



Fair play, legal liabilities and competitiveness in sports: An exploration of law of torts in sports industry

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Abstract

Fair play is a slogan in the sports industry while competitiveness underlines all sports. Participation in sports almost always entails some degree of risky behavior because bodily contact and restraint are permitted in some sports leading credence to the doctrine of *volenti non fit injuria*. Injuries are common among athletes either in organized sports competition or otherwise arising from negligence of organisers, sports federation, other athletes, spectators, sponsors and other stakeholders. Aside injuries, there are also violations of the athlete's legal right manifesting in various ways such as violence, mental torture, emotional distress, assault, physical intimidation, restriction of movement, unjust disqualification, libel, slander among others. It is against this background that legal regime of sports tortious liability is developed.

Considering likely dangers that confront participants in many sports, it is not surprising that courts have felt the need to adapt customary tort principles to meet the demands of competitive athletic activities. It is however our contention that the courts will need to do and fashion exceptionally principles to meet up with modern realities in the sports industry. This paper seeks to investigate the adequacy or inadequacy of the current legal regime on tortious liability in the sports industry in dealing with difficult and problematic situations. The paper contributes to knowledge by also examining the applicability, suitability and the legal implication of duty of reasonable care in the sports industry. The paper concludes with recommendations and argues the urgent need for modifying the laws in force for effective implementation among critical stakeholders in the sports industry.

Keywords: fair play, competitiveness, sports

Introduction

Sport is a worldwide sensation as social thing whether individual, team, federation, national or whatever level and regardless of the type of participation, for pastime, amateur level competition, registration as a profession or simply to be a spectator; sport is somehow involved in one's life. ^[1] Sport accounts for 3% of total world trade. Sport industry like other industries is protected by law. ^[3] Most sporting activities almost always entails some degree of risky behaviour. ^[3] Therefore, participants involved in recreational activities generally owe a duty of reasonable care to fellow participants. ^[4] When an individual violates this duty of care and injury results, there is the possibility for tort liability. ^[5] This paper in discussing the jurisprudential issues commences with legal analysis of common examples of torts in sports to include the trespass to person, negligence and the usual defences. It examines application of tort to different types of sports litigation with specific references to selected common cases and the judicial decisions in the selected cases to illustrate the applicability, constitutionality and suitability of law of torts in sports industry in dealing with legal liabilities in industry with within the ambit of the doctrine of *volenti non fit injuria* and contributory negligence in sporting activities given the risky nature of many sporting activities.

In conclusion, the paper contributes to literature by redefining the concept of *volentia non fit injuria* and the legal regime of tortious liability in the sport industry. There are a number of potential causes of action that an injured sportsperson may wish to consider. The most obvious are an action in either trespass to the person or negligence against the opponent who caused the injury to them. ^[6] Where

professional sport is at issue, the opposing club side may further be vicariously liable for the injuries caused by one of its employee-players. ^[7] However, there are other potential defendants and other causes of action. Where the match official has failed to keep adequate control of the game, he may be liable for the injuries caused. Likewise, if the governing body has not supplied adequate guidance on safety procedure, it may be liable. ^[8]

Common Examples of Tort and Defenses in Sport

In Sports Law, there are two common acts that amounts to tort namely trespass to person and negligence. While trespass to person on its own could amount to crime if grievous bodily harm is caused, it could on the other hand amount to tort where normal rules for the sport are being violated. It has been opined that in sport, the most appropriate form of trespass is battery, which is defined in broadly the same terms as in the criminal law.

1. Tort of Trespass to person

Where there is intention to apply unlawful force on the part of the tackler, there can be an action for the tort of trespass to the person ^[9], specifically, assault and battery. ^[10] Assault is another type of trespass to the person. It is causing another person to apprehend the immediate infliction of battery on him/her, while battery is the direct and intentional application of force to the person of another without lawful justification. ^[11]

If there would be any successful action at all in battery, intention to apply force to achieve an unlawful end must be proved. However, the problem with battery as regards contact sports is that intention to harm/touch another person

is difficult to show because the game necessarily involves one player coming into contact with, or touching the person of another and there is implied consent as regards lawful touch. Where, because of the difficulty of proving intention on a balance of probabilities, or where, for some other reasons, intention is lacking, it is our contention that actionable negligence may be established to secure claims in tortious liability.^[12]

Defences of Trespass to person in Sport

Benjamin A *et al*, is of the view that the possible defences to battery include consent (*volenti*) and contributory negligence.^[13] while *volenti* is a full defence resulting in the total failure of a claim. It is applicable where, in accordance with the maxim, “*volenti non fit injuria*”, the claimant has voluntarily assumed the risk of injury. The requirements are that the claimant must not only have knowledge that the activity in issue is risky and knowledge of the actual details of the risks but must assume or consent to them voluntarily.^[14]

Contributory negligence, on the other hand, is a partial defence in the sense that where it is shown that the claimant contributed to his injury/loss, the court can in its own discretion reduce the damages that ought to be awarded.^[15] However, in cases of contributory negligence, it is not for the claimant to prove that contributory negligence occurred, rather, the onus is on the defendant to prove to the court that the claimant has in his way contributed to the injury/loss.^[16]

2. Tort of Negligence

The most common cause of action to recover compensation for injuries suffered during the course of play is negligence. The basis of the tort of negligence is the claim that the defendant failed to observe the necessary standard of care owed to the claimant and that this negligent act caused the claimant injuries.^[17]

The foundation for modern law of negligence was first laid in the case of *Donoghue v. Stevenson*.^[18] The House of Lords addressed the question of when a relationship between individuals gives rise to a duty of care and the breach of which could sustain a claim of damages.^[19] Lord Esher in the case of *Heaven v. Pender*^[20] had earlier aptly captured the neighborhood principle when he stated that:

“Whenever one person is by circumstance placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger”

Thus, from the foregoing, it is apt to conclude that negligence is a conduct that falls below a reasonable person standard. In other words, it is the failure to exercise reasonable care that a reasonably prudent person would have in the same or similar circumstances.^[21] There are certain elements which the claimant must prove when suing under the tort of negligence, they are:

a. Duty of care

There is a relationship between the defendant and the plaintiff so that the defendant owes a duty to exercise reasonable care to the plaintiff. Thus duty could arise out of a relationship, such as between a general manager of a sports team and a spectator. It could arise out of a voluntary assumption of a duty, such as a coach giving a player a ride

home from a game. Or, duty could be imposed by statute, such as a law requiring that spectator’s bags be searched before entering a sports stadium. In these relationships, the defendant has a duty to anticipate foreseeable dangers and take necessary precautions to protect the plaintiff.^[22]

b. Breach of Duty

The defendant breached the duty of care that he or she owed to the plaintiff. In other words, did the defendant’s actions or failure to act fall below the standard of care applicable to the given situation? If there is a safety rule that is in place, that rule might be determined to be the standard of care. For example, if there is a rule requiring a soccer field to be inspected for potentially hazardous objects before play can begin, then such inspection may be determined to be the standard of care. If there is no such rule and a standard of care cannot easily be discerned, the question is how a reasonably prudent person would have behaved in the same or similar situation.^[23]

c. Proximate Cause

There must be a proximate causal connection between the negligent conduct and the resulting injury. For example; there was a hole in the netting that was designed to protect spectators behind home plate at a baseball stadium and spectator got hit in the face by a ball that went through the hole causing a serious eye injury. If the evidence at trial established that the manager of the stadium knew that the hole in the netting was there, failed to fix it; the court will find that the negligence is the proximate cause of the spectator’s injury. On the other hand, if the court found that the spectator had a pre-existing eye injury and the errant ball was not the cause of her injury, the element of proximate cause would not have been met.^[24]

d. Damages

The plaintiff has to suffer an actual injury or damages and not imaginative. It is best to exercise reasonable care that a reasonably prudent person would have while playing sport.^[25]

Defenses to Tort of Negligence

The defences to the tort of negligence in sport are similar to the defences for trespass to person. According to Eric Johnson, the defences to the tort of negligence include first the defence of Comparative negligence. With the defense of comparative negligence, if the plaintiff’s injury is at least partly attributable to the plaintiff’s own negligence, then the defendant will not be liable to the plaintiff for the full amount of the plaintiff’s damages. If the plaintiff’s relative fault is very large in comparison to the defendant, then, depending on the jurisdiction, the plaintiff may be barred from any recovery whatsoever.^[26] There is also the defence of contributory negligence. The defense of contributory negligence is a more defendant-friendly version of comparative negligence. It is used in a minority of jurisdictions in lieu of comparative negligence. Under contributory negligence, if the plaintiff’s own negligence contributed even slightly to the injuries sued upon, the plaintiff is completely barred from any recovery.^[27] Third, assumption of the risk is another defence. Despite the existence of a prima facie case for negligence, the plaintiff will not be able to recover if the plaintiff willingly assumed the potential burden that something bad might happen. Such

an assumption of the risk can implied by the circumstances or expressed in words, written or oral. ^[28]

In addition to these defenses, there are generic defenses available in all torts cases. These include the statute of limitations, which causes you to lose your claim if you wait too long to file. There are also some unique defenses that are only applicable to certain kinds of defendants, such as charities and governmental entities.

Cases of Torts in Sports

More and more acts of violence in sport are combated by tort law. For Example, in the famous case of Todd Bertuzzi vs. Steve Moore ^[29] that happened in the 2004 National Hockey League a good example of claims for damages by the plaintiff when the defendant's action is intentional. The facts of the case were, On March 8, 2004, a game was played between Vancouver and Avalanche, in the first half of Steve Moore's game of the avalanche got into a fight with Vancouver team player Matt Cooke for whom Steve was permanently banned for 5 minutes in the game, when he later returned to the field, the Vancouver exchanged the game they won and brought Todd Bertuzzi to the field and he continued to challenge Steve to fight him and when he failed to provoke him in the third half he grabbed Steve's jersey and hit him in the neck knocking Steve unconscious. Bertuzzi intentionally landed on top of Steve, causing a major obstacle for players from both teams, two of whom landed on the pile, causing Steve's head to hit rock-solid ice first after standing still for about 10 minutes, Steve was taken out on a stretcher. This incident resulted in Steve having three fractured cervical vertebrae and facial lacerations. The incident ended Steve Moore's professional career and resulted in a criminal lawsuit against Bertuzzi and a civil lawsuit against the Vancouver Canucks hockey team. The verdict in the case concluded that Todd Bertuzzi was permanently barred from the National Hockey League and justified and sought damages for the injuries sustained. ^[30]

The use of legal action in these situations where the plaintiff seeks compensation for the defendant's negligent act, is essentially based on the fact that the defendant had a duty of care towards the applicant and the duty of care in question was the breakup caused damage to the plaintiff and the plaintiff must be compensated financially for the injuries, the following areas of law in which the plaintiff seeks the claim for damages in financial terms is covered by the law of tort. ^[31]

The three major torts that are addressed in the Field of Sports are the following:

1. Unintentional Torts
2. Intentional Torts
3. Recklessness

Unintentional/ Accidental tort or negligence refers to a situation in which a person fails to perform the basic duties of care required by a precautionary measure. In these cases, the court is looking for the aspect that there was a duty of care between the two defendant and the plaintiff who were blocked by the defendant and that this action caused harm to the plaintiff, the standard of care given here by the court is what a prudent man would do if faced with the same situation. ^[32]

The case of *Caldwell v Maguire* ^[33] provides insight into the legal regime in cases of unintentional and involuntary

negligence in the field of sport. In this case, the plaintiff was a professional jockey, as were the defendants. While participating in a race, two other jockeys intentionally sabotaged the race to injure the complainant, who was later discovered in an internal investigation to be against the rules of the race. The claimant had sued the two jockeys for their acts of negligence. The injured party must prove negligence that the breach of duty of care occurred in the established case that both jockeys acted negligently. The court ruled in this case that the two jockeys owed a duty of care to the plaintiff, but at the same time ruled that they were not liable for the damages, since the court mentioned that it was a very competitive race in which all participants took part. The likelihood of injury sustained was higher than usual and therefore the defendant was not held liable.

In the case of *Bolton v Stone*, ^[34] the facts of the case were that on 9 August 1947, during a cricket match at Manchester Stadium, the opposing team's batsman knocked the cricket ball off the ground by a six, the ball hit plaintiff Miss Stone who was standing outside her home about 91 meters from the stadium from which the ball was hit. The club had been playing cricket at the same stadium in Manchester since 1864 before the road was built in 1910.

"The pitch was surrounded by fences around 3.7 meters high, but the place where the ball left the ground was 5 meters high. Passing the ball through the stadium was extremely unusual and only happened six times in the past when the ball had crossed the stadium fences, however local residents near the stadium had claimed that the balls landed in the area once or twice almost every season. The plaintiff, Miss Stone, had argued that the ball, once over the stadium boundary, was sufficient to give the club a state of alert that passers-by around the stadium were at risk of being hit by the cricket ball. The court issued a brief ruling on the following incident on December 15, 1948, stating that Miss Stone's claims could not be taken into consideration and that no one was liable for damages in the case as there was no evidence of injury in the case, for the past 38 years the club has been playing on the pitch and has also claimed that the verdict in *Ryland's v Fletcher* case did not apply to this case as the simple act of hitting the cricket ball on a nearby road was too big to handle to be considered a nuisance".

Intentional Tort

In the intentional tort, civil assault is equivalent to the conduct of the victim against a person accused of a crime. Civil assault, like criminal assault, is a situation where a person threatens or forces another person to act, or a physical attack, such as assaulting or kicking a person. In this case, if the suspect intended to use violence against another person, the suspect can be said to have intended to hit the other person, rather than the victim, and still be charged with intent to injure others. "The difference between assault and negligence is only the purpose of the act, assault is part of the intentional tort along with defamation and invasion of privacy, and negligence is part of the unintentional tort. Assault or civil assault must prove that the perpetrator intended to harm another."

The subject of willful misconduct of civil assault has been illustrated and received judicial attentions in number of cases such as the case of *Nabozny vs Barnhill*. ^[35] This case involved a football match between the school's teams. The plaintiff, who was a goalkeeper, fell on his left knee while catching the ball in the penalty area of the pitch, and the

defendant moved the opponent's forward at high speed towards the ball. The defendant adjusted his speed so as not to collide with the plaintiff, but he did not, and he continued to run with the same aces and kicked the goalkeeper's left head and suffered serious injuries. In this case, the jury found the defendant's actions to be unfair and decided that instead of handing over the case to the plaintiff, it should first determine whether the defendant intentionally, knowingly, or negligently harmed the other party.

In the following cases, the football matches between the two teams were played according to the FIFA Rules and Regulations, the rules in the book prohibit all players from making physical contact with the goalkeeper in the penalty area. The court ruled in its judgment that competitions subject to certain rules and regulations were intended to protect the legal rights of athletes, that the defendant's conduct violates the rules set by the League Federation and that the plaintiff is entitled to remedies.

The case of *Mike Tyson v Evander Holyfield* is another case to illustrate willful civil assault.^[36] On June 28, 1997, during the World Heavyweight Championship match, Mike Tyson bit the ear of his opponent Evander Holyfield in the third round of the match. Mike Tyson was banned from boxing and banned for a long time. As Evander Holyfield was one of Mike Tyson's biggest and toughest opponents to date, he went into a highly anticipated rematch as the favorite to win and win the WBO title. In the first round, Holyfield defeated Mike Tyson with his heavy pants to dominate the game, and Mike did not respond to his attack. Before the second round began, the entire stadium chanted Evander Holyfield's name, and in the second round, Evander Holyfield was hit in the head by Mike Tyson, which was illegal and cut his right eye. In the third round of the fight, Mike Tyson lost his temper by grabbing Holyfield's mouthpiece and part of his ear and spitting at him on the boxing campus. Holyfield fell ill and medical experts asked Evander if he wanted to continue, and he did. The round resumed and they brawled again with 10 seconds left in the round. Mike caught him again and bit Evander's other ear as well. At that point the match was stopped as Evander was bleeding profusely and Mike was disqualified and eliminated. Although this case was not brought to trial, the World Boxing Federation took action against Mike Tyson on the basis of willful misconduct and the WBF suspended Mike for this.

Recklessness

There is a difference between cases of accidental tort and cases of intentional tort, the person's action or conduct is considered frivolous if they knew or knew that the action they are about to perform was intentional and will cause serious injury to another person. The difference between reckless conduct and negligence is the degree of foreseeable harm. Recklessness differs from civil assault because assault requires intent. For an act to be considered reckless, the perpetrator must intend to do the act, but not intend to cause harm through their actions. In cases where the defendant's conduct was negligent, most courts find that the plaintiff's contributory negligence does not play a role in the following circumstances.

The English case law dealing with situations involving the liability of spectators at sporting events was established in the case of *Wooldridge v Sumner*.^[37] The case is one of the earliest involving reckless misconduct. The facts of the case

are that the plaintiff, Mr. Wooldridge, a racing photographer, was struck by a horse used by the defendant, Sumner, who gave his horse to Ron Holladay horse racing, who is considered one of the most skilled and professional riders in competition."The court held that defendant Sumner owed no duty to plaintiff Wooldridge, and the court also held that, as a spectator of the races, Wooldridge recognized the dangers or conditions that might exist at the races. Since it was a competitive and fast race, the court concluded that before the defendant acted intentionally or negligently, the riders in the case were focused on winning the race rather than the welfare of the spectators. In these racing situations, the defendant is not liable for negligence or carelessness because the primary objective is to win the race.

In *Leatherland v Edwards*,^[38] Leatherland and Edwards were participating in a friendly hockey game in accordance with the rules and regulations of the National Hockey League. "According to the circumstances of the case, the defendant lost his cool during a hockey game and deliberately and negligently collided with the plaintiff while holding a hockey stick above his waist. The whole situation happened when the plaintiff was trying to prevent the hockey ball from entering the goal, or in other words, the plaintiff was trying to prevent a goal from being scored and in his anger the defendant raised his hockey stick so high that it struck the plaintiff in the eye, interrupting play for a few minutes and causing eye problems to the plaintiff from the hockey shot. In its ruling, the court ruled that it is against the rules and regulations of the game and the spirit and purpose of the sport to carry a hockey stick above the waist. After all, the court noted that it is not difficult to prove negligence or carelessness in these actions, since violation of the basic rules and regulations of the game is one of the signs of misconduct.

Application of Tort to Different Types of Sports Litigation

In sports, not only the striker, but also the players, the owner, the governing body and the referee can be held legally liable. This can be long-term in terms of speculators, the public and other third parties and liability.^[39]

1. Tortious Liability for Injury Caused to a Spectator/Audience Present in a Stadium.

It is considered fun and safe to watch a sporting event or concert at an opener, stadium or racetrack.^[40] Although injuries are common on trails and fields, unfortunately, visitors to government facilities can unexpectedly become innocent victims of unscrupulous or negligent practices. Stadium and field of play injuries are generally divided into several categories. First is Slip and fall in a stadium or sports facility as a result of wet floors or objects accidentally placed on the floor which could and actually caused slipping problems. These threats can be caused by cleaning, weather, spilled drinks, packed lunches and many similar reasons. Owners and maintenance companies have an obligation to take precautions to avoid these risks. Also, thrown or dropped objects which include anything that is thrown or dropped from the balcony that can cause serious injury to various innocent parties present at the event. Furthermore, inappropriate construction and maintenance is another one. Take for instance, what if rails fall on visitors due to poor or incomplete construction? A ramp built at the wrong angle can also be dangerous.^[41]

Trampling by the crowd - To control this problem, it is necessary to determine whether the venue was more crowded than it usually is or is allowed to be.

The occupants of sports facilities are obliged to take care of everyone on the field of play and observe the necessary precautions. In addition, competitors are required to take care of spectators in case of pre-injury. In several court decisions, we have been held that tort liability arises if due diligence is not exercised.^[42] For example, the judgment in the case of *Watson v British Boxing Board of Control (BBBC)*^[43] "imposed liability on the management of the BBBC for failing to provide the necessary medical equipment on the sidelines of boxing matches and the resulting delay in providing adequate medical assistance, the claimant has certain physical and mental disorders".^[44]

Determining Liability

To be held liable for negligence, the following conditions must be considered:

- If there is any spilled, worn, torn, or otherwise hazardous material on the ground or underfoot, the location's owner or an employee may be responsible.
- Despite knowing full well about the shaky surface, neither the property owner nor an employee took any action to prevent the occurrence or situation.
- An employee or the property's owner should have been aware of the hazardous surface because "a reasonable person taking care of the property would have learned about it and removed or fixed it".^[45]

In the case of *Mantovani v. Yale University*,^[52] the Connecticut Superior Court on February 6, 2008, maintained a jury decision for litigant Connecticut Baseball Inc. The offended party was harmed by a foul ball at a minor's game. The stadium structure had outdoor tables with sitting arrangements that confronted away from the playing field. Preceding preliminary, the court held that "general rule of negligence would apply on the grounds that the baseball rule applied distinctly to audiences in the stands".^[46] The jury did not find it to be risky or in flawed conditions in the structure and hence no infringement by the defendant towards the plaintiff.

2. Tortious Liability for Injury Caused to a Sportsperson

Athletes' bodies can suffer harm from the strenuous movement required by many sports, which can be very taxing on the body. These wounds are frequently so serious that healing calls for pricey treatments. On the field, everyone has a responsibility to be considerate of others. The true meaning of sports is when someone's desire to win does not put another player's safety at risk. As a result, the law of torts may be applied in the event that these terms are violated. The following categories can be used to group tortious liability for sports-related injuries and the extent of that liability:

- a. Injury caused due to negligence of a Party;
- b. Application of the principle of Vicarious Liability for the injury caused;
- c. Mala fide and Deliberate intention to cause injury; and
- d. Application of the test of Reasonable Foreseeability

Injury caused due to negligence of a Party

According to the landmark decision *Donoghue v. Stevenson*^[47], the law of negligence that is frequently applied to sports torts is, at least on the surface, the same as the law that bases its conclusions on the well-known "neighborhood test" of Lord Atkin. The important three requirements that must be established in order to establish negligence under this standard are that the defendant "must owe the claimant a duty to take reasonable care not to harm him, the defendant's play of such standard must have breached that duty, and that foreseeable harm was the result of the breach of duty (causation)".^[48]

In the case of *Condon v. Basi*,^[49] it was once again acknowledged and reaffirmed that athletes competing in sports have a responsibility to other participants and should exercise reasonable caution to prevent injury or harm to them. The plaintiff was hurt in this case when the defendant broke his leg. The defendant was held accountable in this case because they failed to exercise the level of caution that was expected of them.

Application of the principle of vicarious liability for the injury caused: According to the vicarious liability principle, employers may be held liable for any acts their employees commit while working for them. Only professional athletes who have contracts to play for their respective clubs are subject to this doctrine, though.

As noted by *Gravil v Redruth Rugby Football Club Ltd*^[50] each case must be assessed individually to determine precisely whether the tort is closely related to a proper employment relationship which makes the employer liable on behalf of the employer.

The case of *Ben Collett (Manchester United FC) vs. Gary Smith and Middlesbrough FC*^[50] involved an eighteen-year-old Collett who was participating for Manchester United in a game against Middlesbrough FC. He was tackled by the first defendant during the game. Collett's right leg's tibia and fibula were broken as a result of the high, over-the-ball tackle. Collett sought compensation for the harm, loss, and damage Smith's negligence caused. Smith was connected to Middlesbrough FC and acting in the course of his employment as a professional footballer, so Collett decided to sue the club rather than Smith directly, contending that they were responsible for their employee's actions. Collett sought compensation for future lost wages in particular due to his inability to pursue a lucrative career as a professional football player and later as a manager or coach of the sport. Middlesbrough FC acknowledged liability, and the Court was in charge of deciding the precise amount of the settlement.^[53]

Mala fide and deliberate intention to cause injury: Sports enthusiasts are aware that many of these activities come with a certain level of risk because it is just part of the game. Hockey, rugby, football, and soccer are examples of contact sports where this is especially true. However, when actions are taken that are not considered to be "normal play" or within the game's expected risks, then an injured person may be entitled to compensation from the party accountable for their injuries. One must distinguish between injuries brought on by inherent risk and those brought on by careless or malicious behavior in this situation.

In the case of *R v. Davies*,^[54] we can see such intentional behavior. In this instance, a free kick was awarded after two football players collided. The respondent walked toward the other player and struck him in the face as the two players

were setting up for the free kick. It was later discovered that the plaintiff had a cracked cheekbone after the game. The petitioner was not the subject of any incitement, and the respondent deliberately attacked him on the field, the court ruled, making this a serious offense. The broken cheekbone was deemed to be a real injury, and the offender received a half-year detention sentence.

In general, a player can be expected to bear responsibility for injuries sustained during actual contact if there was a deliberate intent to cause harm or if the player's actions went beyond the normal scope of play. In *Woods v Rogers* ^[55] in England, the victim golfer was injured by a ball hit by another golfer. The defendant said he could not see the plaintiff because of the structure of the course. The angry party's accomplice, who hit the fairway with the angry party, waved at him, a court said could be taken as a sign that the two golfers were able to defend themselves.

The decision made in this case illustrates how some games have rules that, by themselves, warn players and observers of any potential risks. For instance, in golf, it is common and acknowledged that players may accidentally hit the ball in any direction, and spectators and other players are aware of this risk and cannot guarantee negligence in this circumstance. ^[56] Therefore, these acts cannot be used as an excuse or an exception in this case if reasonable precautions were not taken to prevent reasonably predictable mishaps or accidents. ^[57]

Plea of *Volenti non fit injuria* in the Sports Industry

The US courts refer to the common law doctrine of *Volenti Non-Fit Injuria* in many tortuous cases emanating from the Sports industry. This doctrine means that the defendant must prove that the plaintiff in the case was aware of the potential harm he could suffer and voluntarily agreed to participate in the event. The court states that the doctrine is based on three aspects of knowledge, intuition and risk acceptance. ^[58]

The case of *Hall v Brooklands Racing Club* illustrates the applicability, workability and the practicability of the doctrine of *volenti non fit injuria*. ^[59] The defendants owned a motor racing track. The circuit was oval in shape and 100 meters wide with 6ft high cement walls all around, there was a 5ft lawn between the circuit and where spectators were allowed to sit the end of the grass section was also surrounded by a 4 foot iron wall. Entry to the circuit was via the ticket payment method, after which spectators were allocated specific seats, but many preferred to watch the race on the grass closer to the circuit. "On the day of the incident, two racing cars were on the strait of the circuit when they collided and one of the cars was thrown through the air and landed on spectators seated in the grass watching the race, two of them were killed on the spot. This incident had never happened before in history. The Racing Club was sued for negligence by a one the injured spectators, he said the club could have made the spectator seat safer for spectators. "The court ruled in the verdict that it was the Brooklands racing club's job to ensure the safety of the track for spectators, but there was no duty of care with respect to situations that had never occurred or could not have been foreseen, as there was no such incident in the past for which the racing club should have been reasonably foreseeable as the Brooklands Race Club was deemed to have no compensation. The court also found that the contestant may have consented to injuries that might occur during the game, but did not consent to injuries that would occur outside of

the rules and regulations of the game in the case of *Condon v Basi*. ^[60] The case concerns a football match between two clubs Whittle Wanderers and Khalso Football Club as part of the Leamington Local League. The actor was playing for the Whittle Wanderers when he suffered a broken leg injury due to the tackle of the defendant. The claimant had requested compensation for breach of normal duty of care and the court found that the duty of care differs depending on the extent of the sporting activity. The defendant had breached his duty of care as the tackle was reckless and even considering it was a local league, the level of due diligence was high and the defendant was below the established basic standards.

In numerous comparable situations, the courts make reference to the common law principle of *volenti non fit injuria*. According to this doctrine, the claimants voluntarily agreed to the risks associated with closely following such sports because they were already aware of them. This authorization may be implicit or explicit. By using this doctrine, the charges can be dropped if the same can be demonstrated in a court of law.

The application of this principle is well portrayed in the decision passed in the matter of *Lorino v. New Orleans Baseball & Amusement Co.*, ^[61] as here a viewer who voluntarily came to watch a match got injured by the batsman during the practice sessions from the "bleachers." ^[62] The court defined bleachers as unshielded seating, which is located within the range of 158 feet. "It is knowledge common to all that in these games hard balls are thrown and batted with great swiftness; that they are liable to be muffed or batted or thrown outside the lines of the diamond, and visitors standing in position that may be reached by such balls have voluntarily placed themselves there with knowledge of the situation, and may be held to assume the risk." ^[63] The bench realized that the plaintiff had presumed the threat of associated with various stages of the game and agreed to join the same. Thus, the suit was dismissed.

Again, we can find that in the case of *Turner v. Mandalay Sports Entm't LLC*, (Nov. 2008) ^[64] a viewer underwent grave wounds on her face when she was stomped by a ball while having food in the Beer Garden, which is a connected area associated with the Cashman Field. In this case the Nevada court stated that viewers are aware of the risks associated with the game, and after such knowledge this spectator had voluntarily chosen to not sit in the enclosed area. The Beer Garden is a risky spot compared to the other enclosed areas of the stadium and the same was known by everyone, hence the proprietor and his employees did not have a responsibility or liable to pay any compensation.

Conclusion

Sports as we have clearly observed, remains a game of passion and keen contest, one might argue that the place of the tort of negligence in sports law is still far from complete, yet we have clearly noted that each game is blessed with rules, and these rules provides minimum threshold that sport participants are expected not to go below.

It was inferred that there is paucity of case laws in the field of negligence in sports, but the rules provides the beacon and the few cases available has laid down the ground rules for robbing in infringing parties the line of redress for these participants, runs from instant punishment by the controlling body up to the Court of Arbitration for Sports or the local law court depending on the nature of infringement.

The plaintiff or the party concerned deserves getting justice for the crime against them. But, in Nigeria the Justice system is extremely delayed in providing justice to the people attached to the Sports industry which is unfair but at the same time justice in Nigeria has always been delayed regardless of the field or the background of the case. Since the level of recklessness is extremely hard to prove in the cases, if the plaintiff is able to prove the recklessness successfully the plaintiff can recover the damages, he suffered due to the actions of the defendant.

In Nigeria the approach and concept of civil cases and criminal cases are not justifiable and it should be answered through the way of Law of Torts, which means that Law of Torts needs due consideration in the country as the concept is still vague and not established yet. At present if the law is not enforced the situation for the sports industry might worsen even more.

The proper implementation of Law of Torts in Nigeria will benefit the Sports industry a lot as it will make the process of determining the wrongful act easier for the Nigerian courts. The adequate implementation of Law of torts will make the liability for the professional sportsperson more claimable if they have suffered injury which will decrease the frauds and scams happening in the industry and make Sports go back to what it was earlier, i.e., making the field happier like before for both the spectators and the players.

Recommendations

- Nigeria should modify their sports laws to accommodate clearly the issue of liability in negligence since it has come to stay.
- Since Sports is now a mean business, the participants more than ever deserve better protection to enthrone sustainability, no one participates in sports with the intention to die.
- All athletes and sportspeople should have insurance so that, in the event of a life-threatening injury, the family may sue for damages and the insurance will ensure that the appropriate amount of compensation is paid.
- The Nigerian Sports Act should make sure that there is appropriate responsibility and liability for the Nigerian sports bodies and authorities. In my opinion, the Act should also add some policies under its governing, such as policies for discipline, policies to prevent harassment, and policies to deal with the issue of internal corruption and improper behavior by dealing with conflicts of interest and other issues.

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