

**LAW AND LIABILITY**  
**in Athletics,**  
**Physical Education,**  
**and Recreation**



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# **Law and Liability in Athletics, Physical Education, and Recreation**

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# Foreword

The legal profession has become deeply involved with the entire world of the physical educator, athletic coach, supervisor, and sports administrator. Sports have experienced a litigation explosion very much in keeping with what has happened to society in general, and major sports have seen significant rule changes as a result of successful litigation. At every level of competition from the youngest Pee Wee leagues to the most sophisticated professional sports, boys and girls, men and women, are deeply absorbed in sports. The potential is ever present for bodily injury and perhaps death. Physical educators, coaches and administrators must be aware of their legal responsibilities and immunities.

*Law and Liability in Athletics, Physical Education, and Recreation* is one of the most comprehensive, most explicit, most understandable books on this subject available. It should be placed on the bookshelf of every professional in the fields related to physical activity.

Sports medicine has been instrumental in addressing sports injuries and pressing for new methods of treatments. New machines such as the PERT scans, CAT scans, ultrasound, arthroscopy, centesis methods and imaging techniques are now able to obtain specific information and definite locations of injuries. Many attorneys will take a sports medicine course at a nearby university when retained for a large lawsuit or will retain a personal medical adviser in that particular area of expertise. Physical educators and coaches need to be well versed in backgrounds related to their profession, such as electromyographical analysis, computer printouts, and drugs. As attorneys become more involved with expertise in sports and athletics, the juries they select also will be better educated.

Although the defendant's lawyer has presented a good defense and has been thorough in background evidence, the jury members are bound to be

empathetic when the plaintiff appears in the courtroom with an obvious permanent injury. The best defense is preventive in nature.

This book has been carefully prepared so that there is a balance of physical education background, coaching techniques, supervision suggestions, safety rules and guidelines, and necessary skill development along with a discussion of the ethical aspects of play. The content is written from a philosophical viewpoint completely congruent with a wholistic foundation with which we are all familiar. The content is followed by a thorough citing of relevant legal cases that further explain and present the legal issues and judgments rendered.

The section on how violence violates the very essence of play and how it is related to the value systems of today's society is extremely well done. Chapter 8 could stand alone as a separate text, for it reviews every sport from a legal preventive viewpoint as safety features are presented. Testing programs are reviewed to illustrate "proximate cause" procedures. The use of anabolic steroids is examined, and the most recent research data are listed. Special issues and problems deal with sensitive areas related to deviant sexual behaviors, shoplifting, and drug involvement and are treated with the experienced understanding of a caring physical educator with full collaboration of a competent attorney. The authors present context from a well-documented history of research.

Today, all segments of society are demanding their rights. Consumerism as a trend is here to stay, and with the expanded interpretation of the 14th Amendment of the Constitution, all persons are more aware of the legal rights they can employ. Student rights and the rights of athletes will be protected via the courts when there is evidence of negligence on the part of supervisors. With the pressure to win and with technology in the field of coaching improving, there may be even more areas for negligence to be charged. As older people remain physically active and leisure becomes more abundant, we need to become more knowledgeable about responsible supervision and guidelines that will help all physical activity to become safe and free of legal liability. Hopefully the knowledge gained from this very well-documented text will prepare more careful, caring, protected professionals.

Dr. Fay R. Biles  
Professor, Kent State University  
Former President, American  
Alliance for Health, Physical  
Education, Recreation and  
Dance and USOC Education Council

# Preface

This book was necessary for two reasons. The first is the increased incidence of lawsuits to compensate students and others injured as a result of the negligence of those working in athletics, physical education, and recreation. This situation has made it mandatory that workers in these areas fully understand their responsibilities for the prevention of injuries, and that they understand how to protect themselves from charges of negligence.

The second reason for writing this book is that attorneys for both the plaintiff and the defendant need a concise and ready reference to determine whether liability is present in a case, as well as to determine the degree of liability.

One of the coauthors is a practicing attorney, with many years of experience in tort law, and a past president of the Indiana Tort Lawyers Association. His writing will be most helpful to those involved in the teaching, coaching, and administration of sports programs, as well as to owners/operators of ski resorts, health clubs, camps, or related enterprises. The experience he brings to this text will, of course, also be helpful to other attorneys.

The other coauthor has had almost forty years of experience in teaching, coaching, and administering a great variety of sports programs and teacher preparation courses, including courses in sports safety and injury prevention. His writing will be most helpful to attorneys, who will gain a ready reference to determine whether safety standards have been met for a variety of activities. This will save many hours of research, making it unnecessary to peruse textbooks on specific sports or recreational activities.

Safety standards for a large number of sports and other activities, from the standpoints of equipment, facilities, teaching and coaching methods, and administration, are presented. This information will be helpful to those involved in such teaching, coaching, and administration because if there are no injuries, tort liability cannot result.

In addition to covering tort law and procedures to decrease the incidence of injuries, the authors discuss other topics of concern, such as student and faculty rights, mainstreaming of special students, Title IX and women's rights, sports violence, product liability, and transportation of students and athletic teams. The authors feel that the book thus covers the field of law and liability in athletics, physical education, and recreation in a practical and thorough manner.

The guiding purpose behind the book was neither to entertain nor to recite a litany of relevant cases. Rather, the authors have endeavored to present practical and useful information in order to decrease the probability of lawsuits. Rather than proceeding from cases to vague principles, the authors present cases to illustrate principles and legal procedures.

The book was written primarily for the layman and is therefore presented in layman's language. Consequently, it should be an appropriate text for undergraduate and graduate courses in law and liability in athletics, physical education, and recreation. Colleges and universities offering a major in physical education and recreation must now offer such courses, in view of the rising incidence of lawsuits brought against coaches, physical educators, and administrators of these programs.

## ACKNOWLEDGMENTS

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### *Jim Baley*

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### *Dave Matthews*

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## The Incidence and Rationale for Lawsuits

The probability that a coach, physical educator, recreation director or athletic director will be the defendant in a sports-related lawsuit has increased manyfold in the last ten years. The same is also true for the operator of a camp, ski resort, racquet club, health spa or swimming pool. There are a number of reasons for this increase in lawsuits. Interest in sports participation has been stimulated through televising sports contests. Increased leisure time has allowed more people to participate in sports. There has been a phenomenal increase in participation in sports by females. Also, the promotional efforts of the President's Physical Fitness Council and the teaching of lifetime sports in schools and colleges has resulted in more people, male and female, continuing their participation in sports after graduation. Given this increased participation in sports, it is not surprising that there is also an increased number of lawsuits. There would be an inevitable increase even if the injury rate remained the same and the same percentage of injured persons initiated a lawsuit.

In fact, the percentage of injured persons who initiate lawsuits has increased for several reasons. Small claims courts have improved the availability of legal services to people with median incomes. There is a greater number of attorneys who will take cases on a contingency basis, where the attorney is only paid for expenses until after he/she wins the case. Also, the switch from contributory to comparative negligence in most states has increased the probability of a plaintiff receiving an award in court.

There are still other reasons for the increased incidence of sports-related lawsuits. The growth of consumerism and changed laws permitting individuals to sue the state or its employees has resulted in more cases. Lawsuits