

SPORTS LAW TERMS AND DEFINITIONS

A

Agreement to Participate. A document used to inform sports, recreation and fitness participants of the nature of an activity, the risks involved, and the behaviors expected of each participant. An agreement to participate also provides administrators with evidence that the participant was aware of the risks of the activity and that his or her participation was voluntary.

Alternative Dispute Resolution. A blanket term used to describe alternative methods to the courts to settle disputes, such as negotiation, mediation and arbitration.

Amicus curiae (“friend of the court”). A legal brief presented to the court in support of one side of a case, written by an individual or organization not involved in the lawsuit.

Assault. A tort in which a person intentionally creates apprehension on the part of another of imminent and offensive contact. The elements of assault are 1) the intention to cause harm to the plaintiff; 2) apprehension of immediate harm on the part of the plaintiff; and 3) lack of consent by the plaintiff.

Assumption of Risk. A legal doctrine relieving the defendant of any duty he or she may have otherwise owed the plaintiff, and which bars the plaintiff from recovering for any injury received. In order for assumption of risk to apply, an injured party must have known, understood and appreciated the potential risk involved in an activity, and still voluntarily consented to participate in the activity.

B

Battery. A tort in which a person intentionally touches another person. The elements of battery are 1) intent to touch; 2) actual touching; and 3) lack of consent by the plaintiff.

Breach of Contract. The failure to perform as promised under a contract. Depending on the type of breach committed and the subject matter of the contract, the aggrieved party may have several remedies, including the awarding of financial damages or requiring the fulfillment of the contract terms.

Brief. A written document prepared by legal counsel and submitted to the court containing a summary of facts, the pertinent laws, and an argument on how the laws apply to the particular case at hand.

C

Causation. The act of doing something, or the failure to do something, that causes an injury or damages. An important element in negligence and criminal cases, the conduct does not have to be the sole cause of the injury, but should be a substantial factor.

Cause of action. The legal claim presented to the court, or grounds of the lawsuit.

Collective Bargaining Agreement. An agreement between the employer (management) and his or her employees (labor union) that regulates the terms and conditions of employment.

Common Law. Refers to the law that has developed from numerous court decisions. Common law is distinguishable from legislative or statutory law, which are laws created by state and federal legislative bodies.

Comparative Negligence. A principle of tort law that measures the negligence of the victim and then apportions damages based on the victim’s fault or degree of responsibility. Thus, the damages allowed are either reduced (proportionate to the contribution of the victim’s negligence) or barred altogether if the victim’s negligence, when compared with the defendant’s, is found to be equal to or greater than the defendant’s negligence.

Consideration. The inducement to enter into a contract. In order for the courts to find a valid, enforceable contract, there must be a mutual exchange of consideration, which can be a price, motives or anything else that induces the parties to enter into a contract.

Constitutional Law. Those laws embodied in the U.S. Constitution that regulate the relationship between the government and its citizens. In addition to the federal Constitution, it should be noted that each state also has its own constitutional laws and protections.

Contract. An agreement between two or more parties that creates a legal obligation for each party to do or not to do certain things.

Contributory Negligence. A principle of tort law that bars the plaintiff from recovering a damage award under negligence if the plaintiff contributed in any way, regardless of the extent, to the injury. Due to the harsh impact of contributory negligence, a number of states have adopted a form of comparative negligence.

Copyright. The exclusive right of the author or owner of an original work of authorship to reproduce or sell the artistic work for a period of time – the life of the creator plus 70 years for individual works, and 95 years from publication for copyrights held by corporations.

D

Damages. The monetary compensation sought or awarded in a lawsuit as a remedy for breach of contract or tortious acts. Typically, damages are awarded to compensate the victim for his or her economic losses, physical pain and suffering.

Defamation. An intentionally false statement, either published (libel) or publicly spoken (slander), that injures an individual's reputation or exposes him or her to contempt or public ridicule.

Defendant. The person being sued in a civil case, or the person accused of criminal wrongdoing in a criminal case.

Deposition. The testimony of a witness, taken under oath outside the court before a court reporter.

Discovery. A method by which opposing parties obtain information from each other as they prepare for trial and narrow the issues that are present at trial.

Due Process. A fundamental right protected by the Fifth and Fourteenth Amendments of the U.S. constitution. Due process is an expected course of action that protects the rights of the accused to be informed of the charges against him or her in a timely manner, and allows him or her the opportunity to answer the charges.

E

Eligibility. The qualifications necessary for an individual to participate in an activity. While the courts will examine the eligibility requirements of state or governmental organizations, the courts will typically not challenge the eligibility standards of voluntary athletic associations unless they are applied in an arbitrary and unreasonable way.

Equal Protection. A fundamental right protected by the Fifth and Fourteenth Amendments of the U.S. Constitution that prohibits the government from denying any person within its jurisdiction the equal protection of the law.

F

Foreseeable. The reasonable anticipation that harm or injury is likely to result from certain acts or omissions. Under negligence, a plaintiff must demonstrate that a reasonable and prudent person would have foreseen or anticipated the potential danger of the defendant's conduct.

Fraud.

Conduct or a statement that is designed to induce another person to give up something of value. The existence of fraud will cause a court to void a contract and can give rise to criminal liability.

G

Good Samaritan Laws. State statutes enacted to protect individuals who stop and render aid to persons injured in an accident or in any kind of emergency situation. The majority of statutes only apply as long

as the person rendering aid owes no duty to the injured person, does not charge a fee for the service and is not grossly negligent.

Gross Negligence. The intentional performance, or failure to perform, of a duty with utter disregard for consequences of the act.

H

Harassment. Conduct directed at a specific individual that is severe or pervasive enough that it creates a hostile or abusive environment and causes an individual substantial emotional distress.

Hazing. Any activity that is expected of someone joining a group or team that humiliates, degrades, abuses or endangers, regardless of whether the person consents to the activity.

I

Immunity. A judicial doctrine that protects certain groups from tort liability that may have resulted from their actions. (See also: Sovereign Immunity)

Implied Warranty of Merchantability. An implied promise by a manufacturer that its products are fit for the purpose for which they were intended.

In loco parentis (“in the place of a parent”). A principle whereby a person (coach or teacher), by undertaking the care and control of a minor child, takes on the parent’s rights, duties and responsibilities.

Indemnity. An agreement whereby one party agrees to indemnify, or reimburse, another upon the occurrence of an anticipated loss or damage. Common in facility leases, indemnification agreements are intended to protect the property owner from loss resulting from litigation by the lessee.

Independent Contractor. An individual or company that contracts to perform a particular task or service for another party. In order for an individual to be classified as an independent contractor, he or she must have control over how the task is to be completed using his or her own methods and tools, and be subject to the employer’s control only as to the final outcome.

Inherent Risks. Those risks that are a normal, integral part of the activity; risks that cannot normally be eliminated without changing the nature of the activity itself.

Injunction. A court order that prohibits a party from doing something (restrictive injunction) or compels them to do something (mandatory injunction). A court will only issue an injunction when it determines that waiting for a trial would cause one party to suffer irreparable harm.

Invitee. An individual who is on the property of another by invitation, either expresses or implied, for the economic or mutual benefit or both parties. Property owners owe invitees a legal obligation to provide a safe environment and to use reasonable care in protecting them from unreasonable dangers.

J

Jurisdiction. Refers to a court’s authority to inquire into the facts, apply the law, make decisions and render judgment. Whether a certain court has jurisdiction depends on the geographical territory in which the conduct in question occurred, the legal issues involved and the individuals involved.

L

Libel. A defamatory communication published in a written form, such as commentary, photographs, cartoons or signs. (See also: Defamation)

Licensee. A person who goes onto or uses the premises of another, with the bare consent of the owner, and is there for his own purpose, rather than the benefit of the owner. The property owner owes licensees a duty of reasonable or due care to warn of known hazards or dangers.

M

Malfeasance. The performance of an act that a person has no lawful right to perform.

Malice. Performing an act, intentionally and without cause or excuse, with the intent to inflict harm.

Mediation. A process in which a third party works with disputing parties to satisfactorily resolves their disagreement.

Minor. A person who has not yet reached the age of majority. In most states, a person reaches majority and acquires all of the rights and responsibilities of an adult when he or she turns 18 years old.

Misfeasance. The improper performance of an act that a person has a lawful right to perform.

Mismatching. A situation in which a smaller, younger, less skilled or less experienced person is injured while participating with someone who is larger, older, more skilled or more experienced. Questions regarding mismatching frequently arise in activities such as wrestling and football.

N

Negligence. Conduct that falls below the standard of care required of a reasonable and prudent person under similar circumstances that injures an individual's person, property or reputation. The four elements necessary to prove negligence are duty, breach of duty, proximate cause, and damage or harm.

Nonfeasance. The omission of an act that a person should perform.

O

Offer. A conditional promise to do or refrain from doing something. An explicit proposal to enter into a contract that, if accepted, binds both the person who made the offer and the person accepting the offer to the terms of the contract.

Option. An agreement or contract, made with consideration that keeps an offer open for an agreed amount of time.

P

Patent. An exclusive right granted by the government to an inventor of a product or process to make, use or sell the invention for a period of years.

Plaintiff. A person who files a civil lawsuit for damages or remedial relief. In a criminal case, the plaintiff is the prosecutor or district attorney.

Precedent. A prior case or decision that is based on similar facts or issues of law as the case under consideration.

Prima facie ("on the face of it"). Fact presumed to be true unless disproved.

Proximate Cause. The primary cause of an injury or property damage, an act without which the injury would not have occurred. (See also: Causation)

Punitive Damages. Damages awarded to punish a person or organization for intentional wrongful acts that injure or harm another. Punitive damages are awarded in addition to money awarded to compensate a victim for his or her actual losses, and are awarded only when the conduct or act performed is found to have been done with reckless disregard or deliberate indifference to the consequences. (See also: Damages)

Q

Quid Pro Quo Sexual Harassment. Something for something: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when submission to such advances or requests is a condition of employment or other benefits such as scholarships and playing time.

R

Reckless Misconduct. Conduct that occurs when a person intentionally performs an act, or fails to perform an act, with total disregard of a known risk and dangers, when the risk is so great as to make

harm highly probable. Applied in an increasing number of states in tort cases involving injuries to sports participants by other participants.

Recreational User. An (injured) individual who is on the property of another specifically for recreational purposes. The user must not have paid or been charged a fee for entering the property, and must be directly involved in a recreational activity at the time of the injury. Generally, the property owner must refrain from any intentional conduct that would injure a user.

Remand. When a higher court sends a case back to a lower court to further review.

Respondent Superior. See Vicarious Liability.

Risk Management. A process by which an organization attempts to maintain greater control over financial and legal uncertainties by identifying and determining the best method for reducing and determining the best method for reducing the organization's exposure to danger, harm or hazards that may negatively impact the organization.

S

Slander. A defamatory communication made orally that injures another's reputation. (See also: Defamation)

Sovereign Immunity. Legal doctrine that protects the government, agencies, boards and departments from any legal action that may have resulted from their negligence. Abolished or restricted in most jurisdictions. (See also: Immunity)

Standard of Care. The degree of care that a reasonably prudent person would exercise in the same or similar circumstances. In a negligence lawsuit, if an individual's conduct falls below the required standard of care, he or she may be liable for injuries or damages resulting from such conduct.

Stare decisi. To abide by, or adhere to, decided cases. Legal doctrine by which the courts agree to follow precedent and not disturb settled case law or legal issues.

State Action. Applies to governmental conduct. In order for the court to apply the protections of the U.S. Constitution, it must first find state action on the part of the challenged rule or practice.

Statute of Limitations. Time period during which an injured party has the right to file a lawsuit. The time allowed under the statute of limitations differs depending on the nature of the lawsuit, and from state to state. For negligence cases, the statute of limitations is typically three years.

Statutory Law. Body of law created by state and federal legislative acts. Statutory law is distinguishable from constitutional law or common law.

Strict Liability. Liability without fault or proof of negligence. In product liability cases, strict liability is applied against manufacturers for injuries caused by defective or hazardous products.

Summary Judgment. An act of the court that disposes of a case without a trial.

T

Tort. A private or civil wrong, including assault, battery negligence and reckless misconduct, for which the court will provide a remedy in the awarding of damages.

Trademark. A distinctive mark, emblem, device, symbol or words that distinguishes the product or merchandise of one manufacturer from another.

Trespasser. An individual who intentionally enters the property of another without permission. Generally, since no consent has been given to use the premises, the only obligation property owners owe the trespasser is to refrain from any intentional conduct that would cause injury.

U

Ultra Vires Act. An act performed by an employee, without the authority of his or her employer that is beyond the scope of responsibility and authority of the employee. Since, under the theory of vicarious liability, the employer is normally liable for the negligent acts of the employee, if an employer is able to show that the employee committed an ultra vires act, the corporate entity would be relieved of liability.

Unconscionability. A judicial doctrine under which the courts may deny enforcement of an unfair or oppressive contract because of procedural abuses arising out of the contract formation, or because of substantive abuses relating to the terms of the contract.

Uniform Commercial Code. Uniform laws approved by every state governing commercial transactions.

V

Vacate. To set aside, cancel or rescind a judgment.

Verdict. The formal decision or findings of a jury or judge.

Vicarious Liability. The imposition of liability on one person for the actions of another, even though the person being held liable did nothing wrong. Vicarious liability is based on the relationship of the individuals involved – for example, an employer is vicariously liable for the actions of his or her employee. Also known as Respondent Superior.

W

Waiver. An agreement or contract in which an individual intentionally and voluntarily relinquishes his or her legal rights. A properly constructed waiver can protect an organization or service provider from the ordinary negligence of his or her employees in at least 45 states. (See also: Agreement to Participate)

Worker's Compensation. Insurance purchased by an employer that provides a fixed dollar amount to any employee who is injured or killed in the course of employment, regardless of fault.

Writ of certiorari. An order in which an appellate court announces whether it will (Cert. Granted) or will not (Cert. Denied) review the decision of a lower court.