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# PROS AND KAHNS: THE PROPER COACH LIABILITY STANDARD FOR ATHLETE INJURIES IN COLLEGIATE ATHLETICS

MARK R. HAMILTON, JR.\*

## INTRODUCTION

Relationships are intricate—unions that involve one superior and one subordinate party are even more tricky. When legal responsibility comes into play, the presence of a superior presents additional avenues that may cause a problem. Specifically, in schools, there is an abundance of relationships that implicate liability concerns. The two most important relationships are that of a teacher or coach and a student or athlete. Both of these relationships are extremely similar yet vary at the same time. A coach is often a teacher, but not always.<sup>1</sup> In fact, coaching adds further responsibility to the care that is owed to the athlete.<sup>2</sup> Coaching requires the function and presence of decision making that most courts recognize.<sup>3</sup> Moreover, while coach and player relationships are not a one-way street, historically, the coach is the one with the majority of the responsibility.<sup>4</sup> A coach must maintain respect and authority and, at the same time, be an approachable mentor.<sup>5</sup> The relationship must be strong because it

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1. Christopher Saffici, *Teaching & Coaching: The Challenges and Conflicts of Dual Roles*, SPORT J. (Mar. 10, 2015), <https://thesportjournal.org/article/teaching-coaching-the-challenges-and-conflicts-of-dual-roles/>.

2. *Id.*

3. *Lennon v. Petersen*, 624 So. 2d 171, 174 (Ala. 1993).

4. James Gels, *The Importance of a Strong Coach-Athlete Relationship*, NFHS (Sept. 18, 2017), <https://www.nfhs.org/articles/the-importance-of-a-strong-coach-athlete-relationship/>.

5. *Id.*

“is important not only for the athlete’s growth as a positive, ethical and moral person, but for the team’s performance as a whole.”<sup>6</sup>

An issue remains in what is the key facet of such a relationship and the legal implications. The main problem is that of trust. Ultimately, trust is a major factor in the player-coach relationship.<sup>7</sup> However, trust is often not enough. In high school alone, “athletes account for an estimated 2 million injuries, 500,000 doctor visits and 30,000 hospitalizations” per year.<sup>8</sup> Even more apparent, statistics show that “90 percent of student athletes report some sort of sports-related injury. 54 percent of student athletes report they have played while injured.”<sup>9</sup> Although collegiate athletics represents a smaller sample size than high school or youth athletics, the number of injuries due to sports is staggering. For instance, through 2004, there were 200,000 injury reports, amounting to about 12,500 injuries per year.<sup>10</sup> All of these statistics beg the question of how liable a coach is, if at all. Moreover, since standards vary, it is essential to understand what the ideal rule is. The proper method to determine whether a standard should be applied is to canvas all options and decide if the prevailing standard at one level of sport should also be adopted at another level.

This Comment analyzes the history in the approach of coach liability for athletes’ injuries and argues for a uniform standard of which collegiate athletics should also adopt. While coach and athlete relationships are already multifaceted, so too are the answers about liability for injury. Section I of this Comment will explore the history and background of student-athlete and coach relationships and how the *Kahn v. East Side Union High School District* standard has prevailed as the liability norm in high school athletics.<sup>11</sup> Specifically, the non-legal history of student-athlete and coach relationships in both high school and college will be analyzed, and distinctions will be observed. This initial survey of thought will serve to provide an overview of background information for player and coach relationships, especially with injuries. Next, this Comment will discuss the actual legal history and *Kahn* standard about the issue of liability for player or athlete injuries. Cases are examined that address

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6. *Id.*

7. Emilee White, *The Key to Success: Trust Your Coach*, SWIMSWAM (Nov. 7, 2015), <https://swimswam.com/the-key-to-success-trust-your-coach/>.

8. Douglas Mangan, *Majority of Youth Sports Injuries Can be Prevented, Here’s How to Keep Kids Safe*, USA TODAY (Sept. 5, 2018), <https://www.usatoday.com/story/life/allthemoms/2018/09/05/majority-youth-sports-injuries-can-prevented-heres-how/1139104002/>.

9. *Student Athletes*, AT YOUR OWN RISK, <https://www.atyourownrisk.org/studentathletes/> (last visited Apr. 1, 2022).

10. Jim Thomas, *Frequency of Injury Among College Athletes*, SPORTS REC. (Dec. 5, 2018), <https://www.sportsrec.com/8080884/frequency-of-injury-among-college-athletes>.

11. *Kahn v. E. Side Union High Sch. Dist.*, 75 P.3d 30 (Cal. 2003).

multiple court rulings on coach liability for athletes' injuries and what defenses a coach may assert. Section II of this Comment will dive into the overall *Kahn* holding and the differing views expressed in the concurrence and dissent. This section provides the justifications set forth for each alternative to the majority holding in *Kahn*. Section III will directly address the current state of liability standards and rules as it pertains to collegiate athletics. Specifically, this analysis will discuss how collegiate athletics differs from that of high school athletics and show the approach courts have used in coming to a decision. Section IV of this Comment will contain my recommendation for collegiate athletics. Within this section, three justifications will be proffered for why a modified *Kahn* standard should be adopted across all of collegiate athletics, instead of the separate independent review that is currently being utilized.

## I. HISTORY AND BACKGROUND

### *A. Non-legal history of student-athlete and coach relationships spanning from high school to collegiate athletics*

Coaching is something that is often criticized by the public. Traditionally, coaching is difficult and subjective. Odds are, if a survey were done today on all of the coaches in the United States, results as to what makes them effective would vary. Coaching involves a high degree of discretion. In other words, a coach must utilize discretionary acts to determine what is best for the team and the athletes overall. A coach must determine the necessary drills for a player.<sup>12</sup> A coach must evaluate the athletes.<sup>13</sup> Furthermore, a coach must be aware of injuries and if an injury is being faked.<sup>14</sup> With all of this discretion, there is a good amount of leeway a coach is given to conduct their practices and events. If a coach has all this opportunity to expand their reach and conduct things the way they desire, what does a player have the ability to do? This is a difficult question to answer. Athletes are often left to the instruction of their coach.<sup>15</sup> An athlete relies on the coach to properly train them to be prepared for activities.<sup>16</sup> An athlete relies on the coach to warn them of the possibility of injury.<sup>17</sup> All of this makes clear that although there is a multiparty relationship, one party, specifically the coach, is clearly in charge. The fact that the coach controls the

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12. *Lennon v. Petersen*, 624 So. 2d 171, 174 (Ala. 1993).

13. *Id.* at 174-75.

14. *Id.* at 175.

15. See Rhiannon Herbert, *More Isn't Better: Overtraining as a Cause of Actions for Coaching Negligence*, 47 CAP. U. L. REV. 125 (2019).

16. *Id.* at 128.

17. *Id.* at 129.

majority of the decisions opens the door to many issues. The athlete is not, however, clear of all fault if something goes wrong. Instead, the athlete is also responsible for the choices they make.

The coach-athlete dynamic is one of great potency. In high school, the coach may serve as a dual role model for the athlete as not just the coach but also a teacher. Conversely, in college, the coach serves just that sole purpose. The distinction between high school and college has become increasingly apparent. Coaches in collegiate athletics expect more from their athletes.<sup>18</sup> For instance, at the collegiate level, coaches handle many day-to-day tasks that an athlete might be accustomed to controlling on their own. This new aspect of coach monitoring, coupled with a more rigorous academic schedule, creates new challenges for the athlete to overcome. Specifically, college athletes must learn to adapt to what is being asked of them. At this new level, sport is no longer seen as just another extracurricular activity. Instead, sport is now a major enterprise, and the coach will treat it as such. Thus, the necessity for understanding how such relationships play out or may be hindered at a higher tier of athletics is extremely important.

The moment an athlete transitions from high school to college, they recognize a change in demands and scenery. The demands that a college athlete experiences far exceed those that a high school athlete must endure. First, training in collegiate athletics is much more intense than that of high school.<sup>19</sup> With increased amounts of training comes an increased chance for injury. Second, the talent around the athlete on their team or their opponent's team increases.<sup>20</sup> The increased level of competition may lead the student-athlete to push themselves further than they ever have before. Therefore, when a coach asks or instructs their athlete to work harder, and the athlete complies, they do so without understanding the risks involved. Lastly, the schedule for a collegiate athlete is much more congested than that of a high school athlete.<sup>21</sup> College athletes are responsible for more activities and often have limited free time.<sup>22</sup> Each of these distinct differences between high school and collegiate athletics suggests why understanding what is expected of an athlete is important to consider. Training, talent level, and scheduling are all influenced and affected by the coach and athlete relationship. Therefore, examining the proper standard

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18. *Five Major Differences Between High School and College Sports*, SPORTSENGINE (July 16, 2018), <https://www.sportengine.com/article/five-major-differences-between-high-school-and-college-sports>.

19. *Id.*

20. *Id.*

21. *High School vs. College Sports 7 Major Differences*, COLL. ATHLETE INSIGHT, <https://collegeathleteinsight.com/differences-hs-vs-college-sports/> (last visited Apr. 1, 2022).

22. *Id.*

that should be applied if an injury or problem occurs is imperative. The coach and the athlete must both be on the same page to understand the present expectations.

*B. The prevailing standard that has been established and applied throughout most legal decisions regarding coach liability*

Liability, as it relates to coaches and athletes, is a common issue that often appears in court. Due to this commonality, most courts have started to develop a customary prevailing standard to be utilized in most jurisdictions. Generally, many factors must be considered when first assessing a coach's liability. Before specific instances are looked at, it is important to understand the duty that a coach owes its players and opposing players. A vast number of cases that have addressed coach liability for athlete or student injuries have occurred in the high school context. In fact, there is a prevailing norm or standard that seems to be applied in most situations. However, there are caveats to the rule, and facts may shift the appropriate standard.

The principal standard that has been widely utilized in high school was established in *Kahn v. East Side Union High School District*.<sup>23</sup> *Kahn* held that a coach might be liable for an injury to a student or student-athlete only if the coach “injures the student or engages in conduct that is reckless.”<sup>24</sup> Reckless conduct is established as something that is “totally outside the range of the ordinary activity” involved in coaching that sport.<sup>25</sup> Before the standard was directly attributed to *Kahn*, it was referred to as the intentional and reckless conduct standard. In fact, some courts still use the terms intentional and reckless conduct, opposed to *Kahn* specifically. Thus, some cases that stray from directly citing *Kahn* are still utilizing the same rule, and this approach is still the most applied standard overall.<sup>26</sup> The key determinant in a *Kahn* or intentional and reckless conduct analysis are the facts. For instance, a loose interpretation of this standard has been applied to determine that coaches' responsibilities usually only apply to their own players and rarely to opposing players.<sup>27</sup> Therefore, the facts of a case are the most vital aspect of determining whether a coach's action rises to the level of intentional or reckless conduct causing injury to an athlete.

The *Kahn* and intentional and reckless standard have proven to be a rather difficult burden to establish for most athletes. For such a claim to prevail, most

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23. *Kahn v. E. Side Union High Sch. Dist.*, 75 P.3d 30 (Cal. 2003).

24. *Id.* at 32.

25. *Id.* at 32-33.

26. *Jaworski v. Kiernan*, 696 A.2d 332, 337 (Conn. 1997).

27. *Trujillo v. Yeager*, 642 F. Supp. 2d 86, 90-91 (D. Conn. 2009).

athletes must establish that the coach failed to adequately perform or teach a fundamental duty such as supervising, training, or ensuring safety.<sup>28</sup> However, even if the coach's recognized duty is addressed as the basis for liability, a student-athlete may still fail to satisfy the rule properly. In *Leshner v. Zimmerman*, a coach injured a high school student-athlete during practice while engaging in a pitching and batting drill.<sup>29</sup> Although this activity squarely falls within the coach's general duty and an injury resulted, the coach was not found liable.<sup>30</sup> Instead, the court stated that a coach is not liable for such injuries unless there was deliberate indifference or such injury was foreseeable.<sup>31</sup> This notion of deliberate indifference is akin to the necessary presence of intentional or reckless conduct, thus making it difficult for athletes to prevail in such claims. Essentially, *Leshner* applied the *Kahn* standard and determined that, without deliberate indifference—or intentional and reckless conduct, as stated in *Kahn*—a coach may not be liable.

Although the coach is responsible for conduct during practice, a coach's duty does not stop simply at drills or training exercises. For instance, a coach may be held liable if they supply defective equipment to an athlete.<sup>32</sup> In *Moose v. Massachusetts Institute of Technology*, a pole vaulter was injured while conducting a specific maneuver, and this injury was attributed to an ineffective pole provided by the coach.<sup>33</sup> Moreover, rules for coaches extend past equipment and encompass the realm of instructions as well. Particularly, a coach may be found liable if they fail to instruct athletes to wear proper safety equipment during warm-ups.<sup>34</sup> Although neither of these cases got to the clear determination of whether the coach is liable, they show that there is an opportunity for an athlete to potentially prevail in a claim that has traditionally favored the coach. However, even if the standard outlined in *Kahn* is not utilized and reasonable care is imparted, the student-athlete still has a major hurdle to jump. For instance, in *Wilson v. O'Gorman High School*, the court opted against *Kahn* and utilized a general reasonable care standard.<sup>35</sup> In *Wilson*, the court decided that the athlete must inherently establish that the coach's decision to allow her to attempt such maneuvers during gymnastics practice was the

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28. Anthony S. McCaskey & Kenneth W. Biedzynski, *A Guide to the Legal Liability of Coaches for Sports Participant's Injuries*, 6 SETON HALL J. SPORT L. 7, 15 (1996).

29. *Leshner v. Zimmerman*, 822 F. App'x 116, 118 (3d Cir. 2020).

30. *Id.* at 121.

31. *Id.* at 120.

32. *Moose v. Mass. Inst. of Tech.*, 683 N.E.2d 706 (Mass. App. Ct. 1997).

33. *Id.* at 709.

34. *Mone v. Graziadei*, No. A-4578-15T2, 2017 WL 5076472 (N.J. Super. Ct. App. Div. Oct. 30, 2017).

35. *Wilson v. O'Gorman High Sch.*, No. CIV. 05-4158-KES., 2008 WL 2571833 (D.S.D. June 26, 2008).

proximate cause of her injuries.<sup>36</sup> Thus, if a coach fails to act or properly monitor, the coach may be found liable.<sup>37</sup> Conversely, if *Wilson* had decided to impart the *Kahn* standard, the coach would have prevailed on their motion for summary judgment.

The issue of coach liability for player injuries also extends to the area of care after an injury—not against the fault of the coach—has already transpired. A coach has a duty to provide emergency medical care or promptly obtain medical care for the athlete.<sup>38</sup> In *Mogabgab v. Orleans Parish School Board*, a student-athlete showed signs of exhaustion, and the coach failed to act promptly. This lack of action by the coach resulted in the athlete's death.<sup>39</sup> *Mogabgab* proved that a coach's responsibility does not halt at instruction or training but rather extends to the athlete's care due to injury or exhaustion. When deciding the issue of liability regarding a coach's medical care, the test or standard is often dependent on jurisdiction.<sup>40</sup> The standard that concerns such medical issues tends to hinge on reasonableness.<sup>41</sup> The reasonableness analysis is not far off from the overall *Kahn* standard. In fact, reasonableness and *Kahn* both require that the student-athlete establish that the coach committed a wrong. The main difference comes down to the requisite level of action or inaction by the coach that contributed to the athlete's injury. For instance, as in *Mogabgab*, if the coach shows carelessness or indifference towards an athlete's well-being, this would be an unreasonable and intentional act rising to reckless conduct. However, if the conduct involved the coach attempting to help the athlete immediately but failing to do so effectively, it would not rise to an intentional or reckless standard. Thus, the facts of a case and the circumstances surrounding each instance are of the utmost importance.

### *C. Defenses that a coach may raise against the imposition of liability*

A coach is not always liable for an athlete's injury. Regardless of the standard in place, a coach has multiple options in crafting a defense. In fact, there are four primary defenses that a coach may assert. First, a coach may preclude liability by establishing immunity. Ultimately, a coach may establish immunity if they can prove that they were performing some form of a

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36. *Id.* at 4.

37. *Id.*

38. *Mogabgab v. Orleans Par. Sch. Bd.*, 239 So. 2d 456 (La. Ct. App. 1970).

39. *Id.* at 457.

40. McCaskey & Biedzynski, *supra* note 28, at 31-32.

41. Thomas R. Hurst & James N. Knight, *Coaches' Liability for Athletes' Injuries and Deaths*, 13 SETON HALL J. SPORT L. 27, 37 (2003).

discretionary act or function.<sup>42</sup> In order for an action to be discretionary, it must avoid the realm of ministerial action.<sup>43</sup> Discretionary functions include making tough decisions and acting promptly at all times.<sup>44</sup> Although most choices that a coach makes may reside on the side of being discretionary, it is up to the coach to prove such a defense. If a coach's action is found to be ministerial instead of discretionary, immunity is nullified, and the coach will remain liable.<sup>45</sup> Moreover, even if some form of immunity is proper, a coach's actions may be so gross that the court does not grant immunity.<sup>46</sup> Thus, the defense of immunity may be utilized to preclude liability, but only if the actions of the coach are not ministerial or so gross that granting immunity would be heinous.

Second, a coach may establish that the athlete assumed the risk of injury by competing in the sport. Assumption of risk comes in various forms, but they are almost all premised on the idea that the plaintiff voluntarily assumed the risks associated with the defendant's negligent or reckless conduct.<sup>47</sup> The primary implied assumption of risk is that of a plaintiff who voluntarily enters a relationship with the defendant, knowing of the risks involved, and who behaves reasonably in assuming it.<sup>48</sup> The secondary implied assumption of risk describes a plaintiff's voluntary and unreasonable encountering of the risk presented by a defendant's negligence.<sup>49</sup> Both of these implied assumptions of risk depend on the inherent risk of the activity and the plaintiff's knowledge or experience.<sup>50</sup> If found against the plaintiff, assumption of risk can act as a complete bar to the claims presented.<sup>51</sup> Thus, if a coach can adequately prove that the athlete assumed the risk or understood the activity's inherent risk and had knowledge or experience with the activity, they may prevail in a claim. In the coaching context, the secondary implied assumption of risk is the most common because a duty is owed by the coach to the athlete.<sup>52</sup> However, assumption of risk cannot be a proper defense when there are extreme circumstances.<sup>53</sup> Thus, as long as the coach establishes that they followed through with their requisite duty and extreme circumstances were not present, they may prevail.

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42. Lennon v. Petersen, 624 So. 2d 171, 173 (Ala. 1993).

43. *Id.*

44. *Id.* at 174.

45. Prince v. Louisville Mun. Sch. Dist., 741 So. 2d 207, 211 (Miss. 1999).

46. Swank v. Valley Christian Sch., 398 P.3d 1108, 1119 (Wash. 2017).

47. Restatement (Second) of Torts § 496A (Am. L. Inst. 1965).

48. Hurst & Knight, *supra* note 41, at 38.

49. *Id.*

50. *Id.* at 39-41.

51. *Id.* at 40.

52. McCaskey & Biedzynski, *supra* note 28, at 50-51.

53. *Id.* at 51.

Third, a coach may escape liability by establishing that there was a written release, disclaimer, or waiver that the athlete signed.<sup>54</sup> An important distinction to keep in mind as it relates to asserting this type of defense is that public policy widely disfavors such agreements.<sup>55</sup> Moreover, this type of defense is more likely to be seen for recreational activities or high school sports involving a parental signature. In collegiate athletics, this type of agreement or release is less likely to be utilized. However, if such an agreement exists, the coach may avoid liability by establishing that the agreement is unambiguous.<sup>56</sup> The large number of hurdles associated with this defense and the fact that it is widely disfavored make it less likely to be something that a coach would assert.

Lastly, a coach may avoid liability, either completely or partially, by establishing that the student-athlete was contributorily negligent. Contributory negligence may occur when a player defies the instructions of the coach and acts on their own accord. However, contributory negligence is no longer as prominent as it once was. Currently, most states adhere to a comparative negligence standard, which utilizes contributory negligence as a means to determine the amount of fault that should be attributed to the plaintiff.<sup>57</sup> Under some jurisdictions, the plaintiff must be less negligent than the defendant to recover.<sup>58</sup> However, other jurisdictions only require that the plaintiff not be more negligent than the defendant to recover damages.<sup>59</sup> Considering that this defense would rely on the jurisdiction that the injury occurred in, it is very limited. Thus, due to the varying nature of comparative negligence and the requisite apportioning of the percentage of fault, contributory negligence should be a last-effort defense, as it is less effective than the other available options.<sup>60</sup>

## II. THE SEPARATE PROPOSED STANDARDS PRESENTED IN *KAHN*

While the prevailing high school norm for coach liability to student and student-athletes has already been addressed previously, there still exists a major ambiguity for the standard that should apply for college coaches. As of now, there is no continuity or fundamental approach that has been applied or considered. The lack of a clear standard for gauging coach liability for athlete injuries has the potential to cause more harm than good for both the athlete and coach. Without a prevailing rule or standard, athletes may feel that they can

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54. *Id.* at 54.

55. *Sanislo v. Give Kids the World, Inc.*, 157 So. 3d 256, 260 (Fla. 2015).

56. *McCaskey & Biedzynski*, *supra* note 28, at 60.

57. *Id.* at 52-53.

58. *Id.* at 53.

59. *Id.*

60. *Id.*

bring suit for any wrongdoing. Conversely, coaches may start to feel that no matter the amount of effort and care they show, they will still remain liable for any injury. The majority opinion in *Kahn* has already been described; however, there are two other opinions present in this case that provide the opposing standards that a college should consider. Below are the other two standards proposed by *Kahn* as it pertains to high schools.

The first alternative proposed to the majority's intentional and reckless standard is the gross or extreme departure standard.<sup>61</sup> This standard proposes that a coach who departs from ordinary activities, increasing the risks of injury beyond those inherent in the teaching of the sport, is subject to liability if the conduct constitutes a "gross or extreme departure from the instructional norms."<sup>62</sup> Ultimately this standard is more pro student-athlete than coach. The purpose here is for the coaches to be held to an increased duty to care for their athletes and students. Although this standard favors the athlete more than that of the intentional or reckless standard, there still stands room for the coach. A coach may establish the reasons for their decisions and judgment, which should not be overlooked automatically. Instead, second-guessing of the coach's judgment should be avoided so that way coaching will not be unduly impeded.<sup>63</sup>

The second alternative proposed within the *Kahn* decision is that of standard negligence.<sup>64</sup> This standard avoids recklessness completely and seeks to hold a coach to the general standard of ordinary care, and requires a plaintiff to simply prove negligence and nothing more.<sup>65</sup> Overall, a negligence standard such as this would drastically change the landscape of how coaching is conducted. The purpose of a rule such as this is to protect athletes and preserve the trust that such athletes have with their coaches.<sup>66</sup> The main argument presented for such a rule is that the goal of coaching should be to push the athletes to advance their skills as much as possible, but not to the extent that presents an unreasonable risk.<sup>67</sup>

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61. *Kahn v. E. Side Union High Sch. Dist.*, 75 P.3d 30, 49 (Cal. 2003) (Werdegar, J., concurring).

62. *Id.*

63. *Id.* at 48.

64. *Kahn v. E. Side Union High Sch. Dist.*, 75 P.3d 30, 51 (Cal. 2003) (Kennard, J., dissenting).

65. *Id.* at 52.

66. *Id.*

67. *Id.*

## III. COLLEGIATE ATHLETICS

*A. The coach and university special relationship with an athlete in collegiate athletics*

Collegiate athletics represents a higher echelon of sport compared to that of high school athletics. With this increased value of sport for the coach, athlete, university, and fans come different rules and relationships. Throughout this Comment, the coach's relationship with their athlete has been discussed almost exclusively in the context of high school athletics. But, in collegiate athletics, there is one major difference that exists that is not present in the high school context. This difference is known as a special relationship.

The special relationship between the university (including the coach) and the athlete was recognized in *Kleinknecht v. Gettysburg College*.<sup>68</sup> *Kleinknecht* held that a special relationship exists between the university and the athlete because the athlete participated in a school-sponsored activity and was recruited by the school.<sup>69</sup> Since *Kleinknecht* in 1993, there have been numerous cases that have addressed the issue of liability as it relates to athlete injuries and whether a special relationship is present. In fact, in *Davidson v. University of North Carolina at Chapel Hill*, the court stated that if the claim by a plaintiff is centered on the defendant's failure to protect them from harm, especially where the defendant holds some power over the plaintiff, there is a special relationship.<sup>70</sup> Thus, the determination made by the court in *Davidson* is that an athlete and the university have a special relationship, as seen through the power the university holds over the plaintiff's welfare.<sup>71</sup> Specifically, it appears that if there is any sort of mutual dependence between the two parties, a special relationship is present.<sup>72</sup> This special relationship status represents a clear difference between high school and collegiate athletics. In high school, the notion of a special relationship does not exist.

As it relates specifically to the coach and athlete relationship, it is apparent that the university is responsible for the coach via respondeat superior.<sup>73</sup> Besides the notion of respondeat superior, it would seem clear that a special relationship is present, as coaches and athletes are extremely intertwined, arguably even more than the university is with the athlete. For instance, college coaches have

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68. *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360, 1372 (3d Cir. 1993).

69. *Id.* at 1367.

70. *Davidson v. Univ. of N.C. at Chapel Hill*, 543 S.E.2d 920, 926-27 (N.C. Ct. App. 2001).

71. *Id.*

72. *Id.* at 927.

73. Michelle D. McGirt, *Do Universities Have a Special Duty of Care to Protect Student-Athletes from Injury*, 6 JEFFREY S. MOORAD SPORTS L.J. 219, 239 (1999).

a great influence on their athletes, and at the same time, the coach has their own separate pecuniary interest.<sup>74</sup> Moreover, coaches often promise athletes not just the ability to gain an education but often, more importantly, the chance to win in the sport that they are being recruited for.<sup>75</sup> While courts have not specifically held coaches to a special relationship or fiduciary duty regarding their athletes, they do acknowledge that the university as a whole has a special relationship, which should extend to the coach.<sup>76</sup>

*B. The duty owed by a coach and the university in collegiate athletics*

Although some historic cases such as *Kleinknecht* appear to open the door and make it easier for an athlete to recover damages as it relates to injuries they sustain while being an athlete for a university, the road to recovery is way bumpier than it seems. In fact, even in instances that involve a player sustaining an injury while during practice or training, it does not always guarantee an ability to recover damages. Regardless of whether a special relationship exists, the duty that is owed is most likely that of reasonableness, which often varies from sport to sport.<sup>77</sup> However, it is important to understand that the university or coach does not owe a duty to protect an athlete from risks that all athletes are aware of and are common to the sport.<sup>78</sup> Overall, there are not many clear differences as it relates to the duty owed by a coach or school in the context of high school versus college. Instead, it seems apparent that the duty owed is almost always going to be reasonableness.

The determination of whether a duty is owed is not always clear. In some instances, a duty is not owed to the athlete due to the circumstances surrounding their injury. In *Kennedy v. Robert Morris University*, the court distinguished *Kleinknecht* and held that the university did not have a duty as it relates to the athlete's stunt group during their training camp under the supervision of the association's instructors.<sup>79</sup> Thus, even though the university had a duty relating to the selection of the camp, that duty did not extend to an injury that occurred at the camp.<sup>80</sup> Meaning, the duty owed is not always easily established and often varies at times. Notice that the cases in this collegiate context are between the

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74. M. Alexander Russell, *Leveling the Playing Field: Identifying a Quasi-Fiduciary Relationship Between Coaches and Student-Athletes*, 43 J.L. & EDUC. 289, 299 (2014).

75. *Id.*

76. *Id.*

77. William H. Baker, *Injuries to College Athletes: Rights and Responsibilities*, 97 DICK. L. REV. 655, 686 (1993).

78. *Id.* at 688.

79. *Kennedy v. Robert Morris Univ.*, 133 A.3d 38, 43-44 (Pa. Super. Ct. 2016).

80. *Id.* at 42.

university and the athlete, not specifically the coach. This fact is important to remember because although the coach is a part of the university, the duty owed might be slightly different. For instance, in *Moose v. Massachusetts Institute of Technology*, there was a determination as it relates to the collegiate context that the coach who provided ineffective equipment could be held liable for such conduct.<sup>81</sup> Additionally, in a very recent case that as of now has not yet been decided, a former University of Oregon football player is suing two of his coaches and the university for injuries that he sustained.<sup>82</sup> The former player is alleging a multitude of negligence claims against two of his coaches centered around the type of punishment they would employ against the student-athletes, the lack of proper supervision during practice, and the lack of training for the coaches overall.<sup>83</sup> All of these cases, as it relates to the conduct of coaches and the subsequent injury of an athlete, have no clear standard to follow. Instead, it appears that courts tend to impart their jurisdictions separate proximate cause tests for negligence, such as the directness test, foreseeability test, or the substantial factor test. Again, the purpose of this Comment is to establish that instead of relying on separate tests to determine whether a coach is liable for the athlete's injury, a more uniform approach should be imparted.

*C. How courts have decided cases related to an athlete's injury in collegiate athletics*

Generally, negligence is the basis of liability as it relates to an athlete's injury.<sup>84</sup> In order for an athlete to prevail on their negligence claim, they must prove that the coach owed a duty to them and breached that requisite duty—which we know as reasonableness—and that they suffered some harm.<sup>85</sup> A coach even owes the duty of reasonable care as it relates to mitigating and avoiding any foreseeable risk of harm to the athlete.<sup>86</sup> That being said, all the coach has to do in the collegiate context is show that they satisfied the duty they owe.<sup>87</sup> If a coach can show that they minimized the risk of injury to their athletes and satisfied their duty, they will likely not be found liable.<sup>88</sup> In following this, courts have used different tests to answer whether a coach is liable for an athlete's injury in the collegiate context.

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81. *Moose v. Mass. Inst. of Tech.*, 683 N.E.2d 706, 709-11 (Mass. App. Ct. 1997).

82. *Brenner v. Taggart*, No. 19CV01516, 2019 WL 162023 (Or. Cir. Jan. 9, 2019).

83. *Id.*

84. *McGirt*, *supra* note 73, at 238.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 238-39.

In *Searles v. Trustees of St. Joseph's College*, a college basketball player brought a claim against the coach and other agents of the university for a knee condition that he became diagnosed with and led to his subsequent inability to play basketball in the future.<sup>89</sup> The court easily decided that the coach did owe a duty to the player, which is an element that is often found without complication.<sup>90</sup> The coach owes a duty to the athlete because they must exercise reasonable care for the health and safety of the athlete.<sup>91</sup> The court, in this instance, utilized a form of directness test and made the determination that the athlete did not prove enough to satisfy on summary judgment that the coach's breach of his duty proximately caused the injury.<sup>92</sup> Therefore, the court overruled the summary judgment on the negligence claim against the coach and stated that this is a jury issue of material fact.<sup>93</sup> *Searles* shows just how many loops an athlete must jump through to prevail on their negligence claim. The issue is that even if the athlete prevails on his claim, there is not much precedential value for other jurisdictions. The goal here should be to adopt a rule as it relates to negligence claims by an athlete against their coach that is consistent and comprehensible. In *Searles*, the separate courts themselves could not even agree to whether there was a genuine issue of a material fact or if the athlete had done enough to satisfy his burden. This state of confusion and blurriness is the very reason to implement a more reliable standard for liability.

Another case that has addressed the imposition of whether a coach should be liable for an injury their athlete sustained is *Lamorie v. Warner Pacific College*.<sup>94</sup> In this instance, a basketball player was struck in the face causing re-injury to his nose and eye during a scrimmage.<sup>95</sup> The court employed the foreseeability test for proximate cause as the main determinant of whether or not the coach should be held liable for the athlete's injury.<sup>96</sup> Ultimately, the court decided that there was a genuine issue of material fact and that it could be foreseeable that an athlete could sustain an injury or re-injury to his nose and eye during the scrimmage.<sup>97</sup> *Lamorie* is another example of how a court relies on a separate test and standard to determine whether a coach should be liable for an injury that an athlete sustains. Ultimately, the court decided that there was

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89. *Searles v. Trs. of St. Joseph's Coll.*, 695 A.2d 1206, 1208 (Me. 1997).

90. *Id.* at 1209.

91. *Id.*

92. *Id.*

93. *Id.* at 1210.

94. *Lamorie v. Warner Pac. Coll.*, 850 P.2d 401, 402 (Or. Ct. App. 1993).

95. *Id.*

96. *Id.*

97. *Id.* at 402-03.

at least some chance that the coach should be liable, but there was yet another disagreement between the separate levels of the courts.

Overall, it seems clear that courts struggle with whether a coach should be held liable for the athlete's injury or not. The difficulty appears to reside in whether there is an increased or heightened duty that the coach owes his athletes at the college level and the adoption of a clear rule regarding liability.<sup>98</sup> The goal for courts should be to adopt a clear standard that both student-athletes and coaches are aware of as it relates to liability. The only foreseeable difficulty is the fact-by-fact analysis that is almost always considered and vital within negligence cases.

#### IV. RECOMMENDATION FOR COLLEGES: THE STANDARD THAT COLLEGIATE ATHLETICS SHOULD ADOPT

The standard that colleges should adopt is a modified intentional and reckless standard. Among all of the standards I have outlined throughout this Comment, the best option for collegiate athletics is the intentional and reckless conduct standard that was presented in *Kahn*. Although, *Kahn* will have to be adapted to acknowledge and impart the special relationship that exists in collegiate athletics and not in high school. The best way to modify *Kahn* to address a special relationship is for that to be the first step in the analysis. Thus, to start the inquiry of whether a coach is liable for an athlete's injury in the college context, the first question should be to ask whether a special relationship exists. If there is a special relationship, then the analysis should move forward to determine whether the coach intentionally injured the student or engaged in reckless conduct that caused or contributed to the athlete's injury. If the court finds no special relationship, then the claim by the athlete would fail. However, due to previous rulings on such a special relationship, it would seem likely that this would not be difficult to prove for the plaintiff.

The benefits of having a uniform approach to liability related to the coaches, athletes, and injuries sustained cannot be understated. Below are three justifications for why this intentional and reckless standard is the preferred option as opposed to the other standards mentioned within *Kahn* and the collegiate case law that currently exists.

First, uniformity of law is of vital importance and has proven to be applied by the NCAA.<sup>99</sup> The NCAA has long valued a form of consistency and steady application of procedures. Therefore, the utilization of a standard that has widely been adopted in youth athletics, specifically high school, would

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98. McGirt, *supra* note 73, at 240.

99. Nat'l Collegiate Athletic Ass'n v. Miller, 10 F.3d 633, 639 (9th Cir. 1993).

constitute a form of transition that is ideal for collegiate athletics. Moreover, the intentional and reckless conduct standard allows for fewer variations or erratic results. For instance, in normal negligence cases, the facts are of utmost importance and cause sporadic results.<sup>100</sup> However, there seems to be more of a clear line with the intentional and reckless conduct standard. In order for the coach to be found liable, there must be a precise instance of conduct by the coach that injured the student or that the coach engaged in conduct that was reckless.<sup>101</sup> Thus, the analysis will shift to decide if the conduct was reckless in nature or if the coach directly or should have foreseen that their conduct would cause injury.<sup>102</sup>

Second, college student-athletes are adults and more aware and understanding of their rights than high school or youth athletes. If any standard were to be shifted, a better argument exists that the high school rule for coach liability for player injuries should be altered. In fact, youth athletes suffer a greater proportion of sports-related injuries—specifically brain injuries—than collegiate athletes.<sup>103</sup> The brain and overall body composition of a young athlete are constantly shifting and still developing.<sup>104</sup> Conversely, the older and more mature an athlete gets, the more their body becomes adaptive and responsive to physical exertion.<sup>105</sup> In contrast, youth athletes remain particularly susceptible to injury with rapid changes in their bodies.<sup>106</sup> Consequently, it seems rather apparent that collegiate athletics' proper standard would be the intentional and reckless standard while courts should alter the youth and high school standard.

Third, coaches need the ability and latitude to find ways to encourage and motivate their athletes. The role of the coach in the life of an athlete, regardless of the level of sport, is one of the most important.<sup>107</sup> Moreover, coaches have a lot of responsibility and discretion when making decisions regarding practice or training.<sup>108</sup> Although a coach may have a good amount of leeway regarding decision-making, it is not absolute. The intentional and reckless conduct

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100. Ryan Mulkins, *High-School Football Injuries: Who Besides the Players May Take a Hit?*, 2 WILLAMETTE SPORTS L.J. 1, 23 (2005).

101. Kahn v. E. Side Union High Sch. Dist., 75 P.3d 30, 32 (Cal. 2003).

102. *Id.* at 47.

103. Luke M. Gessel et al., *Concussions Among United States High School and Collegiate Athletes*, 42 J. ATHLETIC TRAINING 495 (2007).

104. Andrew W. Breck, *Keeping Your Head on Straight: Protecting Indiana Youth Athletes from Traumatic Brain Injuries Through "Return-to-Play" Legislation*, 9 IND. HEALTH L. REV. 215, 218 (2012).

105. Melissa Corso, *Developmental Changes in the Youth Athlete: Implications for Movement, Skills Acquisition, Performance and Injuries*, 62 J. CAN. CHIROPRACTIC ASS'N 150, 154 (2018).

106. *Id.* at 156.

107. See Herbert, *supra* note 15, at 125.

108. *Id.* at 128.

standard will not allow coaches to get away with any and all conduct. Instead, a coach would still be found liable for a player's injury if they did something to cause the injury or failed to train the athlete adequately to prevent injury.<sup>109</sup> The purpose of this standard is not to prevent athletes from recovery but rather to ensure that liability is properly imposed when it is fully necessary. Coaching requires pushing athletes and pursuing the best version of a team possible; thus, it should be reasonable for an athlete to expect that, unless the coach intentionally or recklessly places the athlete in a poor position, the coach is not liable.

#### CONCLUSION

Coaches are prominent figures in an athlete's life. Most professional and collegiate athletes grow up playing sports and formulating relationships with their coaches and mentors. Since the beginning of an athlete's sports career, their coaches train and lead them, becoming a significant part of their lives. When an athlete pursues legal recourse, the coach is often implicated. There is no question that a coach has a duty to their players, but what legal standard is that duty to be gauged by? An understanding must be established between the coach and the athlete as it relates to the expectations of their relationship and what exactly the coach is liable for. In high school, it seems that the intentional and reckless conduct standard set forth in *Kahn* is mostly applied.<sup>110</sup> However, in collegiate athletics, there is no clear answer, which is concerning. Thus, the purpose of this Comment has been to analyze the types of liability and negligence claims across the spectrum of athletics and determine what standard is best for collegiate athletics.

The answer seems rather clear that the most appropriate and well-balanced approach would be to further apply the standard in *Kahn* to that of collegiate athletics as well and modify it by including a special relationship analysis regarding the coach and athlete relationship. The three justifications for such a standard are uniformity in applying the law, the college athlete's understanding and increased maturity, and the coach's necessity to have latitude on motivating and training their athletes. The application of such a standard should allow for more consistent coaching and better athletics overall. Furthermore, if an athlete pursues a claim, the court and the parties involved will have fewer questions as to how to adequately defend or justify such action. Overall, the current intentional and reckless conduct standard regarding the liability of a coach for an athlete that has been widely adopted from *Kahn* and utilized in youth and

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109. *Id.* at 128-31.

110. *See* *Jaworski v. Kiernan*, 696 A.2d 332, 337 (Conn. 1997).

high school athletics should be slightly modified and further applied to collegiate athletics.