

Contents of The Legal Duties of Coaching

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Part A: General Legal Aspects

Negligence:

Failing to anticipate and eliminate an unreasonable risk of injury.

Failing to exercise a reasonable amount of care in a situation that causes harm to someone.

3 Types of Negligence

- 1. Malfeasance- when a coach does something unlawful (ex. Slap a student)
- 2. Misfeasance- when a coach does something incorrectly (ex. Teach a wrong technique)
- 3. Nonfeasance- when a coach fails to do something (ex. Failure to warn)

Duty:

A duty exists on the coach to take reasonable care of the student. This duty is a standard of care or standard of behavior that a coach must be able to perform as a professional.

Liabile:

Being held responsible and accountable.

5 Elements of Negligence

- 1. Duty, A standard of care must exist
- 2. Breach- A breach of that duty or failure to perform duty owed.
- 3. Proximate cause-The breach of the duty must have caused the injury.
- 4. Injury- There must be harm done, physical or property.
- 5. Sufficient Anger to Sue- Not a legal element but an important element of public relations.

5 Common Defenses Against Negligence

- 1. Immunity

2. Assumption of Risk
3. Contributory Negligence
4. Comparative Negligence
5. Act of God

- P An honest blunder or a mistaken belief that no harm will result may absolve the actor from moral blame, but not from liability.
- P Coaches CAN be held personally liable for injuries occurred in sport related activities.

Part B: The Nine Legal Duties of Coaching:

1. Duty to Provide Proper Supervision

- * As a coach, you must exercise reasonable care for the safe conduct of the athletes under your supervision.
- * Lack of supervision is the most common form of sport negligence (80%).
- * Lack of supervision does not automatically constitute liability.
 - it must be shown that the lack of supervision was the proximate cause of injury.
 - there must have been a duty to supervise.

Does The Duty To Supervise Exist?

1. No duty
 - A. Assume no duty: Not applicable to coaches during any mandatory activity.
 - B. Danger not foreseeable
 - C. Activity does not need supervising
 - D. Nature of activity in relation to age:
 - 1-7 - cannot assume any risk
 - 8-12 - assume some risk
 - 13-16- assume most risk
 - 17 -can assume risk
 - except handicapped
 - i. Mental
 - ii. Physical
 - iii. Emotional
2. Statutory Requirement by Law.
3. Voluntarily Assume Duty
 - A. if you state or imply that there will be supervision, then you become legally obligated.
4. Inherent Duty
 - A. Being a coach means you must provide the highest level of care.

2 Types Of Supervision

1. General Supervision

- A. group behavior
 - B. Facilities and equipment
2. Specific Supervision
 - A. Instruction of new and complex skills
 - B. Participant incapability
 - C. Unique participant behavior
 - Anger
 - Frustration
 - Aggression
 - Fatigue
 - likelihood to hurt self and others

Qualities Of A Supervisor

1. Experience
2. Age
3. Knowledge
4. Competence
5. Attentive

A Supervisor Must Know

1. What to look for
2. What to listen for
3. Where to stand
4. How to move
5. What to do if there is a problem

What A Supervisor Needs To Be Able To Do

1. How to supervise the activity
2. How to plan properly
3. How to present a proper warning
4. How to evaluate a warning
5. How to properly match competitors
6. How to administer first aid
7. Crowd control and management

3 Keys To Supervision

1. Closeness to the activity
 - A. Danger of the activity
 - B. Skill level
 - C. Maturity
 - D. Stay close enough to supervise, but don't get in the way.

2. Recognize the warning signs
 - A. when is aggressive to aggressive? when is fatigued, exhausted?
 - B. when does horse play become malicious?
 - C. Establish a clear STOP signal.

4 General Rules For Supervision

1. The coach should always be available
2. Be alert and foresee
3. Write emergency plans and make all aware
4. Have written plans

In The Event Of A Lawsuit Due To Lack Of Supervision, Courts Look At:

1. Why were you gone?
2. How long were you gone?
3. What was the age and skill level of the students?
4. What was level of danger and risk of the activity?
5. How easily could have alternate supervision been provided?
6. Was there a preconceived plan in place?
7. Remember - The more dangerous the activity the closer the supervision is to the activity.

Sample Court Case:

Marcantel v. Allen Parish School Board Louisiana 1986

A 12 year-old boy broke his leg while playing a game of playground football. The injury occurred when he was tackled and landed upon by another boy. While this was happening, the teacher was leaving for a conference and was to be replaced by an aid. The parents of the boy sued and won on the grounds of lack of supervision.

2. Duty To Properly Instruct

* This duty implies that it is paramount that the coach use the latest methods of proper instruction, using sound progression in learning motor skills. If an injury occurs while using an improper instructional technique, negligence will most likely be proven.

Proper Instruction

1. Explanation of rules and regulations
2. Explanations of risks, dangers and safety concerns
3. Suggest and demonstrate proper performance
4. Skills must be taught in progression relative to age a skill level
5. Whenever an incorrect technique observed it must be corrected
6. Instructor skill should match the risk of the activity
 - a. The more immature the participant, the more expert the coach
7. Remain posted on the most recent developments in the sport -
8. Keep detailed records
9. Wrongful acts should not be taught but can be demonstrated as what not to do. This demonstration should include an explanation of consequences.

Points Of Emphasis

1. Team play protocol (ex. Left fielder calls off shortstop in baseball)
2. Player positioning responsibilities
3. Game structure
4. Safety equipment and its limitations
5. Proper warm-up procedure
6. Rules and regulations
7. Special concerns about the environment

3 General Areas Of Proper Instruction

1. What you teach
2. How you teach
3. Rules and safety concerns

Remember:

1. Be Progressive. Build complex skills from simple skills
2. Demonstrate correctly
3. Progression is also important in conditioning

Sample Court Case:

Chris Thompson v. Seattle School Board Seattle WA 1982 -

After catching a pass in a football game, Chris Thompson ran toward the sidelines and lowered his head to run through a tackler. As a consequence of running through the tackler, Thompson severed his spinal cord and instantly became a quadriplegic. Thompson sued the school district because he was never taught not to lower his head when making contact. Thompson won this case and was awarded 6.4 million dollars on the grounds of failure to properly instruct.

3. Duty To Teach And Enforce Rules And Regulations

* This duty applies to three aspects 1) Teaching and enforcing rules and regulations of the game. 2) Teaching and enforcing safety aspects. 3) Enforcing and upholding district policies and procedures.

1. Rules Of The Game

- A. Clear distribution and explanation of rules and regulations.
- B. Clear explanation of game protocol (ex. Left fielder calls off shortstop in softball)
- C. Clear description and explanation of the consequences that may occur with infraction
 - safety consequences
 - punishment consequences
- D. Consistent enforcement of rules and regulations

2. Safety Aspects

- A. Clear description and explanation of program safety guidelines
- B. Clear description and explanation of infraction consequences
 - safety

- punishment

C. Consistently enforce

3. Administrative Policies And Procedures

A. Determine eligibility

B. Keep accurate rosters

C. Collect physical exam documents

D. Collect health insurance documents

E. Issue student/parent handbook

F. Make self, staff, students and parents aware of school and districts policies

G. Issue warning statements

H. Make all aware of new playing rules

I. Follow through with post-season responsibilities

Ⓐ Rules that are not enforced are not rules at all

Sample Court Case:

Monaco v. Raymond New York 1989

An administrator responsible for a high school athletic program failed to comply with rules and regulations by allowing an individual to compete without a physical or parent permission slip. The student died of a heart attack while playing football.

4. Duty to Warn of the Dangers in a Sport

* It is the responsibility of every coach to inform all athletes and their parents of the inherent risks involved in a particular sport. Coaches must describe, using a variety of methods, the catastrophic and common non-catastrophic injuries in a sport.

Ⓐ A person cannot accept a risk they are not aware of.

A warning is communication:

1. Obvious and direct
2. Specific to risk
3. Comprehensible - students must be able to understand
4. Properly located - easily seen

Warning must provide:

1. Knowledge of the activity
2. Understanding of one's own abilities
3. Appreciation of the potential injuries that may occur

Warnings must change with changing:

1. Rules
2. Equipment
3. Strategy
4. Technique

Warning should include:

1. Specify risk by activity or equipment
2. Consistency with how game is played or equipment is used
3. Reasons for the warning
4. The warning must reach the user
5. The use of several mediums (verbal, signs, waiver)

Sample Court Case

Lamphear v. State New York 1982

An intercollegiate softball game was played on a makeshift field. A player was injured when she hit a large hole while sliding into third base. The player sued and was awarded \$18,000. The court stated that since the player was playing normally and had no knowledge of the hole the state was negligent.

Waivers

- Ⓐ Voluntary giving up of a right
- Ⓐ Does not remove liability from willful and wanton misconduct
- Ⓐ "...at your own risk." is a worthless statement
- Ⓐ A waiver signed by a minor is not a valid document.
- Ⓐ Parents cannot sign away a child's right to sue.

An Effective Waiver Must:

1. Include a Warning
2. Be clear and specific
3. Have a majority age signature

Components of a warning waiver sheet should include:

1. Estimate of physiological demands
2. Request medical information and certification
3. Encourage safe play at all times
4. Emphasize major standard warnings (ex. Football helmets sticker)
5. Exercise unique sport characteristics (eyes in racquetball)
6. Show other rare risks
7. Emphasize safety protocol ("fore" in golf)
8. Solicit questions
9. Summarize
10. Sign and date

Informed consent must include:

1. Inform procedure and purpose

2. Inform of risk and discomfort
3. Inform of benefits
4. Inform of alternative programs
5. Solicit questions
6. Inform of freedom to withdrawal
7. Written consent

8 factors that will void a waiver:

1. Strong public policy against it
2. One party being clearly dominant
3. Any fraud
4. Agreement to waiver made under duress
5. Ambiguous
6. Creates unreasonable conditions or clauses
7. No signature
8. Not of legal age

The real problem with waivers

1. No person under the age of 18 is legally bound to a waiver or contract.
2. No parent or guardian may sign away a student's right to sue.

So why have waivers at all:

1. Documentation of a warning
2. Good public relations

Sample Court Case:

Macek v. Schooner's Inc. 3991

A man had his arm broken while competing with an arm wrestling machine at a local tavern. The man had signed a release waiving damages "for any and all injuries suffered." The court found the document to contain ambiguous language and thus, found the tavern liable for the injury.

5. Duty To Provide Safe Transportation

* Coaches have a legal duty to see that all athletes are safely transported to and from contests and to and from practices if they are held at sites other than the immediate school grounds.

Methods of Transportation

1. Common carrier
2. School vehicle (bus) with driver
3. School vehicle
4. Coaches car
5. Athletes transport themselves

If you must send athlete with a non staff member

1. Check for valid driver's license and condition of driver
2. Inspect vehicle
3. Have parental approval on file
4. Adhere to vehicle and road rules
5. Warn of the importance of seat belts and driver safety
6. Check vehicle liability insurance

➤ **Follow District Policy**

Guest Statute

A guest is one whom the operator of a motor vehicle invites to ride without financial or other compensation and where the relationship does not provide for tangible benefit for the driver.

Sample Court Case

Vechel v. Independent School District #403 Minnesota 1984

Twelve high school cheerleaders prepared banners for the next day's football game. The banners were to be delivered to the homes of the football players. One of the cheerleaders borrowed her parent's van and the cheerleaders proceeded to distribute the banners at 5:00 am. During this activity, the van was hit head on by jeep. The cheerleaders sued the school district. The court found the school district liable for not providing supervision and transportation at this mandatory cheerleader activity.

6. Duty to Properly Match and Evaluate Competitors

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* As a coach, it is your duty to accurately group participants for activity in a manner in which they may participate safely. It is also your duty to place an athlete into a situation which they have progressed enough to handle. Along with these duties, it is also your responsibility to observe any incapacitating conditions such as exhaustion or fatigue and deal with these conditions appropriately.

Factors for matching competitors:

1. Skill
2. Experience
3. Injury, exhaustion or incapacitating conditions
4. Maturity
5. Height and weight
6. Age
7. Mental state (a. Anger, frustration)
8. 8.Sex

- ❖ Coaches should never scrimmage against their own players!
- ❖ Matching is not only player to player, but also player with activity.

Sample Court Case:

Benitez v. New York City Board of Education New York 1988

The principal of a New York City high school asked the school board to allow his school's football team to compete at a lower classification on the grounds that the team had several injuries and the team had a poor record the previous year. The principal's request was denied. During the season, in a game against a much larger school, a player was injured near the end of the first half. Up until the time of the injury, the player had been involved in 47 of the games 56 plays that had occurred. The coach stated that he had to play the boy so much because his 110 LB replacement could not have handled the level of competition. The boy sued the coach for allowing him to play in a mismatched game while in a fatigued state. The coach and other experts testified that the mismatch of the competition and the fatigued state could increase the risk of injury. The court found in favor of the boy and awarded him \$1,250,000.

7. Duty to Provide Safe Facilities and Equipment

* This duty has been neglected considerably in the past. Some sport facilities are rather old and many athletic events are practiced, and games played on, or in, inadequate facilities. Inferior equipment has been used without proper maintenance or repair. It is important to remember that the coach is always responsible for the situation in which they place their athletes.

Ⓓ Invitee –

- a. goes on to the premise by the specific or implied invitation of the owner
- b. requires the highest standard of care

Ⓓ Licensee-

- a. came onto the premises for personal benefit, but owner gave consent
- b. lower standard of care (reasonable conditions/warn of risks)

Ⓓ Trespasser-

- a. no permission to access facility
- b. no duty of care unless to a minor

Potential for injuries in facilities

1. Improper design (ex. Wall clearance around indoor courts)
2. Inadequately maintained
3. Deficient products used
4. Moving activity (there is no such thing as a 100% safe facility when motion is involved)

To improve facility safety

1. Reduce congestion and traffic
2. Control noise
3. Provide proper supervision
4. Maintain proper lighting
5. Make phones available
6. Make sure all doors, windows and gates open away from play area

Keys to keeping the environment safe

1. Notice and remedy hazardous conditions
2. Inspect regularly

3. Fix what you can, ask for in writing what you can't
4. List and post rules
5. Meet all standards with facilities and equipment
6. Put unused equipment away
7. Become aware of dangerous sport specific conditions
8. S. Buy the best equipment you can afford
9. Maintain good relations with district maintenance personnel
10. 10 Only qualified people fix, modify or repair facilities and equipment
11. Present warnings
12. Teacher proper use of equipment and facilities
13. Realize you will be involved in liability lawsuits so keep records

Equipment

Equipment: General Prevention

1. Use recommended standards
2. Common sense in design
3. Anticipate potential problems
4. Use only quality products
5. Buy from a reputable dealer
6. Employ inspection from a safety officer (use a teacher in the building)
7. Currently inspect, repair and put up signs
8. Record safety audits
9. Record injuries

Specific equipment needs

1. Proper equipment in good condition
2. No handing down of equipment
3. Make sure protective equipment is worn
4. Constantly inspect equipment
5. Adequate storage
6. Fit equipment properly
7. Never use illegal equipment (ex. Corked bat)
8. Clearly present equipment warnings
9. Do not guarantee safety
10. Proper insurance coverage

3 types of legal equipment standards

1. How equipment fits into facility
2. Standard of equipment itself

3. Standard of construction or maintenance

4 main reasons people get injured using sports equipment

1. not supposed to use the equipment
2. improper instruction
3. defective product
4. equipment old and worn out

Warnings on equipment must

1. be obvious and direct
2. give consequence of misuse
3. give consequence of alteration
4. reach potential users
5. offer a reason for warning

Question: If I report and document a request for a facility repair am I safe from liability? Answer. No. You as the coach are responsible for the environment in which you place your athletes.

Question: Then what if the administration will not or can not fix the problem?

Answer:

1. Stop and discontinue the activity
2. Modify your activity accordingly
3. Temporarily make a repair, warn and proceed with caution

Common fault checklist

1. glass doors or windows near a playing area
2. doors and gates that open into a playing area
3. slippery surfaces poor lighting
4. improper padding
5. poor weather (lightning/rain)

D Never hand down any used safety equipment

Sample Court Case (Equipment)

Ausmus v. Board of Education City of Chicago Illinois 1987

A third grade child was hit in the face with a bat while playing catcher during a softball game in a PE class. The parents sued the school on the grounds that proper equipment was not used. The bat was too heavy for kids of that age and no mask was provided for the catcher. The parents won this case on the grounds that proper equipment was not provided.

Sample Court Case (facility)

McInnis v. Town of Tewksburrv Mass 1985

A seventh grade boy suffered a sprained ankle while attempting a long jump in a PE class. The boy was taught proper technique, but the landing pit was filled with only 2 inches of sawdust, rather than the usual 6 to 12 inches. The boy sued for negligence and was awarded \$60,000.

8. Duty to Provide Health Care

There are three areas of proper health care 1. Before an athletic event, 2. During an athletic event, and 3. After an athletic event or injury.

Before

1. An athlete must receive a doctor's approval before beginning participation
2. All needed preventative care must be taken (ex. Taping, braces, medication)

During - Emergency Health Care

1. Duties in an emergency
 - A. Protect from further harm
 - B. Must attempt to help in life threatening situations
 - C. Provide comfort and reassure victim
 - D. Put emergency plan into action
2. Essential components of an emergency plan
 - A. Send for help (know where a phone is)
 - B. Protect from further harm
 - C. Attempt to help
 - D. Comfort and reassure victim
 - E. Collect and keep records
 - Document witnesses
 - save statements
 - take photos
 - save game films

After

The athletic department is responsible to fully rehabilitate injured athletes when they are injured in school sponsored athletic events.

Sample court case

Mogab v. Orleans Parrish School Board

Shortly before the end of practice, a football player became noxious, vomited and was unable to walk without assistance. Following the coaches instructions, a few players undressed the boy and gave him a room temperature shower and then laid him on a blanket in the cafeteria. The coaches then massaged his arms and tried to force him to drink some salt water. While this was going on, the boy was extremely pale and unable to talk, The boy's condition grew worse to the point where his mouth hung open and his skin turned a bluish gray.

The coaches still did not call a doctor, but did finally call the boy's mother. The boy's mother called a doctor who didn't arrive until two hours after the boy had collapsed. The boy was taken to a hospital where he died in a matter of hours.

The boy's parents sued and won on the grounds of failure to provide proper health care.

9. Duty to Uphold Student Rights

- The key to upholding student rights is to act reasonably. Participation in extracurricular athletics is seen by the courts as a privilege, not a constitutional right. Therefore, any reasonable team rules and punishment will hold up in court. However, it is important to remember that reasonable is a very subjective term. Because the term is so subjective, you must remember that the more severe the punishment, the more imperative it becomes to document due process. For example, if you make an athlete miss a game because he or she skipped practice there will be no problems. On the other hand, if you make that same athlete ineligible for the remainder of their high school career, then you most likely will have some problems.

Ⓐ 1st amendment - Religion-Speech - A public school coach may not lead the team in prayer, but may provide a moment of silence.

Ⓐ 14th Amendment Due Process - The more severe the penalty, the more process is due

Ⓐ Title IX - There may be no sexual discrimination in any form in any program receiving federal or state money.

Ⓐ Disabilities Act - You must provide an opportunity for any and all students to turn out for a team. A coach may not cut an athlete solely due to a disability nor must the coach keep an athlete because they are disabled.

Ⓐ Drug Testing - Must have

1. Compelling need
2. Limited Scope (few tested)
3. Diminished expectation of privacy(surrender privacy in order to participate)
4. Limitations on official's discretion (clear criteria for those tested)
5. Non-criminal penalties (results can only be used for non criminal, educational or rehabilitative penalties)

Ⓐ Search and seizure - Search must be reasonable and substantiated

❖ **Participation in athletics is not a constitutional right**

Sample Court Case:

Bailey v. Truby West Virginia, 1984

A school board required that all student/athletes maintain a 2.0 gpa and they not receive any "F" grades. A student sued the school board, stating that the school board was unreasonable and superseded the state rules and requirements. The court ruled that the standards were reasonable and within the power of the school board. The court also stated that extracurricular activities are not constitutionally guaranteed so the educational and substantive due process was not violated.

Part C: 3 Duties Within Each Duty

1. The Duty to Plan

Lack of planning is a major cause of coaches being derelict in their instruction and supervision. Careful planning is involved in good instruction while safe supervision is based on good planning.

Important Considerations in Planning

1. Plans must be written
 - A. get plan approved
 - B. if you deviate from plan, get it approved
 - C. use clear language

D. issue to staff

2. Base plans on performance objectives
3. Place the emphasis on what the athletes will be doing
4. Consider all risks
5. Stay current in your knowledge and keep plan current
6. Use progression in your planning

A plan should

1. Communicate dangers
2. Reinforce safe participation
3. Allow for skill progression
4. Provide safe operational patterns

Risk Management Plan (outline)

1. Brief overview of the operation
2. Statement of Policy
3. Risk analysis
 - A. Identify all risks (equipment, movement, facility, other)
 - B. Determine extent (frequency/severity)
 - C. Control methods (preventative)
4. Actions if something goes wrong (crisis management)
5. Make the plan known by all

D Develop and use checklists

D Ask yourself “what if ?“

2. Duty to keep records

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- Today, with our courts backed up a great deal with case loads, there can be a delay from 3 to 5 years after the suit is filled until a trial date is reached. Paramount to a good defense is a good record of what happened during the time the accident or incident occurred. Most people cannot accurately remember what they did on a given day four years ago. If good records are kept, coaches can fulfill this duty.

Suggested items to save

- a. Health/Physical exams
- b. Permission to play
- c. Warnings
- d. Waivers
- e. Return to play after an injury - Dr.'s clearance
- f. Eligibility information
- g. Use of alternative transportation
- h. Insurance

- i. Injury forms
- j. Written plans

Þ Build a paper trail

Sample Court Case:

Although no court cases have been decided solely on a lack of keeping records, record keeping is listed as a duty because the coach must prove that he/she acted properly. The coach is not innocent until proven guilty, but rather guilty until proven innocent. It is the coaches' responsibility to prove the child was given proper care.

3 The duty to Foresee

- Foreseeability is a common term found in sport related litigation today. The courts say that a coach should be able to foresee the potential danger that may occur if an activity is continued in that facility, with that equipment, or in that situation. The coach must then take action to prevent the activity from continuing without correcting the problem.
- A foreseeable risk is a risk that a reasonable person would have anticipated.
- The scope of liability is whether there is foreseeable risk of injury. Conduct cannot be seen as unreasonable if the risk is not foreseeable
- The test of foreseeability is foresight, not a test of proximate cause, which is hindsight.

Þ Negligence is failing to anticipate and eliminate unreasonable risk of injury

Sample Court Case:

Benjerman v. State 1982

An eleven year old boy was struck in the head by a hockey puck while standing behind the player's bench at a college hockey game. The blow resulted in serious injury and required brain surgery. The boy's parents sued for negligence citing that there was no protective glass behind the bench to protect fans from such an incident. The court found a "foreseeable risk of injury that could have and should have been avoided" and found in favor of the boy.