

SOME LEGAL ASPECTS RELATED TO ATHLETIC TURF MANAGERS

Betty van der Smissen
Natural Resources
Michigan State University

You part of a team, and while your responsibilities may focus upon the management of the turf itself, you are really much more involved in the total operation of field operations.

I. Some Legal Concepts

A. Negligence

++ Most law suits for injury are brought on negligence.

Negligence is an unintentional tort, that is, an unintentional injury to an individual in person, property, or reputation; a civil wrong with compensatory monetary damages.

- There must be a special relationship which gives rise to an obligation to protect the user from foreseeable "unreasonable risk to harm".

Do you have such relationship? YES

What protection must you give?

Standard of care is that of a "reasonable and prudent professional".

Nature of duty depends on status of individual.

invitee — duty to be proactive and seek out dangers and protect; most suits brought by invitees.

licensee — o.k. to be there and use the field, but "on one's own"; only need to warn of hidden hazards (not open and obvious).

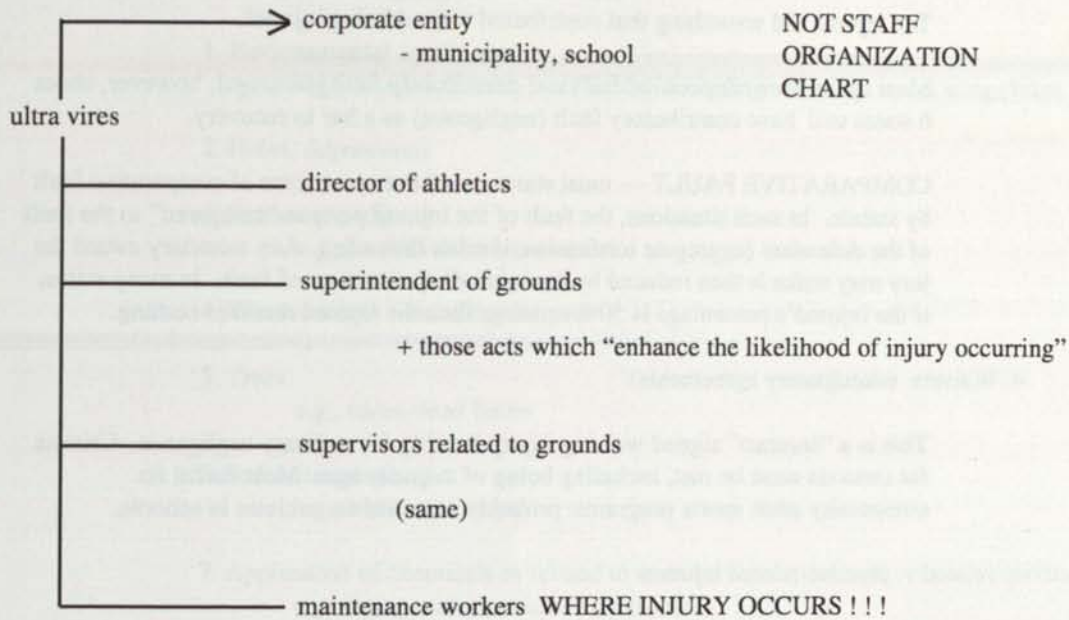
trespasser — shouldn't be there; take the premises as one finds them; warn of hidden ultrahazards, cannot willfully and wantonly injure.

"recreational user"

almost all states have Recreational Use Status; however, most do NOT include urban sports.

persons permitted to use field without charge; landowner liability as that to a trespasser.

B. Doctrine of Respondeat Superior



C. Governmental immunity (tort claims acts)

+ even where a state has some immunity for public entities, such as schools, MOST still have liability for "dangerous physical conditions"

+ discretionary act v. ministerial act
(see II. A.)

D. Concept of notice

1. Actual notice or constructive notice
** liable for both

2. Danger "open and obvious"

3. Giving notice to "superior"
** does not let off the person who reported!

E. Defenses

1. Not negligent! did everything according to statutory and professional standards

2. Primary assumption of risk by injured

The injury was just a natural part of the game being played and thus the participant "assumed the risk"

3. Secondary assumption of risk or contributory fault

The injured did something that contributed toward being injured.

Most states have cooperative fault and contributory fault is integral; however, about 6 states still have contributory fault (negligence) as a bar to recovery.

COMPARATIVE FAULT — most states now have some form of comparative fault by statute. In such situations, the fault of the injured party is “compared” to the fault of the defendant (aggregate tortfeasors, if more than one). Any monetary award the jury may make is then reduced by the injured’s percentage of fault. In many states, if the injured’s percentage is 50% or more, then the injured receives nothing.

4. Waivers (exculpatory agreements)

This is a “contract” signed waiving injury liability for ordinary negligence. Criteria for contract must be met, including being of majority age. Most useful for community adult sports programs; probably not valid for athletes in schools.

F. Activity-related v. premise-related injuries

If you are permitting use of the field, whether for a fee or free, you remain liable to the conditions of the field.

In any informal or formal contracts for use of the field, make it clear the sponsor of the activity IS liable for the conduct of the activity AND the behavior of the participants. Write in either indemnification or co-insurance.

II. Conditions / Situations Which Give Rise to Law Suits and Liability

A. Design, layout, construction / installation

** considerations

American Society for Testing & Materials (ASTM)
Natural & Artificial Playing Fields:
Characteristics & Safety Features

- sprinkler heads
- space “out side the lines”
including placement of benches and fence placement
- appurtenances location
maintenance storage shed
- utility wires and pole placement
electric hazards
- incinerators
- drainage

** discretionary acts (planning, policy decisions)

ministerial acts (operations)

** transferring liability by contract

- instillation contractors
- premise repairs contractors
- et al

Once you accept the work, you’re on your own !

B. Condition of premises (general maintenance)

1. Environmental conditions
e.g., weather (muddy, wet fields), including watering, insect stings/bites
2. Holes, depressions
3. Extraneous objects
e.g., landfill debris, rocks, ect.
4. Weeds, debris concealing dangers
5. Trees
e.g., roots, dead limbs
6. Pedestrian ways
e.g., walkways, steps
7. Application of chemicals as related to users
e.g., lining with caustic lime, pesticides

C. Employee liabilities

1. Application of chemicals; OSHA & state regulations
2. Mower / equipment, safety / protective devices
3. Child labor laws related to running power equipment
4. Sexual harassment
5. Negligent hire

III. Risk Management Practices

Practices which would "stand you in good stead" should injury occur and you be sued.

A. Be up-to-date on the latest and best practices of the profession

- READ
- attend conferences & workshops
- talk with colleagues in the field

B. Inspection system

CRITICAL

- | | | |
|----|-------------|-----------|
| ++ | Establish | DOCUMENT! |
| | Communicate | DOCUMENT! |
| | Implement | DOCUMENT! |
| | Evaluate | DOCUMENT! |

++ Four Elements

1. On-the-job, part of daily responsibilities

BUT, you must check up that your workers are doing it

Have a system for reporting maintenance needs or concerns & how they are to be taken care of.

Will reporting a need perhaps make us more liable? YES, if nothing is done! NO, if the concern has been addressed.

2. Periodic, systematic, "check-off", sign

Keep on file !!

3. Critical parts inspection

Those aspects which need special expertise, e.g., equipment

4. External review occasionally

Peer evaluation or by a consultant

LEGAL REFERENCES

Dumas, David M. Defective Buildings and Grounds — A Dangerous Condition for Colleges and Universities. 17 (3) J. of College & University Law 351-380 (1991)