



No Such Thing as a Safe Field

By Todd Detzel

Some sports turf managers and administrators believe they will be relieved of liability for an injury if their fields aren't any worse than those of other school districts (or towns or recreation districts). This belief only survives because they have not yet been sued and lost or settled out of court.

Both professional turf managers and lay people speak about safe fields as though *safe* has a precise scientific, technical and legal definition. This is unfortunate because it obscures the truth — there is no such thing as a safe field!

A break must be made with the mystique surrounding the word *safe*. The Random House dictionary defines *safe* as "secure from *liability* to harm, injury, danger or risk." The legal issue is liability.

It is clear that a sports turf manager's job is to limit potential liability. However, an understanding of applicable law is necessary to see why the legal issue is liability not safety. California tort law is used in the following sections since it, typically, represents legal trends that are often used in other state courts.

Obligations

For legal purposes, a sports turf management program faces two kinds of obligations: contract (a binding promise) and tort (an obligation imposed by law or, in practical terms, doing what a "reasonable man" would do).

Most suits are brought under tort law rather than contract law. A tort is a civil wrong inflicted otherwise than by a breach of contract. The elements of a tort are (a) a wrongful action or inaction and (b) an injury to some person or property.

The law requires that every suit state specific reasons why the defendant is liable (*causes or actionability* that make him or her liable) based upon an accepted legal theory of liability. A legal theory of liability lists conditions, as defined by the law and interpreted by the court, which must be proven for a person or entity to be found liable for the harm done. The case will be dismissed if all of the conditions are not met. Note that safety plays no part in any of the theories of liability outlined below.

Three generally accepted legal theories of liability in tort law are, typically, used by plaintiffs in injury cases: (a) negligence, (b) strict liability, and (c) nuisance.

The Three Theories

Currently, most cases rely on negligence for cause. There are four conditions that must be met for a finding of negligence.

1. A duty, or obligation, recognized by the law, requiring the person to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the person's part to conform to the standard required: a breach of duty.
3. A reasonably close causal connection between the conduct and the resulting injury.
4. Actual loss or damage resulting to the interests of another.

One important aspect of negligence theory, and why it is often used for cause, is that punitive damages may be assessed by a judge or jury if the negligence was willful and wanton.



Fields should be walked daily for obviously unsafe conditions. Photos courtesy: Floyd Perry.

Strict liability may also be used for cause. It has the following definition: "One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care."

Strict liability has been associated with "products." However, a recent California Court of Appeals' ruling may have great impact in its utilization as a theory of liability in the sports turf area. The case resulted from a fall in a hotel bathtub that resulted in a serious injury. The appeals court ruled that it was unreasonable to expect an individual to conduct tests to determine the coefficient of friction of a hotel bathtub. Therefore, the hotel room was a "product."

This rationale can logically be extended to sports turf. It is as unreasonable to expect the users of a sports field to use a Clegg decelerometer to determine the field's hardness as it is for a hotel guest to determine the coefficient of friction of a bathtub.

Another theory of liability that can be used by plaintiffs is the nuisance theory. Some courts hold that the nuisance theory may be applied in the case of personal injury. However, the burden of showing a significant harm and that the invasion of his rights was intentional and unreasonable, or not actionable under other liability theories, is on the plaintiff. In addition, the plaintiff must demonstrate a particular damage or harm of a kind different from that suffered by other members of the public.

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The plaintiff's attorney will attempt to cite as many theories of liability as possible. The reason is that the defendant's attorney will attempt to have the case dismissed if the facts do not conform to the theory of liability presented in the filing. Regardless of the particular theory(ies) of liability posited in a suit, the injury itself will be used as the basis for demonstrating that the conditions of at least one of the theories of liability were fulfilled.

Rising Liability

How might liability arise?

One section of the civil code of California states, in effect, that each and every one of us has a *duty of care* toward everyone else. This means we must take care not to cause injury to the person or property of another individual. If we do not exercise such care, we can be held liable for the damage done.

An issue currently being litigated is the question of *foreseeability*. Was the



Improperly constructed, damaged or loose fencing creates a potential for injury to both players and spectators.

injury or harm reasonably foreseeable? Rulings by the California Supreme Court indicate that foreseeability is going to be greatly extended. Foreseeability closes the lock in liability suits. This is of crucial importance to sports turf managers! In essence, the theory of foreseeability states that there is no such thing as an accident; that is, injuries do not occur

without cause. Either the user and/or field conditions were responsible for the injury.

About 20 years ago, the California Supreme Court advanced the notion of *comparative negligence*. If the defendant can show some degree of contributory negligence, then the degree of fault can be reduced. Unfortunately, it is usually difficult to prove that a user of a field shares some part of the responsibility for an injury.

Although there may be mitigating circumstances involving the plaintiff, sports turf does not lend itself to a defense that a high liability field condition occurred spontaneously and could not have been foreseen. The defense must attempt to demonstrate that the field condition that caused the harm was an act of God and not foreseeable. Any expert witness can destroy this defense almost 100 percent of the time.

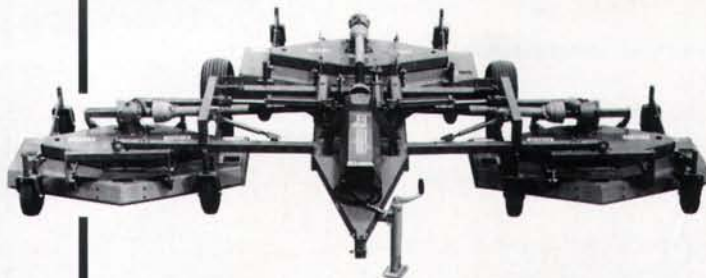
Sometimes an entity will attempt to elude liability by posting a sign such as "You use this field at your own risk!" Such

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signs have been found to be unenforceable because the sign is a *contract of adhesion*. Contracts of adhesion occur when there is no bargaining between parties or when one has unequal power.

Is a written agreement enforceable? If it is between unequal parties, one of whom basically has no power to bargain, it would be found to be a contract of adhesion. A detailed contract between two or more equal parties negotiated at "arm's length" is much more likely to be enforceable.

Joint Suits

Everyone who had anything to do with a turf management program is likely to be named as a defendant in a tort action. This is called *joint and several defendants*. For example, the turf manager, his/her employer and the contractor who put in the field can be found liable either as a group or individually. This is often an attempt to increase the award or to prove shared liability when no single action or inaction caused the injury. A plaintiff may also use this technique to coerce an employee into providing testimony or information prejudicial to the defendant(s) by offering not to name the employee in the suit or removing him or her as a defendant.

Lastly, naming several defendants can result in the defendants attacking each other. The attorneys representing the defendants are there to do only one thing – to protect their own clients. This means that they will try to demonstrate not only their clients' lack of liability but that it was someone else's fault. In other words, another defendant's attorney may actually help in a finding of liability against someone else.

Being Reasonable

What is the standard by which a sports turf manager will be judged in a tort case? It is a fictional person called the "reasonable man." The question often arises in tort cases: "Would a reasonable man have behaved this way?" This legal "reasonable man" is never careless, forgetful or negligent. He is always alert, conscientious, and careful. He is admirable.

There are several important actions that can be taken either to limit or to

lessen the financial impact of a suit.

1. Remember your "duty of care" and act responsibly to avoid injury or damage to a person or the property of others. The central mission of a sports turf manager is duty of care.

2. Try to act like a "reasonable man." Remember, you are a professional, not a grass custodian! You will be held to professional standards. Can you justify your grounds program in court? Can

your grounds program withstand an attack by an expert witness?

3. Document what you do, and are precluded from doing, that impacts field quality. Documentation means writing it down; not telling someone. Write a memo to file if you do have a discussion with anyone about field quality. This may not carry legal weight but will help you refresh your memory.

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YOU COULD BE HONORED BY THE PROS!

Why not enter your baseball field in the **Beam Clay® Baseball Diamond of the Year Awards** contest? You need not be a customer, member, or subscriber; and there is no entry fee. You could be featured in **sportsTURF magazine** and receive an official awards plaque.

The Awards are sponsored by **Beam Clay®, sportsTURF magazine, and the Sports Turf Managers Assoc.**, in recognition of excellence and professionalism in maintaining outstanding, safe, professional quality baseball diamonds. Entries will be judged in three categories: professional diamonds; college diamonds; and school, municipal or park diamonds.

Send the information below to enter:

1. Age of baseball diamond (year of installation).
2. Geographic location (city and state).
3. Description of maintenance program.
4. Operating budget for baseball diamond.
5. Irrigation: None _____ Manual _____ Automatic _____
6. Total number of maintenance staff for field.
7. Does baseball field have lighting for night games?
8. Number of events on baseball diamond per year.
9. Types and number of events on diamond other than baseball?
10. How many months during the year is the field used?
11. Why you think this field is one of the best?
12. **IMPORTANT:** Send two sets of color slides or prints.

Deadline for entries: Entries must be postmarked no later than November 30. Selection of winners will be made by the Awards Committee of Four Major League Head Groundskeepers.

Mail entries to:
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4. Carry a reasonable amount of liability insurance – in which case the insurer will likely help provide a defense in the event of a suit.

5. If you have associates, be sure that they are as careful and conscientious as you are. There are many ways to assure this is the case. Training, using field condition checklists on a regular basis, periodic job reviews and standard operating procedures can all be utilized to assure compliance with your program. Above all, walk your fields daily to check for problems if you do not perform actual field work – even if you have a checklist.

6. The agency you work for should negotiate a written contract with users that specifies the obligations of all parties to the contract. This will not eliminate liability but may narrow the actions or inactions for which you could be found liable.

7. Immediately close fields, even if there is only minor potential liability for an



Holes on a playing field are always strong evidence of negligence.

injury, until the problem is corrected. A sports turf manager has not only a legal responsibility to do this but also a moral one. It is better to be called on the carpet by an administrator than to blame yourself for an injury that could have been prevented if you had closed the field.

8. Retain your own legal counsel in the event of a suit that includes you as an indi-

vidual defendant. Do not rely upon your employer's legal counsel for representation.

Although the material presented in this article is highly condensed, it provides a basis for reviewing how a grounds program might be attacked in a court of law. No sports turf management program is perfect or liability free. However, even the most poorly financed ones can be modified to limit the potential liability of fields.

It is not the intent of the author to offer legal advice. You should consult your own legal advisor regarding any questions. □

Todd Detzel is a member of STMA and the owner of Golden State Grounds Service, Laytonville, CA. Portions of this article are contained in Integrated Turf Management: How to Limit Liability and Maximize the Use of Resources by Todd Detzel, copyrighted 1995 by Golden State Turf Publications, and are used by permission.



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