



# Legal consequences of accidents during tennis lessons

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## ABSTRACT

The physical concentration of high numbers players on a tennis court during group lessons is a personal liability and health/safety risk factor. The objective of this article is to discuss who is liable, and under what circumstances. Since our readers are from different nationalities, and without making exact reference to concrete legal rules, we will determine the basic principles on the matter which are transferable to any territory, and are included in the Project of a Common Reference Framework for the European Private Law (DCFR)<sup>1</sup> or in the European Law Principles of Liability<sup>2</sup>.

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## ORGANIZATION, DIRECTION AND EXECUTION OF PROGRAMMES FOR TEACHING TENNIS

These three functions, together with the evaluation of the results, are the essence of a programme for tennis teaching<sup>3</sup>. They can be carried out by one or several people. The first case may be self-employed coach "running" a tennis school in a facility, organizing groups, teaching lessons, getting payment from his or her students, and paying the owner for the use of the courts. In the second case, a sports institution or an external company of sport services organizes the tennis schools, appointing a director and contracting professionals in charge of delivering classes.

Who can be held liable if damages occur due to an accident? In order to answer this question, we have to start from the legal relationship that stems from tennis lessons.

## LEGAL NATURE OF TENNIS LESSONS

Tennis teaching, as a paid activity, is framed within service contracts. The DCFR, Draft Common Frame of Reference

Tennis teaching, as a paid activity, is framed within service contracts. The DCFR, Draft Common Frame of Reference, defines this as a contract in which the service provider gives a service to the client, in exchange for a fee<sup>4</sup>. The service provider is the club, the external company or the coach, while the clients are the players or their relatives. The obligation of the provider is not result oriented, since, as a random activity, no one is committed to a concrete and precise sport target, such as winning Wimbledon or being #1 in the ATP ranking. Their obligation has to do with the means, that is, to provide a quality service, complying with the teaching methods and techniques in order to assure satisfaction, a learning process, or improving the level of the students, taking into account their ages, technical aptitudes and concerns.

## DIFFERENCE BETWEEN CONTRACTUAL AND EXTRA CONTRACTUAL LIABILITY

The coach must act with utmost care, so as not to fail student's expectations, and minimize the risk of accidents during lessons. This is the difference between contractual and extra contractual liability.

The first one has to do with non-compliance or deficient, or late compliance when the coach is rendering the service:

<sup>1</sup>Draft Common Frame of Reference, Principles, Definitions and Model Rules of European Private Law, Accessible at <https://www.degruyter.com/view/product/41776>.

<sup>2</sup>Principles of European Tort Law, European Group on Tort Law, Accessible at <http://civil.udg.edu/php/biblioteca/items/298/PETLSpanish.pdf>.

<sup>3</sup>On the subject, vid. VALIÑO ARCOS, A. (2017). Gerentes y directores de

organizaciones deportivas dedicadas al tenis. Accessible at: E-Coach -Electronic Magazine of the Tennis Coach, 29 (9), 48-56.

<sup>4</sup>Art. IV.C.-1:101 del DCFR.



absence, unpunctuality, laziness or open incompetence in teaching classes are behaviours that fit this category<sup>5</sup>.

The second starts when damages occur during classes due to an external cause to the service rendered, for example, the poor condition of the court.

These two types of liability are enforceable through different legal means, even though the frontiers between one type and the other are not always clear; it is not surprising they overlap, having in most legal systems different periods of limitation<sup>6</sup>.

## COMPENSATORY DAMAGES AND NON-COMPENSATORY DAMAGES

It is important to stress the fact that not all damages imply responsibility. Sport entails certain risks, whose consequences must be accepted by the athlete, like minor injuries resulting from a fall, or accidental contact with another athlete. It all depends on who suffered the accident, and how much they know about the conditions of the court or the conditions of the sport practice.

### Poor condition of the court

The Courts in Spain have dismissed claims for accidental falls which very unlikely were due to the court condition, for example, due to tripping on clay courts because of a very slight elevation of the lines with respect to the surface, causing minor injuries<sup>7</sup>. But, if the cause of an extraordinary damage, like a serious injury or even death, is the clear result of a lack of court maintenance, the lesson organizer/owner of the facilities could have an extra contractual responsibility for causing the

<sup>5</sup>Art. IV.C.-2:105(1) del DCFR: "the service provider must perform the service with the care and skill which a reasonable service provider would exercise under the circumstances". Para un estándar del entrenador ideal, vid. CRESPO CELDA, M. (1994). *Cómo ser un buen entrenador de tenis*. En: *Workshop Regional de la ITF para Entrenadores*. Montevideo, accesible en <http://www.miguelcrespo.net/articulos/Crespo.%20Como%20ser%20un%20buen%20entrenador%20de%20tenis.%20Uruguay,%201994.pdf>.

<sup>6</sup>En el Código Civil español, la acción para exigir responsabilidad contractual prescribe a los cinco años, mientras que la acción para exigir responsabilidad extracontractual prescribe en el plazo de un año.

<sup>7</sup>For a similar case, vid. *Sentence of the Audiencia Provincial de Málaga (section 4<sup>o</sup>) n<sup>o</sup> 896/2004, December 9th*.

accident. For instance, if the poor condition of the surface produces the fall of a player, who hits the floor with his/her head and dies, the possibility of receiving compensation is considered insofar as there has been a damage that is economically compensable and imputable due to a lack of conservation of the tennis court, and a link can be established between this poor maintenance and the extraordinary damage produced, which is attributable to the owner of the facilities where classes take place<sup>8</sup>.

### Impracticability of the court due to weather conditions

When risk depends on the real impracticability of the court, due to heavy rain, who the person who suffered the accident is will be relevant for the estimation of the claim. Thus, expert coaches and athletes can be expected to have a certain knowledge about the condition of the court; however, it is not so with beginner players. Therefore, injuries due to accidental falls fall into the first category of the theory of the assumption of risk by the injured<sup>9</sup>, while in the second category, there is a possibility to claim against the organizer of the classes or the facilities owner who has unnecessarily put the athletes at risk.

### Risk due to extreme weather conditions

During the summer and in areas where temperatures are higher than 30 degrees celcius, the risk of accident increases significantly. Thus, a cautious coach must plan classes during hours to avoid personal damages. This idea is also valid for competition environments, so, organizers must avoid matches during hours of maximum heat or humidity<sup>10</sup>.

### The risk due to recklessness of the coach when rendering the service

Inappropriate material or excess number of students are a potential source of damage attributable to the coach. The use of balls, which are not appropriate for the level of the players, makes control difficult and increases the level of risk. The same thing happens with accidental crashes or impact between players, for instance while waiting in line or retrieving balls. These accidents may imply the responsibility of the lesson organizer(s), unless they take all the preventive measures to avoid them. This happened in a club in Murcia, Spain: a child had to undergo several surgeries in one eye after being hit by the racket of a playmate. The sentence considered the Tennis Club was responsible: a teacher, contracted by the institution was teaching the class in which this unfortunate event occurred, while the kids were retrieving balls, and using their

<sup>8</sup>A real case in Spain on a paddle court was resolved by a *Sentence of the Audiencia Provincial de Valencia (Section 6<sup>o</sup>) n<sup>o</sup> 469/2012, July 23rd*, the athletic club was sentenced for the accidental death of an athlete due to the poor condition of the court surface which produced the fall with this fatal outcome.

<sup>9</sup>The *Sentence of the Audiencia Provincial of Cádiz, January 4th, 1999*, quoted by CASADO ANDRÉS, B. (2017). *El tenis: ¿un deporte de riesgo?* In: *Diario La Ley*, n<sup>o</sup> 9023, Sección Tribuna, 5(13), in connection with tennis coach injury.

<sup>10</sup>Art. 8.5.h) of the *Regulations of Sport Justice of the Tennis Federation of the Valence Community* typify as a serious offence of arbitration bodies "to schedule matches between 2 and 5 pm when the forecasted temperature will be over 35 degrees, according to the National Meteorological Agency, and the participants of the tournament or competition are under age, no way will they be scheduled after 9pm, nor will matches be authorized if scheduled beforehand, but due to a delay have not started before 10 pm. These matches should be put off and start not before 10 the next day".

rackets as if they were trays. The criterion for the sentence was the fault or negligence due to the lack of surveillance or control of the kids<sup>11</sup>.

### BUDGET FOR DAMAGES

Taking responsibility for the damages occurred during classes depends on the diligence of the organizer. Keeping the court in good condition, using balls of different colours for students who cannot control the ball very well, and not teaching large groups are measures that contribute to preventing, or at least, reducing risk considerably. The same can be said about the selection and surveillance of the coaches that have been contracted; the organizer must make sure the methodology and exercises used do not put the safety and health of students at risk<sup>12</sup>.

If all these measures are considered, and in spite of this, damages still occur, unless they are extraordinary, they must be assumed by the athlete, because even though sport benefits the physical and mental health of athletes, they are never exempt of certain risks<sup>13</sup>.

In racket sports, due to the position of the players, impact is not frequent. But risk increases in doubles matches and also particularly in group lessons, due to the concentration of students in a small space. In the first category of a singles or even doubles match, the risk theory gets full application. In the second, due to the paid nature of the service in which classes occur, it gives rise to a presumption of the organizer's guilt, which may even have contributed to the intensification of risk, for instance, when accepting a greater number of students than is reasonable, or using worn out balls that increase the risk level considerably<sup>14</sup>.

### THE IMPORTANCE OF HAVING LIABILITY INSURANCE

Although it is already a regulated requirement in many legal systems<sup>15</sup>, tennis coaches, highly exposed to the inherent risks of group lessons, must have a liability insurance policy. So, by means of paying an insurance premium, it will be the insurance company that will have to pay the compensation in case of accidental damages during lessons.

<sup>11</sup>Sentence of the Audiencia Provincial of Murcia (Section 4<sup>o</sup>) n<sup>o</sup> 458/2013, July 18th.  
<sup>12</sup>Article 6:102 (responsibility for auxiliaries) of the European Legal Principles of civil responsibility states that "a person is liable for the damages caused by their auxiliaries in the practice of their functions, as long as they have breached the standard of behaviour required".

<sup>13</sup>The theory of the assumption of risk was formulated for the first time in Spain in the Sentence of the Supreme Court, Civil Tribunal, October 22nd. 1992 after an accident during a ball match, during which a player lost an eye after receiving an accidental ball in his eye from a playmate, who was not considered liable after hitting a ball during the match, there was no guilt or blame, since it was just part of the regular sport practice.

<sup>14</sup>On the risk of sport, vid. VERDERA SERVER, R. (2003). Una aproximación a los riesgos del deporte. In: *InDret. Revista para el análisis del Derecho*, 1, 1-19, in [http://www.indret.com/pdf/116\\_es.pdf](http://www.indret.com/pdf/116_es.pdf). El tenis: ¿un deporte de riesgo? In: *Diario La Ley*, n<sup>o</sup> 9023, Sección Tribuna, 3(13).

<sup>15</sup>In Spain, it is present in almost all autonomous sport laws, and its infringement is classified as a punishable administrative offense with strong economic fines.



### CONCLUSION

Teaching a great number of players in a small area entails additional risks that force the tennis coach to be extremely cautious as to the number of students in the same lesson, the material selected in case students' skills are limited, and the hours during the day in which classes are scheduled in case the weather conditions are extreme. Although damages are not frequent in tennis lessons, clubs and coaches are advised to sign a liability insurance policy, so as to diminish the possibilities of having an economic imbalance in case they receive legal claims for damages during the tennis lessons they organize.

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