

LEGAL QUADRIVIUM
2010
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THE BRAIDED LINE
(BATTERY IN SPORT)

**Portions of the following are excerpted from *Legal Concepts in Sport - A Primer*,
by Linda Jean Carpenter, Published by Sagamore Publishers
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“Battery” is a term that has use in both the civil and criminal realms of the law. The elements are slightly, but significantly, different.

In the civil realm, battery refers to any harmful or offensive intentional contact that is unprivileged or unpermitted. The intent must be to contact. In the criminal realm, battery is most frequently defined in similar ways except that the intent must be to harm.

The elements of battery (civil) are:

- o intent to contact,
- o contact,
- o harmful or offensive actions, and
- o being unprivileged or unpermitted.

There is no requirement that the victim be injured. Rather, the only requirement relating to the result of the contact is that the contact needs to be harmful or offensive to the plaintiff. A kiss would, under some circumstances, qualify as “harmful or offensive.”

Part of the Game or Violence?

In the context of sport, the intentional tort of battery is most frequently found when fair play leaves and violence arrives. The line between the two is sometimes blurred in the eyes of some sports participants. A slide into second base with spikes high, a well-placed elbow carrying a message of intimidation, or a stroke with a hockey stick higher than it needs to be are in some people's view close to the line (on one side or the other). Some people would call these actions “part of the game.” Others would call them acts of violence.

More and more sport-related claims of civil battery are finding their way to court. Is this because society, through the judicial system, has decided that there is too much violence in society and that allowing it to flourish unrestricted within the context of sport is no longer tolerable? Perhaps it is because the victims of violence in sport have decided not to be victimized silently anymore. Whatever the reason, there is an increase in the number of cases.

The line between being part of the game and violence remains unclear, both in some participants' eyes and in the eyes of the court. However, if a participant violates a safety rule of the game it makes it easier for a finding of battery to exist. Some rules relate to the progress of the game and others relate to safety. In field hockey, the rule limiting the height that the stick can swing to is a safety rule rather than a rule relating to the progress of the game. On the other hand, a rule about stepping over the center line in a volleyball game is not a safety rule but a progress of the game rule.

If ordinary contact is part of the game and it happens to lead to an injury, the injured player will not be able to successfully claim battery, unless it ‘crosses the line’. This is because the element of “unpermitted and unprivileged” is absent. When a player decides to play, the player consents (gives permission) to contact that is part of the game. Thus the placement of the line between violence and part of the game is critical.

Mistaken Target

When a player intends to contact one person in a harmful or offensive way but actually ends up contacting someone else by mistake, the claim of battery belongs to the person actually

contacted. Mistake of target is not a defense on the part of the person doing the battery because the issue is contact, not target.

Battery by Agency

Battery claims can be lodged against someone who did not actually do the contacting. When a coach instructs a player to "hit hard enough to take the opponent out of the game" or "remember the opponent has a bad right knee; aim for the knee," the coach is making the player an agent. Just as in negligence, responsibility for the agent's actions can be placed on the principal (in the legal sense- not the principal of the school) or, in this example, the coach. So for many reasons, not the least of which is fear of being charged with civil battery, coaches should be careful what they ask their players to do in the heat of the game.

Battery by Teachers and Coaches

More and more teachers and coaches are finding themselves having to discipline and control students and athletes in potentially violent confrontations. When a teacher intervenes in a fight, removes a weapon from a student, or restrains an out-of-control student and contacts the student in the process, is the teacher guilty of battery? It depends. The paragraphs below discuss this issue in several contexts.

Corporal Punishment

Corporal punishment is certainly intentional, but is it battery? Defining corporal punishment is difficult. It is not the physical restraint of students by school officials in order to prevent physical harm to themselves and others or the destruction of property; such restraint would not be battery because it would be privileged. It is corporal punishment when a teacher paddles a recalcitrant student. It might be corporal punishment when a teacher uses more subtle behaviors, such as using excess exercise as a motivation or the discipline technique, "You're late; do 25 extra push-ups."

Most existing legal theories used in the area of corporal punishment are theories requiring extrapolation or adaptation. Constitutional theories, negligence, *in loco parentis*, and the intentional tort of civil battery are the main categories that have been employed, but they have been only marginally successful in enforcing an environment free of corporal punishment.

Constitutional theories used in corporal punishment cases. The 8th (cruel and unusual punishment) and the 14th (due process required in order to deprive someone of a liberty interest) Amendments to the U.S. Constitution are the most commonly used constitutional theories in the area of corporal punishment. When the 8th Amendment has been used, the courts have been asked to decide if the nature of a particular punishment was cruel and unusual. The courts have generally said corporal punishment is not cruel and unusual. When the 14th Amendment has been used, the courts have been asked to decide if the victim's right to due process prior to the infliction of corporal punishment was violated. The courts have generally said that the infliction of corporal punishment requires little, if any, due process. Historically, neither the 8th nor 14th Amendment has been particularly successful as used by victims of corporal punishment.

In loco parentis. For decades the use of reasonable corporal punishment was upheld by the courts on the basis of the theory of *in loco parentis*. This refers, in part, to the privilege of the teacher to act as a parent in disciplining students while the students are engaged in school activities. If a punishment technique would be acceptable or reasonable if used by a parent, that technique would also be acceptable if a teacher or coach used it. The corporal punishment delivered to the student would not have been battery because it was privileged. Today, the basic notion of *in loco parentis* has been diminished. The source of the privilege to punish or discipline is viewed less as flowing from the parent's delegation to the school and more as flowing from the state via compulsory education laws and therefore from the state's obligation to maintain discipline in the educational environment.

Negligence as a claim in corporal punishment cases. Teachers and coaches have the duty to protect from foreseeable risk of unreasonable harm. If corporal punishment in the form of excess exercise (such as extra laps or push-ups) causes harm, it is theoretically possible to use negligence as a theory against corporal punishment's results, but few students have used it successfully.

2. **Battery as a theory against corporal punishment.** When battery is used as the legal theory in a corporal punishment case, the focus of discussion is on the element requiring a showing of “unpermitted and unprivileged contact.” Certainly, in the typical “paddling” corporal punishment case, the teacher or coach intended a contact that was harmful or offensive. If the student can show that the contact was unpermitted or unprivileged, the case for battery will have been made.

Students don't give permission for corporal punishment. But does the teacher or coach have a privilege to discipline using corporal punishment? The courts have generally said “yes” to this question. At the same time, however, the courts have increasingly narrowed what is considered reasonable. Historically, teachers or coaches have been privileged to use harmful or offensive contact that was reasonably believed to be necessary for the student's proper control, training, or education.¹

Statutory prohibitions against corporal punishment. Today the majority of states have banned the use of corporal punishment in schools. California has gone one step further and has included the use of excess exercise, such as running laps or doing push-ups as punishment, as corporal punishment. A teacher who violates specific state legislation against corporal punishment may find it difficult to defend a claim of battery lodged by the student. Even though teachers and coaches in some jurisdictions continue to have the right to use corporal punishment to some degree, the issue still remains: How much or what intensity of force is reasonably believed to be necessary? If reasonableness is exceeded, no privilege is bestowed.

Self-Defense as a Defense Against Battery

Sometimes a teacher or coach is involved in an altercation with a student or between students when trying to break up a fight. We've just talked about the use of reasonable force in privileged situations. How far does that privilege extend?

Can the teacher punish a student who struck the teacher by hitting the student back and still maintain the privilege? No. Selfdefense is not revenge or punishment. The legal definition of self-defense is the use of reasonable force under the specific circumstances to repel the reasonably perceived threat of imminent violence.

Thus *any* hit that is delivered as punishment will not be considered self-defense. Teachers and coaches who allow their anger or frustration to direct their behaviors in ways that include the physical punishment of students or athletes are unlikely to be able to successfully claim self-defense when charged with battery.

Criminal Battery and Assault

Terminology varies, but many of us hear the term “assault” and we think of someone intending to hurt someone else, not just intending to contact them. In some jurisdictions the term applied to such an intention to hurt is *assault* and in others it is *criminal battery*. Whatever term is applied, the elements are generally the same as for civil battery with one exception.

The elements of criminal battery are:

- o intent to *hurt*
- o contact,
- o harmful or offensive actions, and
- o being unprivileged or unpermitted.

As our society appears to become more violent in nature, more teachers, coaches, and administrators will face issues surrounding assault or criminal battery. Criminal battery or assault may come in a variety of forms, including child abuse, third party actions by uninvited persons on campus, school fights, and fights on the field of play. Jurisdictional details vary greatly, but jail time is frequently tied by statute to acts of criminal battery or assault.

Athletes injured by the intent of their opponents, both in the scholastic and professional realms, are more frequently pursuing criminal charges against the perpetrator. Teachers, coaches, and administrators are more frequently being charged with negligence for failing to prevent injury to their students and athletes by those who would criminally batter or assault. Although schools may be safer than the media portray, the increasing presence of gangs and outsiders on campus also increases the foreseeability of unreasonable injury at the hands of those intending to hurt, thus placing a duty on the teachers, coaches, and administrators to act in prudent, reasonable, up-to-date ways to avoid having their students injured.