

RISK MANAGEMENT IN VENUES

Steven A. Adelman

I. INTRODUCTION TO THE COURSE MATERIAL



Much of the legal foundation of sports and entertainment risk management is the law of torts and contracts. The elements of both are relatively easy to list. Once you can recite *duty-breach-causation-harm*, along with *comparative fault* and *reasonableness*, you have assembled most of the basic tools contained in the tort lawyer's toolbox. Contracts are comprised of only three elements: *offer, acceptance, and consideration*. It looks so easy, you might wonder why law schools devote an entire first year course to each subject, much less why you might want to take this class. Forward-thinking students might even ask how any intelligent lawyer could spend a career litigating cases that turn on tort or contract disputes.

In the world of live events, our facts are always interesting, often bizarre, occasionally catastrophic. Procedurally, cases involving risk management are particularly well-suited for discussion, argument, and hypotheticals, all of which will help you learn to think through risky situations. Given the myriad ways in which people hurt themselves and others and break things, this requires only modest creativity on my part – many of our fact patterns will be "ripped from the headlines."

The centerpiece for the Spring, 2017 version of this course will be a deep examination of the August 13, 2011 Indiana State Fair stage roof collapse just before a Sugarland concert, which left seven people dead and more than 50 others injured, caused more than \$50 million to change hands, and resulted in array of legal challenges that continues to this day. Through research, individual presentations, and group discussion, we will explore what happened, whether it had to happen, and what lessons a reasonable person should learn.

The devil, and the education, is in the details. I aspire to follow the classic (fictional) pedagogical method of Professor Charles Kingsfield from *The Paper Chase*:

*You teach yourselves the law. I train your minds.
You come in here with a skull full of mush, and if
you survive, you'll leave thinking like a lawyer.*



II. HOW THE COURSE MATERIAL RELATES TO YOU

Here are our goals for this course. First, we will sensitize you to the vast array of risk that sports and entertainment organizers must accept as a cost of doing business. We will explore the human frailties that characterize both the people who create live events and the people who attend them. We will learn to distinguish unavoidable risks that must be managed from avoidable risks to be identified, addressed, and even eliminated. We will dive into the parade of horrors revealed to people who know how to look at risk. This elite group will soon include you.

Second, we will identify potential solutions to problems. Although we will definitely engage in *schadenfreude* (taking pleasure in other people's misfortune), my hope is that as the laughter dies down, you are enveloped in a sense of personal unease as you realize that you would have made the same mistake. I believe we learn much more once we accept how little we truly know.

Finally, once you are imbued with a proper appreciation of the mayhem and resulting legal trouble that lurks around every corner of the world of live events, as well as the gospel of risk management, we will teach you to be ambassadors to the industry. The resiliency of the live event business, notwithstanding the injury, death, and destruction that we will discuss each week, can lead to a Nietzschean sense that "that which does not kill us makes us stronger." When you finish this course, you will be well-equipped to combat the institutional complacency you will likely find among your less-educated peers.

III. ABOUT YOUR INSTRUCTOR

I got into the law regarding live event safety through a lawsuit, during which a young man attending a stadium music festival nearly died of asphyxiation in a general admission crowd. Through that case and many that have followed, I have learned from the inside out how live events are organized and operated.

I will share the details of my background as the semester unfolds. In the meantime, feel free to explore my web site, www.adelmanlawgroup.com.

For our purposes, my practice emphasizes two skills I consider valuable: detective, then storyteller. Suffice to say that I am deeply immersed in the business of live event production and operation, and I am deeply committed to the idea that people should be able to attend live events and return home safely.



IV. SYLLABUS

Being adults, we will take advantage of the luxury of not being slaves to a rigid schedule. The energy of our discussions, and the learning that comes from them, will determine exactly when we move from one issue to the next. Here are the topics we will cover.

Introduction to Risk Management in Venues

- Defining the basic terms
- The legal foundation for risk management
- Duties of care in sports and entertainment venues
- Sources of those duties and the applicable standards of care.

Examples will include the “Baseball Rule,” tickets and other “adhesion contracts,” and a gallery of warning signs.



Legal Limits of the Duty of Care

- Identifying the “reasonable person under the same or similar circumstances”
- What does the reasonably foreseeable patron in entertainment venues do?
- Given the reasonably foreseeable patron (mis)conduct, what might reasonable risk mitigation might look like at different venues?

We will discuss violent incidents in stadium parking lots, recent active shooter incidents, the cult of “situational awareness,” how people have behaved in life-threatening crises, and theories grounded in human psychology about why we act the way we do. Our discussion will include lessons learned from the pages of two entertaining books about disasters, *The Unthinkable*, by Amanda Ripley, and *The Myth of Choice*, by Kent Greenfield.

Proximate Cause and Comparative Fault

- Dram shop law and responsibility for intoxicated patrons
- Drugs, moshing, crowd surfing, and other prohibited but reasonably foreseeable conduct
- The third rail of live events: EDM
- Crowd management theory.



In this section, will begin to apply the legal and psychological lessons of the first two parts of the course. Some of our material will come from my own case files, significantly supplemented by *Killer Show*, a gripping insider account of The Station nightclub fire and resulting litigation, written by the head of the Plaintiffs’ Steering Committee in that case, John Barylck.

Case Study: The Indiana State Fair

The August 13, 2011 Indiana State Fair stage roof collapse offers something for nearly every taste, which is good because each student will be asked to choose an issue to research, write about, and lead the class in a discussion. Here is a sample of issues I find compelling:



- Force majeure: the legal concept of an “act of G-d;”
- Severe weather: the foreseeability of summer storms to an event promoter in the middle of North America in 2011;
- Technology: tools available for promoters to manage the risks that severe weather poses to large outdoor events;
- Engineering: how can a temporary stage roof blow down?
- Communication: how might event organizers have spread information better among each other and out to the crowd?
- Tort reform: how to compensate the victims of mass casualty incidents;
- Social justice: significance of the fact that one of the dead was in a same-sex union from another state;
- Contracts: whether the stage roof provider should have been fully indemnified for its mistakes, as specified in the express language of its agreement.

The Indiana State Fair case will allow students to play the two key roles for this class: detective, then storyteller. There is ample primary and secondary source material available on the Internet, and because I was an expert witness in the lawsuit that followed, I may have helpful nuggets of information for students who ask the right questions.

V. GRADING AND ADDITIONAL NOTES

In this class, we will modify Woody Allen's quip that "eighty percent of success is just showing up." Here, in addition to requesting the pleasure of your company each week, I will base student grades on the final project, whose oral and written components will be evaluated in roughly 30% and 70% shares, respectively. I will not expressly evaluate anyone's class participation, but in a course like this in which finding a reasonable answer is no more important than learning to ask good questions, you will learn more if you engage in the process yourself.

I will be happy to meet students before or after class, or by appointment. Here is my contact information:



Steven A. Adelman
Adelman Law Group, PLLC
8776 E. Shea Blvd., Suite 106-510
Scottsdale, AZ 85260
PH: 480-209-2426
E: sadelman@adelmanlawgroup.com
www.adelmanlawgroup.com