

# **TERTIARY SPORT AND RECREATION: PLAYING IT SAFE**

by

**CHUNDERPAL SINGH**



Submitted in partial fulfilment of the requirements

for the degree

**DOCTOR OF PHILOSOPHY**

in the

**FACULTY OF ARTS**

(Department of Biokinetics, Sport and Leisure Sciences)

**University of Pretoria**  
Pretoria

December 1999

## ACKNOWLEDGEMENTS

This thesis is the product of countless professional relationships from which I have received instruction, guidance, support, friendships, and inspiration. I wish to acknowledge my indebtedness to the many individuals and institutions who have influenced my thinking, philosophy and behaviour, and have inspired my commitment. Credit is due to the following :

- ❖ Professor AE Goslin, of the Department of Biokinetics, Sport & Leisure Sciences, and Professor JMT Labuschagne, of the Department of Legal Pluralism & Legal Hermeneutics, University of Pretoria, who served as the supervisors responsible for the academic content of this thesis. Their positive support and guidance was invaluable.
- ❖ Professor GJ van Wyk, Head of the Department of Biokinetics, Sport & Leisure Sciences, University of Pretoria, for coordinating the academic administration and registration procedures and the examination.
- ❖ The financial assistance of the Centre for Science Development towards this research is hereby acknowledged. Opinions expressed in this thesis and conclusions arrived at, are those of the author and are not necessarily to be attributed to the Centre for Science Development.
- ❖ Mrs. Saras Singh, for proof reading the theoretical framework and advice regarding specific legal terminology and principles.
- ❖ My loving wife and children for their understanding, support, encouragement and tremendous sacrifice during this mammoth endeavour.

## SYNOPSIS

TITLE	:	Tertiary Sport and Recreation: Playing It Safe
PROMOTER	:	Prof. A. E. Goslin
CO-PROMOTER	:	Prof. J. M. T. Labuschagne
DEPARTMENT	:	Biokinetics, Sport and Leisure Sciences
DEGREE	:	Doctor of Philosophy

This study was undertaken to evaluate the risk management practices in sport and recreation at tertiary institutions in South Africa. Because of the growing emphasis on safety in sport, the aim was to determine: to what extent sport management staff understood legal liability issues affecting sport and recreation; to what extent they conducted their affairs in a professional manner by utilizing what specific risk reduction strategies to prevent or reduce injuries. Because of a paucity of scientific research in this field in South Africa, and because there was no evidence of a body of knowledge that has developed locally, a secondary aim was to set out and explain the various legal aspects from various legal systems concerning sport that are suitable for the needs of personnel in this country. A range of personnel are involved in the whole business of sport and recreation. They include facility managers, coaches, referees, activity leaders, sport officers, promoters, educators, sport and recreation directors, club managers, participants and spectators.

The methodology employed involved descriptive research. The secondary aim of investigating what legal issues are relevant to sport, from a sport perspective, was accomplished by an analysis of case law, journal articles and published reference works on the topic. The quantitative assessment of risk management practices was achieved by utilizing an instrument developed by Penman and Adams (1980), called "Assessing Athletic and Physical Education Programs". A pilot study was conducted on two universities and two technikons to validate the instrument. The sample for the study

(iv)

consisted of forty tertiary institutions. A profile analysis of the respondents was done to identify their strengths and weaknesses.

The literature review established that there is a growing interest in the academic study of the legal regulation of modern day sport and recreation. Further, "Sports Law" is now a legitimate subject in the United States, Britain, Canada, Australia, New Zealand and South Africa. The commercialized nature and sophistication of modern sport has necessitated the law's involvement in sport.

An indispensable part of the literature review was a content analysis of risk management practices. The most frequently listed risk management concerns that surfaced over the past two decades were categorized into the following specific areas: supervision and instruction; equipment and facilities; medical care; travel and transportation; insurance; and civil rights. The most recommended approach to identify and reduce risk was the use of printed forms to record whatever had been done and to provide evidence as a solid defense against liability. The legal theory was analyzed and discussed under the following broad categories: negligence issues; constitutional issues; legislative issues; administrative issues; and risk management theory.

The profile analyses revealed a normal distribution of scores in the general liability category. The results showed that the status of institutions in respect of being previously disadvantaged or advantaged was not a good indicator of vulnerability to legal liability. It was found that far too many safety issues were not addressed by a significant number of respondents. Also, about a quarter of the institutions were exposing themselves to a serious risk of liability.

The category of equipment and facilities appeared to be most frequently addressed in a formal manner. However, not all institutions provided hazard-free facilities for both athletes and spectators. A category that appeared problematic was medical aspects.

## TABLE OF CONTENTS

(v)

Almost half of the respondents gave below average attention to pre-season, in-season and post-season medical considerations.

### Acknowledgements

The category that showed the severest weaknesses dealt with the management of records and information on athletes. This category had the lowest average score indicating that there appeared to be either a lack of awareness of how this category impacts on legal liability in sport or that there were serious constraints with respect to human resources in sport management services at most institutions. This category reflected the largest scope for improvement of practices relating to the maintenance of records and information of athletes.

### Statement of the Problem

This study revealed that there was an urgent need for a comprehensive legal framework in sport law, and that the legal profession should investigate this deficiency very seriously. Further, safety in modern day sport is of paramount concern. This study has helped to develop the body of knowledge in sport law in South Africa. Sport and recreation managers were generally not aware of their legal responsibilities. Many of the institutions were clearly exposing themselves and their employers (vicariously) to serious risk of litigation by breaching the legal standard of care expected of them. Based on the results of the study, recommendations were made: to improve the legal literacy of sport management personnel; to improve the standard of care in sport and recreation; to implement risk management as a vital planning tool in the drive to reducing injuries; to incorporate sport law in professional preparation programmes; and to conduct further research.

### Glossary

#### KEY WORDS:

Sport Law

Safety

Civil Liability

Negligence

Injuries

Risk Management

### Review of Literature

### Context Analysis Of Risk Management Practices

### Conclusion

## TABLE OF CONTENTS

Dedication	(i)
Acknowledgements	(ii)
Synopsis	(iii)
Table of Contents	(vi)
List of Figures	(x)
List of Tables	(xi)
<b>CHAPTER 1: INTRODUCTION</b>	
1.1 Rationale for the Study	1
1.2 Purpose of the Study	7
1.3 Critical Questions	9
1.4 Limitations	9
1.5 Delimitations	9
1.6 Assumptions	10
1.7 Hypotheses	10
1.8 Methodology	11
1.8.1 The Questionnaire	11
1.8.2 Pilot Study	13
1.8.3 Fieldwork	14
1.8.4 Returns	14
1.9 Definition of Terms	15
1.10 Glossary	15
<b>CHAPTER 2: REVIEW OF LITERATURE</b>	
2.1 Introduction	18
2.2 Review of Literature	19
2.3 Content Analysis Of Risk Management Practices	34
2.4 Conclusion	37

## CHAPTER THREE: THEORETICAL FRAMEWORK

3.0	<b>Introduction</b>	38
3.1	<b>What is Law</b>	38
3.1.1	Relationships	39
3.1.2	Behaviour	39
3.1.3	Reasonableness	39
3.1.4	Creation and Limitation of Freedom	40
3.2	<b>Why do we have Laws</b>	40
3.2.1	Goodness	40
3.2.2	Fairness	40
3.2.3	Consistency	41
3.2.4	Compensation	41
3.2.5	Ownership	42
3.3	<b>Sources of Law</b>	42
3.3.1	Constitution	42
3.3.2	Statute	43
3.3.3	Judicial Precedent	43
3.3.4	Custom	44
3.3.5	Old Authorities	45
3.4	<b>Branches of Law</b>	46
3.5	<b>Sport Law</b>	47
3.6	<b>Negligence Issues</b>	54
3.6.1	The Law of Delict	54
3.6.2	Negligence	60
3.6.3	Liability of Sport Managers, Supervisors and Coaches	85
3.6.4	Liability of Match Officials for Player Violence and Injuries	97
3.6.5	Liability of Occupiers and Organisers/ Promoters	101
3.6.6	First Aid and Medical Care	104

## CHAPTER 4: ADMINISTRATIVE ISSUES, LEGISLATIVE ISSUES AND RISK MANAGEMENT

4.1	<b>Administrative Issues</b>	107
4.1.1	Introduction	107
4.1.2	Principles of Natural Justice	108
4.1.3	Travel and Transportation	110
4.2	<b>Constitutional Issues</b>	114
4.2.1	Human Rights	114
4.2.2	Discrimination Based on Race and Sex	118
4.2.3	Due Process	125
4.2.4	Drug Testing	128
4.2.5	National Sport and Recreation Bill	132
4.2.6	South African Sports Commission Bill	134
4.2.7	Concluding Remarks on Constitutional and Legislative Issues	135
4.3	<b>Risk Management</b>	136
4.3.1	Introduction	136
4.3.2	What is Risk Management	137
4.3.3	The Risk Management Process	138
4.3.4	Risk Management Considerations	145

## CHAPTER 5: ANALYSIS AND DISCUSSION OF RESULTS

5.1	<b>Analytical Procedures</b>	147
5.2	<b>General Liability</b>	148
5.3	<b>Equipment and Facilities</b>	151
5.4	<b>Medical Aspects</b>	152
5.5	<b>Records and Information on Athletes</b>	154
5.6	<b>Composite Scores</b>	155
5.7	<b>Spread of Scores for all Four Categories</b>	156

**CHAPTER 6: CONCLUSION AND RECOMMENDATIONS**

6.1	<b>Conclusion</b>	158
6.2	<b>Recommendations</b>	161
6.3	<b>Concluding Remarks</b>	164
REFERENCES		165
LIST OF CASES		169
NEWSPAPER ARTICLES		173
APPENDICES		174
1.	Questionnaire	174
2.	Profile Analysis of Legal Aspects	182

## LIST OF FIGURES

## LIST OF TABLES

FIGURE

PAGE

TABLE

1.	139
2.	142
3.	157

CHAPTER ONE

LIST OF TABLES

INTRODUCTION

1.1 RATIONALE FOR THE STUDY

TABLE	PAGE
1. Interest in any form and any language of sport has progressively become a global phenomenon due to the impact of modern travel and television. Sport fans are televising	13
2. Sports in South Africa appear to be interested not only in watching the sport but	148
3. Sport play abroad and television has aroused interest in many foreign sports, and	151
4. The history of growth of interest in science, travel and television sports is due to	152
5. The globe to bring international sport into every living room	153
7.	155

There is an increasing commercialised sports globally. In South Africa, this trend is likely to continue in the future (Van Heerden, 1996), for various reasons:

- i. The vision of the Ministry of Sport & Recreation "to get the nation to play"
- ii. The adoption of the slogan "to get the nation to play" as an aim by the sporting bodies of sport and recreation, namely, The National Sports Council (N.S.C.), South Africa and National Recreation Council (S.A.N.R.E.C.)
- iii. The intension of the National Department of Sport and Recreation to pursue an "Active" South Africa campaign
- iv. South Africa's re-entry into international sport
- v. The transition to democracy and the adoption of the new Constitution (Act 108 of 1996) which includes the Bill of Rights that protects the human rights of all citizens
- vi. Interest in sports participation being stimulated through the general media and televised sports contests