Legal Concepts Related To Youth Responsibility

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Youth, legally, may be required to take responsibility for their participation. We talk so much about youth violence and misbehaviors, and their failure to take responsibility for their conduct; but, the fact is that the law is trending toward youth having to take responsibility if they wish to participate.

It is not possible to have "risk-free" physical activity! In today's society youth seek adventurous activity – which puts the fear of liability into many a provider, whether a provider of facilities for the activity or an activity under leadership, including public agencies, nonprofit associations, and commercial for-profit enterprises. Insurance companies are also fearful of certain types of activities. In addition, there often is concern regarding the violent behavior by the participants, their parents, coaches, and spectators.

The common law and statutory law regarding sport and recreation applies to both adults and youth; yet, seldom is there any discussion of what this could/should mean in working with youth, including children. Most of the literature discusses the need for parents' and coaches' to become educated about their own behavior including the need for them to set an example for youth (Abrams, 2002; Fiore, 2003) Another dimension should be added to their education programs—enhancing the attribute of responsibility within the youth. Youth need to be informed about the legal ramifications associated with their actions.

No longer are adults custodians of youth safety, assuring safety; no longer is there the attitude of the jury that it is the humanitarian thing to do to give compensation for injury, nor is compensation for injury any longer an "entitlement"— if youth get hurt, the provider is liable! Youth are now being held accountable for their actions.

What are the responsibilities of youth from a legal perspective? There are the responsibilities related to *SELF* and those related to *OTHERS.*

NOTE: Torts are state-based, for the most part, thus the nature of common law and statutes vary by state! Basic concepts are presented. Furthermore, there are many cases regarding these legal concepts;

however, effort was made to select the more recent cases involving youth. In addition, the providers' responsibilities as related to these concepts are not discussed.

I. RESPONSIBILITIES TO SELF

The responsibilities to self encompass (1) the participant's knowledgable consent regarding the activity and (2) the way in which the participant conducts oneself or the manner of behavior in regard to participation.

A. Knowledgable consent (primary assumption of risk, inherent risk doctrine, inherent risk no duty rule)

Consent is based in the Common Law and involves decision-making information. This information includes (a) nature of the activity, (b) what the activity requires in terms of skill competence and physical condition, and (c) appreciation of possible injuries. There are two aspects related to knowledge consent: (1) concept of inherent risk, and (2) statutory designations.

1. Concept of inherent risk

What is inherent risk? It is a normal, integral part of the activity and if taken away, the basic nature of the activity would change. It is not incident to, not extraneous to the activity. Participants assume inherent risks, known and unknown

Are minors capable of assuming inherent risks? – YES, at a very early age! Several cases are useful in illustrating this point.

- In *Bennett v. Hidden Valley Golf & Ski, Inc.* (2003) a 16-year-old was injured when she went over a "ski-bump." It was alleged that the primary assumption of risk doctrine in active sports should be applied differently when involving minors – i.e., should prove she understood and appreciated the risk – but the court did not agree. Instead, the court held that this bump was an inherent risk (p. 877).

- A 7-year-old fell from a ski chair lift in *De Lacy et al v. Catamount Dev. Corp* (2003). Held the child assumed the inherent risk (p. 735-736).

- In *Gentry v. Craycraft et al* (2002) a 4-year-old was participating in a chair-building activity. The Court said that the measure of care

required of a child is that degree of care which a child of ordinary care and prudence of the same age, capacity, education and experience is accustomed to exercise for his own safety under the same or similar circumstances (p. *8).

• In *Spooner v. City of Camilla* (2002) three boys were biking by a mining pit pond, when the 13-year-old child jumped in although he could not swim. There were no barricades or signs. The court noted that between the ages of 7-14 years, the ability to assume risk depends on the particular circumstances involved (p. 111). The Court added that dangers associated with fire, falling from heights, and water, are normally understood by very young children, absent some other facts creating additional risks of harm (p. 112).

What are the criteria for when a participant assumes the inherent risk of participation and the entity (provider) is not liable?

(1) The individual "voluntary consents" to encounter a known danger or risk of the activity in which the participant wishes to engage. A person who voluntarily participates, accepts those hazards which reasonably inhere in the activity.

(2) The individual knows the "facts" associated with knowledge of the nature of the activity and conditions under which the activity is to be engaged.

(3) The individual "comprehends" and understands the requirements for participation in terms of the physical/emotional condition required, skill competence, and pre-requisite safety precautions and why these all are important.

(4) The individual "appreciates" and is aware of potential injuries that may occur.

Nelson v. Great E. Resort Mgmt., Inc. (2003) focused on proof of the plaintiff's knowledge of the risks involved in the activity. The plaintiff was injured at a snow tubing park when another rider hit her in a run-off area as she was walking off after her ride. The court explained that she assumed inherent risks that were clear and obvious to a reasonably careful person, however, this applied to the ride and not the run-off area (p. 281). Under Virginia law the defendant must prove that the plaintiff subjectively knew, understood, and appreciated specific risk of injury, and here the plaintiff did not prove this knowledge (p. 280).

In addition the provider cannot enhance or enlarge the risk, unless participant is knowledgeable of these changes and accepts the additional risk.

In *West v. Sundown Little League of Stockton* (2002) a 10-year-old playing baseball, lost the ball in the sun and was injured. The possibility of changes in the lighting condition during the game was considered an inherent risk in the sport. However, it was alleged that failure to provide sunglasses or to inform the child regarding sunglasses increased the risk of injury (p. 356). The court disagreed and held that the injury was due to an inherent risk of the sport (p. 362).

Youth are expected to know the inherent risks of the activity in which they wish to participate. They will then be held legally responsible for this level of knowledgeable consent.

2. Statutory designations

There are a considerable number of statutes, also known as "shared responsibility" statutes that provide statutory assumption of risk. They are a codification of primary assumption of risk. Under these statutes, the participant is responsible for inherent risks, however, the provider is still liable for injury due to its negligence.

The impetus for these statutes came from a Vermont skiing case, *Sunday v. Stratton Corp.* (1978) in the '70s, which held that a hidden danger on the trail was not one of the inherent risks that the skier assumed as a participant. The response of the Vermont legislature was immediate, as it perceived a threat to the ski industry's well-being, and thus, the State's economy. It passed a statute that set forth the responsibilities of the skier and those of the ski operators (VT. STAT. ANN. tit. 12, §§1036 & 1937, 1978). Within three years nearly all states that had skiing to any extent had passed similar legislation (van der Smissen, 1990, p. 77).

Since that time, the state legislatures have used this concept of shared responsibility in various types of statutes and for different activities. The skiing statutes remain the most extensive in identifying the responsibilities. Beyond this, these statutes could be classified into six categories: (1) equine; (2) skiing; (3) skating [i.e., roller skating, ice skating, skateboarding, in-line skating]; (4) statutes pertaining to other activities [e.g., snowmobile, hang gliding, fishing, renting bicycles]; (5) general recreation and sport statutes; and (6) hazardous recreational activities statutes. For a description of each category and a table of statutes by states, see Cotten (2003). Spengler & Burket (2001) also has listing and discussion of statutes.

In the end, what is the responsibility of youth related to "shared responsibility" statutes? None of the statutes exempt youth – youth have the same responsibilities as adults; thus, it behooves all participants, whether adult

or youth, to be aware of the responsibilities designated by the statutes. Youth must be knowledgable about their responsibilities as participants in the respective activities of their participation. Not to do so results in not prevailing in a law suit.

B. Conduct unreasonable

Whereas inherent risks rest with consent – understanding the activity, accepting the risks in participating – this aspect deals with conduct – how one behaves - and is referred to as secondary assumption of risk. In these situations, the injured acts unreasonably and thus contributes towards being injured, therefore, the risk of injury was enhanced by the plaintiff's own conduct. This conduct could involve violations of specific rules or codes of conduct, and could involve not heeding warnings or avoiding open and obvious conditions.

1. Specified rules of conduct

The expectations associated with participant behavior should be set forth in a written agreement to participate. In addition the particular code of conduct should be made very clear. If these rules are posted, such as helmets being required, failure to follow these rules would result in secondary assumption of risk of injury (See Spohn, 2002, relating to skateparks).

2. Warnings

The essence of warnings is communication. Warnings should be obvious and direct, specific to risk, not contradictory, comprehensible, and in appropriate location/timing. They can be in many forms, such as oral, written, video and posting of signs. Certainly youth must heed warnings to prevent their own injury.

3. Open and obvious

One of the most important aspects of assumption of risk is the consideration of "open and obvious" danger. In other words, one does not have to warn because the danger is obvious. For example, in *Smith v. Ferrel* (1988) the court held that the lake operators were not negligent even though they did not place a warning sign or post an additional lifeguard, because it is not reasonably foreseeable that a person would dive in easily observable

shallow water (p. 1076-1077). Similarly, in *Perrotti v. City of New York* (1987), where participants elected to play softball on a wet field and were injured, they assumed the risk of danger inherent in softball. The defendant was obligated only to exercise reasonable care to make the conditions "as safe as they appeared to be" (p. 538). See also two basketball court surface cases where the condition was "open and obvious" -- *Plotsker v. Whitey Ford's Grand Slam, Inc.* (1999) and *Smith v. Village of Hempstead* (A.D. 1999).

Participant conduct can also be problematic if it involves the consumption of alcohol and drugs. For example, in *Moser v. Ratinoff* (2003), the court stated by way of example that drinking alcohol beverages was not an activity inherent in sport of skating.

And, what does the "conduct of the youth" mean as related to responsibility? The conduct that contributes to the likelihood of injury, goes to the comparative fault ratio for the plaintiff.

II. RESPONSIBILITIES TO OTHERS

The second aspect of youth responsibility in a legal context is responsibility to others, including co-participant behavior and acceptance of the potential negligence of providers.

A. Co-participant behaviors (assumes risk of injury to others)

Generally, when one participates in an active sport or activity, the co-participants are not liable to each other when injury occurs within the "rules of the game". However, when the injury is caused by the reckless disregard for the safety of others or when in the situation there is considerable violence and the allegation may be assault and battery, the courts are apt to hold the one participant responsible for the injury to the other participant. (See also Watson. 1990-91).

1. Violence—assault and battery

In *People v. Hall* (2000), an 18-year-old skier got going too fast down the mountain and ran into another skier, killing him. The court discussed the four culpable mental states the State's General Assembly had passed – "intentionally," "knowingly," "recklessly," and "criminal negligence." The law states that a person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he

fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists. Further it must be shown that the person consciously disregarded the risk. The evidence showed that Hall was going at excessive speed, lacked control, and used improper technique, although a skier of expert knowledge, ability, and training, thus he was grossly deviant from the standard of care and created a risk of serious injury or even death in event of a skier-to-skier collision. (p. 223). However, the case was remanded and a jury acquitted Hall of reckless manslaughter, but found him guilty of "criminally negligent homicide" (p. 223). He was sentenced to 18 months in jail (Weiler & Roberts, 2001; see also Jones & Stewart, 2002).

2. Reckless disregard for safety of others (Pulumbo, 2002)

Reckless disregard is "heightened recklessness, or intentional conduct." It is outside the rules of the sport/sportsmanship and beyond assumption of inherent risks. The rules of the game are designed for protection of the players, as well as for the flow of the game, and thus violation of the rules and violence by players is not considered inherent to the game.

The case of *Kabella v. Bouschelle* (1983) involved a "friendly" game of tackle football. The plaintiff alleged that after he was already down, the defendant continued to tackle him anyway causing him to dislocate his hip. The plaintiff argued because he had said he was "down" and the players had commonly understood that it was the practice and rule of the "friendly" game to stop when another player said this, the defendant breached his duty by acting outside the rules of the game (p. 462). Although noting that voluntary participation in a football game constitutes implied consent to the normal risks of the game, the court also noted that such participation does not constitute consent to contacts prohibited by the rules if these rules are designed to protect the participants from harm (p. 463). According to the court, a participant can only recover for injuries where the conduct that causes the harm is either intentional or reckless (p. 463-464). Because the defendant's conduct was negligent and not intentional or reckless, the court affirmed the district court's grant of the defendant's motion for summary judgment (p. 465).

In *Ramos v. City of Countryside* (1985) an 8-year-old was injured by a 14-year-old while playing "bombardment." The child's parents sued the summer recreational program that sponsored the game and the other participant who caused the injury (p. 419-420). The court held that the other participant could not be held liable for behavior that was only negligent, and the recreational program was immune from suit (p. 420-421). Additional illustrative cases

discussing reckless disregard, include *Marchetti v. Kalish* (1990), *Mahoney v. USA Hockey* (2001), *Azzano v. Catholic Bishop of Chicago* (1999), *Schick v. Ferolite* (2001), *Ritchie-Gamester v. City of Berkley* (1999), and *Schneider v. Erickson* (2002). (Cohen 2000).

There is also concern for violence within the game when it may be considered that the player consented by playing. The question becomes – when does it get "out of hand"? In *O'Neill v. Daniels* (1987), when a softball player was struck in eye during warm-ups, the New York court distinguished not consenting to acts which are reckless or intentional, from players understanding and accepting dangers associated with the sport, including carelessness (p. 265). As the court explained, there can be no recovery in latter situation (p. 265).

In another case, a Louisiana court held that a participant in a game or sport does not assume risk of injury from a fellow player's acting in an unexpected or unsportsmanlike way with a reckless lack of concern for other participants (*Novak v. Lamar Ins. Co.*, 1986).

In *Ickes v. Tille* (1996), a 14-year-old novice golfer hit a 13-year-old friend in the forehead with a golf club, as the friend was standing behind the swinger. The court held that individuals engaged in recreational or sports activities assume ordinary risks of the activity and cannot recover for injury unless the participant's actions were either reckless or intentional (p. 739). Recklessness can be distinguished from negligence. Negligence is mere inadvertance, incompetence, unskillfullness, or failure to take precautions to enable a person to adequately cope with possible or future emergencies. Reckless disregard is disregard for the safety of another if the person acts or intentionally fails to do an act in contradiction to a duty to another to do. This must be coupled with knowing or having reason to know of acts which would lead a reasonable person to realize not only that his conduct creates unreasonable risk of harm to another, but also that such risk is substantially greater than that which is necessary to make conduct negligent. In other words, reckless conduct involves conscious choice of action related to serious danger.

B. Acceptance (assumption of risk) for negligence of provider—waivers

There is a trend towards parents signing contracts on behalf of minor participants, either a waiver or an indemnification. In May of 2003 the Colorado legislature passed Senate Bill 253 (COLO. REV. STAT. §13-22-107, 2003), which allows parents and legal guardians to sign and release liability for their children providing protection for organizations offering recreation

and sport programs. While Colorado passed the first statute, the courts in California (*Hohe v. San Diego Unified Sch. Dist.*, 1990; *Platzer v. Mammoth Mountain Ski Area,* 2003, Connecticut (*Saccente v. Laflamme,* 2002), Massachusetts (*Sharon v. City of Newton*, 2002), Ohio (*Zivich v. Mentor Soccer Club*, 1998), and Wisconsin (*Osborn v. Cascade Mountain*, 2002) have all supported parental waivers of a child's rights (Cotten, 2001).

As for youth responsibility, this trend may lead to more participation opportunities, especially particularly adventurous and daring activities.

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