

Coaching & the Law

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Coaching & the Law

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– Coaching & the Law.

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Introduction

The law is the method by which our society determines the rights of a citizen in a particular situation. It touches every aspect of life and sport is no exception.

The sporting ethic in Australia has always been a strong one, and as sport becomes more professional, those involved will increasingly turn to the courts to protect their rights.

The major areas of the law that attracts most concern in sport is -

- negligence
- the duty of care.

There are no limits or boundaries to what can constitute negligence or a breach of duty of care, so we can only judge organised school or club sporting programs on the guidelines provided by the courts in specific cases.

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Negligence

NEGLIGENCE

is 'conduct that falls below the standard regarded as normal or desirable in a given community'.

The essence of negligence is that in certain circumstances the law imposes a duty on a person to **take reasonable care not to cause harm to others**.

'Anyone who accepts a coaching position has a legal responsibility to provide their athletes with the utmost care'

A PERSON WILL ONLY BE LIABLE IN NEGLIGENCE IF

THE INJURED PERSON CAN PROVE THAT:

- the defendant (for example, the coach or administrator) owed the plaintiff (the injured athlete) a duty of care
- the defendant was in breach of that duty of care
- the defendant's breach of duty of care was the cause of the plaintiff's loss
- the damage suffered by the plaintiff was not too remote.

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Duty of care

A DUTY OF CARE

is a duty imposed on one person to take care of another.

BEFORE YOU OWE A DUTY OF CARE TO ANOTHER PERSON THERE ARE TWO PREREQUISITES:

- the harm must be reasonably foreseeable
- there must be some form of relationship (known as 'proximity').

In determining whether **harm is foreseeable**, the court asks what another reasonable person would have done in the same circumstances and then compares that behaviour with the facts under consideration.

When supervising athletes, adults are expected to take basic precautions which include ***a duty to anticipate the dangers associated*** with sporting activities, equipment and facilities.

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Duty of care

This is not an easy task, but it is a low standard test to pass.

For example, if a baseball was hit over a one-metre fence running alongside a busy road, a reasonable person would be likely to foresee that it could hit a car and cause damage.

Similarly, a reasonable person would be likely to foresee injury if a coach instructs the wrong training method.

A person ***does not owe a duty of care to the world.***

There must be some **relationship or connection (proximity) between two people** before there can be a duty of care.

Once it is shown that the 'reasonable person' would have foreseen the possibility of injury and that there is proximity between the parties, it may be said that there is a duty of care.

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The coach and the duty of care

In sporting terms, it is difficult to imagine a situation where two participants.....

- a coach and an athlete,
 - an umpire and participant,
 - an administrator and athlete or coach — for example,
- would not owe a duty of care to each other.

Once it has been determined that you owe someone a duty of care, the next step is to decide whether that duty of care has been breached.

THE STANDARD OF CARE REQUIRED IS THAT OF A 'REASONABLE PERSON'.

It will vary according to the situation that a person is in, their skills and attributes and what is normal and reasonable practice.

If the coach's conduct is above the standard, the coach will not be negligent.

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The coach and the duty of care

There are common factors that are considered relevant when *deciding if someone has breached the standard of care*:

MAGNITUDE OF THE RISK

- the larger the risk, the higher the standard of care

THE PROBABILITY OF THE RISK OF INJURY

- the higher the probability, the higher the standard of care

THE GRAVITY OF THE HARM

- either where the activity is dangerous or where the person is particularly susceptible, the standard of care increases

THE DIFFICULTY AND EXPENSE OF ELIMINATING THE RISK

- the easier it is to eliminate the risk, the less likely a failure to take these steps will be justifiable.

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The coach and the duty of care

OTHER RELEVANT FACTORS, particularly from a sport perspective, that are considered relevant when *deciding if someone has breached the standard of care*:

- what is **normal** practice
- what is **reasonable** practice.

A CASE STUDY - 1987 case of Watson v Haines

One of the most significant cases that rocked the sports world was the 1987 case of Watson v Haines.

A 15-year-old schoolboy, playing hooker for his rugby union team, suffered quadriplegia after the scrum engaged.

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The coach and the duty of care

SOME RELEVANT DETAILS OF THE CASE. (Watson vs Haines - 1987)

He sued the state of New South Wales for damages in negligence, alleging that the Department of Education failed to give specific neck strengthening exercises and that his physique of a long thin neck meant that he should not have been selected to play hooker.

During 1980, a video about neck injuries was produced.

The video conveyed the message that people with long thin necks should not play in the front or second row of the scrum.

The video was distributed to Department of Education centres, but the message from the video never got to teachers.

The teacher/coach of the schoolboy was unaware of this information.

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The coach and the duty of care

SOME RELEVANT DETAILS OF THE CASE. (Watson vs Haines - 1987)

The court found that there was no failure on the part of the teacher/coach to take reasonable care.

They had done everything that could have been expected of them. They did not know and it could not reasonably have been expected that they should know that the schoolboy's particular physique was such that it was unsafe to select him as a hooker.

The state of New South Wales was, however, held to be negligent.

There had been a warning, given through the video, about this exact issue. The court said that ***it was the state's duty to ensure that teachers were made aware of this information.***

WHAT WAS NORMAL PRACTICE — THAT OF PLAYING ANYBODY WITHIN A SCRUM — WAS NO LONGER REASONABLE PRACTICE.

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STANDARDS

THE STANDARD OF CARE OF A COACH WILL BE MEASURED AGAINST THE COACH'S PEERS.

For example, if you are a National Coaching Accreditation Scheme (NCAS) Level 1 coach in netball, the standard of care that you must demonstrate to your athletes is that of a reasonable Level 1 netball coach.

This does not mean that a coach will be judged at the same level as the most experienced or qualified coach. If a coach claims to have special skills or qualifications then the standard of care will be rated higher.

The coach will be judged against the reasonable person who has the same skills and qualifications.

There are very good reasons for this approach by the courts.

For example, you would expect that a doctor treating a patient would display a higher standard of care than a person who has a first aid certificate who treats an injured person at an accident.

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STANDARDS

For most accredited coaches this does not present a problem. To obtain accreditation, a coach must have undertaken a formal course, and has been assessed as competent along the way.

However, a coach cannot avoid liability by simply not becoming qualified or letting their qualification lapse.

If a coach is coaching, they are professing to have the skills necessary. The courts will determine that the standard of care they must demonstrate is that of someone who is accredited.

THE COACH WHO HAS LET QUALIFICATIONS LAPSE WILL BE JUDGED AGAINST THE PEERS WHO ARE QUALIFIED.

If techniques and training methods have advanced since that person gained coaching qualifications, but he/she continues to teach using 'old' methods, the coach is squarely in the spotlight for liability.

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STANDARDS

The legal aspects of sport are a concern for coaches.
It should not mean, however, that coaches become risk averse.

Coaches are under a duty to challenge their athletes to develop skill, and to push athletes to their full potential. This requires risk taking.

If children are involved, the courts have generally accepted that the standard of care will increase.

CHILDREN CANNOT ACCEPT ALL THE USUAL RISKS OF BEING INVOLVED IN AN ACTIVITY.

COACHES OF CHILDREN NEED TO BE MINDFUL OF THE EXTRA CARE NECESSARY.

It is a balancing act between taking the necessary risk to develop your athlete, both physically and mentally, and ensuring that the standard of care is met.

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Legal responsibilities

- 1 Provide a safe environment
- 2 Plan all activities adequately
- 3 Evaluate participants for injury
- 4 Do not mismatch participants
- 5 Warn participants of the risks of the activity
- 6 Supervise activities closely
- 7 Develop clear rules for activities and general conduct
- 8 Keep accurate records



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Legal responsibilities

- Coaches owe a **duty of care** to participants
- Breach of this duty is called **negligence**
- Coaches of children must provide a higher level of care



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Legislation that may affect coaches

- *Privacy Act 1988*
- *Discrimination Act 1991*
- *Disability Discrimination Act 1992*
- *Sex Discrimination Act 1984*
- Child-protection legislation



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Legal Responsibilities of the Coach

There are a number of areas where the coach's duty of care demands attention. Carrying out the following will substantially reduce the chances of a successful claim of negligence against the coach.

1. Provide a safe environment

Facilities and equipment must be safe for both the users and others involved in the competition. Adverse weather conditions must also be taken into account during competition and practice sessions.

2. Activities must be adequately planned

Impaired learning ability and injury may be the result of unplanned practice sessions. Using appropriate progressions in teaching new skills, especially potentially dangerous skills, is imperative.

3. Athletes must be evaluated for injury and incapacity

Athletes with an injury or incapacity should not be expected to perform any potentially harmful activity. No athletes should ever be forced to take part in any activity that they do not wish to. Individual difference must be accounted for.

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Legal Responsibilities of the Coach

4. Young athletes should not be mismatched

Young athletes should be matched not only according to age, but also height, weight and maturity. Skill levels and experience should also be considered.

5. Safe and proper equipment should be provided

Existing codes and standards for equipment should be met and all equipment should be kept in good order. It should always be adequately repaired so that it is safe to use at all times.

6. Athletes must be warned of the inherent risks of the sport

The inherent risks of any sport can only be legally accepted by the participants if they know, understand and appreciate those risks. In some situations, even such a warning may not be enough, eg. where young people are involved in a supervised school activity.

7. Activities must be closely supervised

Adequate supervision is necessary to ensure the practice environment is as safe as possible. Each sport will have its own specific requirements in this regard.

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Legal Responsibilities of the Coach

8. Coaches should know first aid

Coaches should have a knowledge of the basic emergency procedures and keep up to date on them. Coaches should know STOP (Stop, Talk, Observe, Prevent further injury) and RICER (Rest, Ice, Compression, Elevation, Refer) procedures for managing injuries. Coaches should have a written emergency plan and ensure that appropriate medical assistance is available. At the very least, coaches should ensure nothing is done which could aggravate the injury.

9. Develop clear written rules for practice and general conduct

Many injuries are the result of fooling around in change rooms and practice venues. Clear written rules should be developed for general conduct and behaviour in such situations.

10. Coaches should keep accurate records

Adequate records are useful aids to planning and are essential in all cases of injury. Record cards should be kept on all athletes, including relevant general and medical information and progress reports. Accident reports (not diagnoses) should be made as soon as possible after each injury occurs.

(Adapted from R Martens (1990) Successful Coaching. Champaign, Ill: Leisure Press.)

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DETERMINING NEGLIGENCE

Even if a coach owes a duty of care,
the **damage or injury must be directly attributable to the actions** of the defendant.

CAUSATION

is concerned with establishing whether or not the negligence of the defendant was responsible for the injury.

In many cases, this is not an issue.

The test is expressed as whether the plaintiff (the person taking the action) would not have sustained the damage 'but for' the defendant's negligence.

This is really a **cause and effect** type analysis.

Did the actions of the defendant cause the damage to the plaintiff?

A problem occurs if there is an intervening event. The courts must decide if the **intervening event has broken the chain of causation**.

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DETERMINING NEGLIGENCE....

A problem occurs if there is an intervening event. The courts must decide if the **intervening event has broken the chain of causation**.

Even if the defendant is found to have caused the injury suffered by the plaintiff, there is a further step.

Before liability may be attached it is necessary to consider whether **the damage was closely connected** to the defendant's negligence.

If the damage is **too remote** from the original negligence, the defendant may not be liable.

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DETERMINING NEGLIGENCE....

A Case Study - Bolton v Stone (1951)

For example, in the English case of Bolton v Stone (1951) AC 850, a plaintiff brought an action against a cricket club after being injured by a ball which was hit out of the cricket ground during a match.

The evidence showed that the risk of a person being struck by a ball hit out of the cricket ground was negligible. The court weighed this factor against the reality that the only sensible way to entirely eliminate the risk of a person being hit by a ball would be to cease playing cricket on the ground altogether.

The court said that in these circumstances, *a reasonable person would have thought it right to ignore the risk.*

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DETERMINING NEGLIGENCE....

Even the best-prepared coaches may find themselves in the situation where something goes wrong. Should it be proved that someone has been negligent, that is not the end of the matter.

There is one final step in the process — determining whether the coach has a valid defence.

THERE ARE TWO DEFENCES THAT MAY BE AVAILABLE DEPENDING ON THE CIRCUMSTANCES:

- voluntary assumption of risk (volenti non fit injuria)
- contributory negligence.

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DETERMINING NEGLIGENCE....

There will be a total defence to a claim for negligence where the injured party has voluntarily and completely assumed the risk of injury.

In a sporting context, the courts have approached the issue of risk by finding that a player, by taking the field, has consented to the inherent risks of the sport.

For example, in a game of rugby, a player consents to being tackled within the rules of the game. If an injury occurs as a result of this tackle it is likely that the court will say that the player accepted that risk. The tackler is not negligent.

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DETERMINING NEGLIGENCE....

If, however, the player is tackled head-high and is injured as a result, it cannot be said that the player consented to a risk outside the rules of the game. In this instance, the tackler may be liable for negligence.

If the coach has instructed his player to tackle in this way, the coach may also be liable in negligence.

The rules are a useful guide as to what a player consents to. However, they are not the only consideration.

A person may still be negligent while operating within the rules. For example, it is not outside the rules to use a hockey stick that is cracked or splitting, but if the stick breaks and a piece hits another player this may be negligent.

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DETERMINING NEGLIGENCE....

If an athlete contributes to their own misfortune, it is only fair that they should share some of the liability.

This is what is known at law as **CONTRIBUTORY NEGLIGENCE**.

An athlete who has failed to exercise reasonable care for their own safety will be found negligent for a certain percentage of their losses. The court will make a judgement as to how much of the injury was caused by the athletes themselves, and then reduce the overall award of damages by this amount.

SOME SPORTING EXAMPLES COULD BE:

- failing to wear a helmet or piece of safety equipment required as part of the rules, such as a helmet in men's lacrosse, and
- playing a sport while under the influence of drugs or alcohol and being injured as a result of poor judgment.

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Limiting liability

Many sporting clubs, gymnasiums and aerobic centres often try to limit their potential liability by having a participant sign **an indemnity form**. These forms aim to convey the message: 'All Care, No Responsibility'.

This type of clause is called **AN EXCLUSION CLAUSE**.

It aims to reduce or exclude any liability for any negligent actions.

The courts take a very dim view of exclusion clauses, and have established a stringent set of rules to limit the scope of exclusion clauses.

This is because as a matter of public policy an individual should not have to give away all their rights just to participate.

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Principles relating to Exclusive Clauses

THERE ARE FOUR GENERAL PRINCIPLES RELATING TO EXCLUSION CLAUSES:

1. They must be drafted correctly

— the courts have determined that specific wording is required to exclude liability for negligence.

2. They must be clear and unambiguous

— exclusion clauses should emphasise that sport can be dangerous and explain which aspects of the sport are dangerous so that a person can fully consent to the risks involved in the sport.

3. They must be brought to the attention of the participant before the relationship commences —

— this can either be in writing and signed by the participant before they start the activity, or be in the most clear and unequivocal manner if it is not in writing. A sign on a door or a condition on the back of a ticket may not be sufficient on their own.

4. Even if there is an exclusion clause,

— it still may not protect a person who operates outside the acceptable boundaries.

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The Coach & Risk

A coach who understands their sport, the risks in the sport, and who coaches to minimise those risks is a prudent coach.

A coach cannot avoid all risk, but a common sense approach is integral.

The knowledge and skills required of a prudent coach in any sport can be gained through the Australian Sports Commission's National Coaching Accreditation Scheme.

All practising coaches should be accredited to at least Level 1 and have access to ongoing education to maintain their knowledge at the required level.

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SUMMARY

- An injury to an athlete can be frustrating and can sometimes occur even with the best training and coaching methods.
- **Prevention is better than cure, is the golden rule.** Coaches must ensure training programs are properly planned and that facilities and equipment are both adequate and properly maintained.
- Not only do coaches have a **responsibility to minimise the risk of injury** in sport, but also they must know how to deal appropriately with any injuries that do occur.
- It is important that either the coach or a member/parent involved in the club or school have **first aid knowledge**.
A minimum of Level 1 accreditation an appropriate First Aid Certificate including CPR, or SMA's Sports Trainers Scheme is essential.

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SUMMARY

- Rules of sport are designed to create **a safe playing environment**.
Athletes should be encouraged to observe both the written and unwritten rules of the game. They should be continuously reminded of the importance of good sporting behaviour and fair play.
- The essence of negligence is that in certain e the law imposes a duty on a person to take reasonable care not to cause harm to others.
Courts ask what another **reasonable person** would have done in the same circumstances and then compares that behaviour with the facts under consideration.
- When supervising athletes, coaches are expected **to take basic precautions** which include **a duty to anticipate the dangers associated** with sporting activities, equipment and facilities.

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SUMMARY

- There are common factors which are considered relevant when deciding if someone has breached duty of care, including
 - ✓ the magnitude of the risk,
 - ✓ the probability of the risk of injury,
 - ✓ the gravity of the harm
 - ✓ the difficulty and expense of eliminating the risk.
- Other relevant factors are
 - ✓ what is normal practice
 - ✓ what is reasonable practice.
- If children are involved the standard of care will increase. Children cannot accept all the usual risks of being involved in an activity.
- Coaches of children need to be mindful of the extra care necessary.

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Areas where the coach's duty of care requires attention

- ✓ providing adequate supervision and a safe environment
- ✓ warning athletes about the inherent risk associated with the sport
- ✓ teaching athletes the skills so that when athletes face the risks of being involved they can deal with them in a reasonably safe manner
- ✓ ensuring athletes have the mental and physical skills to be able to master difficult and dangerous skills coaching principles recommend sequential learning
- ✓ planning thoroughly and maintaining accurate records
- ✓ adhering to any code of practice relating to safety equipment and maintaining this equipment in a safe condition
- ✓ knowing first aid
- ✓ developing clear written rules for practice sessions.

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Further Reading

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- [Illustrations reproduced from The Sports Trainer Guide and Prevention of Sports Injuries. Brisbane: Jacaranda Wiley, 1986, with the permission of Sports Medicine Australia.]

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