Sports Assignment

Question 2

Taking selected areas of the civil and or criminal law, evaluate whether sportsmen and women are treated differently from the general public in proceedings that have their origin on the field of play.

Answer

Sport plays a major part in the culture of today's society. Many people spend considerable time in front of the television, in sports grounds and traveling all over the country to support their respective club whether it be football, rugby, cricket or netball etc. However whilst playing, spectating or just generally being involved in a sport, things can go wrong and this very often results in an action in the civil or criminal courts. Sporting incidents should be dealt with like any other civil or criminal action, however there is evidence this is not happening in many cases in both areas of law.

There can be several areas of civil law where claims can be made. These are Negligence, occupier's liability, defamation, nuisance, trespass and animals. However not all these will need to be looked at, the main ones being Negligence and occupiers liability. It is in the area of negligence that I will look at the sporting cases and how they differ from non - sporting cases of civil wrongs. I will be looking at participators, clubs, referees and spectators. In the second section I will be looking at negligence and injuries in football and how they differ from non football negligence and injuries.

Part 1 The Law of Negligence

Negligence occurs in many areas of civil Law. Negligence consists of three elements, namely a legal duty to take care, breach of that duty and damage suffered as a consequence of that breach.

The test for establishing whether a duty of care is owed is based on the famous case of Donaghue v Stevenson 1932 AC 562 and the neighbour principle set out by Lord Atkin. This principle of reasonable foreseeability of harm and a close and direct relationship together with the element of 'is it just and reasonable' to impose such a duty is necessary to establish the existence of a duty of care in respect of anyone who has been physically injured. The duty test is expanded in cases such as Caparo v Dickman [1990] 1 ALL ER 568

In Caparo Industries v Dickman Lord Roskill commented that "it has now to be accepted that there is no simple formula or touchstone" in the formulation of the test for the existence of the duty of care. Phrases such as 'foreseeability', 'proximity', 'neighbourhood', 'just and reasonable', 'fairness', 'voluntary acceptance of risk' will be found in several different cases. But such phrases are not precise definitions. At best they are but labels or phrases descriptive of very different factual situations that arise in different cases, and they must be carefully examined in each case before it can be determined whether a duty of care exists and if so what is the scope of that duty. It was established in the case of Donahue v Stevenson. Liability for negligent conduct had previously been recognised only in certain carefully defined circumstances. Lord Atkin emphasised the need for a relationship of proximity between the parties in addition to the notion of foresight and reasonable contemplation of harm.

Once a claimant has shown that there is a duty of care it is necessary for them to prove that the defendant was in breach of that duty. Negligence cases are tried by a judge alone and the standard of care expected of a particular defendant is usually set by law but the question of whether the defendant fell below that standard is actually one of fact, to be determined by reference to all the circumstances of the case. In the area of sport it would be the acts or omissions that occurred participating in the sport on or off the pitch, or in training. The care is that of a reasonable sports person not a professional or an amateur. The question is whether the sports person has fallen below that standard and it is a question for the judge to decide based on the facts proven in the case. It is up to the claimant to prove that the defendant was negligent and this may be the hardest task. There is a three point test in Caparo Industries plc v Dickman that is used to prove a duty of care, namely, are the acts reasonable foreseeable? Is there a relationship of proximity? And is it reasonable to impose a duty on these circumstances?

The reasonable man test is an objective test, chosen because a subjective test would be impossible. The classic statement was given by Alderson B in Blyth v Birmingham waterworks Co (1856) 11 Ex 781 'negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do'.

In order to prove the damage the plaintiff must first show that the harm suffered was a matter of fact caused by the defendant's breach of duty. The element, which is known as 'causation in fact' and if 'but for' the defendants negligent conduct the damage would not have happened then the negligence is the cause of the damage. This is

causation in law and liability may still be avoided if the defendant can show that the damage suffered was too remote a consequence of the breach of duty. If the harm to the plaintiff would not have occurred "but for" the defendants breach of duty then that negligence is a cause of that harm as shown in Barnett v Chelsea and Kensington Hospital Management Committee 1969 1 QB 428. This case established what is known as the 'but for' test.

There are several defences to negligence. Before the law reform contributory negligence was a complete defence however it is now recognised that there must be fault on both parties. The Plaintiffs carelessness need not be a cause of the accident but it is essential to show that it contributed to the damage suffered. This demonstrated in the case of Froom v Butcher 1976 QB 286. Volenti is another defence whereby the defendant will not be liable if the plaintiff voluntarily assumed to take the risk involved, although knowledge of the danger does not necessarily imply consent. Volenti succeeded in the case of Morris v Murray 1990 3 All ER 801 after the plaintiff accepted a lift with a drunk driver. Other general defences can be used. Mistake could be used as a defence to a negligence action but this would normally be a mistake as to a fact which is unlikely to occur in sporting cases. Another defence would be 'inevitable accident' where it was not intended by the defendant and could not be avoided by the use of reasonable care. In sports cases this would be similar to consent for example if a tackle ended in injury. Finally the defence of necessity can be used and this defence is essentially that the defendant's action was necessary to prevent greater damage to the defendant or third party.

If a tort is proved then the claimant could be awarded a remedy to compensate for their injuries, to put them in the same position as they were previously i.e. damages for loss, personal injury, pain and suffering. An injured sports person could claim compensatory damages for personal injuries, for loss of income and medical or other expenses. This could be claimed from the club or even the governing body of the sport. The Court would calculate the pecuniary and non pecuniary losses.

The general law of negligence can be applied directly to sports cases and the same rules apply. In a sports match there is a duty owed to make sure no one is injured. There are several sporting cases involving negligence. Where someone is injured in the course of a game a claim will lie if it is reasonable to say that the acts would be reasonable foreseeable, that there is a relationship of proximity and that it is reasonable to impose a duty in this area. In the case of Woolridge v Sumner 1963 2 QB 43 'the duty of care which a competitor or participant in a sports game owes to a spectator depends on the standard of conduct which the sport or game permits or involves, and a spectator takes the risk of damage done to him by the participants in the course of and for the purposes of that sport or game, notwithstanding that such damage may be a result of an error of judgment by the competitor, provided it is not reckless or deliberate'. In this case a duty of care existed but there was no claim in negligence. Also in the case of Condon v Basi 1985 1 WLR 866 it was stated that 'those who take part in a competitive sport owe a duty of care to other participants and may be liable in negligence for conduct to which another participant may be expected not to have consented'. In this case the player's conduct and

actions fell below the standards of care reasonably expected of those taking part in the game, and he was held liable to anyone injured as a consequence there of.

It must then be established that there has been a breach of this duty within the sporting area. In the above cases the duty was breached in Condon v Basi when the participant fell below the standards necessary and broke his opponent's leg with a bad tackle. In Woolridge v Sumner there was no breach by the horse or rider as the conduct did not cause the accident. In this case the issue of a contract being formed was raised and a claim was made in that area also. In Pearson v Lightening (unreported) it was found there was a duty and a breach of that duty when a golfer struck a ball which hit a fellow player.

It must also be proved that the breach caused the damage. In the case of Wattleworth v Goodward Road Racing Company [2004] EWHC 140 (QB). A racing driver died when he crashed his car into an earth bank faced with lorry tyres during an amateur track day on the motor racing circuit which was owned by Goodward. Goodward owed Wattleworth a duty of care but he was not in breach of it as causation was not proved.

There can be several defences used in these circumstances the first being volenti. In Woolridge v Sumner it states that this defence does not normally apply to cases of spectators suing participants in games because it cannot be applied in the absence of negligence. It would appear that volenti is unlikely to ever feature in sports spectator injury cases as legal issues would revolve around the establishment of negligence rather than defences to negligence. However consent is a valid defence as in most sports games competitors consent to most of the actions that occur on the pitch. In the case of Murray v

Harringay Arena [1951] 2 KB 529 the Defendant had taken all reasonable precautions and the danger was one which the spectator could foresee and therefore the defendants could not be held liable. The risks are also accepted when the ticket is bought in contract. In Hall v Brooklands Auto Racing Club [1933] 1 KB 205 a wooden barrier was held to be a reasonable care and therefore there was no breach of that duty to the spectators. Again the contractual grounds for a claim were looked at.

Negligence occurs within several sectors of sport. It could occur between the participators, the spectators, the referee or a mixture of all of these, and it must be established who is responsible for the tort, and if any damages can be claimed.

The spectator is deemed to accept 'risks incidental to the game' and this can be seen in cases surrounding the Hillsborough disaster as shown in Alcock v Chief Constable of the South Yorkshire Police [1991] 1 WLR 814. In the case of Murray v Harringay a six year old boy was injured by a puck at a hockey match. The Court of Appeal said the net at either end of the pitch was sufficient and the spectators are there at their own risk. The same acceptance of risk is confirmed in Hall v Brooklands Auto Racing Club where a spectator who was struck by a racing car whilst behind the wooden barrier had no claim. The situation regarding spectators has now dramatically changed over the past thirty years as stadiums are now mainly seated with controlled numbers and more police closely controlling crowds. This has resulted in fewer injuries occurring at sports grounds. One of the major cases (as mentioned above) concerning this is the Hillsborough disaster that occurred in the late 80's. This concerns sportsmen, the police and the general public. Many of the general public attempted to claim in negligence,

some succeeded some failed. Spectators appear to be in a very weak position when it comes to claims in this area. It seems that if injuries result from the normal course of the game there are no grounds for a claim. Spectators have also to conform to many new laws that have come into force to help with spectator safety.

The next aspect is to look at is the liability of the club. The club as a whole must always make sure that the ground is safe for visiting members of the public. There could also be vicarious liability for the actions of some of its employees. Over the years the clubs have had to conform to new acts that have come into force, particularly the Safety of Sports Ground Act 1970. Sims v Leigh Rugby Club [1969] 2 All ER 923. Here a rugby player 'must be deemed willingly to accept the risks of playing on such a ground as complies with the by – laws of the Rugby League'. This rugby player as with any other sports player on the ground must be taken to willingly accept the risks involved in playing on that field. So unless there is something that is seriously wrong with the ground it is unlikely that there could be any claims against the club. There could also be claims from the general public against the club. This is shown in the case of Bolton v Stone [1951] All ER 1078 where it was held that the incident must be reasonably foreseeable and the result is what a reasonable man would contemplate. There must be sufficient probability to lead a reasonable man to anticipate it. In this case during a cricket match a ball was struck outside the ground and injured a man standing on the adjacent highway. It was held that it was not reasonable foreseeable that such an injury may occur. In Miller v Jackson [1977] 3 All ER 388 CA a house was built next door to a cricket ground and although a 15foot fence was put up by the cricket club the family found it impossible to use their garden during a cricket match as on many occasions a cricket ball landed in the

garden. The family was awarded damages, so here the general public's protection was upheld. However there was a greater public interest to keep the cricket ground open so therefore the injunction granted earlier would be discharged.

The participator in the sport may also be negligent in the course of the game they are playing. They are generally said to consent to actions that occur in the game but sometimes the negligent act may go beyond what it is possible to consent to. The ordinary rules of negligence do apply to sports participants and the participator must take reasonable care and avoid foreseeable harm to those who may be injured by his acts. All participants agree to the same standards of care. Players who act outside the rules will be liable. The standard for participants is shown in the case of Condon v Basi, where it states that a football player should be measured by a variable standard of care. However it was later decided that all players should be judged by the same standard of care and this was reinforced in the case of Elliot v Saunders and Liverpool Football Club (unreported). Participants who drop below this standard of care should be liable. In Basi a bad tackle resulted in a broken leg and damages were awarded. However this is a rare case.

Many footballers or participants in any other sport will rarely claim against their opponent as it is seen as unsporting and against the "players rules" of the game. Clubs may also feel it is bad publicity. This is evident in the recent game between Bristol City and Peterborough where Tony Butler was punched by Clive Platt (who needed three stitches to his hand) in the face in the tunnel at half time and eight of his teeth were knocked out. Despite serious injuries, the player decided against any civil or criminal proceedings and it is now up to the FA to decide a suitable punishment for the offending player and/or club. Similar to the Condon v Basi case is a game recently when Liverpool

played Blackburn Rovers where a player suffered a severe Broken Leg but no action has been taken by the injured player. Sometimes insurance by the club will cover compensation for medical fees and player's wages etc.

Every sport nowadays has a regulatory body which over-sees all the internal aspects of a sport. An example of this would be the Football Association. In the case of Watson v British Boxing Board of Control [2001] QB 1134 a boxer claimed for a breach of duty for not receiving immediate ringside attention on the injuries he received. It was held that the nature of the sport meant that specialist attention should be on hand and there was none. Watson belonged to a unique class of persons and would rely on the skill and expertise of the governing body to take reasonable care of him. It was held to be negligent in this case as the medical attention was insufficient. However this may just be in the case of a boxer and the nature of the sport. Medical negligence in general is difficult to prove especially in sport which may indicate that this is a one off case. Also in the case of Wattleworth v Goodward Racing there was discussion as to whether a governing body could be held liable for negligent Medical and safety advice. It was held that it was not. This is discussed in the E-commerce Law reports in a Journal Called Wattleworth v GRRC, MSA and FIA.

Finally in a sports game the referee may be held liable for claims in negligence. On the field of play the referee is responsible for the game and keeping the players within the rules of the game. The land mark case in this area which has concerned most match officials is the case of Smolden v Nolan v Whitworth [1997] ELR 249 where a referee failed to establish control over a dangerous aspect. The plaintiff was awarded 1.8 million pounds in damages, and received 1 million pounds. Also in the case of Vowles v Evans

and Welsh Rugby Union ltd 2003 EWCA Civ 318 a referee of an adult amateur rugby match owed a duty of care to the players to take reasonable care for their safety when carrying out his refereeing duties and were his breach of that duty caused the claimants injuries. In the Journal International Law Review an article titled 'Who would be a referee?' examines the Court of Appeal decision in Vowles and the issues raised as to the duty of care and how the training of referees may now differ.

Part 2 Football

As stated in some of the cases above, there are many instances in football which involve negligence. In fact with football being the one of biggest sports in Britain there is the most number of cases in this area.

In the case of Watson and Bradford City FC v Gray and Huddersfield Town Association (1998) QBD there was a successful claim in negligence where a broken leg had been sustained as a result of a challenge by another player. On the balance of probabilities a reasonable professional player would have known that the challenge would have carried significant risk of injury. Huddersfield town were held vicariously liable for the tackle. There was a similar claim in the case of Brian McCord v Swansea AFC and John Cornforth (1996) QBD. This concerned whether an error made by a player in terms of an intentional foul which led to an injury to an opposing player was capable of giving rise to liability in negligence.

'A case of foul play' found in the New Law Journal is an article which examines the liability in negligence of professional footballers who injure another player for

example through a negligent tackle. It explains the requirements for bringing a successful claim in negligence.

However, even in amateur football games a claimant has been awarded damages in negligence. Matthew Cubbin v Stephen Minnis (2000) is the case of a 24 year old male who received £18500 for a fracture to his right leg.

These injuries occurred in the player's work place, as they play football for a living. However on a day to day basis people are injured in their work place. For example in the case of Urch v Valder, where a road surfacer, whilst doing his job was injured and his right leg is now one and a half inches shorter than the other. He was awarded £43686.13 in damages. Also in the case of Whitehead v British Railways Board, the plaintiff whilst working his job as an assistant railway manager injured his foot and received £2,029.07 in damages after falling awkwardly whilst doing his job. Similarly in the case of Watkinson v British Railways Board was awarded £5670.98 due to an injury he received as a Locomotive driver. Finally a trainee floor tiler was awarded £5049.38 from an injury he received at work to his feet and toes.

It is unfortunate for any sort of injury to occur, but in reality they happen regularly on a day to day basis and very often others are to blame. This is where negligence claims arise in court. However injuries happen in sport, to sports players just as they would to the general public, and the damages awarded reflect the damage done. This is rather different from criminal proceedings in sport, where participants are treated some what differently from the general public with far fewer complaints and lesser sentencing awarded for those incidents that happen on the pitch. Whilst the usual rules of criminal law apply, sometimes the results are not always consistent. For example in the case of R

v Lincoln (1990) 12 Cr App R 250 a football player punched an opposing member of the team. He was sentenced to four months in jail but this was later reduced to 28 days. Also in the case of R v Blissett (the independent) 4/12/1992 in the course of a challenge during a football match the victim sustained a fractured cheekbone and eye socket, the defendant was cleared of violent conduct. In the case of R v Birkin [1988] Crim LR 854, a punch was thrown which resulted in a broken jaw, but the eight months sentence was later reduced to six. Very often with sport if a criminal act had been committed the aggrieved party will choose not to make a complaint to the police at all.

This is in contrast to the general public where the sentencing given is fully fitting for the crime and is not reduced due to 'spur or heat of the moment' incidents. If the incidents above happened in the general public domain, depending on the person and circumstances the sentencing is not likely to be reduced, and imprisonment is likely to be the result. A normal sentence for Actual bodily harm could be up to six months.

Critical Evaluation

Negligence occurs in many areas of sport, but is there a difference between the participators and the general public in negligence claims. As outlined above, claims in negligence result from many areas of a sports game. The club, participator, referee or spectator may put forward claims or be liable in the civil court.

The spectators in sport will not receive any special recognition for being at a sports ground to claim for an injury. It is very difficult to claim as generally if a ticket has been bought to watch the match a contract has been made and therefore there is deemed consent to the dangers of being at that particular ground. This would be the same if it was

not at a sporting ground but at for example a pop concert. If reasonable care has been taken to look after the spectators it is unlikely a claim could be made. Nowadays so much extra care is taken at a football match for the safety of the spectators there is more likelihood of a spectator being at more risk when outside as a member of the general public rather than in the ground.

If a participator acts outside the rules then they are likely to be liable for a damages claim for a personal injury. Just as if on a night out you were assaulted by a passer by the passer by would be liable for injuries caused. However it is more realistic that the passer by will claim as he would not have consented to the injuries. The sports player consents to many things that occur on the field and even if something goes beyond what can reasonably be consented to it is quite unlikely that a claim would be made as it brings bad publicity to the club. Often the club will sort matters out away from the public eye and the press in private. Governing bodies such as the Football Association may become involved to enforce their own rules.

It was a shock for referees to be ever found liable for injuries that were caused on a pitch as in the Vowles case. However on a day to day basis for example if a school supervisor was to allow two pupils to do something they shouldn't, it is likely they would be liable in tort, particularly if the standard of care fell below what is reasonably required. The same would apply to the general public and any claims they may make which were away from the sports field. In all areas now special training is needed to in an endeavour to prevent any sort of accident, not just in sport.

This is similar to the clubs liability. If again they fall below the standard of care necessary of a reasonable man, then they could be liable. There are no exceptions for sports clubs and the public must be treated the same.

The civil law for sporting claims is the same as that in any other civil claims. However claims in sport are few and far between. This is due to the fact that often sport generally or a particular club does not want any bad publicity as it a major part of British culture and it does not want a bad name. There is also considerable money involved in sport and therefore a bad name would be detrimental to sport, the country generally and for British industry. Also now stadiums are safer and better policed particularly when there are large crowds, which has helped reduce claims.

Looking more closely at football as a whole, claims have been made for injuries sustained on the pitch. However these cases are few and the nature of the injuries received would not only be enough to give liability in normal negligence cases, but are generally very severe instances or injury, perhaps career threatening. These cases are not strictly confined to Football Players. No special allowance is given to people in the surrounding area of a stadium and they are treated like the rest of the general public - if there is a real claim then damages will be awarded. This is shown in the cases above where similar leg and feet injuries which occurred at work were awarded damages for negligence, just as with the football players. This is in contrast to criminal proceedings which it seems lesser sentences are given to the offending party and it may be said special allowance is given to the sports player.

Sports players in general, even when the injury is serious, may not want to pursue any civil claim for damages as there is often an unwritten ‘sports mans code’ whereby

they accept a certain degree of physical force on a playing field. This was the situation with the incident at Bristol City at the start of this year, and although the assault was beyond what could be consented to, the injured player probably did not want to pursue the matter as he felt he was equally involved; because of provocation or at the request of the clubs to prevent adverse publicity. This could be compared to say an assault in the street outside a night club when there is every possibility the aggrieved and injured party would press charges and seek a Compensation Order in the magistrates' court or even commence civil proceedings for the injuries received. This may also result in a claim to the Criminal Injuries Compensation Board. The court may not entertain a claim in this scenario if there was any sort of contributory negligence or the aggrieved party had been drinking or taking drugs. However an attack of such a nature as at Bristol City is likely to end up in a civil or criminal court if a member of public was involved.

In the civil court I would argue that there is no legal difference between claims from the general public or sporting incidents. If a duty of care is found, and that there has been a breach of that duty, then any claim is possible. The only difference I would say however is that a sports player or club may be more reluctant to claim and if a claim was pursued would prefer to settle out of court to prevent bad publicity for themselves or the club. Pro-rata there are probably fewer "sporting claims" than general public civil claims but the burden and standard of proof are the same in all cases. In the public domain the high amount of claims is not helped by the "claims culture" and specialist claims companies that have developed today. The only non-legal means of securing compensation for sports injuries currently widely available is insurance. However few players outside the top flight are insured.

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