

1. A-Please explain how these four tenets apply in this situation. Please give your opinion, based on these tenets, of whether the Smith family will meet the burden of proof to successfully sue SU-ME under the theory of negligence. Please be specific and on point.

I believe that the Smith family could sue SU-ME for negligence based on the 4 tenets of negligence. The Smith's would have to present these 4 tenets and prove that all 4 were present in their negligence case against SU-ME. These four elements are duty, breach of duty, cause, and injury.

Duty is explained as a legally recognized obligation in which a person is required to "adhere to a standard of care and conduct according to the situation" (Module 2, Lesson 1). In this moot court case the standard of care refers to the responsibility SU-ME owed the Smith family when they came to watch the game. SU-ME has a duty to its fans and spectators to provide a reasonable amount of safety while they are watching a baseball game. This duty includes keeping the facilities where the game takes place safe for spectators. The netting of the backstop looked old and ragged in spots, and SU-ME should have taken the precautionary measures to take care of these ragged and old spots in the netting. It is the responsibility of the athletic department and coaches at the school to survey the baseball stadium, and take care of any potential problems that could cause harm. Care was clearly not taken when they allowed fans to sit behind an old, ragged backstop at the stadium.

SU-ME also has a standard of care to its spectators to provide employees at the stadium that uphold the responsibility of the University. The usher at the stadium did not seem to be trained very well or know how to handle the situation of Junior misbehaving during the game. He did nothing to address the complaints about Junior, or the actions of Junior to maintain the standard of care that spectators should receive while watching the baseball game. The athletic director and department are responsible for training staff for events, and also in what they should do when issues and problems arise, to keep spectators in a safe atmosphere while watching the game. To establish this duty of SU-ME, the Smiths could look to the baseball industry standards, college athletic rules, regulations and statutes, and also what court rulings have been in regards to this type of suit.

After it has been proved that SU-ME had a duty to provide a safe atmosphere for spectators, it needs to be proved that SU-ME had a breach of this duty. Breach of duty happens when "the person responsible for the safety of the other failed (in their duty)" (Module 2, Lesson 1). A clear breach of this duty took place when SU-ME allowed the Smith's to sit behind an old, ragged backstop when they came to the game. The breach went even further when the usher did nothing to stop Junior from misbehaving or make him sit in his seat and not be running around the stairs and area he was sitting. The usher is under the purview of the athletic director, and an employee of the school. He had a

duty to make sure spectators were behaving appropriately and safe. SU-ME also had a duty to make sure their employee was trained, knew the rules, and what to do, and who to contact when problems arose. This was not the case with this usher, as when Junior started acting up at the game he just laughed at him and did nothing to stop the situation, or do things to keep the spectators safe. A clear breach of SU-ME took place when they failed to be responsible for the safety of spectators. This was due to the university not maintaining the baseball stadium and keeping an old, ragged net as the backstop, and also hiring employees that did not uphold the standard of care that spectators should receive while watching a baseball game at the University. To help the Smith's show that SU-ME breached the standard of care that was owed to them under these circumstances they could look at case precedents in similar situations, violations of rules and regulations, state and federal laws, position statements and violations of guidelines and policies.

For this negligence case against SU-ME, the Smith's would have to prove that there was proximate cause on the part of the university that lead to the injuries and harm that Junior sustained. SU-ME should have been able to foresee how a spectator (Junior in this case) could get injured by a baseball if the net is not able to stop the ball. The University had to know that fans can get hit by baseballs, especially those sitting behind an old and ragged backstop. Knowing this information SU-ME should have taken better care in making sure the backstop was in good condition, and that it would be able to serve its purpose and stop any balls that were hit into it, so that these balls would not harm spectators.

SU-ME should have also been able to foresee how employees letting spectators misbehave could cause liabilities and problems. Rules and regulations are in place for a reason, and the university should have made sure this usher knew how to handle the situation of Junior misbehaving. He should have been told to stay in his seat, to stop running around and possibly have his parents told he would have to leave for safety reasons if this was not done. Instead this employee did nothing but laugh. SU-ME should have taken better care in hiring employees that can uphold the rules and safety measures. Because this wasn't the case, Junior was running around and got hit by the ball that broke his arm. The fact that he was out of his seat running around caused even further injuries, because he fell down the stairs which gave him a concussion on top of the broken arm. The ball that hit Junior and broke his arm, and led to his concussion, was the probable result of negligence of SU-ME, and their lack of stadium maintenance and lack of employee control.

The last element that needs to be proved in this negligence case against SU-ME is that an injury took place. As Junior has a broken arm, and a concussion, there is a lot of proof that actual harm and injuries exist. Junior has an obvious physical injury that resulted because of the lack of care SU-ME took at the baseball game. With these injuries there is

a definite claim to be made by the Smith's against SU-ME. I think the Smith's will only be able to make a claim based on these physical damages and not based on emotional damages, as it seems Junior had a great time at the baseball until the actual physical damage occurred.

1. B-What possible defenses to Negligence will SU-ME assert, and what do you feel will be the outcomes of these defenses.

SU-ME will use a legal defense of assumption of risk. This is "a legal defense by which plaintiffs may not recover for injuries in negligence when they have voluntarily exposed themselves to known and appreciated dangers" (Spengler, 2009, p. 25). To prove assumption of risk as a defense three elements must be proven. The first is that the risk is inherent to the sport. The second is that the participant voluntarily consents to exposure of risk, and the third is that the participant must know, understand, and appreciate the inherent risk (Module 2, Lesson 3).

SU-ME will use a defense that includes getting hit with a baseball is a risk inherent to the sport of baseball. You cannot take away balls from the game of baseball, or the fact that a ball could hit a spectator without changing the nature of the sport.

SU-ME will also use a defense that states that the Smith's voluntarily consented to be exposed to the risks of baseball. They purchased full price tickets, kept the stubs that had the policies, procedures, and waiver of liability on the back. They purchased tickets for seats behind the backstop so had to know there was increased risk sitting behind the batters, and where a large number of foul ball find their way too. Even though Junior is a minor (10 years old) his parents bought the tickets and consented at this time by doing so because of the waiver on the backside of the ticket stub. All these factors will be used in SU-ME's defense that the Smith's voluntarily exposed themselves to the risk of being hit by a baseball.

The third element that SU-ME will use in their defense of assumption of risk is that the Smith's must know, understand, and appreciate the inherent risk. SU-ME will use the fact that when purchasing the tickets, the Smith's had knowledge and understanding of this assumption of risk that takes place at a baseball game. This again will be due to the fact that the policies, procedures, and waiver of liability was on the back of each ticket stub the Smith's kept after purchasing the tickets. As the mother and father are old enough and coherent enough to understand the backside of the ticket stubs and waivers for the whole family, SU-ME will use this to help their defense that The Smith's know, understand and can appreciate all the risks that come along with the sport. Even though they are not season ticket holders, or avid baseball fans, they were made aware of the

policies, procedures and waivers when purchasing the tickets.

SU-ME could also use the defense of contributory negligence. Here they could use a defense that focuses on the fact that the Smiths were negligent as spectators when they let their son Junior run up and down the stairs, become restless and not remain where he was supposed to be seated. Had the Smith's had more control of their son and were able to keep him seated; he may not have got hit by the ball, and also may not have fallen down the stairs after he was hit. This is also where SU-ME could look at the usher that they employed, and contribute his negligence while he was working this baseball game, and his lack of care for how Junior was acting to the case. They could also look to the manufacturer of the backstop, and the malfunction of the ball breaking through the netting and hitting Junior.

A better used defense of comparative negligence could also be used by SU-ME. SU-ME would focus on the same negligence of the Smith's as mentioned above, but based on the fault found for each party; the monetary damages are awarded accordingly. SU-ME could strive to use a defense that shows that the Smiths were very negligent as well, and if the court finds them negligent they will recover damages based on percentages of their negligence. SU-ME could also do the same with the usher for not following clear guidelines on the policies and procedures for safety at the baseball game.

Another defense that SU-ME could use is governmental immunity. SU-ME is a public university and as this isn't a case of gross negligence, governmental immunity will take place.

One last defense that SU-ME could use is Insurance. This is not a legal defense but a University is probably covered in many ways. If SU-ME is insured they could use this as a way to protect themselves from losing a lot of money.

I think that SU-ME will be able to use the defenses mentioned above and have a positive outcome from the negligence case from the Smith's. I think that the assumption of risk that takes place at a baseball game will be proved, and that there is always a chance that you could get hit by a ball at a baseball game. Even if SU-ME takes all the care and responsibility to ensure this doesn't happen, there is still a risk that it can at a baseball game. I also think that the fact that Junior wasn't in his seat, but instead running up and down the stairs will help in SU-ME's defense, because if Junior was behaving and sitting in his seat, the ball may never have hit him, and he wouldn't have sustained any injuries. Lastly, since this is a public university, they will have governmental immunity which will be a huge help in their defense.

2. Please write a memorandum to your head coach expressing your opinions to this practice. It may be, or may not be hazing. You must decide, and then base your decision to either punish or not punish, or what mechanisms, if any, you will put into place. Please be creative and all encompassing, as this memo will be public info and could damage the reputation of the coach, if not done carefully (and harm SU-ME in the process).

### **Anti-Hazing Memorandum**

Hazing is an increasing problem for quite a few different reasons. These include the fact that coaches and administrators don't see it as an important problem, student-athletes don't exactly know what hazing is, if there isn't actual harm to student-athletes it is not seen as a big deal, and lastly kids feel pressure to be part of teams so will take place in hazing in order to feel they belong (Module3, Lesson 3). I hope that the information in this memorandum makes my stance on hazing very clear to not only the tennis team, but also the whole athletic department, staff, and athletes.

"Hazing is defined as an intentional, knowing or reckless act by a person who acted alone or with others that was directed against an individual and that person knew or should have known would endanger the physical health or safety of the individual, and that was done for the purpose of affiliation with participation in, or maintaining membership in any organization" (Module 3, Lesson 3). According to Allan and Madden in the article "More Hands Needed" another definition of hazing includes it as an "activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them regardless of a person's willingness to participate" (2009, p.2).

Education is the key to preventing hazing, and I believe the best practice is to stop hazing before it can start. There are many grey areas when it comes to hazing, and exactly what hazing is and what this university deems acceptable. We all have to be on the same page, and working with the same definitions of what constitutes hazing; not only throughout this university, but across the conference, as there is a "no-hazing" policy.

As athletic director I take responsibility for not establishing these clear cut guidelines and procedures as to what exactly hazing is, the many different "traditions" that can be considered hazing, and the punishment for partaking in any of these practices. Many times a team doesn't think that making freshmen carry equipment, or in this case sing the fight song is a form of hazing. As I said, I take responsibility for not having clearer guidelines on this, but from this point on all questions about forms of hazing should be clear after reading this memo.

Both of these definitions mentioned above will be used in the zero-tolerance policy that

will be implemented without question when it comes to hazing and players at this university. This zero-tolerance policy will include the following list

- No initiation of young players by the older players. This will include not making them do things because they are rookies, young or have to earn their place on the team.
- No pressure to make players do something or not do something so that they will feel like part of the team.
- No demanding excessive exercise or performance to prove oneself as part of the team.
- No depriving anyone of basic needs including food, water, clothing to make them prove their loyalty to the team.
- No piercing, tattooing, shaving each other's heads, or branding of any kind.
- No drinking or sexual acts will take place in order to belong to the team.
- No executing power or authority over others on the team.
- Nothing humiliating or degrading should take place on the team that does anything to weaken the group, and not strengthen it.
- No abuse or endangerment should take place to any player at anytime.
- No name calling.
- No verbal abuse.
- If it is an activity you feel you can't tell your coaches, parents, or teammates about, you probably shouldn't be doing it! Talk to your coaches immediately if this is the case.

The players are to feel safe, secure and free from negative group pressures that come along with any sort of hazing. I do not only include hazing that causes actual physical harm or injury to someone, but also the form of hazing that can cause stress, pressure, and mental distress to players. The zero-tolerance policy on hazing will include everything listed above. Players and coaches should be aware that saying something is "tradition" will no longer hold merit, or be an excuse to partake in any of the above mentioned bullets on the list.

While all the above listed behaviors are not acceptable, there are many acceptable forms

of team bonding, chemistry building, and ways to celebrate and carry on tradition. The list below states behaviors that are recommended.

- Team dinners
- Team building exercises
- Adventure exercises that include risk, challenge and bonding.
- Learning about the history of players and teams that have come through the program and school.

A zero-tolerance policy on hazing does not mean that the girls on the team cannot have fun, experience team unity and bonding and carry on tradition. The needs they seek to meet through hazing can be achieved through the above listed activities. The policy is to make teams aware of what hazing is and educate them on other ways they can become a team without putting anyone through physical or mental distress, or pressure on them to partake in negative activities to feel like part of the team. I also want them to understand that if a player agrees to do something it does not mean that it is not hazing; they may just be doing so because they want to fit in and feel like they are a part of the team. Again if the players have any doubts or questions about some team activity involving hazing, they should not hesitate to ask or talk to their coaches about the activity in question!

Along with this zero-tolerance policy of hazing, will come the punishment for partaking in acts of hazing. As it is a zero-tolerance policy, NO forms of hazing will be tolerated. The punishment for partaking in any acts of hazing will be very simple.

- If you are partaking in any sort of hazing you are suspended for 3 games.
- If you are found to be partaking in hazing a second time, you are dismissed from any involvement with the team.

As athletic director I will have to execute ultimate control over the teams and players, but am writing this memorandum for all coaches to be fully aware of what constitutes hazing at this university, what the punishment is, and ways to help steer teams and players away from hazing. On top of being aware of hazing, each coach needs to enforce the same disciplinary procedures for all players when it comes to hazing. Consistency of this discipline will need to take place, and the ability of the athlete, or stake of the game should not come into play when punishments for hazing are being doled out.

It is the responsibility of the coach to provide a safe atmosphere, where the athletes can have a positive athletic experience and a positive team experience. The best way to stop hazing is to do so before it starts. As a lot of hazing can occur in the locker room where

the team is left mainly unattended from their coaches, it will be very important to have locker room rules and enforce these rules alongside the zero-tolerance policy on hazing. On top of locker room conduct there are many other preventive measures that can be taken when it comes to hazing. Coaches can do all of the following

- Discourage any negative team traditions, promote new positive traditions.
- Control punishment for hazing.
- Talk to team captains about getting rid of hazing and promoting the anti-hazing policy.
- Watch athletes for any signs of trouble that could result from hazing.
- Include athletic directors, teachers and administrators in watching for any signs of trouble with your athletes.
- Have an honest and trustful relationship with players and team so lines of communication are open.
- Written copies of team rules, locker room rules, and punishments discussed with all players, handed out to all players and parents, signed by all players and parents, and posted in team locker room.
- Written copies of anti-hazing policy and punishments discussed and handed out to all players and parents, signed by all players and parents, and also posted in team locker room.
- Select appropriate team captains that can set a good example of anti-hazing that team will follow.
- Encourage individuals and not only group mentality and group think.
- Educate the coaching staff and players on the fact that hazing can cause physical, emotional and psychological harm.
- Involve the parents with the zero-tolerance policy. Show them the rules and ask them to talk to their children about peer pressure and not partaking in hazing.

Ask all players to make an anti-hazing pledge, led by the examples of the captains, and showcase their anti-hazing stance.

As the issue of hazing has been brought up because of the actions of the tennis team, I



would like for you as coach of this team, to work with the players and create an anti-hazing pledge for the university. This pledge is to include all the points of the hazing policy I have mentioned in this memo, and clearly state what hazing is, the “zero tolerance” policy this university has, the punishment for hazing, and ways to help athletes and teams steer clear of hazing and join in other activities. I would like your team to take this anti-hazing policy to all athletes and coaches at the University and get them to make a pledge to NO hazing in any way, shape or form.

I would also like your team to create an anti-hazing pledge that can be taken to the whole conference. They can use social media, and show the conference the stance this university has taken on hazing, and that there is no more grey area when it comes to what hazing is and what is accepted at SU-ME. This policy and pledge your team comes up with should make clear to the conference that SU-ME does have a “zero-tolerance” hazing policy, and any questions as to what constitutes hazing has been defined, and NO forms of hazing described in this policy will be acceptable without punishment at SU-ME. I hope by doing this, it could make other players, coaches, and teams aware of the fact that something that is thought of as a “tradition” could actually be considered hazing, and get everyone on the conference on the same page when it comes to hazing.

3. How would you address the situation above, based on the policy, and keeping in mind ideas about discrimination, privacy, and sexual harassment (hint: discuss all of these things).

The first thing I would do is arrange a private meeting with each of the parties involved in this relationship, which include the female volleyball coach, and the female volleyball trainer. I would want to talk to each of them privately, and hear what they have to say about this relationship and the dynamics of it. It would be important to hear and talk to each member of the relationship. I would need to discuss with the trainer about how she feels working as a trainer, to the female volleyball coach while they are in a relationship, and how that is affecting their working relationship. I would also need to discuss with the coach about the fact that she is in a position of power as a head coach, and in a position where she is teaching and supervising the female trainer she is in a relationship with. I would want to discuss with her how these dynamics are affecting her as a coach, the trainer as a trainer, their working relationship, and the volleyball team in general. Discussing these topics with each one is important, so that I can know where this relationship stands as the athletic director, and also so they feel like they can be honest and open with me about their relationship. Having these talks in a private manner is also important so that the coach or trainer do not feel as if the athletic department is outing them, but instead listening to what the reality of the situation is and making decisions based on what is actually going on in accordance with the policy at the University.

I would next discuss the policy of the university in regards to “Conflict of interest in educational responsibilities resulting from consensual amorous or sexual relationships”. I would explain how this policy relates to them and that this university policy explains that a university employee who has educational responsibility (coach) for the student (trainer) “may impair or undermine the ongoing trust needed for effective teaching, learning and professional development”.

The coach is in a position of power and authority over the trainer, as well as responsible for the trainer meeting needs and requirements for her training education with the volleyball team. As this is the relationship between the two in the university setting, and they are in a sexual relationship, I would further discuss the fact that the policy states that the coach should not be in a situation where she is responsible for the education or advancement of the trainer in her physical training education because of their personal relationship. Even with the relationship being consensual, it is still a situation that the university states should be removed when it occurs. I would explain that as athletic director, I will move the trainer to a new team. By doing this, it adheres to the policy and also eliminates the coach being in a position of power over the trainer, and responsible for her education. The policy states that under special circumstances the trainer may stay working if it is in her best interest academically, but as the unit administrator in the athletic department, I would have final authority on this matter. I would flat out state that this arrangement would have to be changed, and that the trainer would have to work with a different team since they were in a relationship.

I would make this decision as the athletic director because of the issues of sexual harassment. The nature of this relationship and issues of supervision, teaching, and power that are in the hands of the coach make it very difficult to keep this coach and trainer working together while in a relationship. There are many factors that play into sexual harassment and I would hope that by talking to the coach and trainer, and moving the trainer to a new team I would help stop a possible situation that sexual harassment could occur in.

These types of situations could lead to two types of sexual harassment. The first is Quid Pro Quo. This is where sexual favors are expected of athletes, students, or trainers by people in power, and in turn they get something athletically. The next type of harassment is called hostile work environment and this occurs when the coach or people in positions of power make life very difficult for athletes, students, or trainers. When this happens it can interfere with the athletes, students, and trainers, abilities to perform athletically, learn, or trainers to do their necessary jobs. Types of things that can be looked for to determine a hostile environment is the degree to which the conduct effects the students and athletes, the type and frequency of the conduct, the relationship between the parties, the age and sex of the parties involved, and also the location of any incidents.

With the sexual relationship between the coach and the trainer, it could very easily turn into one of these two situations where sexual harassment occurs. As the coach is in a situation of power over the trainer, she could easily ask for favors. The trainer may feel obligated to do these favors if the coach makes her feel like she wouldn't achieve the same status or success with training if she didn't do them. This same relationship could easily create a hostile work environment as well. With the coach and trainer working together, their sexual relationship could carry over to their work. The coach could start demanding things of the trainer out of the normal coach/trainer relationship, and also make things very difficult for the trainer based on dynamics of the relationship, and nothing to do with the simple coach/trainer relationship. This could lead to problems if the trainer starts to feel aspects of their personal relationship are affecting her ability to perform as a trainer. I would also be very concerned what would happen when these two broke up, and what would happen if things in the relationship started going bad. I would explain to the coach and trainer that while everything is fine with them working together at the moment, I would still move the trainer to a new team and eliminate the situation of them working together, in hopes of eliminating a possible sexual harassment case.

One last area I would have to address in regards to the relationship between the coach and trainer is the area of discrimination. I would want to make clear to the coach and to the trainer that the reasons for moving the trainer to a new team are not in any way based on discrimination. As they are two females in a relationship I would have to be careful that they didn't feel their relationship was not being allowed because of that fact, and cause any situations where cases based on sexual discrimination could arise. There may also be issues of the trainer feeling she is being discriminated against if she really wants to work with female volleyball, and is not able to do so because of her relationship with the coach. I would have to take time to really discuss with the trainer and coach that it is not because of the fact they are in a relationship, but because of the dynamics of their relationship as a coach and a trainer that they are not allowed to continue working together since stating they were in a relationship.

The last thing I would do as athletic director of SU-ME to address this situation, would be to establish a clear policy for the athletic department in regards to parameters of coach/athlete/trainer relationships, and that any relationships were to be told to the athletic director immediately. This would be in accordance with the university policy and the same idea that coaches or people in positions of power and authority over athletes and trainers, are not allowed to stay in this position of responsibility over them if they are in a relationship with them. Along with this policy, I would make sure there are written sexual harassment policies and procedures that all coaches, athletes, trainers and people affiliated with the athletic department are very familiar with. The athletic department should always be pro-active and protect the student athletes. By establishing clear policies and making them known to everyone, it will hopefully protect SU-ME from

possible harassment and discriminatory cases that could lose the schools federal funding and cause large compensatory damages.