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CONTACT DETAILS

T: +27 (0) 11 880 5800
F: (+27) 11 442 3091
@: DurellJ@athletics.co.za
www.athletics.org.za

POSTAL ADDRESS

P O Box 2712
Houghton Estate
2041

STREET ADDRESS

Athletics House
No. 3, 11th Avenue
Houghton Estate
Johannesburg 2198

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MISSION

To make a contribution towards
Nation Building and Healing of
our land, South Africa, and the
Transformation of our Society,
through the Development of
Athletics, from Grassroots to the
highest levels of Excellence

To
From
Date
Subject
No pages

ASA Members
ASA Office
22 November 2017
IMPLICATIONS OF FAILURE TO APPLY THE RULES
9

ELECTRONIC TRANSMISSION

Dear ASA Members

Circular 153 of ASA 2017 (11/22) – IMPLICATIONS OF FAILURE TO APPLY THE RULES

Please find attached a lecture presented by Chris Goldschmidt – ASA National Technical Committee, during the 2017 ASA National Technical Symposium, which should make relevant reading to all our members.

In recent years ASA has experienced a substantial increase in situations where individuals want to challenge ASA or other ASA Members in court, mainly due to failure of applying/following the rules.

In some cases, lawyers are prepared to take on these cases on a “no-win, no-cost” basis. They are not discerning who they cite as the defendant – usually using a shot gun approach to see who responds and who has the deepest pockets!!

For this very reason the ASA Constitution Clause 31 stipulates: “All disputes between Members, or between a Member and ASA, or between a Member and an Athlete, or between an Athlete and ASA, or between an Athlete and the IAAF, or between the Athlete and the CAA, however arising, shall be referred to arbitration for determination within ninety (90) days of the date upon which the disputed decision was made”.

Members are deliberately guided towards the process of declaring a dispute with the relevant party and request for an Arbitrator to rule on the declared dispute.

The process of arbitration has the same legal authority as a ruling of a Judge in court, with one significant difference; the legal cost related to arbitration is contained whereas the cost of a legal process in court can become a bottomless pit as legal teams try to win the case on behalf of their client.

It goes without saying that the individual challenging ASA, or any other ASA Member in court, runs the risk of losing the case, and as a result may have to repay the legal expenses of the member you have challenged in court. Parties that choose to seek relief via a court run the risk to be suspended from the sport.

The thesis that follows was presented at the recent 2017 ASA National Technical Officials symposium and illustrates to the reader how rules and regulations govern all levels of our sport, and the implications of not applying the rules.

Athletics greetings

Richard Stander
ASA ACEO
Not signed due to electronic sending

IMPLICATIONS OF FAILURE TO APPLY THE RULES

PRESENTATION AT ASA TECHNICAL OFFICIALS SYMPOSIUM 2017

By: Chris Goldschmidt – ASA National Technical Committee

1. What rules are applicable?

The topic of rules applicable to sport is very wide and can range from simple definitions to very complex legal interpretations.

The rules that govern Athletics can be divided into four main groups:

- 1.1. **Basic playing** laws (rules) that control the way the sport is conducted, mainly for safety and fair competition :
 - 1.1.1. IAAF Competition Rules
 - 1.1.2. IAAF Advertising Regulations
 - 1.1.3. ASA Domestic Rules and Regulations
 - 1.1.4. The IPC Athletics Rules and Regulations
- 1.2. **Penal** laws which come into play when a playing rule is transgressed
 - 1.2.1. Temporary suspension (eg yellow cards)
 - 1.2.2. IAAF / ASA Codes of Conduct and Ethics
 - 1.2.3. Disciplinary Code
- 1.3. **Administrative** laws that control the sport in the broader sense
 - 1.3.1. The ASA Constitution
 - 1.3.2. Domestic Rules, Regulations and constitutions of ASA member provinces
 - 1.3.3. The Companies Act
 - 1.3.4. Rules regarding membership, licences, committees, elections etc.
- 1.4. **National** laws
 - 1.4.1. Constitution of the Republic of South Africa
 - 1.4.2. The Safety at Sports and Recreational Events Act, 2 of 2010 and its Regulations
 - 1.4.3. The Occupational Health and Safety Act, 85 of 1993 and its Regulations
 - 1.4.4. Municipal/Provincial Rules and Regulations
 - 1.4.5. SANS 10366 : Health and Safety at Events
 - 1.4.6. Civil and criminal law
 - 1.4.7. Consumer Protection Act

Of course some of the documents listed apply in more than one category and there are numerous other statutes and regulations that might apply.

Entry to an event is a “contract” which raises the possibility for interpretation according to various other statutes.

2. Who do these rules affect?

We can create some simple groupings of the people and organisations that make up the “Athletics Family” as it is described in the ASA Code of Conduct:

2.1. Persons directly involved in an event

- 2.1.1. Athletes
- 2.1.2. Technical Officials
- 2.1.3. Marshals

2.2. Persons not participating but present at an event

- 2.2.1. Race Organiser
- 2.2.2. Supporters / spectators
- 2.2.3. Coaches
- 2.2.4. Volunteers
- 2.2.5. SAPS
- 2.2.6. Security
- 2.2.7. Contractors / Vendors
- 2.2.8. Safety Officers and medical staff

2.3. Persons indirectly associated with an event

- 2.3.1. Sponsors
- 2.3.2. Venue Owner
- 2.3.3. Athlete Representatives
- 2.3.4. Residents in the area where an event takes place

2.4. Other parties

- 2.4.1. National Federation and its Office bearers
- 2.4.2. Provincial Federations and their office bearers
- 2.4.3. Municipal/Provincial Authorities
- 2.4.4. General public



Affected indirectly by the Competition

Residents in the area where an event takes place
National Federation and its Office bearers
Provincial Federations and their office bearers
Municipal / Provincial Authorities
General public

3. Scenarios and Implications?

With reference to the different types of laws or rules that govern our sport, let's consider some scenarios where a rule might not be adhered to or not enforced and the possible implication: This list is by no means intended to be complete!

3.1. Playing Rules

Scenario	Who	Implication
Failure to display licences	Athlete	Disqualification
Failure to display age tags	Athlete	Exclusion from age group prizes
Failure to wear full club colours	Athlete	Exclusion from team prizes
Pacing	Athlete	Disqualification
Cheating	Athlete	Disqualification
Littering	Athlete	Disqualification
Outside assistance	Coach / Supporters	Disqualification
Damaged or missing facilities	Officials / Organiser	Injury and possible damages claims
Inadequate marshals / traffic control	Organiser	Event delay or cancellation

3.2. Penal Rules

Scenario	Who	Implication
Failure to enforce playing rules	Officials	Protests and Appeals
Inconsistent application of rules	Officials	Accusations of discrimination
Errors in results or placements	Officials	Appeals and possible civil claims
Failure to adhere to Code of Conduct	Athlete (and others)	Disciplinary action
Drug abuse	Athlete / coach	Suspension / banning
Minimum event standards	Organiser	Fines
Failure to apply Safety principles	Officials	Civil claims for damages and possible criminal charges

3.3. Administrative Rules

Scenario	Who	Implication
Election or removal of Office Bearers	Club / Federation	Legal appeals
Non-compliance with constitution	Club / Federation	Legal appeals
Financial controls	Club/Federation/Event	Theft / costs
Athlete registration	Club	Ineligibility or disqualification
Ambush or Illegal Marketing	Sponsor	Loss of sponsorship
Failure to report injuries	Officials	Insurance claim rejection
POPI Act transgressions	Organisers	Civil claims

3.4. National Rules

Scenario	Who	Implication
Event Permission	Organiser / Official	Event Cancellation
Failure to implement Safety Plan	Organiser / Safety Officer	Injuries - claims and possible criminal charges.
Public liability insurance	Organiser	Personal liability

4. Safety and Injuries

The area of **Safety and Injuries** has serious legal implications and penalties and requires further consideration.

- 4.1. Fortunately athletics is a reasonably low contact sport so we do not normally see collision injuries such as those in rugby, or high velocity impact injuries such as motor racing or cycling.
- 4.2. However we do use dangerous implements (javelins and weights) and run on public roads with motor vehicles so there is always an element of risk associated with participation. It is reasonable to assume that the athlete accepts this when they enter for an event. This is known as the Voluntary Assumption of Risk.
- 4.3. However, at common law organisers and officials (including police and medical staff) owe athletes a "duty of care". Were it established on a balance of probabilities that this duty of care fell below the standard expected of such persons civil (and in extreme cases criminal) penalties and/or damages could result. It is possible to mitigate the risk of such penalties for negligence in the event organisers got athletes to sign a waiver of claims and a disclaimer that they accept these risks.

INDEMNITY / WAIVER

By entering this event I undertake to be bound by the rules and regulations of the event including those of IAAF and ASA at my own risk. I warrant that I am in good health and aware of the risks and dangers of physical nature of this sporting event, and do not claim ignorance of these risks and dangers. I hereby accept that I participate in the event entirely at my own risk and I release and discharge, to the fullest extent allowed in law, the organisers of the event, all sponsors, persons and organisations assisting in the staging of the event, provincial and national athletics bodies and all local authorities from any responsibility, liability or costs relating to any injury, loss or damage of whatever nature, however caused, arising directly or indirectly from my participation in the event including pre-and post-race activities. I further agree and warrant that if at any time I believe conditions to be unsafe, I will immediately discontinue further participation in the activity;

MINOR RELEASE: *and I, the minor's parent and/or legal guardian, understand the nature of athletic activities and the minor's experience and capabilities and believe the minor to be qualified, in good health, and in proper physical condition to participate in such activity and I enter into this Indemnity/waiver on behalf of the minor.*

Printed name of participant (parent/guardian in the case of a minor):

Phone: _____ Signature: _____ Date: _____

- 4.3.1. Accordingly a signed waiver would discourage a participant claiming for damages if for instance they pull a muscle while running or throwing an implement.
- 4.3.2. However, that voluntary acceptance of risk by the athlete is based on certain assumptions that the event will be conducted in accordance to the rules and with adherence to minimum standards of safety.
- 4.3.3. A court may also decide that a very restrictive waiver deprives people of their valid rights. It can be argued that participants have no choice but to accept the waiver when entering – particularly online, even if they do not fully understand the wording or implication of accepting the waiver. This might be particularly relevant given the different languages spoken and levels of education found in athletics.
- 4.3.4. The annual ASA licencing form includes a waiver which applies for all events sanctioned by ASA. Hence the reason for ensuring that such forms are completed and retained.
- 4.3.5. Unregistered participants that take out a Temporary Licence must sign the waiver included on the tear off slip on the Temporary licence bib. Failure by the organiser to

collect such completed slips places the organiser, officials, volunteers, sponsors and service providers at risk.

- 4.4. In the case of injury, if there is perceived NEGLIGENCE on the part of the organiser or officials, there may be a civil claim for damages. Delict*, which forms part of civil law is designed to compensate a person who has suffered injury or loss as a result of another. It seeks to determine responsibility and how much should be paid in damages.

****Delict** (from Latin *dēlictum*, past participle of *dēlinquere* 'to be at fault, offend') is a term in civil law jurisdictions for a civil wrong consisting of an intentional or negligent breach of duty of care that inflicts loss or harm and which triggers legal liability for the wrongdoer; however, its meaning varies from one jurisdiction to another. Other civil wrongs include breach of contract and breach of trust. Liability is imposed on the basis of moral responsibility, i.e. a duty of care or to act, and fault (*culpa*) is the main element of liability. The term is used in mixed legal systems such as Scotland, South Africa, Louisiana and the Philippines, but tort is the equivalent legal term used in many other common law jurisdictions.*

- 4.5. The test for liability in Delict involves:

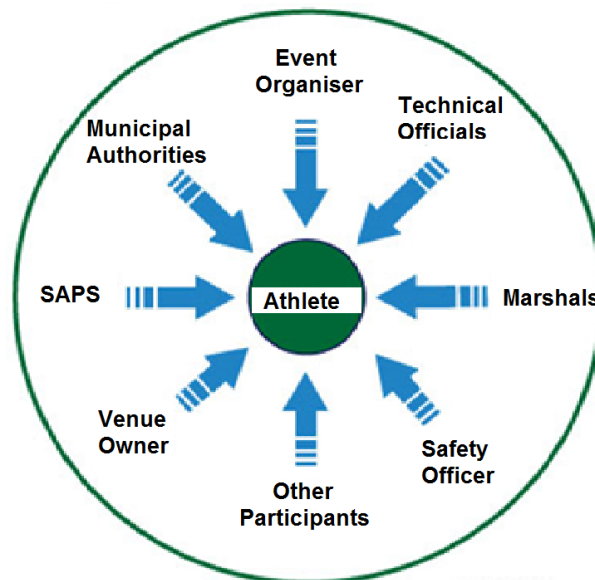
- 4.5.1. **Conduct:** This can be either doing something or failing to do something.
- 4.5.2. **Wrongfulness** is a value judgement the courts make regarding the conduct.
- 4.5.3. **Fault:** This is the Reasonable Person test.
- 4.5.4. **Causation:** Did the wrongful conduct (or omission) cause the damage complained of.
- 4.5.5. **Harm:** Was there actual harm caused?

- 4.6. Overseas such claims have become so numerous that there are fears of an insurance crisis that presents a serious risk to the viability of certain sports.
- 4.7. It is not unrealistic to expect that South Africa will follow the global trend and have more claims for compensation for wrongful conduct (Delict*).
- 4.8. Lawyers are often prepared to take on these cases on a “no-win, no- cost” basis. They are not discerning who they cite as the defendant – usually using a shot gun approach to see who responds and who has the deepest pockets!!

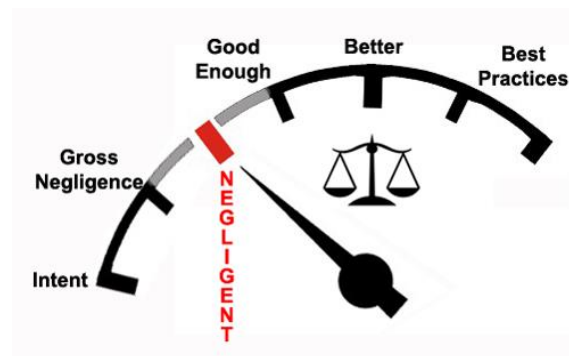
5. Negligence

- 5.1. Negligence is when a person (or organisation) is blamed for giving insufficient attention to standards, procedures or duty of care that is required or expected in a particular situation.
- 5.2. A consideration of negligence can be applied to anyone who might be deemed to have a duty of care towards the athlete or any other stakeholder.
- 5.3. Although this diagram shows the athlete at the centre, it could equally be applied to any stakeholder or member of the public whether directly involved in the event or not.

Who owes a Duty of Care ?



- 5.4. The standard test that is used by the courts to determine negligence is the objective standard of the "Reasonable Person".
- 5.5. The reasonable person test asks whether the actions (or lack thereof) of the defendant accused of negligence were appropriate in the circumstances or should they have acted differently if the risk was foreseeable and preventable.
- 5.6. There is a voluntary assumption of risk accepted by a person playing a particular sport, so the normal risks inherent in the regular practice of the sport might not be deemed negligence. However newcomers to the sport might need to be warned of risks that may not be obvious. What may be obvious to one person may not be so to another, so there is still room for interpretation – leaving the door open for claims.



6. Safety Legislation

- 6.1. The Safety at Sports and Recreational Events Act, 2 of 2010 requires that the Event Organiser must, for every event, ensure that a safety officer is appointed and that a written safety plan is prepared and put in place.
- 6.2. The Safety Plan will normally form the basis for approval for the event issued by the local municipality.

The safety plan will typically include

- 6.2.1. A risk assessment
- 6.2.2. Safety measures
- 6.2.3. Security measures
- 6.2.4. Crowd management measures

- 6.2.5. Motor vehicle parking arrangements
- 6.2.6. Emergency medical measures
- 6.3. Failure to implement such safety plan can expose the event organiser to criminal prosecution as well as charges of negligence in the case of an accident.
- 6.4. The Technical Delegate appointed to the event may also be held liable as their role is to act in a liaison capacity between the organisers and the controlling body, and ensure that the minimum standards of organisation, as required by the controlling body, are complied with.
- 6.5. As a sport run mostly by amateurs it is probably unreasonable to expect that part time event organisers will be flawless in carrying out all aspects of risk management, it is more of a case of what is reasonable to expect. For instance a risk may be considered so unlikely to occur that it is reasonable that no particular plan is put in place.
- 6.6. However, because of their training, there is an onus on Technical Officials to implement and monitor safety in the sport; The Referee in particular is a Quality Controller with an increased Duty of Care to ensure that standards and procedures are applied ; including
 - 6.6.1. Officials must be properly trained and accredited
 - 6.6.2. Facilities must be checked for safety and compliance prior to an event
 - 6.6.3. Implements and equipment must be in good working order
 - 6.6.4. Participants are appropriately prepared for their event, including health checks, fitness training, coaching and knowledge of rules
 - 6.6.5. Children and other vulnerable participants should be supervised and guided. These categories demand a higher Duty of Care.
 - 6.6.6. Injured persons are treated promptly
 - 6.6.7. Inappropriate behaviour is stopped promptly
 - 6.6.8. Procedures are implemented to minimise risks
 - 6.6.9. Rules are applied consistently and fairly
- 6.7. A discussion on Safety is included in the 2018 ASA Rules and Regulations in Chapter 5.
 - 6.7.1. This covers examples of safety and emphasises that safety in the sport is everyone's responsibility.
 - 6.7.2. Public liability insurance is required to be taken out by the Event Organiser in terms of the Safety at Events Act. However no guidelines are given as to the extent of such cover.
 - 6.7.3. It is also recommended for contractors and suppliers to cover themselves. Professional Safety Officers also take out similar cover.
 - 6.7.4. It could be considered that ASA should take out appropriate cover to protect Technical Officials working in an official capacity?

7. Constitutional and Civil rights

In our modern social environment there is an increased awareness of constitutional and civil rights so it is possible that we will see an increase in cases involving;

- 7.1.1. Failure to accommodate athletes with disabilities
- 7.1.2. Discrimination on ethnic and religious grounds
- 7.1.3. Challenges against procedures followed for discipline, drug abuse and disqualification
- 7.1.4. Code of conduct cases involving abuse of social media
- 7.1.5. Sexual harassment allegations
- 7.1.6. Breach of privacy or disclosure of private information

End