

# IS YOUR FACILITY SAFE?

// By SCOTT BILLS, CSFM

**M**y goal in this article is to help readers learn about the Theory of Liability and Standard of Care as they relate to the responsibility of administrators, facility managers, athletic directors and coaches to provide safe and playable athletic facilities.

## Theory of Liability

There are four factors that make up a complete Theory of Liability:

■ **Dangerous Condition.** A dangerous (or improper) condition must exist (if someone trips and falls on a sidewalk and is injured, but there are no cracks or unevenness or anything

that makes it irregular or dangerous, there is no liability.

■ **Causation.** The dangerous (or improper) condition must have caused the incident (and injuries or damages). Maybe the sidewalk was cracked and uneven in one spot, but the injured party tripped and fell somewhere else/nearby, then there is no liability.

■ **Notice.** Must be established that the defendant(s) either knew or should have known, with typical/proper/reasonable attentiveness (consistent with the actions of a reasonable man and/or the normal standard of care) of the dangerous (or improper)

condition. Alternatively, if the defendant(s) created the dangerous/improper condition, this covers or is considered notice.

■ **Standard of Care.** What would a reasonable person do? It must be shown that the defendant(s) violated the typical/normal standard of care. Often the expert, who should have relevant knowledge and/or experience, establishes the standard of care (of/for the defendant[s]) and then opines on whether or not it was violated.

The definition of “standard of care” is the watchfulness, attention, caution and



Plaintiff breaks his left leg after sliding into second base on an improperly maintained synthetic baseball field.



X-ray of the plaintiff/author's resulting broken leg.



prudence that a reasonable person in the circumstances would exercise. If a person's actions do not meet this standard of care, then his/her acts fail to meet the **duty of care** that all people (supposedly) have toward others. Failure to meet the standard is **negligence**, and any damages resulting there from may be claimed in a lawsuit by

the injured party. Negligence is conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances.

The problem is that the "standard" is often a subjective issue upon which reasonable people can differ.

In order to establish negligence as a Cause of Action under the law of torts, a plaintiff must prove that the defendant had a duty to the plaintiff, the defendant breached that duty by failing

## CASE STUDY

### Broken Ankle on a Public Synthetic Softball Field.

At approximately 4:15 pm on March 30, 2015, the Plaintiff was injured while playing softball in a high school softball game. The Plaintiff was running towards home plate and slid into the base. The Plaintiff's foot got caught in the turf and she continued to slide, and then discovered her foot was turned the wrong way.

"During my inspection I observed the field to be a softball field with painted baselines at the southwest corner of an all synthetic carpet style nylon soccer field. The field surface material was uniform in all areas except the right hand batter's box. This surface measured approximately 3' wide x 5' deep and consisted of a taller fiber sewn onto a rubber backing. The section appeared to be a repair and replacement of the original surface. This piece was significantly different than the original carpeting in length of fibers, texture and thickness. The rubber backing thickness was 1/2" and the fibers were 1 1/2" high compared to the 1/2" height of the surrounding surface. The replacement piece was not attached, connected or otherwise anchored to the surrounding synthetic carpeting or substrate and protruded 1/4" - 1/2" above the surrounding surface."

to conform to the required standard of conduct, the defendant's negligent conduct was the cause of the harm to the plaintiff, and the plaintiff was, in fact, harmed or damaged.

What separates a "common accident" from an "act of negligence" is the standard of care. By neglecting the proper standard of care for a given situation, an individual may be found liable for any resulting injuries. You can be found negligent if a "dangerous condition" existed, caused the incident, you had "notice," and your actions or inactions violated the standard of care.

## Reasonable person

The so-called "reasonable person" in the law of negligence focuses on how a typical person, with ordinary prudence, would act in certain circumstances. The test as to whether a person has acted as a "reasonable person" is an objective one, and so it **does not** take into account the

specific abilities of a defendant. Thus, even a person who has low intelligence or is chronically careless is held to the same standard as a more careful person or a person of higher intelligence. A jury generally decides whether a defendant has acted as a reasonable person would have acted. In making this decision, *the jury generally considers the defendant's conduct in light of what the defendant actually knows, has experienced, or has perceived.*

## Proof of negligence

In a negligence suit, the plaintiff has the burden of proving that the defendant did not act as a reasonable person would have acted under the circumstances. The court will instruct the jury as to the standard of conduct required of the defendant.

For example, a defendant sued for negligent driving is judged according to how a reasonable person would have driven in the same circumstances.

A plaintiff has a variety of means of proving that a defendant did not act as a reasonable person would have acted. The plaintiff can show that the defendant violated a statute designed to protect against the type of injury that occurred to the plaintiff or a plaintiff might introduce expert witnesses to provide evidence of a customary practice.

If you don't want to get sued, here are some basic industry expectations:

- Establish standard operating procedures. Inspect the premise regularly and keep maintenance records customary for the site or sport.
- Repair defects immediately or prevent exposure to users, participants or spectators until the premise is made safe.
- Keep users, participants or spectators safe during the use of the premises by having a plan for reasonable supervision and security.
- Use reasonable employee recruiting, selection, hiring and training practices.
- Have a written emergency and medical plan
- Practice the plan

Risk management is the process of identifying and minimizing elements that could cause injury or harm to users, participants or spectators. Four elements of risk management include:

- Identification with regular inspections
- Evaluation by prioritizing based on severity and frequency
- Treatment by stopping the activity, reducing the risk, transferring liability through contract (hold harmless clauses), and assuming the risk is worth the liability exposure
- Implementation—once a treatment is implemented, reevaluate to ensure it was the correct option

You can be subject to a lawsuit for negligence if a dangerous condition exists, is the cause of an injury, and you had notice and violated the standard of care. Inspect your facility as if you will be a participant, parent, or spectator. **/ST/**

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