

**QUESTION 1 (20 Points)**

**Question 1. A.** Please explain how these four tenets apply in this situation. Please give your opinion, based on these tenets, of whether the Smith Family will meet the burden of proof to successfully sue SU-ME under the theory of negligence. Please be specific and on point.

**Answer:** The university has a duty to keep all patrons safe when they are visiting their facility. By having an old backstop that has “ragged looking spots”, the university is not supplying a safe barrier between the field of play and the stands, which is a breach of duty. If the university had inspected the netting fully they should have foreseen the backstop giving way to a ball at some point in the near future, which is proximate cause. The injuries that occurred to the kid were the concussion and the broken arm as a result of the ball going through the net and then falling down the stairs.

The university cannot say they did not know that this accident was going to happen, because that could be a sign that they do not inspect the facilities. If they did see the problem and chose to ignore it until an incident occurred the university is still at fault.

If the university tries to put it on the usher, the usher is their employee who was trained and is a representative of the university at the game. Since the usher did not do his job correctly it shows the university was not doing their job correctly to train their staff on keeping the patrons safe.

**Question 1. B.** What possible defenses to Negligence will SU-ME assert, and what do you feel will be the outcomes of these defenses?

**Answer:** All patrons at the game had the “Policies, Procedures, and Waiver of Liability on the back of the ticket” which could state that objects from the playing field can fly into the stands. All patrons need to be paying attention to the action on the field to know if something is coming at them. The university, also, could say they did not know the netting was bad, because there were no other incidents that have occurred. The defense could state that if the child was in his seat, he would have not been hit and falling down the stairs would not have occurred, but since the child was not in his seat they should not be responsible.

The university could also put the blame on the usher for not doing his/her job. There were multiple complaints and it was obvious that the child was not cooperating, so the usher should have taken action towards making sure the child sat down. Since the usher was in charge of that section he breached his duty to keep the people in his section safe.

I think the university, the defense, will be found negligent in this case.

**QUESTION 2 (10 Points)**

**Question 2:** Please write a memorandum to your head coach expressing your opinion as to this practice. It may be, or not be hazing. You must decide, and then base your decision to either punish or not punish, or what mechanisms, if any, you will put into place. Please be creative and all-encompassing, as this memo will be public information and could damage the reputation of the coach, if not done carefully (and harm SU-ME in the process). (Remember—this is fictional and just for my reading pleasure—and your grade)

**Answer:** My action would be to let go of the coach due to letting this occur.

# Memo

---

## State University – Middle East

To: Mr. Tennis, Female Tennis Head Coach  
From: Gary Koskinen, Athletic Director  
CC: State University – Middle East Athletic Department  
Date: 4/16/2012  
Subject: Tennis Hazing Concern

---

### Message

It has been brought to my attention about the possibility of hazing occurring on your tennis team. The incident that brought this to my attention was after your final match of the 2013 season, where one of your captains took the microphone and told the fans “Thank you for coming and supporting us, and it is a tradition that the freshman sing the fight song after the final home tennis match.” The person that brought this to my attention reported that the freshman girls’ looked embarrassed for having to do this.

This action may seem like an innocent act to get the younger athletes to feel like they are a part of the team and tradition with the team, but it could also lead to more issues of hazing in the future. As you have been trained on, hazing is defined as “an intentional, knowing, or reckless act by a person who acted alone or with others that was directed against an individual and that person knew or should have known would endanger the physical health or safety of the individual and that was done for the purpose of affiliation with, participation in, or maintaining membership in any organization”. A student athlete should not have to prove they are able to sing the fight song in a public or private place to make them feel like they are a part of the team.

After having conversations with you, your captains, and the freshman girls on your team. We have come to the conclusion that you were equally responsible for the hazing of these athletes and have decided that this action and promoting this type of treatment of student athletes cannot be tolerated.

Since you clearly knew about this tradition and did not do anything to change this from occurring, we would like to thank you for all of your years of service and getting the Female Tennis Team to where they are today. We cannot have this type of treatment of our younger student-athletes. You are officially being let go as coach of the Female Tennis Team at State University – Middle East.

Regards,

Gary Koskinen  
State University – Middle East  
Athletic Director

**Question 3:** How would you address the situation above, based on the policy, and keeping in mind ideas about discrimination, privacy, and sexual harassment (hint: discuss all of these things).

**Answer:** From the comment made at the restaurant that night of “we are dating” caused me to investigate what was happening between the coach and the student-trainer. The issue would be kept private and handled the same as if the coach and student-trainer were of different genders. I would start by interviewing/questioning the two involved. I would keep the questioning to just the two people involved to ensure that the relationship is kept private from the athletes and training staff. My first priority is to check into when the two started dating, and then if the coach is one of the evaluators of the student trainer to see if they are violating university policy. These 2 main issues will lead into my 3 scenarios:

1) If the coach and student trainer were dating before the season: This means the coach failed to properly disclose to the unit administrator about the relationship, both the coach and student trainer are in violation of the policy set forth by the university. This would be grounds for dismissal of the head coach because the relationship was kept secret from the administrator.

2) If the coach does grade or evaluate the trainer and the relationship began after the season started: I would investigate further into the legitimacy of the relationship to see if the coach is sexually harassing the student trainer by promising good grades for a relationship. I would add the head trainer to the interviewer process to see if he was aware of the relationship between the coach and the student trainer and what kind of evaluations the coach has given the student-trainer. The actions that I would take for this would be to transfer the student trainer to another team, so that the relationship could keep going while also making sure that the coach is not evaluating the student- trainer anymore.

3) If the coach does not grade or evaluate the trainer and the relationship began after the season started: I would still investigate whether or not the relationship is due to the superior position that the coach has over the student-trainer, but if all is found innocent with the relationship then nothing would be done because the relationship is not violating the policy of the university. I would keep track of the relationship to make sure that nothing changes between the two or the way the student-trainer is evaluated.

In my opinion, the most likely case would be number 2 because of the analogy I am going to compare it to. When I was student teacher I had a mentor-teacher and a person from Michigan State University that I worked with. My mentor-teacher and I would be the relationship similar to the coach and student-trainer. My mentor-teacher was not my main evaluator, but she did have an opinion on how well I did in the class. I think it would be important to have an evaluation from all of the people you are in direct contact with, which includes the head coach of the team you are working with. Therefore, my most likely action from this scenario would be to transfer the student-trainer to another team at the university so the evaluation process was not in question by any of the parties involved at the current time or in the future.

I would make sure that both the coach and trainer know that this action is because of the policy of the university. Good notes will be needed of the interviews and actions taken in order to mirror exactly what was done if other coaches are in relationships with student-trainers, so no one could come back to the school and say either the university discriminated against the same gender relationship or the relationship between two different genders.