

Validity of declarations to waive liability in contact sports

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Introduction

Contact sports are sports where physical contact between players is important or necessary and is involved such as Martial Arts, Karate, Sky-diving etc. Many adventure sports activities, also known as Extreme sports, are being conducted in the country for the youth, with elements of bodily risk involved. Only people with a strong mind and a healthy body are expected to participate in contact sports. If you're thinking about Contact sports, there are a few things you should know before you go. Before going in for this kind of sport activity, the participant needs to sign a Waiver Form because it has risks associated with it. In the cases of fitness, recreation and extreme sports, wounds occur. And where injury occurs, proceedings are brought and the suppliers of those activities suffer financial loss. Activity providers therefore need to take care in two ways to manage risk. First, steps should be taken to reduce the likelihood of injury as far as possible. Second, to protect themselves and the company from the risks associated with financial losses, they should do everything possible. The reason behind its dangerous level is due to the Injuries, Traumas such as [Chronic Traumatic Encephalopathy\(CTE\)](#). So, waivers are signed because a waiver may protect the supplier against liability for negligence damages caused by the supplier. An exemption does not generally protect the supplier against liability for extreme actions. The following steps are to be followed to waive the liability :

- (i) waiver under law;
- (ii) negligence in relation to the right to sue, and
- (iii) the legality of a Participant Form signed by a guardian/parent for the participation of their minor children.

In general, adventure sports involve people over the age of eight, who are classified into two age categories, one for children and the other for adults. One parent or guardian will accompany the child on the course to keep an eye on them while they participate in the 'kids group' adventure sports. Parents and guardians are not permitted to participate in the adventure sport(s), but they must be present to assist

their children and ensure that they obey the adventure sport's restrictions in order to complete it safely (s). Adventure sports include inherent risks and dangers that participants may be exposed to when completing / participating in the adventure activity (s). Drowning, near-drowning, sprains, strains, fractures, heat and cold injuries, overuse syndrome, incidents with vehicles or other conveniences, and animal attacks are all examples of serious body harm.

We will now discuss the legal provisions governing the Waiver of Liability in Contact Sports and Adventurous Sports :

Legal provisions governing the waiver of liability

1. In accordance with the relevant provisions of the [Indian Contract Act 1872](#) ("ICA"), all contracts are contracts if they are entered into for a legitimate and legitimate purpose by the free consent of the parties and are not declared invalid under the provisions of the ICA. Free consent for a valid contract is an essential requirement. Consent is said to be free if it is not caused by coercion, excessive influence, fraud or misconception.

2. The consent of the contracting party shall be derived from the persons responsible for the contract and the parties shall be capable of entering into a contract.

- I. Persons who have a sound mentality;
- II. Persons who are a majority of people, that is, 18 years of age or older;
- III. Persons who, except under law applicable to each other, are not disqualified.

3. Under Section 3(1), of the [Indian Majority Act of 1875](#), a maximum age of every person residing in India, except for persons for whom a court-appointed guardian was appointed, is considered to be reached at the age of 18 years after the age of the majority at which the court has appointed him to the age of 21.

4. In Section 4(a) of the 1956 [Hindu Minority and Guardianship Act](#), "minor" is defined as an individual that is not eighteen years of age.

5. Under Section 8(1) of [The Hindu Minority and Guard Act of 1956](#), the natural guardian of the Hindu Minority is entitled to do all acts necessary or reasonable and appropriate for the benefit of the minor or the exercise, protection or benefit of the minor's estate, subject to the provisions of that section. But the guardian shall not, in any way, be entitled to bind a minor on a personal agreement.

6. "Guardian" means a person who has responsibility for the care of a child or his property or both his person and his property and consists of:

1. a natural guardian,

2. a guardian, designated by the will of the child's father or mother, (Hindus Minority and Guardianship Act 1956),
3. a court appointed guardian or declared, and
4. a person authorized as such to act by or on any act in connection with any Court of Ward.

Legal authorities : waiver

A waiver is the abandonment of a right which is explicit or implicit in conduct. A person entitled to a statutory clause may waive that statutory clause and allow the transaction to take place as if it did not exist.

1. Waiver is 'willingly and deliberately renouncing or surrendering to a known, existing law, profit, claim or privilege that the party would have liked except for such renouncement.

2. Waiver is express or implicit; explicit when the person who expressly and in terms is entitled to something gives up it almost looks like a release; implied when the person entitled to something else acts or acquits anything other than what he or she is entitled to.

3. It is settled law that pursuant to Section 63 of the ICA a promised person is free to dispense, totally or partly, of the fulfilment or satisfaction of the promise made to him. Waiver is the surrender of a right that everyone is normally free to renounce. "Unless it is released, a waiver is nothing. It only means an attempt not to emphasise the right."

4. Release/exemption shall be contractual in nature and shall be subject to contract law. A valid release/waiver must therefore include all the ingredients in a valid contract, bearing in mind that release is the renunciation by a person of a right, claim or privilege to the person against whom the right, demand or privilege could have been requested or enforced.

Negligence in relation to right to sue: case laws

1. In the case of [Mala Devi vs. The State Govt. of NCT of Delhi](#) [W.P.(C) 7178/2012] and [Smt. Madhubala vs. Govt. of NCT of Delhi and Ors.](#), the court said When an individual is fully aware of risk of failure of the procedure/operation and he/she writes in favour of the doctor/health centre conduction operation not being responsible for successful operation by either him/her or her families or any other person, the claim cannot be made for compensation because of a failure of the sterilisation procedures.

2. In the case of [M.N. Rajan And Ors. Vs. Konnali Khalid Haji And Anr](#), the concept of "negligence" implies that the degree of attention, care and vigilance required by the circumstances to prevent such an other person from being harmed, is

not observed in order to protect the interests of an individual. The test of negligence is a lack of proper attention and care, which is anticipated in the circumstances of a particular case by a cautious person.

3. In the case of [Sudha S. and Others Vs. Union of India and Others](#), the Court determined, while determining whether the organisers of the air show had taken proper care to perform the air show, that there was no experience of the air show organisers in the arrangement of these events in the past, and that no written procedures were set and circulated for the participants during the air show before the show was held. The Court found the organisers to be careful in the conduct of the air show and liable for the compensation on the grounds of the above observations.

4. If a person agrees not to take any measures against the other party for the incident/non-occurrence of any particular event(s) if the other party is unable to initiate any proceedings against him/her in view of the above-mentioned precedents (s). If the other person (organiser) is negligent and the other person (organiser) owes a duty to look after him who gave consent, the person (who gave his consent) is entitled to the cost/products/compensation for negligence from the other person (or organiser) who gave his consent.

Participant form signed by parent / guardian for participation of minors

1. When the age of majority has been provided by law to be 18 years, any person less than that age, even by a day, would be a minor in law. [See: [Bhim Mandal v. Magaram Corain.](#)]
2. A minor has no legal competency to enter into a contract or authorize another to do so on his behalf. A guardian therefore steps in to supplement the minor's defective capacity. Capacity is the creation of law whereas authority is derived from the act of parties. The guardian can only function within the doctrine of legal necessity or benefit. The validity of the transaction is judged with reference to the scope of guardian's power to enter into a contract on behalf of the minor. This was stated in the case of [Vadakattu Suryaprakasham v. Ake Gangaraju.](#)
3. It is well settled law that the guardian can in no case bind the minor by a personal covenant. As per [Black's Law Dictionary](#) 'personal covenant' means a covenant that creates a personal right or obligation enforceable only between the covenanting parties and that is not binding on the heirs or assigns of the parties.
4. In the instant matter, the Participant Form is a contract and will be binding upon the participants so long as the conditions of a valid contract are satisfied. So far as minors are concerned, they are incompetent to enter into a contract and therefore a minor participant should not sign the Participant Form on his/her own.
5. As the age of majority is 18 years under law, any person less than 18 years of age, even by a day, will be a minor in law. Therefore, the participation of minors ought to be facilitated by the parent / guardian of such minor participant to the adventure sports by signing the Participation Form.

6. Further the parents/guardians of the minor participants shall be bound by the terms and conditions of the Participation Form. However, keeping in view the applicable laws, the terms and conditions of the Participation Form shall not bind the minor participants. Meaning thereby, the terms and conditions of the Participation Form cannot be enforced against the minor participants and such minor participants may raise/make claims against Organizers for any injury/loss/damage caused to such minor participants during the Obstacle Race.
7. Inclusion of indemnification provisions in the Participation Form to be given .

Conclusion

Based on the legal regulations, precedents and analysis provided above, a Participation Form duly signed by the Participant (the qualified person or by the parent/guardian) shall bind the Participant Participant with the Participant Form Conditions. Organizers should inform all the participants as regards the rules, regulations, procedures, safety instructions, methods, policy course, guidelines and other guidelines, if any, as far as adventure sports are concerned. If a minor (under 18 years of age) participant in adventure sports is the parent/guardian of the minor participant, the parent/guarder of that minor participant should sign the participative form for the minor in the adventure sports. A member's parent/guardian should not comply with the terms of the participatory form (s). If, due to negligence of the Organizer, any participant in conducting or organising the adventure sport(s) has caused damage, injury, disability, harm, liability, loss or expense, the participant concerned may initiate civil/crimes in those cases.

References

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