

SPORTS LAW – EXAMINATION NOTES

Sports law touches upon many other subjects of law, including, but not limited to, criminal liability, the law of negligence, corruption, the use of banned substances, discrimination, competition law and corporate law. One of the most interesting aspects of sports law centres upon the fact that there are several different jurisdictions working together, not only in terms of national and international law, but also regarding the rules of a particular sport.

1. Sports and Criminal Liability

(a) Volenti non fit injuria

Consider the defence of *volenti non fit injuria* – that which a party consents to cannot be deemed to be an injury (*Rootes v. Shelton* [1968] ALR 33).

(b) Inherent risk of injury?

“The playing culture of a sport is the way that it is accepted as being and expected to be played by those who are intimately involved . . . It is not limited to the rules of the game but would include codes of conduct, tactics and commonly occurring incidents of foul play” (*Gardiner, et al., 2001, p.668*).

(c) Is participation consent?

Knowledge is simply evidence of assent (*Dann v. Hamilton* [1939] 1 KB 509).

“Knowledge of the risk of injury is not enough. Nor is a willingness to take the risk of injury. Nothing will suffice short of an agreement to waive any claim for negligence” (Nettleship v. Weston [1971] 2 QB 691).

However, someone involved in a lawful sport arguably accepts the risks associated with that sport with no remedy for any injuries suffered except where some act of foul play causes them (*Caldwell v. Maguire & Fitzgerald* [2001] EWCA 1054).

(d) What do sports participants consent to?

Participants in sport usually consent to intentional acts involved with participating in a sport (*Watson v. British Boxing Board of Control* [2001] QB 1134).

However, consider former Manchester United and Republic of Ireland footballer, Roy Keane's infamous description of his challenge upon the then Manchester City footballer Alfie Inge Haaland that seriously injured Haaland's knee and got Keane sent-off and banned for four games in 2001 –

“I'd waited almost 180 minutes for Alfie ... Now he had the ball on the far touchline ... I . . . hit him hard. The ball was there (I think) . . . [D]on't ever stand over me again sneering about fake injuries” (Keane & Dunphy, 2002, p.281).

See also *Smoldon v. Whitworth & Nolan* [1997] PIQR P133 where a rugby union referee was held liable for a player's injuries that resulted from a collapsed scrum. The reason for this is that whilst –

“[t]he plaintiff had of course consented to the ordinary incidents of a game of rugby football of the kind in which he was taking part ... he cannot possibly be said to have consented to a breach of duty on the part of the official whose duty it was to apply the rules and ensure so far as possible”.

(e) Who is liable for a sports participant's injuries?

Consider *Watson & Bradford City Football Club v. Gray & Huddersfield Town Football Club*, 29 October 1998 unreported H.C. judgment, case no.1997/W/97 where the defendant's employer/football club was deemed to be vicariously liable for a career-interrupting injury that the claimant suffered.

2. Sports Law and Negligence

(a) Does the ordinary rule of negligence apply?

A duty of care is involved with any negligence action: in *Donoghue v. Stephenson* [1932] AC 562 it was identified that it is necessary to –

“take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then is my neighbour? The answer seems to be persons directly affected by my act that I ought reasonably to have in contemplation” (Donoghue v. Stephenson [1932] AC 562, p.573, per Lord Atkin).

Therefore, a successful negligence claim required a duty of care and a breach of that duty due to a failure to exercise the required level of skill that was not too remote that served to bring about recognised harm (*Lochgelly Iron & Coal v. M’Mullan* [1934] AC 1).

(b) Is sport beyond the law of tort?

Anyone who claims to have a certain skill cannot be held to the same standard as an ordinary man (*Bolam v. Friern Hospital Management Committee* [1957] 2 All ER 118) so that it is possible that–

“there might be a higher standard of care according to standards of skill and playing level [so that] its practical effect is that when a Premier League side plays a non-league side in an FA Cup match, the players of the former side owe a higher standard of care” (Moore, 2000, at p.145).

However, taken to the extreme, the position would appear to be incongruous due to the possibility that two extremes of amateur and professional liability may arise in one match.

Nevertheless, in *Wilks v. Cheltenham Homeguard Motor Cycle & Light Car Club* [1971] 1 WLR 668 it was recognised that –

“a competitor in a race... must, of course, use reasonable care. But that means reasonable care having regard to the fact he is a competitor in a race . . . he is expected to go 'all out' to win” (*Wilks v. Cheltenham Homeguard Motor Cycle & Light Car Club* [1971] 1 WLR 668, p.671, per Master of the Rolls, Lord Denning).

(c) The recognition of negligence in sports law is still developing?

In *Condon v. Basi* [1985] 2 All ER 453, it was recognised that –

“there is no authority as to what is the standard of care which covers the conduct of players [of] competitive sport[s] whose rules and general background contemplate ... physical contact between the players” (*Condon v. Basi* [1985] 2 All ER 453, p.687, per Master of the Rolls, Lord Donaldson).

Therefore, this decision effectively meant that liability derived from sporting activity could be imposed upon the defendant footballer who broke the claimant’s leg with a serious foul tackle that he was also sent off for in *McCord v. Cornforth & Swansea City Association Football Club*, *The Times*, 11th February 1997.

However, it was only after nearly a decade that sport's standard of care was eventually settled on in *Caldwell v. Maguire & Fitzgerald* [2001] EWCA 1054 regarding the injuries caused by a professional jockey's careless riding during a race as being negligence.

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