Whose Duty?

Injuries are inevitable and, to some extent, unavoidable in the martial arts, but instructors have a duty of care and as such are obliged to take certain steps to prevent them occurring.

There's no doubt that injuries will occur, however, certain people owe participants a duty of care to ensure that there is as small a risk of injury as possible. These people include the participants, the event organisers (probably including coaches), and the occupiers of the premises. It must be noted, however, that liability can be avoided in a number of ways, such as acting in a reasonable manner, or placing adequate warnings about the risks involved (although warnings are sometimes, if not often, considered insufficient to mitigate the risk). Most importantly, and especially within the context of martial arts training, is for all those involved to abide strictly by the rules of the martial art so as to remove any possibility of unforeseeable or unreasonable harm to a participant.

A decision of the High Court of Australia in 2002 (*Woods v Multi-Sport Holdings Pty Ltd*) considered that the common law did not require a warning to be installed to alert players to the risks associated with a sport that carried occasional risks of injury, such as collision and body blows from the ball used in play, as such risks were self-evident. As a result, it seems that many potential injuries in martial arts would be considered inherent risks of the art.

The common law tort of negligence applies to sports activities in a number of ways. Sports competitors owe a duty of care to one another to avoid a foreseeable risk of injury (*Fraser v Johnston*, 1990; *Aust Torts Reports*). This liability is determined on the basis of reasonableness. In other words, did the person who inflicted the harm act unreasonably within the context of the sport? Factors used to consider the reasonableness of the conduct are the nature of the sports activity, the rules of the sport, the extent to which the defendant's conduct surpassed the expected conduct of the sport, and the circumstances in which the conduct occurred (*Fraser v Johnston*, 1990; *Aust Torts Reports*).

In martial arts, a breach of this duty is foreseeable if one competitor attacks the other in an unauthorised way. For example, if two martial artists are practising non-contact sparring and one ends up battering his opponent, there would probably be a strong argument that this conduct was unreasonable and uncontemplated by the opponent, as he was only consenting to non-contact participation.

The tort of 'trespass to person' may also apply in a sporting context. One martial artist may be liable for trespass to his opponent if he is found guilty of foul play outside of the rules of his sport through the injury of his competitor (*McNamara v Duncan – 26 ALR 584*, 1971). A person will not be liable in a case where the injury occurred within the prescribed rules of the sport, as the participants are deemed to have consented to interferences that are commonly seen as incidental to the activity (*Hilton v Wallace*, 1989; *Aust Tort Reports*). An example of how such a situation might arise is if one opponent intentionally hits or kicks the other in an area of the body not prescribed by the rules, such as the groin. On the other hand, if the kick is not deliberate and arises out of an unforeseen movement by the plaintiff, it may be considered incidental to the sport and therefore liability for trespass to the person may not be found.

Additionally, an organiser of an event owes a general duty of care to protect against potential harm of participants where possible (*Emmett Manning – 40 SASR 297*, 1985). This would likely apply to the coaches and/or the coordinators of the training or competition. Also, an occupier of premises, such as the owner or tenant of the gym or training centre, should take reasonable care to ensure that the space is safe, and a mere warning of the potential dangers will often not be sufficient to discharge the liability (*Nowak v Waverly Municipal Council*, 1984; *Aust Torts Reports*).

In one case (*Travali Pty Ltd v Haddad*, 1989; *Aust Tort Reports*), the occupier of a skating rink was found liable for injuries to the plaintiff, an inexperienced skater, after he was ordered to use the rink devoted to experienced skaters. One can easily imagine a similar situation occurring in the context of martial arts, whereby a less experienced martial artist would be pressured to spar with or compete against a person with a much higher skill level.

It's important for all practising martial artists to understand the basic laws governing negligence and duty of care, especially in a society that is becoming more and more litigious. From a statistical point of view, however, there's no available indicator of the number of legal actions that involve martial artists being taken over the last decade. Therefore, we can assume that martial artists have by and large kept out of legal system. Nevertheless, one cannot ignore the High Court's development of the law of negligence, and some States' incursion into the common law of negligence.

If you're in doubt as to your legal rights and obligations, make sure you seek independent legal advice.

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