

LAW REVIEW

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PLAY VOLLEYBALL IN YOUR NEIGHBOR'S YARD, THEN SUE THE NEIGHBOR

We live in a litigious society. There are plenty of times when it is appropriate to sue, like when someone backs out of a business deal or defaults on a lease or a contract or when the other party is negligent and injures you. Sometimes you have to hire a lawyer to sue the bad guy.

My personal view is that some Americans are a little too quick on the draw, unwilling to assume responsibility for their own actions, looking for someone else to pay.

Argentina

When we were visiting friends in Buenos Aires last year, our hosts the Cushmans told us to be careful walking on the sidewalks. Indeed, the sidewalks were flat out dangerous--from huge holes to missing slabs, all sorts of dangers lurking for the unsuspecting walker.

I thought to myself, what these folks need is a few good personal injury lawsuits to encourage sidewalk owners to make the sidewalks safe. Another part of me wondered why we don't just watch where we are walking when on a poorly maintained sidewalk.

Sports Injuries

Because I don't have a "plaintiff's mentality" I have always liked the legal doctrine "assumption of the risk", which is applied in sports injury cases. As a general rule, if you are injured while participating in a sports activity, whether it be soccer, skiing, softball or backyard football, you are generally deemed to have assumed the risk inherent in the sport, meaning you can't successfully sue. The big exception is if the other participant increases the inherent risk of the sport.

Front Yard Volleyball

Thirteen-year-old Fabian Luna was invited to play a summer evening of volleyball in his neighbor's, the Vela's, yard. Vela had created a volleyball court in his front yard, using a volleyball set he had purchased consisting of a net, net poles, tie lines to hold up the poles and yellow stakes to secure the tie lines in the ground. He set up the equipment for family and friends. He neglected to get signed releases!

Luna, who lived across the street, having never played volleyball, joined the game. A thirteen year-old who never played volleyball?

The front sidewalk was being used as one of the out-of-bounds lines for the front-yard court. The tie line, a pale pink color, was stretched from the pole across the sidewalk and anchored by one of the yellow stakes in a narrow grass strip between the sidewalk and the street.

About ten minutes after playing, a ball was hit out-of-bounds and into the street. Luna went to retrieve the ball, tripped on the line and fell, fracturing his right elbow. Maybe he had never run before.

You know what happened next. Luna's family sued on his behalf. Vela defended claiming Luna assumed the risk inherent in playing volleyball.

Risk Assumed

The trial court ruled in favor of Vela, but Luna appealed to the Court of Appeal which discussed cases where sports participants were found to have no recourse for their injuries which were an inherent risk of the sport: competitive swimming, rock climbing, baseball, flag football (the leading case), skiing, and golf. My favorite part of this court opinion is how it described golf as a recreational activity: "...as well as less active, noncontact sports such as golf." Take that you avid golfers.

Risk Not Assumed

The Court of Appeal also discussed cases where sports participants were found not to have assumed the risk of their injuries, such as a horse camp which provided horses inappropriate for beginning riders, and a motocross operator who designed jumps for bicycle racers that created an extreme risk of injury, and the organizer of a marathon race who allegedly failed to provide a sufficient amount of water and electrolyte replacement drinks (seriously), and even a golf course owner who designed the course with non-separated fairways. In those cases the injured sports participant was allowed to proceed to trial with his or her--case primarily because the injuries were caused by the sports activity organizer vs. another participant.

On To Court

I'm not supportive of this Court of Appeal's ruling as it allowed Luna to sue for his broken elbow after being invited to play in his neighbor's yard. The Court should not have made it easier to sue.

The Court found it would be up to a jury to determine whether Vela (the organizer, not participant) had unwittingly increased the risk inherent in a front-yard volleyball game by placing unmarked string across a sidewalk to anchor the volleyball pole. The Court noted, however, that to prevail Luna would have to prove to a jury he would have seen the line had it been brightly colored or marked with flags.

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