

## RISK MANEGEMENT DURING SPORT ACTIVITIES: JAPANESE SPORTS LEGISLATION AND PRECEDENTS

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### Synopsis:

One of the key elements for solid sports development is the risk management of accidents and injuries that are inherent in sport. To grasp the current situation in Japan, this study examines the legal case which disputed the civil liability of the sports organizations incurred by lighting damage on a player during the game, and the preventive measures taken by the other sports organizations after the case. Considering the recent cases that require “the duty of care” to the sports organizations wider than ever, it is highly important to set up the system allows them to get prepared the civil liability for the sake of further promotion of sport in Japan. To facilitate this, the initiative of the public sectors would be desirable.

### Abstract:

#### Aims

One of the key elements for solid sports development is the risk management of accidents that are inherent in sport (Ishii, 2013). To grasp the current situation in Japan, this study examines the legal case which disputed the civil liability of the sports organizations incurred by lighting damage on a player during the game, and the preventive measures taken by the other sports organizations after the case. The related sports legal systems are also taken into account.

#### Background

As we can see the class action against the NFL regarding concussion and brain damages (Fenno, 2015), it is highly important for any sports organization to get ready for the civil liability incurred by an accident that might happen under their authorities. Otherwise, they won't be able to contribute the sustainable sports development. It is also a crucial issue for the public sector, including the government, to pursue the promotion of sport for all. In Japan, the Basic Act on Sports (2011) defines the principles of sports policies overall in the country. Regarding the responsibility of the government to create a safe

and enjoyable environment of sport, the Act declares in its Article 8 that “the government shall implement legislative, financial or taxation measures or other measures necessary to implement the measures concerning sport.” In addition, the government should aware of the importance of accident prevention as the Article 14 outlines as follows:

The national government and local government shall endeavour to train instructors, etc., improve sport facilities, disseminate knowledge on the preservation and development of physical and mental health and ensure safety in sport (including knowledge about the appropriate usage of sport goods) and implement other necessary measures in order to prevent or contribute to the reduction of sport accidents or other external injuries or problems caused by sport.

Therefore, it is necessary and possible for the government to construct a scheme which enables the providers of sport facilities, services, and activities to get equipped in case of the accidents under their management.

### Analysis

In the lawsuit a high school student sought compensation after being severely injured by lightning strike during a soccer game, Japanese Supreme Court recognized the negligence of his coach and the responsibility of the city sport association who had hosted the competition (Kitamura v. Tosa High School & Takatsuki City Sports Association, Japanese Supreme Court civil case collection 219: 703 [2006]). While his school (i.e. the employer of the coach) made an initial payment to cover the student’s damage, the city sport association went bankrupt after its partial payment to his family.

Traditionally, acts of god, such as flood, lightning strike and storm, are recognised as a defence in Japan, USA and France; there are differences in its application between the countries. Regarding the sports-related lawsuits, Japanese court has recognised lightning strikes as one of acts of god in defence relatively wider when compared to USA (Maussner v. Atlantic City Country Club, Inc., A.2d 826 [N.J.Super Ct.App.Div., 1997]) (Miller 2011, Robinson 2010).

However, Kitamura was the very first case in Japan that recognises the negligence of the sport organization regarding the damage caused by thunderbolts during outdoor activities, it forces other sports organization for taking a necessary action to raise the awareness of safety among their members. For example, Japan Football Association established the guideline for prevention of lightning accident in 2006, then set the flowchart of the game management regarding hazardous event (lightning) in 2009.

On the other hand, the management for litigation risk of sports organization remains unresolved. While the personal insurance for sport participations is widely available in Japan, there is no institutional support for the sports organizations to prepare them on the civil liability which might be incurred by such an accident.

### Conclusion

Considering the recent cases that require “the duty of care” to the sports organizations wider than ever, it is highly important to set up the system allows them to get prepared the civil liability for the sake of further promotion of sport in Japan. To facilitate this, the initiative of the public sectors would be desirable when considering the fact that the significant part of Japanese sport

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development is carried out by the small size of organizations. Learning from the best practices from other countries would be helpful. For example, New Zealand has a system to compensate all injuries comprehensively, irrespective of fault and regardless of cause. France legally requires the sports organizations to join the insurance to get ready for their civil liability when operating a sporting event.

References:

- Fenno, N. NFL, retired players agree to changes in proposed concussion deal. LA Times (13 February 2015). Available: <http://www.latimes.com/sports/sportsnow/la-sp-sn-nfl-concussion-deal-changes-20150213-story.html> [accessed on 12 March 2015]
- Ishii, N. (2013). Civil liability for accidents during sport activities: A study on sports organizations in France. *Taiikugaku kenkyu* (Japan journal of physical education, health & sport sciences) 58: 637-662.
- Miller, L.M. (2011). Act of God. In Swayne LE. and Dodds M. (Eds), *Encyclopedia of Sports Management and Marketing* (pp. 5-6). Thousand Oak, Cali.: SAGE Publications.
- Robinson, M.J (2010). *Sport club management*. Champaign, Ill.: Human Kinetics.