



# INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY

**ISSN: 2454-132X**

**Impact Factor: 6.078**

**(Volume 7, Issue 4 - V7I4-1703)**

Available online at: <https://www.ijariit.com>

## Law of torts and sports litigation

*Avinash Pandey*

[pandeyavinashap18@gmail.com](mailto:pandeyavinashap18@gmail.com)

*Kirit P. Mehta School of Law, Mumbai, Maharashtra*

## **LAW OF TORTS AND SPORTS LITIGATION**

**Submitted by:**

Avinash Pandey

Student (BBA LLB Hons.)

Kirit P. Mehta School of Law, NMIMS Mumbai

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**Abstract**

**PURPOSE:** The research paper talks about the relation between Law of Torts and the Field of Sports and how important it is to establish Law of torts in the Field of Sports.

**RESEARCH IMPLICATIONS:** The research paper portrays relation between Law of torts and sports litigation. The thesis includes various case laws, research paper and references from online articles.

**FINDINGS:** The evolution of sports in the country has called for proper implementation of laws for the industry and as the of Law of torts in India are still not properly established it is very hard for the sportsperson to claim for damages in situation where they suffer injury. The transparency of the federal sports authorities in India has also not been fair and transparent as more and more frauds and scams have been disclosed in the recent years. The proper establishment of Law of torts would help the Indian judiciary as determining cases under Law of torts would be simpler and finding out who is entitled for claim for legal damages would also become easier. The research portrays different types of torts, cases of sports under the said torts and the possible remedies that can be provided to the players.

**ORIGINALITY/VALUE:** The research paper is on the topic Law of Torts and Sports Litigation. Secondary research conducted on the topic reveals that proper implementation of Law of torts as well as laws made by the Sports federation of India is required.

**KEYWORDS:** Law of Torts, Sports Litigation, Sports Federation of India, Claim for Damages.

## LAW OF TORTS AND SPORTS LITIGATION

### Introduction

The front page of majority of the newspapers is full of human stupidity, theft, rape, corruption, or drug abuse. So, many of the newspaper readers skip the front page of the newspaper and skip to the Sports section or to the latter half of the newspaper which they find attractive. Nevertheless, in the recent times sports has also seen an unusual presence on the front page of all these newspapers due to the scams and drug abuse cases that have recently seen a boom in the sports industry, be it the Peter Korda drug abuse case, the disgrace in the Olympic games, the match fixing in the cricket matches or series by players or unlawful betting by players or people related to sports shows the scepticism in the sports industry.

Sports is a global sensation. As, a social thing or a group effort without taking into consideration the type of participation, for passing time, competing at amateur level, taking it up as a profession, or just being a spectator, sports is involved in some way or the other in a person's life. Sports accounts to 3% of the total world trade. Everything is protected under the law, the insufficiency of the current legal system to tackle the challenging and problematic situations is one of the most important reasons to bring a change in the current laws and implement it more effectively.<sup>1</sup>

There are no specific laws for Sports, Sports federation of every country has its own guiding rules and regulations, according to the Indian Sports law and welfare association:

“Sports Law are those applied to the field of sports and other physical education. It is a pure law and is based on the general interactions that takes place in sports.”<sup>2</sup>

Nowadays, the crime percentage in sports field have increased to such a level that they can no longer be classified only in two types, i.e., civil or criminal, they can easily be sub sectioned into different type of legal violations such as, copyright claims, Torts, etc.

The concept of torts is still not established as compared to other common law countries. India follows the structure of the United states which is not implemented correctly in our nation yet but is duly acknowledged by the Indian courts. It governs the actions that might result in damages been given to a party involved.

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<sup>1</sup> McCutcheon “Sports Violence, Consent and the Criminal Law” (1994) 45 NILQ 267.

<sup>2</sup> <https://www.sportslawindia.info/> 16-03-2021 6PM

In the modern sports world, there are injuries left right and centre, injuries might not only be physical but also mental injuries, injuries in today's time is not restricted to the sportsperson anymore at time the sports federation is also involved. The violation of legal right of the sportsperson takes place in several ways such as, mental torture or physical harassment and various other situations are thrown at them, sports law imposes liability on these wrong doers and in order to give justice to the sportsperson Law of torts are frequently used.

The aim of the research paper is to discuss the connection between the field of sports and law of torts and how the evolution of sports industry has resulted in the need of new and more strict laws for the wrong doers. The research paper also analyses the need and implication of Law of torts with reference to several incidences that took place in the recent times in the sports industry.

## **Objectives of The Study**

The following are the objectives for the study of relation between Law of Torts and Sports litigation:

1. To study the current situation of the sports industry.
2. To discuss the evolution and need of sports law.
3. To study the relation on Law of torts and Sports.
4. To discuss various concepts of torts related to the field of sports.
5. To study the need of Torts in sports with help of incidences that happened in the recent years.
6. To make relevant suggestion on how the laws can be amended for the betterment of the sportspersons.

## **Research Methodology**

Secondary research was conducted to find out the relation between law of torts and the field of sports. Various legal research papers, online and legal journals were taken into consideration while establishing the relationship between the two fields.

## **Hypothesis**

### Hypothesis I

Null Hypothesis – There is no relationship between the field of sports and law of torts.

Alternative Hypothesis – There is a relationship between the field of sports and law of torts.

### Hypothesis II

Null Hypothesis – There are no Sports Litigation.

Alternative Hypothesis – There are Sports Litigation.

### Hypothesis III

Null Hypothesis – There are no Unintentional Tort of Negligence in the field of Sports.

Alternative Hypothesis – There is Unintentional Torts of Negligence in the field of Sports.

### Hypothesis IV

Null Hypothesis – Volenti Non Fit Injuria does not exist in the field of Sports.

Alternative Hypothesis – Volenti Non Fit Injuria does exist in the field of Sports.

### Hypothesis V

Null Hypothesis – There are no compensation given in the cases of torts in Sports.

Alternative Hypothesis – There are cases in which compensation are given in cases of torts in Sports.

### Hypothesis VI

Null Hypothesis – There are no cases of Recklessness in the field of Sports.

Alternative Hypothesis – There are cases of Recklessness in the field of Sports.



## **Evolution and Need of Sports Law**

Whenever the topic of laws relating to sports are talked about, every time the minds of the people are diverted towards the few rules and regulations that players must follow set by the league board or the sports authority when they enter the field. The sports industry is extremely vast in terms of activities, athletes or spectators and generate billions of revenues every single year. The sports industry not just include its players who play certain sports, but they also include broadcasters, equipment manufacturers, medical care providers, companies or business that sponsor such sporting events and concessionaires that sponsor these events as food or beverage partners.

Sports law are enacted in the field sports, physical education, leagues and other related events. These are the rules and regulations that completely governs the field of sports. The laws for each sport are different so as to make sure the fairness and equity for the event is not hurt as sponsors for a certain event might want certain laws to be either removed or added, so for the purpose of in general fairness and to maintain competitive spirit different laws are made.<sup>3</sup>

Despite their being numerous laws in the field of sports majority of the laws are based on intellectual property, Law of torts and Law of contracts. Intellectual property in Sports law governs the trademarks that the equipment manufacturing companies have over a certain product that they produce, and Law of contracts deals with the contractual relation between the Sports person and the organisation or team he is playing for.

When it comes to Indian evolution of Sports law, various government bodies such as the Sports Authority of India and quasi-governmental bodies such as the National sports policy 2001 comes to the mix. The Indian government and the Sports Authority of India in partnership with the Indian Olympic Association takes care of the national and international achievements for the country. There are several State bodies that govern the conduct and punish the players involved in wrongful acts and all host the series or leagues for the respective sport.<sup>4</sup>

The legislature had divided several governing bodies for the field of sports. The information about the Indian Sports is mentioned in the Seventh schedule of the concurrent list, which states that both state and union legislatures have the power of making certain laws for the sport. National Sports Policy and various other policies and framework govern the field of sports in India. According to the National Sports Policy 2001, the Central government and the State government along with the Sports Federation and Indian Olympic Association looks after the Sports and the excellence at national and international level.<sup>5</sup>

The Indian government has also created a National Development Funds for the development of sports industry. They have also created several Schemes for sports industry such as, Schemes for Infrastructure, events and leagues, awards, incentive of promotion of events, state sports academy and talent search. Although, the Indian government have introduced so many schemes and policies for the betterment and development of the Sports industry and having rules and regulations for everything yet there is

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<sup>3</sup> Healey, D. (2005). Sport and The Law, 3rd ed. University of New South Wales Press Ltd.

<sup>4</sup> <https://sportsauthorityofindia.nic.in/> 17-03-2021 1PM

<sup>5</sup> <https://yas.nic.in/sports/national-sports-policy-2001> 17-03-2021 1PM

a need for the re evaluation of these rules to make it stricter. The Indian government have also shown interest in the implementation of the National Sports Development Bill<sup>6</sup> which will increase the development process of the Sports industry and will counter the problem of many biases that happens in the Sports industry such as women harassment, etc.

Despite having so many policies and schemes for the development of Sports industry, India is yet to achieve the mentioned objectives which make them fall back in terms of progress. The Corporate Governance needs to improve in India as seen in the recent past involvement of private companies in one of the biggest leagues around the world “IPL” shows that to have a fair play and to maintain credibility government needs to improve the rules and regulations for these big events having foreign involvement.

## **Law of Torts and Sports Litigation**

### **Law of Torts**

The word “Tort” is derived from the Latin word “Tortum”. Law of torts refers to a wrongful act conducted by the wrong doer whereby he has violated another person’s rights. In simpler words Law of Torts basically refers to a civil wrong. It is an infringement of a person’s right giving him the ability to claim for damages by filling a suit against the wrongful act.<sup>7</sup>

The above-mentioned definition shows that Tort is a civil wrong but not every civil wrong is a tort. Various torts have the aspect of Prima-Facie in them. Prima Facie basically refers to an adjective meaning the sufficiency to establish the fact or to raise an assumption unless it gets disapproved. The plaintiff would have to prove that the defendant’s act has all the aspects covered under Prima Facie in order to file a suit under the Law of Torts.

To take an example Tort of Trespass has 3 Prima Facie conditions:

1. Defendant had the intent to enter the land.
2. Defendant invaded the land.
3. Plaintiff had not given his consent to the defendant to enter the land in question.

The essentials for a tort are that the wrongful act done on the part of the defendant has resulted in the plaintiff suffering injuries i.e., the violation of the plaintiff’s legal rights. Torts are recognized in several types, but a common division is of: (I) Negligence Tort, and (II) Intentional Torts. The dominant portion of an act to be considered tort is negligence.

Negligence means carelessness on a person’s behalf; in a legal sense it means the failure to take care on the part of the wrong

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<sup>6</sup> <https://yas.nic.in/sites/default/files/File921.pdf> 17-03-2021 1PM

<sup>7</sup> Ramaswamy Iyers- The Law of Torts (Ninth Edition), Lexis Nexis Butterworths.

doer which a prudent man should have done if he was in the same situation. The act of negligence by the defendant has caused injuries to the plaintiff. Negligence is a type of tort in which several types of harms may occur due to a person's carelessness.

To take an example: If a man is walking in a market or a crowded area with having a sharp object with himself, he has to be more careful than the people walking around him with nothing at all.

The following are the Essentials of Negligence:

1. Defendant owes the duty of care.
2. Defendant was negligent and made a breach of duty of care.
3. The plaintiff has suffered harm due to the negligent act of the defendant.

Intentional Tort occurs when a person has the intention to commit an act in order to cause harm to the plaintiff. Intentional tort to be proven in a situation does not require the person to cause an actual injury intentionally just having the intent of committing such act is enough.

For example: If A knowing that B has heart problems, intentionally goes and makes up a situation and tells it to B causing him to have a heart attack and loose his life, here A is liable as he intentionally frightened a person with a bad heart to suffer a heart attack. This situation will be intentional tort as the person had the intention of frightening the person.

## **Sports Litigation**

Often waiting in the lines outside the venues hosting your favourite events, entering the stadium or venue and seeing hundreds and thousands of fans waiting to cheer for the favourite team and running to get the best possible seat for viewing pleasure, these are the things that fans do to see their favourite team win the respective match. Sports was believed to be free of any scandals or scams and a fair game of sportsmanship governed by certain rules and regulations.<sup>8</sup>

However, the times have changed considerably and sports which was used to stay at the end of majority of the newspaper for the reading pleasure of the readers has seen itself on the front page of the newspaper more often now in light of several scandals and scams.

In a recent interview the Commissioner of the NBA David Stern addressed the following issue by saying:

A sports league or series should not condone to such activities and should deny the acceptance of events that are against traditions of certain society.<sup>9</sup>

On the international level where the sportsperson represents their country and play the sport professionally chances of injury is

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<sup>8</sup> Citron, J., Ableman, M. (2003). Civil Liability in the Arena of Professional Sports

<sup>9</sup> <https://www.si.com/nba/2020/01/02/david-stern-commissioner-dies-legal-background> 17-03-2021 1PM

very high, the injuries caused in these situations are not of tortious nature. These injuries are the basic risks that a person playing a sport will have to take.

The following are the factors required in a situation to ask for consideration:

1. Need to compensate the wrongfully injured participant.
2. Need to detour the tort that took place.
3. Setting certain levels of standards which will determine if the act is wrongful or not.

The plaintiff has several criteria under which he can ask for claim for damages under tort law some of them are, battery, assault, negligence and same is for the defendant he also has many ways of replicating himself as innocent under the criteria of, self-defence, consent, contributory negligence, etc. due to the presence of so many possible situations the final authority of taking decisions lies in the hands of the rule makers of the game or the federation/authorities.

Many sports do pose a serious chance of a participant getting injuries. A person who has suffered an injury might claim for damages in the way of medical expenses if the act done by the defendant is negligent and is intentionally done to sabotage the situation. Courts decide cases involving injury to athlete or any spectator by applying situation of basic torts to it. The court follows a simple process that if a party owes a duty of care towards another party and the duty of care is breached, the party who breached the duty of care is held liable and is asked to pay for the damages for the plaintiff.

The level of breach of duty of care depends on the situation that may arise, higher dangerous situations require more duty of care and vice-versa. To consider an example: A spectator sitting in the stands at a baseball game cannot claim for damages if he is hit on his head by the ball as everyone is aware about the situation that a ball may come towards the spectator at any point of time but at the same time a person in an environment where it is very unusual for the ball to come and hit might claim for damages, so at the same game if a person is not near the stands but is in the cafeteria lobby and if he gets hit by the ball he can claim for damages for the injury incurred.<sup>10</sup>

Athletes are entitled to claim for damages in sports if they think the act conducted was intentional and negligent on the defendant's part. In all the sports all professional and amateur players give certain consent of them being hit by their opponent on the body but if the court thinks that the conduct on the part of the defendant goes outside the given consent action against the same can be taken.

In certain cases, where the sports might be played in the schools or educational institutions the school authorities can be held liable for negligence if something happens. If the member of the sports department of the educational institute fails to supervise a certain event and if one of the children participating in the events suffer the injury due to the lack of supervision the institute or the school can be held liable for the negligence.

The defendants in the case of Torts in sports can have numerous defence opportunity, one of the easiest ways of proving yourself innocent in the case is to claim that the plaintiff party was aware of the fact that they might get injured while spectating the match

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<sup>10</sup> Yeo, S., (2001). Accepted Inherent Risks Among Sporting Participants. Tort Law Review.  
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or in some cases the defendant use the defence that the plaintiff might have ignored the warning signals present around the stadium to make them aware of the fact that they can suffer injury. By doing this the main reason of the defendant is to proclaim that partial compensation should be provided to the plaintiff and the situation of partial negligence should be applied.<sup>11</sup>

## **Cases of Torts in Sports**

An increasing number of violent acts occurring in sports are being tackled using the law of torts.

For Example;

In the famous case of **Todd Bertuzzi Vs Steve Moore**<sup>12</sup>, which happened in the National Hockey league back in the year 2004 is a great example of claim of damages for the plaintiff when the act of defendant is intentional. The facts of the case were, On March 8<sup>th</sup> 2004 a match was played between the Vancouver and the Avalanche, in the first half of the match Steve Moore of the avalanche had a fight with the player Matt Cooke of the team Vancouver for which Steve had a 5-minute permanent ban in the game, later when he came back to the pitch the Vancouver did s substitution of their won and got Todd Bertuzzi on the pitch who kept on provoking Steve to fight him and when in the third half he was not able to provoke him he grabbed Steve's jersey and punched him on the back of his neck making Steve unconscious. Bertuzzi landed on top of Steve intentionally causing a big obstacle for players of both team out of which two of them landed on the pile making Steve' head go face first in the rock solid ice after lying motionless for about 10 minutes Steve was taken out on a stretcher. This incident caused Steve to have three fractured neck vertebrae and facial cuts. The incident had ended Steve Moore's professional career and resulted in a criminal case against Bertuzzi and a civil case against the Vancouver Canucks Hockey team. In the judgement of the case it was held that Todd Bertuzzi will be permanently banned from the National Hockey League and damages for the injuries suffered was justified and claim was made.

The use of the legal suits in these situations where the plaintiff wants to seek compensation for the Negligent act of the defendant, is basically based on the fact that the defendant owed a duty of a care towards the plaintiff and the duty of care in question was breeched causing damages to the plaintiff and the plaintiff needs to be compensated for the injuries financially, the following area of law where the plaintiff seeks for the claim for damages in financial terms is dealt by Law of Torts.

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

1. Unintentional Torts
2. Intentional Torts
3. Recklessness

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<sup>11</sup> Wong, G. (2010). Essential of Sports Law. 4th ed. Westport.

<sup>12</sup> Todd Bertuzzi Vs Steve Moore, march 8, 2004.

## **UNINTENTIONAL TORTS<sup>13</sup>**

Unintentional torts or negligence refers to a situation in which a person fails to provide the basic duty of care which a prudent man would do if he was in the same situation. The court in these cases look for the aspect that there was a duty of care between the defendant and the plaintiff which was breached on the part of the defendant and such act has caused injury to the plaintiff, the standard of care here stated by the court means what a prudent man would do if he is put in the same situation.

Following are the cases of Unintentional Torts of Negligence in Field of Sports:

### **Caldwell Vs Maguire<sup>14</sup>**

The facts of the case were, the claimant was a professional jockey and so were the defendants. While participating in a race two other jockeys intentionally sabotaged the race to hurt the claimant which later in an internal investigation for declared against the rules of the race. The Claimant had sued the two jockeys for their negligent act. To establish negligence, the claimant has to prove that the breach of duty of care took place in the situation which was established as the two jockeys were negligent in their act. The court in this case held that the both the jockeys owed a duty of care towards the claimant but at the same time they held them as not liable for compensation as the court mentioned that being a highly competitive race in which all the participants were participating chances of injury being suffered was higher than usual and hence the defendant were held not liable.

### **State of Louisiana Vs Ouachita Parish School Board<sup>15</sup>**

The facts of the case are as the member of the freshman football team for the West Monroe high school, Morgan day was supposed to take part in the weight training class during the school hours, the following session was supervised by the head coach and 3 other head of weight lifting department. There were 60 participants in the football division who were divided into groups of 5 supervised by the Coaches and the senior students of the school.

One day during the weight lifting class Morgan had injured his back while lifting weight and played the football match the following day which made the situations worse for his back. After the match was over he took medical assistance, after an examination of his back the medical team stated in a report that Morgan cannot lift weight or do squats and play football due to seriously injured back. When Morgan showed the notice of the medical team to the coaches they addressed to the main office for which they said Morgan cannot weight lift or do squats or play football for only 1 week and can participate thereon. After a week had passed, Morgan was seen attending the class but not indulging in any physical activities to which the head coach asked Morgan to do a Dumbbell exercise to which Morgan reminded him by saying he still has a back pain. The head coach said that it

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<sup>13</sup> Keeton, W. P. Keeton, R. F. (1977).

<sup>14</sup> Caldwell v Maguire [2001] EWCA Civ 1054

<sup>15</sup> STATE of Louisiana through the DEPARTMENT OF HIGHWAYS v. OUACHITA PARISH SCHOOL BOARD. 138 So. 2d 109 (La. 1961)

will not hurt and when Morgan started with the weight lifting activities he right away felt extreme pain in his back to which he had lay down on the floor and when the situation was reported to the physician he got angry and wrote an application stating Morgan cannot do any activity until further notice, he showed this to his parents to which the parents who then referred to another physician who claimed the same. Morgan got so demoralised that he failed in his class as he could not play football anymore and removed his name from the school and took admission in another school. The parents of Morgan Day filled a suit against the school coaches and authorities for their negligent behaviour towards their child.

The court in the following situation held that defendants in the case were liable for the back injury suffered by Morgan Day. The school and the coaches are liable and Morgan and his family can claim for damages in the following case.

### **Bolton Vs Stone<sup>16</sup>**

The facts of the case were, On August 9<sup>th</sup> 1947, during a cricket match held in the Manchester stadium the batsman of the opponent team had hit the cricket ball for a six out of the ground, the ball hit the claimant Miss Stone who was standing outside her house approximately 91 metres away from the stadium from where the ball was hit.

The club had been playing cricket on the same Manchester stadium since the year 1864 before the road was built in the year 1910.

The ground was surrounded by fences of approximately 3.7 metres in height, but the place from where the ball had left the ground was 5 metres in height. The passing of the ball across the stadium was extremely unusual and only six times it had happened in the past when the ball had cleared the fences of the stadium. Although, the people living in the neighbourhood of the stadium had claimed that the balls used to land in the locality almost every season either once or twice.

The claimant Miss Stone had argued that the ball crossing the boundaries of the stadium once was enough to give the club a state of warning that there might be risk for the walkers around the stadium of getting hit by the cricket ball.

The court gave a short judgement on the following incident on 15<sup>th</sup> December 1948 stating that the claims made by Miss stone were not to be taken in account of and no one was liable for compensation in the case as there was no evidence of injury in the previous thirty eight years of the club playing on the ground and also stated that the judgement in the case of Ryland's Vs Fletcher was not applicable for this case as the mere act of hitting the cricket ball onto a road nearby was too vast to be considered as nuisance.

### **Volenti Non-Fit Injuria**

The United States courts refer to the common law doctrine for the cases of Volenti Non-Fit Injuria. This doctrine involves that the defendant must establish that the plaintiff in the case was aware about the possible injury that he might suffer and voluntarily agreed in participating the event. The court states that the doctrine is based on three aspects knowledge, comprehension and

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<sup>16</sup> Bolton v. Stone [1951] AC 850

assumption of the risk. Lord Denning in his study revealed that if the defendant is able to establish the situation of Volenti Non-Fit Injuria he is absolved from compensation.

Following are the cases of Volenti Non-Fit Injuria:

### **Hall Vs Brooklands Racing Club<sup>17</sup>**

The facts of the case were; the defendant was the owner of a racing track for motor cars. The race track was Oval in shape and 100 metres wide with walls made of up of cement with a height of 6 feet around the entire course, there was a 5 feet stretch of grassland between the race track and where the spectators were allowed to sit the end of the grass division was also enclosed by an iron wall of 4 feet. The entrance in the race course was through the gate of payment for ticket after which specific seats were allotted to the spectators but many of them preferred to view the race standing in the grassland closer to the race track.

On the day of the incident two cars competing in the race were on the finishing stretch of the race track when they had a collision and one of the cars flung in the air and landed on top of the spectators sitting on the grass viewing the race, two of them were killed at the spot. This incident had never happened before in the history. The Racing Club were sued for being negligent by one of the injured spectators he said that the club could have made the viewing place safer for the spectators.

The court in the judgement held that it was the duty of the Brooklands race club to make sure that the race track is safe for the spectators but there was no duty of care towards a situation that had never happened before or were not foreseeable as there was no such accident in the past for which the race club had to be reasonably foreseeable for it was held that the Brooklands Race Club are not liable to pay for compensation.

### **Condon Vs Basi<sup>18</sup>**

The case involves a football match between two clubs Whittle Wanderers and Khalso Football Club under the Leamington Local League. The claimant was playing for the Whittle Wanderers when he had suffered a broken leg injury due to the tackle by the defendant, the claimant had filled in for compensation under the terms of breach of standard duty of care.

The court in the following case held that the standard duty of care varies according to the level of sports activities. The defendant had breached the duty of care as the tackle was reckless and even with the regard that it was a local league the standard of duty of care were high and the defendant was way below the basic standards set. The court also stated that the participant might have agreed for the injury that might happen in while playing the game but has not given his consent for the injuries which would occur outside the rules and regulations of the game.

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<sup>17</sup> Hall v Brooklands Auto-Racing Club [1933] 1 KB 205

<sup>18</sup> Condon v Basi [1985] 1 WLR 866 Court of Appeal



## **Intentional Tort**

Civil assault under the intentional tort means the same as an injured person would bring action against someone who is accused of criminal assault. Civil assault just like Criminal assault refers to a situation in which a person is threatening or forcing another person into an act, any physical assault like punching a person or kicking the person accounts to assault. In these situations, the intent to use force against another person is what matters the defendant might state that he might not be targeting the person who got injured but was trying to hit another person, he will still be charged as he had the intent of hurting another person.

The point of differentiation between Assault and negligence is only the intention behind doing the said act, assault is part of the intentional torts along with defamation and invasion of privacy whereas, negligence is under the unintentional tort. In cases of Civil assault or any case of assault it is necessary to prove that the wrong doer had the intention of causing harm to the other person.

The Following are the Cases under Intentional Tort of Civil Assault:

### **Nabozny Vs Barnhill<sup>19</sup>**

The case was from a football match played between the school teams. The plaintiff who was the goalie and was kneeling on his left knee while holding the ball in the penalty area of the field, while the defendant the striker of the opponent team was moving at a high pace towards the ball. The defendant had time to control his speed to avoid collision with the plaintiff but he did not and continued to run at the same pace and kicked the left side of the goalie's head causing him severe injuries.

The court in the case held that instead of stating that the act of the defendant was wrongful and giving the case to the plaintiff, the jury first needs to establish that was the act conducted by the defendant deliberate or wilful or with a reckless regard to cause injury to his opponent player.

In the following case the football game played between the teams were on the rules and regulations set by FIFA, the rules in the books prohibited all players from making any kind of physical contact with the goalkeepers when he is inside the penalty box. The court in its judgment held that the leagues that are governed by certain rules and regulations are for the purpose of protecting the legal rights of the players, following the facts of the case the court could establish that the act of the defendant was against the rules and regulations set by the league federations and stated that Plaintiff is entitled to get legal protection.

### **Mike Tyson V Evander Holyfield<sup>20</sup>**

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<sup>19</sup> Nabozny v. Barnhill (Ill.App. 1975) 31 Ill. App. 3d 212,

<sup>20</sup> "Mike Tyson Assaults", New York Law Journal, vol. 218, no.3.

On June 28<sup>th</sup>, 1997 in a World Heavyweight Championship match Mike Tyson had bite off the ear of his opponent Evander Holyfield in the third round of the fight. Mike Tyson was disqualified from the boxing match and had faced a considerable time of suspension.

Evander Holyfield had come in the anticipated rematch as the favourite to defeat and win the WBO championship as he was one of the greatest and probably Mike Tyson's most difficult opponent yet. In the first round Holyfield had dominated the fight with hitting Mike Tyson with heavy body shots and Mike had no answer to his attack. Before the second round started the whole stadium was chanting the name of Evander Holyfield, during the second round Evander Holyfield head-butted Mike Tyson which was an illegal move and it opened a cut over the right eye of Mike.

In the third round of the fight Mike Tyson lost all of his composure, while in a clinch he spat out his mouth piece and bit of Holyfield's ear and spat that on the boxing campus. Holyfield was in pain and the fight was stopped for a while and medical experts had asked Evander if he wanted to continue to which he said he will. The round resumed and they started fighting again with 10 seconds left in the round Mike clinched again and bit of the other ear of Evander as well at this point the fight was called off as Evander was bleeding heavily and Mike was disqualified and suspended.

Even though this case was not filed against any court the World Boxing Federation had taken action against Mike Tyson on the basis of Intentional Tort as the act was intentional and the WBF suspended Mike for the same.

## **Recklessness**

The situation of recklessness is somewhat between the unintentional tort cases and the intentional tort cases, the act or behaviour of a person is considered to be reckless when he or she knew or had the knowledge that the act they are about to conduct will cause serious injury to another person. The point of difference between Act of Recklessness and negligence is the degree of foreseeability of harm, recklessness is different from a civil assault as in an assault the establishment of intent is required. For the act to be considered reckless the wrong doer should have an intent of conducting the act but not have the intent of causing harm by doing the said act.

Most courts stated that in cases where the defendant's conduct is reckless, opposite to the situation of negligent, contributory negligence on the part of the plaintiff does not play any role in the following situation as both the degrees are different in nature.

The following are the cases of Recklessness in the field of sports:

## **Wooldridge Vs Sumner <sup>21</sup>**

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<sup>21</sup> Wooldridge v Sumner [1963] 2 QB 43

Wooldridge V. Sumner is an English Case law dealing with the situation of liability in the sporting competitions for the spectators. This case was one of the initial cases involving the tort of recklessness.

The facts of the case were that Mr. Wooldridge who was the plaintiff was a photographer at a horse race who got injured after being hit by the horse who was used by the defendant, Sumner, who had given his horse to Mr. Ron Holladay for the horse race who considered as one of the most skilled and professional horse riders that participated in the race.

The court in the judgement held that the defendant Sumner had no duty of care towards the plaintiff Wooldridge, the court followed and said that as a spectator for the race Wooldridge had accepted the risks or situations that might happen in a horse race. The event being a highly competitive and high paced race the riders of the case would be focused on winning the race and not on the wellbeing of the spectators, the court concluded by stating that until the act done by the defendant is reckless or deliberate in these situations of races the defendants cannot be held liable for the act of negligence or recklessness as their focus pre dominantly will be on winning the race.

### **Leatherland Vs Edwards<sup>22</sup>**

Leatherland and Edwards were participants of a friendly hockey match followed under the rules and regulation of the National Hockey league.

The facts of the case were during the hockey match the defendant lost his cool and had raised the hockey stick above the waist height and he knowingly and recklessly had collided with the plaintiff. The whole situation took place when the plaintiff was defending the hockey ball from going inside the goal or in other words the plaintiff was trying to stop a goal from getting scored and in anger the defendant in his follow through had raised his hockey stick at such an height that hit the plaintiff on his eye causing the match to stop for few minutes and the resulted in the plaintiff suffering eye problems due to the hit from the hockey stick.

The court in their judgment had stated that raising the hockey stick above the waist height was against the rules and regulations of the game and it violates the spirit and purpose of the sport. The court concluded by stating that establishing negligence or recklessness in these activities is not difficult as going against the basic rules and regulations of the game is a major sign of wrongful conduct.

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<sup>22</sup> Leatherland v. Edwards (1998, unreported)  
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## **Conclusion and Suggestions**

The plaintiff or the party concerned deserves getting justice for the crime against them. But, in India 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 India 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 India 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 India will benefit the Sports industry a lot as it will make the process of determining the wrongful act easier for the Indian 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.

The following are my suggestions for Law of Torts and Sports Litigation:

The insurance should be provided to all the athletes and sportsperson to ensure that in a life-threatening injury the family could claim for the damages and the insurance would make sure there will be no under payment of the compensation.

To reduce the burden of cases on the major courts of India Alternate Dispute Resolution should administer state level and amateur claims in India and as well as some major claims such as match fixing or drug abuse or corruption in sports which will make justice available for quickly.

In the United States of America, the act Title IX passed in the year 1972 deals with the aspect of gender discrimination in organisational and sports field, India should pass a similar act to ensure that there is no gender bias or discrimination in the field of sports.

The Indian Sports Act should ensure that there is proper responsibility and liability for the sports bodies and authorities of India, in my opinion the act should also add certain policies under its ruling, policies for discipline, policies to avoid harassment, policies to tackle with problem of conflict of interest and other points to tackle the problem of internal corruption and wrong behaviour of the employees.

The chance of being heard in front of the court should be given to the sportsperson accused of the wrongful act as “everyone is innocent till proven guilty”, to consider an example if a cricketer is accused of taking performance enhancing drugs before the game to improve his performance, he should be given the opportunity to present his part of the story in front of the court and the media should not be allowed to defame him until he is proven guilty for the wrongful act.

Since sports has seen a massive boom in its audience recently in the country, the media or anyone should not be allowed to defame or cause damage to the reputation of these players as they are in front of the media all the time and a false allegation could hurt the reputation of a player in a very serious manner leading to him being either dropped from the sport, he his playing or people mistaking him every time he appears in front of the media.

Just like the Indian judges have an age limit to retire, 65 being for the judge of the supreme court and 60 being the retirement age for the government employees, the field of sports should also have a set retirement age as some people may continue for very long which will hurt the opportunity for upcoming generation to represent their talent in front of the country. Justice Verma in one of his statements said that some people at the federation are there so long that might leave the position only after the intervention of god.

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