independent Contractors vs. Employees

• Court cases have established ten (10) legal tests for determining whether someone is an employee or an independent contractor:
  1. How much control can the employer exercise over the details of the work?
  2. Are people paid by the hour or by the job?
  3. How long has the person been working for this establishment?
  4. How much training does the person require?
  5. Does the person provide service to more than one client or business?
  6. Who provides the equipment?
  7. Is the work integral to the business?
  8. In other clubs, is the work traditionally performed by an independent contractor or employee?
  9. What did the club and the trainer intend when they made their agreement?
 10. Is the employer engaged in business?
Contracts

- The following elements are necessary for a binding contract:
  - An offer and acceptance with a mutual agreement on terms.
  - Consideration - an exchange of valuable items, such as money, for services.
  - Legality - acceptable form under the law.
  - Ability of the parties to enter into a contract with respect to legal age and mental capacity.
Contracts

- A document becomes a valid contract when signed by both parties, if both parties are of legal age to enter into contracts.
Business Structure

- Sole proprietorship is a business owned and operated by one person.

- The risk of liability is a drawback to sole proprietorship that often convinces people to choose other business structures. In sole proprietorships, the owner is completely responsible for all liabilities, court awards, or damages incurred by the business.

- Another disadvantage of sole proprietorships is the difficulty of getting away for vacations, illness, or emergencies.
Business Structure

- In a general partnership, all partners are fully liable for the actions of the business.

- In a limited partnership, partners are allowed to limit their liability to the amount of money they have contributed to the business.
Business Structure

- Corporations exist as legal entities and are independent of their owners.

- Corporations are taxed separately from their owners, and corporate assets may be easily sold or transferred.

- An S Corporation passes its profits through to shareholders, where the income is taxed at the individual rate. S Corporations have certain restrictions, such as limiting the number of shareholders to 35.
# Business Structure

## Advantages and Disadvantages of Sole Proprietorships, Partnerships, and Corporations

<table>
<thead>
<tr>
<th>Sole Proprietorships &amp; Partnerships</th>
<th>Corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Advantages</strong></td>
<td><strong>Advantages</strong></td>
</tr>
<tr>
<td>Easily formed under the law</td>
<td>Limited liability for corporate acts</td>
</tr>
<tr>
<td>Low costs of formation</td>
<td></td>
</tr>
<tr>
<td>Typically can operate in different states</td>
<td>Complicated legal requirements</td>
</tr>
<tr>
<td>Owners pay taxes, but business does not</td>
<td>High costs of formation</td>
</tr>
<tr>
<td>Minimal government regulation</td>
<td></td>
</tr>
<tr>
<td><strong>Disadvantages</strong></td>
<td><strong>Disadvantages</strong></td>
</tr>
<tr>
<td>Unlimited liability (except limited partners)</td>
<td>Both corporation and owners are taxed, except for S corporation</td>
</tr>
<tr>
<td></td>
<td>Extensive government regulation</td>
</tr>
</tbody>
</table>
Scope of Practice

• Wellness-assessment documents should be utilized for determination of an individual’s level of fitness, never for the purpose of providing or recommending treatment.

• The personal trainer should use the health history form to screen the client for appropriate placement in a fitness program.

• In cases where any significant risk factors are indicated, you should refer the client to a physician for clearance before the program begins.
Scope of Practice

• If the personal trainer is not a registered dietician or healthcare professional, the personal trainer should avoid making specific recommendations and refer the client to a registered dietician or physician.
## Personal Fitness Trainer’s Scope of Practice

<table>
<thead>
<tr>
<th>DO NOT:</th>
<th>DO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diagnose</td>
<td>Follow guidelines for exercise programming; screen for exercise limitations; identify potential risk factors; refer clients to appropriate allied health professional or medical practitioner</td>
</tr>
<tr>
<td>Prescribe</td>
<td>Design exercise programs; refer clients to appropriate allied health professional or medical practitioner</td>
</tr>
<tr>
<td>Prescribe Diets or Recommend Supplements</td>
<td>Provide general information on health eating; refer clients to dietician or nutritionist</td>
</tr>
<tr>
<td>Treat Injury or Disease</td>
<td>Refer clients to appropriate allied health professional or medical practitioner; use exercise to improve overall health; help clients follow physician or therapist advice</td>
</tr>
<tr>
<td>Monitor Progress for Medically Referred Clients</td>
<td>Document progress; report progress to appropriate allied health professional or medical practitioner; follow physician, therapist, or dietician recommendations</td>
</tr>
<tr>
<td>Rehabilitate</td>
<td>Design an exercise program once a client has been released from rehabilitation</td>
</tr>
<tr>
<td>Counsel</td>
<td>Coach; provide general information; refer clients to a qualified counselor or therapist</td>
</tr>
<tr>
<td>Work with Patients</td>
<td>Work with clients</td>
</tr>
</tbody>
</table>
Legal Responsibilities

- Liability simply means responsibility.

- When a personal trainer selects a workout area, he/she should give special consideration to the following:
  - Floor surface
  - Adequate free space around workout stations
  - Appropriate use of public spaces
  - Ethical use of other business establishments
Legal Responsibilities

• The personal trainer’s primary responsibility is the client’s safety.

• When selecting equipment, the personal trainer should:
  - Select equipment with the highest safety & design standards
  - Avoid homemade equipment
  - Ensure selection, maintenance, and repair of equipment meets standard
  - Inspect equipment on a regular basis
Legal Responsibilities

• A personal trainer should never leave a client during an exercise session in which direct supervision is needed.

• Proper supervision requires planning to ensure that each client can be monitored at all times.
Legal Responsibilities

- Safety guidelines for working out with a client include:
  - All sessions should be well-planned, sequential, & documented
  - Enforce all safety rules for equipment use
  - Be sure that equipment meets or exceeds all industry standards
  - Inspect all equipment prior to use and document maintenance
  - Never allow unsupervised activity by the client
  - Limit participation to those under contract (i.e., no friends)
Legal Responsibilities

- Safety guidelines for working out with a client include (continued):
  - Clearly warn clients about specific risks of activities
  - Be sure all activities selected are within the areas of the personal trainer’s training
  - Be sure that clients wear any necessary protective equipment (e.g., athletic supporter or sports bra)
  - Review the emergency plan (access to a phone for EMS and/ or 9-1-1)
  - Stay up-to-date with certifications and education
Legal Responsibilities

• Standard of Care - appropriateness of an exercise professional’s actions in light of current professional standards and based on the age, condition, and knowledge of the participant.

• Graded Exercise Test (GXT) - a treadmill or cycle-ergometer test that measures or estimates maximum aerobic capacity by gradually increasing the intensity until a person has reached a maximal level or voluntary exhaustion.
Legal Concepts & Defenses

- Code of Ethics - code, supplementary to other professional standards of practice or legal requirements, developed by professional organizations to govern professional conduct. Adherence to these codes is necessary to maintain professional standing or certification with such organizations.

- The ACE certification in personal training, the trainer’s conduct is compared to the ACE Code of Ethics.
Legal Concepts & Defenses

- If a client voluntarily accepts the dangers known to be part of an activity, the trainer can use the assumption of risk defense.

- Known technically as exculpatory agreements, informed consents, warning, and waivers fall under contract law and are often used by exercise leaders and fitness centers to absolve themselves of liability.
Legal Concepts & Defenses

- A personal trainer should inform his/her clients about:
  - The exercise program or test, providing a thorough and unbiased explanation of the purpose of each
  - The risks and possible discomforts involved
  - The benefits he/she may expect
  - Alternatives that may be advantageous to them
Legal Concepts & Defenses

• Someone who fails to perform as a reasonable and prudent person would under similar circumstances is considered negligent.

• The definition of negligence has two (2) important components:
  1. Failure to act
  2. Appropriateness of the action
Legal Concepts & Defenses

• To substantiate a charge of negligence in court, the plaintiff must establish four (4) elements:
  1. The defendant had a duty to protect the plaintiff from injury (Duty to Act);
  2. The defendant failed to exercise standard of care necessary to perform that duty (Failure to Act within Standard of Care);
  3. Damage or injury to the plaintiff occurred (Damage); and
  4. This damage or injury was caused by the defendant’s breach of duty (Proximate Causation).
Legal Concepts & Defenses

• If the client played some role in getting injured, a few states prohibit the recovery of damages under contributory negligence.

• Some courts may apportion guilt and any subsequent award for damages, measuring the relative fault of both the plaintiff and the defendant (comparative negligence).
Other Business Concerns with Legal Implications

- Although there are currently no federal laws requiring licensure or certification for personal trainers, certification from a credible professional organization can assist a defendant by providing evidence of competency.

- It is also important to understand that certification does not protect against findings of negligence.
Other Business Concerns with Legal Implications

- All the popular recordings on the radio and television have been protected by artists and studios with copyrights.

- ASCAP & BMI issue licenses for commercial use of recordings; however, their fees are probably prohibitive for personal trainers.
Other Business Concerns with Legal Implications

• The Occupational Safety & Health Administration (OSHA) plays different roles in the profession of personal training. Be familiar with how OSHA regulations apply to the profession.
Other Business Concerns with Legal Implications

- Risk management is the periodic review of programs, facilities, and equipment to evaluate potential dangers to clients.

- This will allow the personal trainer to decide the best way to reduce costly injuries in each situation.
Other Business Concerns with Legal Implications

• Most authorities recommend a risk management protocol that consists of five (5) steps:
  1. Identification of risks
  2. Evaluation of each risk
  3. Selection of an approach for managing each risk
     a. Transfer of risk, as with insurance policies
     b. Reduction (through continuing education)
     c. Retention (budgeting for minor emergencies)
     d. Avoidance of certain activities or equipment
  4. Implementation
  5. Evaluation