

**Where education law and sport law meet:  
the duty of care of the educator-coach in  
South African schools**

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**Abstract:**

In South Africa the year 2004 marks the 10th anniversary of democracy after the first democratic general elections in 1994. The new Constitution has caused a still increasing awareness of the importance of human rights. This awareness has a notable effect on education in the country, because rapidly developing legislative provisions force educators, school management teams and governing bodies to adapt their approaches by utilising innovative strategies. The protection of students' fundamental right to an environment, including the sport arena, that is not harmful to their health or well-being, is one of the focus points in this scenario. Besides the inherent enjoyment and potential educational value, sport activities obviously also involve a number of risks. The possibility of injuries may jeopardise students' safety, which may lead to accusations of negligence on the part of the educator who is also a sports coach. The increasing incidence of legal action against coaches is a world-wide phenomenon and indicates that, to some learners, the school sports arena may have become a threatening, rather than an educational, environment. In this article I examine the duty of care of the educator-coach at school in a variety of sport-related situations that may pose a risk to the well-being of participating learners. I conclude with a number of practical suggestions regarding both the enhancement of safety and prevention of the coach being accused of negligence.

**Introduction**

Sport participation involves, next to the inherent enjoyment and fulfilment, a number of risks. Injuries among players are sustained on a regular basis during contests, which may lead to accusations of wilfulness on the side of the opponent, as well as alleged negligence on the part of a coach, official or even a spectator. Similarly, as Doleschal (2003:143-145) points out, smaller incidents as well as major stadium disasters occur where spectators at sporting activities get injured due to alleged negligence of the event organisers. These human actions, or lack of action, all have legal implications, and over the years, as Wood (2003:3), mentions, there "has been a growing tendency to institute action when injuries have been suffered".

This growing tendency in legal actions is a world-wide phenomenon, but in South Africa, possibly more than in other countries, the implementation of the South African Constitution, Act 108 of 1996 (SA, 1996) (hereafter referred to as the Constitution) enhanced awareness of the importance of the law. This is mainly because South African society, for the last decade, has functioned under a Constitution that is the supreme law of the country. The implementation of the Bill of Rights, which forms chapter 2 of the Constitution, sparked the growth of a human rights culture.

### Concept clarification

In the law of delict, also called "tort law" in some countries, a duty of care has to be established before anyone can be held liable for damages suffered because of his or her negligent behaviour (Beloff, Kerr & Demetriou, 1999:112). There are various circumstances under which an educator has a legal duty of care. One of these is the special relationship between the parties concerned. This relationship exists where, for example, "it is an educator's duty to assist a learner with a particular gymnastic exercise in a gymnasium" (Botha in Oosthuizen, 2003:90) There is therefore a close link between liability and the duty of care. In the sporting arena a duty of care exists and is owed by numerous role-players, including players, referees, coaches, spectators, organisers and others (Hamman, 2003:37; Wood, 2003:8).

What should be noted, is that "sport" at school level should be regarded as more than mere competitive activities between individuals or teams. Although this article mainly focuses on issues related to competitive sport, the range is much wider: the term sport also includes recreational (non-competitive) activities and excursions, Physical Education classes and any other form of movement development or movement education. The principles of the duty of care of the educator can (and should) be extended to all these activities.

### Focus

In sport there are numerous role-players and also a vast variety of settings in which sport takes place and where negligence may occur. In this article, however, the scope is limited to addressing the crucial issue of duty of care within the context of school sport, expressing the duty of care of educators in their roles as sport coaches. The term educator-coach is used to depict this specific group of educators in South African sport.

Referring to participants in sport and recreational activities, the article focuses on young participants who are still at school. Therefore the terms *learners*, *children* and *athletes* are used to refer to these juniors who take part in the many kinds of sport, which include the typical school sport activities in South Africa, such as rugby, soccer, athletics, netball, hockey and swimming, but also sport codes such as cycling, gymnastics and golf that are often coached by non-educators in a private club environment.

### The law of delict

The law of delict in South African falls within the field of private law. In the USA, Australia and several other countries this doctrine is called the law of tort. A delict can be defined as an unlawful act which causes damage to another person. The act causes an obligation in the form of damages to be paid by the defendant to the plaintiff. The delictual action is built on common law principles under the maxim *actio ex lege Aquila* (Davel & Jordaan, 2000:18.)

Describing the application of the law of delict in sport, Basson and Loubser (2001: Ch.5, 10) state the following:

Under the law of delict an injured player or spectator can claim compensation for physical, psychological and financial damage caused by an injury attributable to the intentional or negligent conduct of a player or official.

The extract contains reference to the five elements of a delict: an act (conduct or an omission); damage; unlawfulness of the act; a causal link between the act and the damage; and fault, which can be either intentional or negligent. In South African law these five elements have to be present for someone to be found guilty of a delict, or, in other words, for a person to have suffered compensatory damage. In sport the purpose is to compensate a participant who has suffered injury and resultant loss, pain or inconvenience as a result of the fault of another (Basson &

Loubser, 2001: Ch.5, 11).

Regarding delicts in sport, Beloff, Kerr and Demetriou (1999:112-113) also refer to the following:

- There should be proof of an existing relationship according to which a duty of care was owed to the injured person. According to Beloff "the existence of a duty of care between competitors in sport is already well established". The common law duty of care relevant to sport is the need to avoid foreseeable physical injury (Hamman, 2003:3). According to Wood (2003:8) there exists a duty of care "between players, referees, coaches, spectators, promoters, owners, organisers and so on".
- It has to be proven that the defendant fell below the reasonable standard of care. Hamman states that "the standard set will depend on the probability of the injury, the seriousness of the consequences of the injury, and the ability to eliminate the risk".

Each of the elements connected to a delict are briefly considered in the paragraphs that follow, as one should distinguish carefully between different actions. In sport, some actions are unlawful or faulty, whilst similar actions are not.

### **Act**

Oosthuizen, Rossouw and De Wet (2004: 68) state that, for liability to be present, the action that resulted in the damage must be a human action and also a voluntary action. Nobody can be held liable for "acts of God" or where someone does something that is performed against his will, for instance, an injury to another person due to an accident that occurs because someone has fainted. In his discussion of the application of tort law in American sport, Mawdsley (2003: Ch..7, 35) mentions that actions can be characterised as

- malfeasance, where someone committed an act "that should not have been done at all",
- misfeasance, indicating an act that a person "could lawfully do, but has been done improperly", and
- nonfeasance, where a person "ought to do but did not".

In the discussions that follow, some of these actions are identified in different sport-related activities.

### **Damage**

There is a clear distinction between two types of damage or loss: patrimonial (or pecuniary) loss, which is related to financial damage, and injury to personality rights, such as defamation. It is important that the educator-coach and his school should be aware of these types of damage because the extent of the damage is calculated with reference to these items of damage.

As mentioned previously, in sport the purpose is to compensate a participant who has suffered injury and resultant loss, pain or inconvenience as a result of the fault of another. It has to be established who should bear the loss, who should be compensated and how much should be paid in damages. (Basson & Loubser, 2001: Ch..5, 11).

#### **Patrimonial loss**

According to Oosthuizen (2003: 96) compensation may be claimed for patrimonial (pecuniary) loss such as damage to property, medical expenses, or loss of income and earning capacity.

#### *Injury to personality rights*

The court normally awards compensatory damages under the following heads for damage resulting from infringement of physical or mental bodily integrity: pain and suffering, dis-

figurement, loss of general health, loss of amenities (regarding lifestyle), shortened life expectancy, emotional shock (Oosthuizen, 2003:96).

### *Unlawfulness*

When a participant in sport unlawfully causes injury to an opponent, it may lead to delictual liability. Depending on the nature of the sport, it is not necessarily unlawful for one player to cause injury to another. Basson and Loubser (2001: Ch..5, 11) stress that the distinction is mainly drawn through the notion of reasonableness. This norm of reasonableness is supported by Beloff *et al.* (1999:112). In terms of the rules or conventions of the specific game, especially contact games like rugby, causing injury is often legal and therefore acceptable to both opponents. Another criterion is that of *boni mores*, according to which the decision of whether the action was unlawful is based on public policy or the legal convictions that prevail in a specific community. It should be noted that in the sporting sphere, other than in the public domain, the lawfulness of a specific act can relate to the ordinary legislation of the country, but often to the rules or "laws" of the specific game.

Generally speaking a participant will never be guilty of unlawful conduct if he or she stays within the rules. For the coach or referee of a contact sport, the distinction between lawful and unlawful conduct of specific players is very important, because he can be held liable if he does not exercise his duty of care by protecting victims of unlawful conduct of opponents. The rule, that they may keep in mind in their judgement of specific situations, is provided by Basson and Loubser (2001: Ch.5, 12):

Injury-causing conduct is unlawful where it contravenes the rules and conventions of the sport concerned and therefore falls outside the ambit of the risk to which participants knowingly expose themselves.

In sport a number of different actions can be described as being unlawful.

### *Assault and battery*

Assault and battery are closely linked, but distinguishable. Battery, according to Mawdsley (2003: Ch.7, 36) can be defined as the unlawful touching of another person without consent. The other person's reasonable apprehension of a battery is then defined as assault. Ferrin (2003: Ch..6, 6) states that "a general truism is that assault is essentially a mental rather than a physical invasion".

Wood (2003:4) defines assault as "the unlawful and intentional application of force or the threat of violence to the person of another". It should be noted that a certain action may be regarded as assault in spite of the fact that the assaulted person was not touched physically. Sexual assault or harrasment is, however according to Ferrin (2003: Ch.6, 11), related to battery and assault.

In sport the causation of a certain injury, caused with an appropriate high level of intent, may be regarded as a criminal offence. In South Africa there have not been many reported criminal cases on sports injuries since 1948. In England a sport like boxing became a recognised sport in 1882, in spite of the fact that the activities between two boxers in the ring, should they happen in the street, would be regarded as deliberate assault and could lead to conviction. As long as a boxer stays within the rules (e.g. not hitting below the belt, refraining from biting or head butting) the participant is immune from both criminal and civil actions, despite the fact that serious and even fatal injuries can be inflicted (Wood, 2003:5).

### *Defamation*

Another form of injury that can be sustained inside or outside the sport arena is that of psychological damage, which normally relates to defamation. According to Mawdsley (2003: Ch.7, 39) the two possible forms of defamation are the common law concepts libel (a written statement that is substantially untrue) and slander, which is an oral statement. The damage is done to the reputation (*fama*) or dignity (*dignitas*) (Robinson & Human, 2001:53) of the person. Mawdsley (2003) stresses the fact that the statement, whether oral or written, must be published to a third party before a defamation claim will be regarded as viable.

### *Causation*

To succeed in delictual liability issues there should be adequate proof of a causal link between the unlawful act and the damage suffered. Hamman (2003:12-13) in her discussion of liability matters concerning netball participants during pregnancy, states that a plaintiff has to satisfy the onus of proving that there has been a causal link between a particular injury and the pregnant netballers' participation. In these possible cases the plaintiff would typically be a child who has allegedly sustained injuries as a foetus, suing his or her netball-playing mother for negligence during the pregnancy.

It should be noted that the elements like the act and the damage may be separated. Davel and Jordaan (2000:18) refer to research by Joubert who states that the five elements of a delict can be separated in time and place. If it can be proven that a certain unlawful act that happened earlier can be causally linked to a damage of loss that only manifested later, the plaintiff who suffered the loss does have an action (see *Pinchin v Santam Insurance Co Ltd* (1963) 2 SA 254 (W)).

### *Fault*

Although similar, fault should be clearly distinguished from unlawfulness. Basson and Loubser (2001: Ch.5, 12) state that "delictual liability arises where injury is caused not only unlawfully, but also with fault, i.e. either intentionally or negligently".

The difference lies in the additional elements of intention and negligence. Either one of the two must be present to prove that a sports participant has suffered compensatory damage. Intention is present when a person's will is directed at causing injury and he is conscious of the unlawfulness of his conduct. The action is deliberate and purposeful.

Although seemingly less serious than intentional conduct, negligence, if proven, may also give rise to liability. Negligence can be defined as the failure to act as a reasonable person would in the circumstances to avoid injury to other parties. It may be accepted that, in the actions of an educator-coach, intentional harm to a learner will seldom be part of the relationship (Wood, 2003:8). Negligence, however, often leads to disputes in sport, and should be carefully considered. Ferrin (2003: Ch.6, 26.5) states that, in the USA, negligence is "the most prolific cause of action in modern jurisprudence and in educational settings specifically".

As indicated in the definition above, "the reasonable person" test forms the basis for decisions on negligence. Reasonableness is an elastic term, but it is accepted that a reasonable person uses the care that a reasonably prudent and careful individual uses in ordinary life to avoid harm or injury to others when faced with certain phenomena and circumstances.

### *Negligence and the standard of care*

Of great importance is the well-known principle in the law of delict regarding a "higher standard of care". According to this principle it is expected that an educator-coach, especially those better

qualified and more experienced, will know and anticipate the dangers of specific sport-related situations better than the ordinary man in the street. Mawdsley (2003: Ch.7, 42) refers to the case *Cerny v Cedar Bluffs Junior/Senior High School* 628 N.W.2d 697 (Neb. 2001) where the Supreme Court of Nebraska found that coaches who have coaching endorsements to their teaching certificates that represent specialised training in athletic injuries can be held to a heightened standard of care.

The courts expect a similarly heightened standard of care from educators in South Africa, although it is clear that there are a number of conditions that should be taken into consideration. In an analysis of four cases regarding alleged negligence by educators, the age of the learner, among other factors, stands out as a critical element.

In *Broom and another v The Administrator, Natal* 1966 3 SA 505 (D), an educator-coach was sued for negligence. Learners were playing baseball during school hours and the game was under the control of, and supervised by, the Physical Education educator. The first plaintiff, aged 16, a pupil of a high school under the control of the defendant, had taken part in the game together with other pupils in his class. An assistant teacher of the school supervised the game and the batsmen used a cricket stump, without a metal tip to it, in the absence of a baseball bat. The boys awaiting their turn to bat stood in a queue, in an informal line to the rear of the batsman. The first plaintiff was fourth in the queue and stood some seven metres away from the batsman. When the batsman hit the ball the stump left his hand, travelled through the air and came into contact with the first plaintiff's head just behind his right ear. The first and second plaintiffs, a minor son and his father, respectively, sued for damages alleged to have been sustained through the negligence of the educator.

The court held that the probable lack of seriousness of the harm and the small chance of it happening were such that the use of the stump could not in itself be regarded as sufficient proof of negligence. It further held that on the facts there was not such a correlation of risk and serious consequence to warrant the Court holding that the educator had been negligent in controlling the game. It held, accordingly, that the second plaintiff had not discharged the onus of proving negligence on the part of the educator.

In *Knouwds v Administrateur, Kaap* 1981 (1) SA 544 (C) 553 the plaintiff had instituted action for the payment of damages for serious injuries which her eight-year-old daughter had sustained when she fell on a lawnmower when she and another schoolgirl (N) were playing in the grounds at school. The accident occurred just before school started on that particular morning. It appeared that the plaintiff's daughter and N were racing over the lawn where the operator of the lawnmower was busy cutting the grass. Other children were playing there and were making a noise and shouting while they were playing. While the plaintiff's daughter and N were running, N pushed the plaintiff's daughter to prevent the latter passing her. The plaintiff's daughter stumbled and put her hand on the lawnmower to maintain her balance. She was then injured. Some of the court findings were the following:

- In these circumstances a reasonable person would have taken precautions in order to avoid or prevent the occurrence of the damaging consequences.
- Having regard to the well-known conduct of young children, it should have been foreseeable to those involved that the children, while they were busy playing and running, could for one or another reason have fallen or have lost their balance and have stumbled into the lawnmower.
- The risk to which plaintiff's daughter and the other children were exposed that day was such that they ought to have been kept constantly under proper supervision; and the risk was indeed of such a nature that it required effective steps on the part of the school staff

to ensure that the safety of the children there was guaranteed.

- Negligence on the part of the operator, L, the supervisor, S, and the principal had been proved.

Referring to the latter case, Basson & Loubser (2001: Ch.5, 28) however point out that only reasonable supervision and care is expected during sports activities and play at schools. It is not reasonable to require continuous supervision, and an injury may occur when children are running, pushing and shoving. A coach cannot be held liable if it can be shown that an injury would still have occurred had he been present and had he acted reasonably. The conduct of children cannot always be anticipated.

Peter Wynkwart v Minister of Education, Highlands Primary School 2002 (High Court of SA: Cape of Good Hope; case No. 4168/1999) can serve as a non-sportrelated case which, however, clearly indicates the standard of care expected from educators. The plaintiff, Wynkwart, acted on behalf of his son, Randall Wynkwart, who was an eight-year-old learner who suffered serious injury on the school grounds on his way home from school. He and the rest of the Grade 3 learners at Highlands Primary School were discharged from school somewhat earlier than the older learners. Normally they exited the school grounds under the supervision of their class teachers, other educators and senior learners, who would escort them across a busy street. On the day of the incident Randall left via another gate that was unused and locked. When he tried to climb over the gate, he slipped and fell on his head. He sustained severe spinal injuries which left him permanently disabled and quadriplegic.

The court ruled in favour of the applicant and held that the school was to be held liable for the damage. According to Oosthuizen and De Waal (2003:337) the court contended, among other things, that this kind of care is to be regarded as appropriate where young children, whose behaviour is characterised by impulsiveness, are dealt with. Even more so at the specific school which is situated next to a dangerous road. It is to be expected of educators trained in psychology and child development to understand the behaviour of children, especially since they are known to act impulsively, unpredictably and irresponsibly. The mere fact that the students were told at assembly that they were not to climb gates and fences was not enough reason to abdicate the educator's duty of care.

In this ruling the court laid, according to Oosthuizen and De Waal (2003:338), too heavy a burden on the shoulders of the educator in question. It is not possible for any educator to keep an eye on all the students during every minute of every school day. The Minister's application for appeal was granted — the outcome of which is still awaited at present.

Shortly after Wynkwart, in Lubbe v Jacobs 2002 (High Court of South Africa: Transvaal Provincial Division, case No.1225/2001) the High Court was less stringent in its approach towards the educator's legal duty of care. In this sport-related issue Nadia, 12 years old, was injured by a hockey ball during the course of a mini hockey tournament. Several matches were played at the same time diagonally across the field, and plastic cones were erected as temporary goal posts, which had no nets to stop the hockey ball from deflecting onto bystanders. Nadia had finished her game and her school educator/hockey coach was refereeing another game. As Nadia went to put the educator's jacket in her bag behind one of the temporary goal posts, a deflecting hockey ball struck her and she was injured. Her father sued the school and argued that the coach, Van Biljon, had been negligent in one or more of the following ways:

- She did not take proper safety measures.
- She allowed the match to be played on a field without proper goal posts.
- She failed to make arrangements for the students not to be in the vicinity of the temporary goal posts during the matches.

- She failed to take the necessary measures to avoid such an accident.
- She did not execute her duty of care properly.

Judge Hartzenberg ruled that the educator had not been negligent and could not be held liable for the incident and he dismissed the claim with costs. The judge reached his decision on the basis that hockey players who are twelve and thirteen years old knew the game, and went further to explain:

In this case, the children under the supervision of Mrs van Biljon were not babies. They were girls and were twelve years and older. It was accordingly not unreasonable for Van Biljon to accept that they would act responsibly. One would expect Nadia to approach the bags, knowing that they were behind the goal posts, with the necessary caution. She was old enough to appreciate the dangers inherent in the game of hockey and Mrs Van Biljon was entitled to accept it.

Furthermore, it is a reality that the presence of a coach does not necessarily prevent accidents. In the USA, Ferrin (2003: Ch.6, 39) referred to *Navarra v Lynbrook Public Schools*, 733 N.Y.S.2d 730 (App. Div. 2001) where an appellate court in New York was satisfied that a playground was adequately supervised because several educators were nearby when a student fell from a set of parallel bars. The court explained that "duty to supervise does not extend to holding children harmless against all injury".

Similarly, in *Rusere v The Jesuit Fathers* the case was heard by Judge Beck in 1970 in Zimbabwe (then Rhodesia) and the judge clearly indicated that, in spite of a definite heightened standard of care expected from educators, these expectations should take reality into account all the time. No superhuman form of supervision can be expected from educators.

To subject the children to the repressive and molly-coddling awareness of round-the-clock surveillance of all their waking activities would be to adopt too timorous an approach toward the ordinary incidence of risk inherent in the daily amusements in which children will indulge.

In spite of the fact that courts take a reasonable approach, coaches and Physical Education educators should always be aware of their responsibility to avoid negligent conduct. Typical examples of negligent conduct are:

- Forcing or allowing injured players to continue in the game.
- Playing unconditioned players out of position in rugby positions such as prop, or to select players to play on a level that require a higher standard of skill than they are capable of.
- Unsupervised swimming or gymnasium activities, where high-risk skills may be attempted by over-enthusiastic or reckless learners.
- Advancing participants too early in attempting to master high-risk movements where higher levels of skill are needed in coaching gymnastics and similar kinds of sport such as diving and trampolining.

On evaluation, a number of questions may be asked to decide whether a gymnastics coach can be held liable for serious back injuries that are sustained. It should be determined whether the gymnast was attempting a skill beyond his capabilities and experience. Another question is whether a coach has enough experience to coach the participant the proper technique of a double back-somersault. How many times previously had a gymnast succeeded during practice sessions in his attempts of this specific skill before trying to perform it without assistance? If it was a compulsory movement in a competition sequence, was he initially entered into the appropriate division or level? All these questions reflect on the involvement, and therefore liability, of the coach.

A number of guidelines will subsequently be presented to indicate to educator-coaches which precautions can be taken.

### **Precautionary steps for educator-coaches**

Gibson (2004) confirms the increase in litigation in Australia and other countries that was already noted in 1995 by Cotton (1995:1). This is due to an increased awareness of the rights regarding safety of participants. Unfortunately this may result in a no-risk approach by coaches, which in turn may lead to an unnatural, over-protective coaching style. Plastic bats and soft balls will then, for example, replace the standard equipment, and in extreme cases this approach may take away much of the challenge or even enjoyment of certain activities. This increased awareness may also result in coaches simply not wanting to stay involved any longer to avoid the risk of being sued for injuries sustained by children.

The following guidelines for coaches, as adapted from Basson & Loubser (2001: Ch.5, 31-32) Smith (2002:1-2), Van der Walt (1990:1-11), Hamman (2003:47) and Beloff *et al.* (1999: 118-199), may ensure the necessary precautionary steps are taken in a balanced way.

#### **Warning participants of risks**

Most types of sport have ordinary as well as unexpected dangers. Referring to these dangers, Smith (2002:1) states that "it is prudent for a coach in the discharging of his or her duty to provide players with adequate warning". This is called the disclosure requirement and implies that coaches cannot assume that participants know the dangers, even when they are very obvious. Smith refers to *La Valley v Stanford* 79 N.E. 2d 437 (1947) where a coach did not warn a learner in Physical Education about the dangers of a boxing contest. He was also not properly trained in boxing techniques, got injured, and the coach was held liable.

The disclosure principle is especially important when coaches work with young children, whose perception of the reality is not well developed. The dangers attached to, for example, a swimming pool, a trampoline or cricket bat should be pointed out, as well as the risks of moving around during practice sessions. It is not uncommon that six-year-old children, on their way to the dressing rooms, will move under an apparatus like the parallel bars or high bar while a senior gymnast is swinging or preparing for a dismount. Except for the importance of verbal warnings and "coaching" them in the safe routes, proper control over these young participants is crucial.

#### **Development levels of participants**

The coach's responsibility will vary according to the level of participation and the age of the participant, as well as the level of skill and experience of the participant. The nature and risk level of the specific sport will determine how these factors should be taken into account. The more dangerous the activity, the closer and more effective the level of supervision needed, irrespective of the age or development level. In contact sport, the referee is the person closest to the activity and should exercise control over the participants. In boxing, for example, he should determine whether one boxer is too strong for his opponent and should stop the contest.

In a gymnastics accident that will probably lead to chest or neck injuries, the coach may not be held liable if the fault is completely on the side of a senior, experienced gymnast. If he clearly overstrides, while the spring board is without doubt in the correct position and at a proper distance from the vaulting horse — a factor of the situation where the coach should have played a role. The duty of a coach related specifically to apparatus placement is, however, more crucial with young gymnasts who may not be able to judge the situation well under the pressure of a competition atmosphere.

Similarly, the coach's responsibility will also be higher if the group includes participants who can be regarded as incapacitated in some way or another for the specific session, e.g. less developed, very young or illiterate.

In the current South African scenario, the development of previously disadvantaged groups has certainly created a number of new responsibilities for coaches of especially junior participants. Some obviously do not understand the language of instruction, and in such situations the number of participants should be reduced or more assistants and/or translators should be employed. In the quest for a really non-discriminatory society, including the sport sphere, it can be expected that coaches will have to effectively cope with mentally disabled or physically disabled participants (deaf, blind, or paraplegic). Their specific needs should be taken into consideration, and coaches should realise their duty in this regard.

### Matching participants

In some sports codes competitors should be matched according to weight, skill level, experience and other relevant factors. Especially in recreational activities, it may often happen that children of different genders become engaged in the same activity. Female participants' different levels of strength and stamina, as well as their different physique, should be kept in mind. The important notion should be that, in sport, equality and the absence of discrimination do not necessarily mean that all the participants are treated the same. To be fair, coaches need to differentiate between participants.

### Injuries to participants

It is a basic duty of a coach to do everything in his or her power to prevent injuries to players. An effective way to do this is to adequately prepare participants for the specific demands of a sport by ensuring the ideal kind of fitness and body conditioning. Smith (2002:2) refers to *Larson v Independent School District 289 N.W. 2d 112* (1979), where the court held that "preparation must be graduated to the activity". According to Smith, this implies that

- skills have been developed,
- a suitable level of fitness has been reached over time, and
- participants are injury free and adequately warmed up.

When injuries do occur, the coach should assess whether an athlete is fit to train, and training should be supervised in a proper way. Normally these assessments can be done without any immediate pressure, but when an on-field injury occurs, the liability of the coach may become a real issue. Smith (2002:2) refers to *Mogabob v Orleans Parish School Board 239 So. 2d 456* (1970) where a coach sent a player to hospital after two hours, whilst he actually needed urgent attention due to heat stroke and exhaustion. The player subsequently died and the court held the coach liable, because evidence suggested that the player would have survived if medical treatment had been administered sooner.

Smith also mentions that certain competing interests may distort the coach's perception at the time when he or she has to make an important decision regarding a player's condition. Either the player may be too young to fully appreciate the extent and implications of an injury, or a player may be very keen to stay on the field because of the importance of the match, in spite of an injury. This may especially be the case with older learners, seeing that peer loyalty is such a strong driving force among teenagers. A coach who acts responsibly would, if in doubt, demand a declaration of fitness from a medical practitioner before allowing an injured participant to practice or compete.

### Correct technique

Ensuring that the athlete masters the correct technique, in for example artistic gymnastics, pole vault and weightlifting, will to a great extent eliminate the occurrence of serious injuries. This may be regarded as one of the most important responsibilities of coaches. The following is an illustration of such a situation. A gymnast is ready for the level of the skill attempted — a double back-somersault from the beam. Furthermore, the apparatus is properly erected, sufficient mats of prescribed thickness according to international standards are correctly placed. There is, in other words, most probably no element of negligence by the coach or the organisers of the event that can be the cause of possible neck or spinal injuries to the gymnast.

Attempting to coach movements beyond the knowledge and experience level of the coach is a risky venture, as previously mentioned. Sport associations should have specific regulations as guidelines regarding coaching qualifications as compared to the level of participation that the coach is entitled to train. The FIG that controls gymnastics internationally, for instance, requires a level 1 qualification for men's coaches to be able to coach up to level 3 gymnasts, whilst a coach with a level 4 qualification level is eligible to coach level 10 up to Olympic gymnasts, who perform movements with a high risk level.

### Equipment and grounds

In the previous discussions the correct placement of the apparatus was mentioned. For the coach, the correct usage and proper placement of well-maintained equipment by both participants and himself should be a high priority. The standard of the equipment should match the level of the participation. Where improvisation (in the absence of the right equipment often experienced in schools) leads to the utilisation of non-standard equipment, special care should be taken.

Regarding the playing field, surrounding grounds and other facilities, proper measures should be in place to safeguard all participants. The surface of the edges of swimming pools should be non-slippery, whilst the water should be kept clean to ensure swimmers' health. Dangerous objects in the vicinity of playing fields should be removed or properly covered, goalposts covered in contact sports like rugby, and participants like hockey goalkeepers and cricket players should be equipped with proper protective clothing like pads and helmets. In the case of *Leahy v School Board of Hernando County* 450 So. 2d 883 (1984) (as cited by Smith, 2002:2) the participant voluntarily played without proper protective clothing. The coach, however, was eventually held liable for facial injuries sustained by the plaintiff.

### Assistant coaches

Depending on the type of activity, the coach should be present and supervising the activities as far as reasonably possible. In this sense a swimming practice session differs completely from a tennis session, although a coach can never escape from his responsibility regarding the safety of participants.

To share the burden of care of the head coach, assistant supervisors or coaches should be used with large groups, as long as they are competent and made properly aware of their duties. Delegation of his or her authority can never relieve the coach from his/her primary responsibility for proper supervision and care.

### Common sense and control

The importance of mere common sense by all involved in sport is mentioned by Crouch (1996: 28), who calls this the greatest asset and, legally speaking, the greatest defence against liability for any school. When children are expected to take part in a hurdle race over fixed benches, as

reported in Australia in the case of *Smith v Her Majesty's Attorney General for the State of Tasmania* (1991), the educator should without doubt be held liable for negligence because of the obvious foreseeability of injuries.

The final word is control, which has already been mentioned in connection with the safety of young participants as well as the duty of care of referees and event organisers. It is, however, equally true of the interaction between coach and older participants. Experience has shown that good control and sound discipline can prevent up to 80% of injuries, especially where group activities are taking place. As Crouch (1996:28) rightly states, "teachers can't be everywhere at once, but they need to be able to show that their supervision is adequate for the situation".

## Conclusion

There is a close link between delictual liability and the duty of care owed to participants by the educator-coach. In sport, a duty of care does exist and is owed by numerous role-players, but especially by coaches.

In decisions whether an educator-coach can be held liable for injuries or other forms of damage, a higher standard of care is expected, especially from better qualified and experienced educators who act as coaches, who should know the potential dangers of specific sport-related situations better than the ordinary "man in the street". Precautions in order to avoid or prevent the occurrence of injuries or other forms of damage to participants are essential.

Certain elements, especially of high-risk or contact sport, do not make it easy to foresee injuries to those involved. A coach would not be held liable if it could be shown that an injury would still have occurred had he been present and had he acted reasonably, taking a number of precautionary steps or approaches to ensure maximum safety. These include warning participants of the potential dangers, coaching the right technical execution of skills, correct grouping of participants according to skill level, not coaching beyond your own capabilities and knowledge, and utilising equipment in the correct fashion.

Finally, those persons judging a certain situation to determine an educator-coach's possible liability, should keep in mind what was quoted by Judge Beck in *Rusere v The Jesuit Fathers* (1970). He referred to the 1941 case of *Camkin v Bishop*, in which Lord Goddard observed in 2 All E.R. 713 at p. 716:

If every master is to take precautions to see that there is never ragging or horse-play among his pupils, his school would indeed be too awful a place to contemplate.

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