DEAR READERS: Do you have a legal question that has been burning in your mind (but are afraid to ask an attorney…ching…ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q: My son plays basketball at his high school, so I signed a consent form/release in case he gets injured. Sure enough, he broke his ankle during practice. Will the form I signed prevent us from suing the school? J.S.

Dear J.S.: Umm…good question. It prompts the proverbial reply" "Simple question — complex answer".

The form that you are referring to is probably a Consent/Release of Liability Form that is fairly common, not only in school sporting activities, but may also be presented to anyone who joins a health club, joins a Yoga class, or takes their kid to a summer camp. The Release is considered a binding contract—so read it carefully. Generally, in order for the Form to be enforceable, it must meet three criteria: 1) the language must be clear and ambiguous; 2) the act which may produce the injury must be reasonably related to the object or purpose for which the Release was signed; and; 3) the Release cannot be against public policy.

Legal babble. I know. The bottom line is this—most sporting activities are inherently dangerous, whether it is high school sports, skiing at Tahoe, or teeing off at the beautiful nine-whole course at Northwood in Monte Rio. California courts have rightly acknowledged an inherent risk and danger with such activities, and thus a legal doctrine called "primary assumption of risk" is in play. (For the bookworms, check out the key California case on wwww.findlaw.com—*Knight v. Jewett* (1992) 3 C4th 296).

You see, in order for "someone" to be liable or take responsibility for an injury, there must be a duty and a breach of that duty. When it comes to activities that are inherently dangerous, such as competitive or cooperative sports, the California courts have held that there is **no duty** to protect against inherent risks—in essence, the participant/member who willingly and voluntarily plays the sport assumes the risk. If there is no duty, there is no breach, and thus no recovery, meaning…no moula for the injured athlete.

A quick (and I mean quick) preview of California cases tells the story. Our courts have held there is NO RECOVERY for: touch football—a player stepped on another player's hand; 2) two skiers who collided on the slopes; 3) a girl scout who was thrown from a "jumpy" horse while at camp; 4) a kid who lost his front teeth when a baseball was thrown at him at practice; and 5) an extended elbow that caused injury in basketball.

Does this mean that all sporting activities are immune from liability? No…..because for every general legal principle (like "assumption of risk"), there are nuances and

exceptions. Liability may attach is there is **reckless or intentional** conduct that leads to the injury. For example, if a child is injured at recess on the school playground due to inadequate supervision, the school may be liable, even if a Release is signed. Or if a skier is descending the Tahoe slopes, fired up with Irish coffees and hot-buttered rum, he or she may be held liable if they slam into another skier. Or if a member of a health club is injured from a defective bench that collapses in the sauna, the health club may be responsible, even if a Release is signed.

A Release will not totally immunize a school district, but is a good booster if the nature of the activity is inherently dangerous and the school has not engaged in any reckless or intentional conduct that leads to the injury. Enjoy the game!

Debra A. Newby is a resident of Monte Rio and has practiced law for 26 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in historic Railroad Square in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email (debra@newbylawoffice.com), phone (707-526-7200), fax (526-7202) or pony express (10 Fourth Street, Ste 212, Santa Rosa, 95401).