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# Sport and Children

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J. Neville Turner, LL.B., B.A.,  
Children's Bureau of Australia Incorporated.

## THE RESPONSIBILITIES AND PRIVILEGES OF SPORTS PERSONS

Many people believe that top sportsmen earn far greater sums than they deserve. It is certain that there is much envy in this. Why should someone be paid millions of dollars for doing something he enjoys?

The justification, to me, lies not so much in the proper appreciation of genius or talent, but in the recognition that sportsmen have the highest responsibility to young people.

Sportsmen and women are **exemplars**, having a unique ability to influence the young. Adults often forget the adulation that they felt for sporting heroes of their day. But every parent knows the feeling that advice which he may have given and was disregarded, when it comes from a sporting hero, will classify as an unassailable, *ex cathedra*, pronouncement.

It is disappointing that certain sportsmen abuse their responsibilities. It is also disturbing that blatant cheating, violence and reckless behaviour off the field has been widely practised in recent years, and has received a disproportionate amount of publicity.

## SOME LEGAL PROBLEMS FOR CHILDREN, TEACHERS AND COACHES

In a recent, well publicised case in New South Wales, the Education Department was held liable to the tune of over \$2m for an injury to a boy who was injured playing rugby at school.

I am concerned that this case may have a deleterious effect, in the way of an over-reaction. To my mind it is beyond dispute that sport, and organized team sport in particular, is of great value to children. Sport is of inestimable value as a character builder, as well as for medical reasons. There are admittedly legal ramifications to be taken into account. But these should not cause panic measures. I would suggest that sensible action in advance will prevent any catastrophic legal consequences. But it is important for all those connected with children's sport to be aware of their legal responsibilities and duties. The fact that it is **sporting** activity in which one indulges does not provide anyone with a legal immunity from the consequences of wrongful acts. The attitude that Leigh Mathews, the V.F.L. footballer, takes in a controversial book, that sport should be removed from the law and that events taking place on the field should not suffer from interference by the law, may indeed, as he claims, reflect a widely held community feeling.

It is however, absolutely and completely false. This is extremely well established law. Let me try to give an overview of the principles of law applicable.

## WHAT TYPE OF INJURY MIGHT BE THE SUBJECT OF LEGAL ACTION?

There is potential for legal liability for both injury suffered **within** the context of a game or physical recreation and for injury suffered **outside** that context.

There may be liability on a wide number of persons such as spectators, the clubs, the occupiers of premises, sports officials, those administering medical treatment, manufacturers of sporting goods and other persons associated with sporting activity.

### (a) INJURY DURING THE GAME

It is, I think, necessary to distinguish between contact and non-contact sports. An injury deliberately inflicted in a non-contact sport is almost certainly going to be actionable. The difficulties mainly arise in so-called **contact** sports. It is sometimes difficult to decide what is and what is not acceptable contact. It is fair to say that a contact sport allows for the possibility that a person may be injured either accidentally or even by an error of judgement and still may not have recourse to law. The rules of the game, although they are very significant, are not determinative of what is and what is not acceptable contact. They do not bind a Court of Law. Contact "off the ball" is invariably regarded as unacceptable.

Participants in a game or sport owe a duty to each other. In one High Court case, a water skier was being towed. The driver of the boat

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## AN APPROACH TO FAMILY THERAPY

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## REFERRALS TO THE LIFELINE FAMILY THERAPY UNIT

Referrals come to the Unit through Lifeline's Crisis phone service, through Government and private agencies, through helping professionals, and through self-referral.

## REFERENCES

- MacKinnon, L.K. and James, K. 1987. *The Milan Systemic Approach - Theory and Practice*. A.N.Z.J. Fam. Ther., 8,2 89-98.
- Zinker, J. 1978. *Creative Process in Gestalt Therapy* Vintage Books, New York.



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failed to indicate that he had seen a stationary boat. The skier should have been warned about this, because it was accepted practice.

The water ski case concerned adults. Does the position differ in children's sport?

There is a feeling in the community that young people playing sport are not themselves liable to injury caused. That is false. If a young person has enough money to be sued, **that young person** can be sued personally. In practice, what normally happens is that an action is brought against the school or against the Education Department, on the basis that they are **vicariously** liable. An employer is vicariously liable if one of its employees has failed to keep a reasonable check on the activities of the children playing sport. This is judged by what a **reasonable** teacher or reasonable coach would do. It goes without saying, that a coach who deliberately tells a child to "get stuck in there" and inflict violence, is going to be **personally** liable for any damage that is done as a result of that. In that case, the child is virtually acting as his instrument.

The NSW rugby case does suggest that the standard of negligence is to be judged realistically in the light of the **game**. People do take risks in sport, and the fact that a person makes an error or judgement in the sporting contest, does not necessarily render him liable, in circumstances where he would be liable if, for instance, he had made the same error on the road.

## DEFENCES

There are two defences to an action in negligence for sporting injury. First, the so-called "defence" of contributory negligence. Actually, this means that a plaintiff's damages may be reduced by the extent to which he himself was negligent.

The other defence is that of **consent**. This defence is only available if the consent is to a risk which is **acceptable**. For instance, a boxer would be able to rely on that defence quite easily as a defence to an assault. But it is fallacy to think that a Rugby or Australian footballer consents to some foul play because it is part of the accepted ethic of the game!

## ACTIONS

In addition to the law of negligence, it is possible in some cases that an action may be brought for **assault and battery**. Assault and battery is **both** criminal **and** civil. There is an interesting recent English case where a teacher joined in a game of rugby with his students. He injured the student when he tackled him. The judge found that it was acceptable for the teacher to participate to keep the game going, but the teacher had performed a high tackle on the plaintiff. Even though it was permitted by the rules of the game, in the circumstances, it was unlawful and dangerous because of the relative sizes of the teacher and the pupil. This case suggests that there may be circumstances where the significance of the rules is diminished by the fact of the various levels of experience of the players. It is worthwhile emphasizing that teachers should not mismatch opponents, or encourage physical violence in games.

What is the standard of skill by which an injury caused by one player to another is judged? It is

said to be objective. But it depends to a large extent on the experience of the players. You can expect a higher standard of a professional than from an amateur. This should be borne in mind by teachers and coaches in children's sport. They should never expect a child to perform feats of skill (or evasion) beyond his talents.

## LIABILITY OF CLUBS AND EMPLOYERS

The liability of a sporting club can take many forms. One of the most common instances is where spectators are injured by a structure or the collapse of a stand. There can be liability where spectators are injured as a result of an event taking place which should not take place. In cases such as the Bradford football disaster, the club is almost certainly going to be liable. In addition to that, the club can be liable **vicariously** for an injury caused by one of its players or employees, if the player or any other employee injures a spectator. The club is liable as well as the player himself.

A club would be liable for the behaviour of a coach who encourages violent conduct. There is an interesting American case where during a football game, off the ball, the defendant struck the plaintiff from behind and fractured his neck. Now, the evidence before the court was that the members of the defendant's team had orchestrated and built up the players' emotional rage, without regard to their opponents' safety. The case was dismissed at first instance on the theory of consent. An appeal was upheld. The player does not assume the risks of excessive violence.

Liability can also attach to injuries which take place in training sessions, especially where the coach requires an act which is clearly going to be dangerous to one of the players. This also brings into play the liability of teachers and coaches. They must try to adopt a standard which will not subject any of their younger players to danger. Of course, this principle also applies to physical education such as gymnastics. The teacher must take careful note of the ability of his charges. It has been held in one American case that a club was negligent because it allowed a player to play after it was aware of his violent tendencies and failed to train him and supervise him sufficiently. That was a basketball case. An extremely hot tempered player was held liable when he felled an opponent. And so was the club, who should have sacked him! This case suggests that a club or school could be liable if it allowed to continue playing, a child which it knows has violent tendencies. So, for instance, certain "king hit players" might very well cause the club to be liable.

## DANGEROUS CONDITIONS

Another ground of liability is playing in dangerous conditions. A club owes a duty of care to its own players as well as to its opponents. In one case an umpire has been held liable because he allowed a game to take place when the ground was unfit and some damage was done to the players. The negligence in this case consisted in not cancelling the game. And this was so *even though the young players*, against their coach's advice, aware of the condition of the ground, voted to play. This did not

amount to consent, for they were put under extreme pressure. They would have had to forfeit the points.

In a New South Wales case the Waverley Municipal Council was successfully sued by a footballer when the game was played on an unsafe ground. The Council had put protruding water sprinklers on the ground. The game should not have been played on the ground. Both the council and the rugby league (who hired the ground) were liable.

Another potential type of liability exists on the **occupier** of premises. Organisers of sporting activity can be sued normally for negligence, but they may also have an even stricter duty under a statute called the Occupiers Liability Act, which applied where premises are unsuitable or defective. This may apply despite the fact that in normal terminology there is no occupancy or ownership.

## SPORTS OFFICIALS

Coaches, referees and umpires owe a duty to the participants, for the training and supervision and the implementation of rules and practice of the game. Coaches particularly have a duty to act in loco parentis, that is, as a reasonable parent. This has relevance to facilities, instruction, supervision and medical care. The coach's function is to minimise the possibility of body contact when it may result in something more than slight injury.

In the recent NSW case of *Watson v. Haynes*, a school boy rugby player successfully sued the education authority because it failed to disseminate a medical report warning that long-necked boys ran special risks if played in the hooker position. This particular position exposed them to neck injury. The plaintiff was a person with a long, thin neck and was injured — in fact became a quadriplegic. The teachers were not liable because they were unaware of the risks. The Department, however, was liable for its own bureaucratic negligence.

In this particular case, the Education Department was well aware of this danger, but did not disseminate the report to the teachers in charge of selecting players and it was held that the education authority was therefore liable. But the decision also really illustrates the tremendous responsibility on teachers and coaches to select and position players whose physique creates a risk of injury in an appropriate position, particularly if there is well known medical information on the dangers.

## MEDICAL ASSISTANCE

Liability can attach to those who tend a player after he or she has been injured.

There is a danger that actions taken when there is an injury will not conform to the standard or care required. Persons or organizations in control of sport activities have a duty to provide reasonable medical assistance as soon as possible. Now what is reasonable? Of course it cannot be expected in every single match that a doctor should be present. For instance, there are cases in which a player has been taken off the field and, instead of being taken off by a stretcher, has been carried off in some way in which an injury has been exacerbated. There is one Californian football case in which a player had been fallen on by another player and was



unable to stand up. He was incapable of moving his hands and fingers when asked to do so by the coach. The coach requested eight of the players to carry him on to the sidelines. He became a permanent quadraplegic. The medical evidence was that further spinal damage was caused when the player was moved without a stretcher. In this particular case there was a doctor in attendance, so the doctor was held to be negligent. A doctor of reasonable skill should have treated the player promptly and would have instructed the player be moved from the field in a way designed to avoid further

injury. But, when there is no doctor on hand, there is difficulty because the person acting in a medical role is not judged by the standard of a doctor, but by the standard of competence consistent with the skills of, for instance, a paramedic. In these cases, a particularly high responsibility falls on teachers to protect pupils from injury.

Finally, it should be remembered that there is liability for supply of defective sports equipment. Most probably there would be liability on teachers or allowing children to wear defective sports equipment.

## SUMMARY

There is a considerable potential for legal liability in the conduct of children's sport.

But, provided it is **reasonably** conducted, having regard to the individual child's needs and aptitudes, there is no need to fear.

I, for one, am convinced of the value of sport and physical recreation as a health-giving, social and internationally cultural activity.

And I am concerned that professional sports persons see it that way too, and conduct themselves as role models to our children.