

Study on civil liability of referees in the sport competitions


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ABSTRACT

Mohamadinejad A, Mirsafian H, Soltanhoseini M. Study on civil liability of referees in the sport competitions. *J. Hum. Sport Exerc.* Vol. 7, No. Proc1, pp. S24-S34, 2012. Litigation is now a common occurrence and the sport environment is not excluded. The law affects all aspects of sport, whether you are an Olympic champion, a referee of a soccer game, a fan of special team, a constructor or seller of sports equipment, or a coach of team. Many circumstances do occur in the field of sports through which administrators, coaches, referees, et cetera, could be entangled in legal disputes on the conducts of their duties in sports. With of referee's career in the sport competitions and the effective role of them in the result of matches regards to the importance, discussion about the duties of referees, their responsibilities arising from breaching their duties, required factors for imposing liability to them, and the criteria of the standard referees are important. In this article, it is tried to analyze different aspects of civil liability of referees in the sport competitions. **Key words:** DUTY, NEGLIGENCE, DAMAGE, RESPONSIBILITY, ATHLETE.

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INTRODUCTION

Sport is an entity that has been with man for a very long time. From a "humble" beginning, the institution of sports has been transformed and what we have today is quite different from what existed in the olden days. Diversity of sports opportunities, pass the sport rules, increase the number of participant and affect of sport in different aspect of socio-economic are most important factors of this transform.

As a result of the enlarged sports scope, injury problem emanated, which is an offshoot of the increased number of participants and the nature of sports. The sports activities involve varying degrees of risk due to physical contacts that are common (Hart & Ritson, 2002). Though most sports injuries are classified as accidents, yet they are regarded as products of the inter play of factors that cause injuries. It is accepted that these injuries do emanate through the inter play of social environmental or behavioral factors, which if controlled, could lead to reductions in both death and injuries (Dougherty, 2002).

The effect of these factors is imposition the liability to the guilty person and forces him or her to compensation of the damage. This imposition of liability, with regards to the variety of sports is different to various persons and in various situations. Referee's profession is one of the most controversial and disputed subjects in the world of sport and law. A sport referee is that person who has been trained to adjudicate between two competing teams during a competition whether individual or team sports (Morakinyo, 2008).

There are three different roles for referees in the sport competitions.

1. As a judge, run the rules and make the decisions.
2. As a manager, are responsible of the match and manage all of the people who are engage.
3. As a mediator in the dispute, are responsible to solve the conflicts (Ahmadi & Mohamadzadeh, 2009).

Referees have different duties in performing these roles and the results arise from negligence of those duties, make them liable and forced them to compensate the damages with regards to the presenting the required factors for liability.

Employment Status of Referees

The referee may be classified as an independent contractor or an employee. This distinction becomes important if a referee is injured in the course of performing his or her duties or make damage to others. If acting as an independent contractor, the association of referees will not be eligible for workers' compensation and it will generally not be held responsible for the actions of the referee; but if classified as an employee, the association would be entitled to receive those benefits, it could be held liable for the actions of the referee under the legal theory of vicarious liability (Wong, 2010), because, it failed to exercise reasonable care in selecting that official (Goldberger et al., 2007).

The single most compelling feature in determining if a person is an employee or an independent contractor is the degree of control that the employer is able to exert over the person's actions. Independent contractors are generally not subject to the control of the hiring authority but, rather possess an independent skill or trade, pay their own expenses, supply their own equipment and clothing, and are compensated on a per-event basis (Goldberger et al., 2007).

Anyway it should be noted that the interpretation of a referee's status differs from state to state on the basis of state laws and the legal relationship between the referees and the hiring institution (Wong, 2010).

Duty of Referee

The duties that referees owe to participating athletes determine by rules, contract or common law and rest largely on two legal concepts:

Contractual Duty of Care

Based on the contract which is concluded between referees and their hiring institutions, referees are obligated for caring the players in the sport competitions. Although the participating athletes do not, as a general rule, share in the process of contracting for referees, their safety and welfare is clearly recognized as the end or aim of the contract. Thus, the contractual relationship between the referees and the hiring authority is seen as establishing a legal foundation for liability (duty) in the event that referees should fail to effectively fulfill prescribed duties regarding participant safety (Goldberger et al., 2007).

Duty To Control

In addition to the responsibilities imposed by a formal contract, the rules of most sports place referees in a position of authority over athletes. The rules of most sports, for instance, charge the referees with the responsibility of ascertaining the playability of the field, penalizing identified illegal or unsafe behaviors, and ejecting from the game those individuals whose conduct flagrantly deviates from the prescribed limits. Referees, therefore, are able to exert a degree of control over the actions and conduct of the athletes and, thus, may bear a legal obligation to do so (Goldberger et al., 2007).

Duty of Referee In Details

1- Inspect playing surface and facilities and equipment before starting the match and continued safety of them during the contest (Wong, 2010).

It is the duty of the referees to check the grounds, facilities and equipment to be used for the match. The rules of various sports, track and field, soccer, wrestling, basketball, volleyball and so on dictate that the referees must inspect the facilities and equipment that will be used for the competition. Any dangerous condition discovered by referees should be reported to the organizers and steps should be taken to rectify them before the commencement of the game (Morakinyo, 2008).

It is very dangerous to use an area or facility while waiting for corrective measures to be taken, it is better to have the competition shifted to another good facility and if none is available, the game should be postponed (Hart & Ritson, 2002). Any way referees must to prevent players from participating if the playing area and equipments are obviously ill fitting (Wong, 2010). A gymnastics judge, for instance, is expected to note and correct a situation involving inadequate matting. A softball umpire is expected to correct a badly eroded base path or equipment left in the playing area. And a football referee should note and correct the absence of proper protective equipment and safe field marking devices (Goldberger et al., 2007).

Like coaches and teachers, the referees are expected to respond to both actual and constructive notice. Coach or athlete complaints regarding facilities or equipment are examples of actual notice. Reasonably obvious deficiencies such as those revealed by the required performance of an appropriate pregame inspection constitute constructive notice.

In both cases the referees have a clear responsibility to take immediate and appropriate actions to safeguard the athletes involved.

Also referees should inspect the player's equipment. A situation that may be more likely to result in successful litigation is when a referee does not enforce a rule, especially a safety rule requiring certain equipment such as helmets or banning dangerous items such as earrings (Wong, 2010).

2- The referees have a duty to warn competing athletes of any dangers that are known to them or should have been discovered during pre-competition inspection. This duty does not extend to dangers that competitors' are aware of or those a reasonable person would have known existed (Morakinyo, 2008).

3- Attention to weather and climate conditions. Referees should not have started the game in inappropriate weather. They should stop the game which increases the probability injury to participation (Wong, 2010).

4- Keep the playing area free of equipments and /or spectators which lead to players' injury. For example, a ball or bat may be left on the playing field and a player may trip, fall, and be injured by the equipment (Wong, 2010).

5- Control the participants activities and enforce the rules of the games are another duties of referee (Schot, 2005). Sport rules, from a legal perspective, are divided into two categories:

- A category of rules which cover the original structure of sports; sport rules and the correct execution of actions in each sport depends on them. In football, for instance, only the goalkeeper has a right to touch the ball with his hands within the game. Violations arising from this group of rules fall within the category of sport errors, and carry a special penalty in sport matches. This issue is not considered in a legal manner unless non-conventional damages could be awarded.

- The other category of rules imposes special precautions on athletes. The aim of these rules is to provide safe and healthy conditions for players within the match, to dissuade violence and revenge, and to encourage fair play.

Referees in sports cannot prevent violations in sports, however, they must use reasonable care to see that the rules guiding the competitions are obeyed (Morakinyo, 2008). Referees have responsibilities to ensure that the individual skills used by the athletes are according to rules and appropriate for the game because, elements of play are within the control of the referee during the game (Goldberger et al., 2007). In soccer, for instance, the act of kicking the legs of the player with the ball is both unsafe and against the rules of the game. A player that does this, whether deliberately or by accident and does not get punished will do it again. Once a player is seen to have gotten away with a violation, other players are likely to try it too. This act of oversight will invariably reduce the standard of play and safety of the players (Morakinyo, 2008).

Referees who fail to intelligently and firmly enforce rules regarding players' contact, opponents baiting, and unsporting conducts are placing themselves in a position of high legal exposure. By not penalizing players' infractions early in the contest, the referees, in effect, place a stamp of approval on prohibited conduct and in so doing makes allegations of negligence by a participant who is later injured possible to sustain. Referees have the authority and the obligation to effectuate negative reinforcement for prohibited and dangerous acts by penalizing participants for such infractions. If appropriate penalties and sanctions are

not imposed by the referee at the time of violations and injury results, the referee may be liable (Goldberger et al., 2007).

6- Referees are expected to exercise reasonable supervision while the game is going on. According to Dougherty et al. (1994), referees are expected to maintain reasonable control of the environmental conditions and the activities of contests by exercising effective general and specific supervision". Since supervision implies "oversight" (Hart & Ritson, 2002), it is expected that referees shall place themselves in vantage positions that will give them the best "view of the action both on and away from the ball" (Morakinyo, 2008; Goldberger et al., 2007).

7- Proper handling and treatment injured player is another duty of referees which is put on referees after injury.

Referees ought not to attempt to render first aid or medical treatment but, they owe an injured athlete prompt and adequate medical treatment (Goldberger et al., 2007).

In the first instance, the referees must make sure that medical personnel and their equipment are available during the competition; this is in addition to the fact that each team is expected to include medical doctor in its composition (Loomis, 2001). The referees are required to stop play immediately when necessary to protect the injured player. After stopping play, the referees must determine if the player is in need of assistance. If the player is injured seriously enough so that play must be stopped, he or she will usually need to be substituted for, depending on the game rules. But in any event, it is the referee's responsibility to immediately summon adult personnel from the bench, in particular the head coach, who must then determine if a trainer or physician is required. It's important that referees allow medical personnel the unfettered opportunity to determine if and when the player may be moved, regardless of the time of delay, (Goldberger et al., 2007).

Failure to abide by the laws of the game as they relate to medical provision and treatment of injured athlete may be considered as negligence (Morakinyo, 2008). Regarding player injury, referees need to be thoroughly familiar with the rules that govern stop of play and time-out procedures.

Also, the referees must continue to supervise both teams. It's advisable to keep the teams separated and at or near their bench or team areas during the time-out. Although most playing rules instruct game referees to interpret all rules with a view toward placing safety first, sometimes a situation does not appear to fall directly within the letter of the written rules. While in many ways this question is more a moral issue than a legal one, it's no less important. The critical point is that regardless of the potential for a lawsuit, the health and safety of the athlete must be the most important factor to be weighed in the decision-making process. If the likelihood of an injury is very remote, or the potential severity is very minor, then other factors such as the flow of the contest or the desires of the athletes or the coaches can be considered. As the potential likelihood and severity of an injury increases, however, so must the primacy of the safety issues (Goldberger et al., 2007).

Civil liability of Referee

Civil liability for sports injuries falls under tort law. That is a mechanism for protecting individuals' rights from unreasonable interference, and by that the offender is forced to redress the damage for damaged person (Dobbs, 1984).

In other words, the primary focus of the tort law is that when losses should be shifted from one individual to another or it should be left where it has fallen (Keeton & Keeton, 1977). It should be mentioned that the purpose of tort law is not punishing people for torts that they commit but, it is compensating injured parties for damages suffered (Standler, 1999).

Before a referee forced for assuming financial responsibility for an athlete's injury, his negligence should be proved. In order to that, four elements need to exist: duty, breach, cause, and harm (Carpenter, 2000).

The above stated elements shall; individually, be examined in relation to referees officiating during sports competitions. It should be noted that the absence of any of these elements, will bar recovery of damages under the law.

Duty

Finding that a duty of care exists is the first step in maintaining a negligence claim (Schot, 2005). Once the competition starts, the primary responsibility for the ultimate safe conduct of the contest devolves upon the referees, who are more directly involved with the control and flow of the game (Goldberger et al., 2007). With regards to the referees' duties which are discussed previously we can add that all of the referees' duties and tasks are summarized to performing the regulations, rules and safeguard the safety of the players. In the other word, the duty of referee in one statement is supplying the safety and maintaining the players' security that these aims are achieving with performing the other duties (Michael & Demetriou, 1999; Schot, 2005).

Standard of Care

Having established that the referees owe a duty to exercise reasonable care in the control of an athletic contest and over its participants, one must next establish the standards of performance (standard of care) or level of care that they must meet in fulfilling this duty (Goldberger et al., 2007). In other words, it should be determined that what is the purpose of reasonable care (Cadkin, 2007).

Sports decisions are made instantaneously and under intense pressure. Commentators therefore argue that referees conduct should be measured against a more lenient standard which does not restrict a referees' discretion; referees should be free to properly officiate without fear of litigation (Feiner, 1997). Assuming referees are acting in good faith and make an unintentional error in judgment (Cadkin, 2007) and they could not be properly held liable for errors of judgment, oversights or lapses of which any referee might be guilty in the context of a fast moving and vigorous contest (Michael & Demetriou, 1999). Therefore, it seems reasonable that an ordinary negligence standard would suffice for check out the referee's performance (Cadkin, 2007).

It seems that regardless the importance of the referee's career and different professional aspects and moreover, their needs to freedom for making the decisions without any fear from the law, we cannot take a behavior of a normal and ordinary people as a criterion of the care of a referee because, a normal people has no knowledge about the referee's skills, rules and regulations of the sports. Thus, referees are not expected to behave like a normal and ordinary human during the sport matches. The yardstick used in assessing the performance of a referee, therefore, is a reasonably prudent referee who must, by the rules of the sport itself, act reasonable care requires acting with the diligence of a reasonable and prudent referee of similar training and experience: reasonableness equates to an ordinary negligence standard (Cadkin, 2007).

Also, it should be noted that in evaluating the behavior of an intelligent and skilled referee in the matches, the criterion of care is the behavior of a referee with same characteristics of skills and intelligences, and is not a behavior of a normal referee which is used for other referees (Standler, 1999; Yazdanian, 2000). Generally, the standard and level of care owed to participants will depend upon the nature of the sporting activity and each activity's inherent risks and degree of harm which may result (Zurowski, 1999); and in any given situation is influenced by four factors:

1. Written standards - includes government statutes and regulations, national and provincial building code standards, regulatory equipment standards, non-statutory guidelines established by or for a specific activity or industry, policy and procedural manuals for a particular sport program or facility, and an organization's own risk management plan and internal policies and procedures.
2. Unwritten standards - includes common practices in the industry, discipline or profession, such as eyewear for racket sports, and helmets for bicycles. A common practice may include discontinuing a softball game in rainy conditions because the bat will become slippery.
3. Case law - refers to court decisions addressing similar fact situations which provide guidance on appropriate conduct to other judges as well as to sports administrators, programmers, instructors, coaches and leaders (Fast, 2004; Morakinyo, 2008).
4. Common sense - refers to intuition based on one's knowledge and experience that something does not seem safe or right and ability to perceive significant risks and act accordingly (Kitchen & Corbett, 1995).

Breach of Duty

Once a duty has been found to exist, a prospective plaintiff must establish breach. Breach is commonly defined as a "failure to perform a duty or 'failure to exercise that care which a reasonable (person) would exercise under similar situations (Loomis, 2001). In other words, the plaintiff (athlete) must demonstrate that the "referee's conduct deviated from a required standard of care and that such a deviation resulted in a different outcome for the game" (Loomis, 2001) or lead to the damage to him or her.

It is believed by the court that an individual (referee) will exercise the degree of care and foresight that a reasonably prudent person (referee) would exercise under the same or similar circumstances (Schuhert et al., 1986; Hart & Ritson, 2002). To establish a breach, the threshold of liability is high and will not be easily crossed because of the inherently risky nature of contact sports such as rugby (Gardiner, 2001).

Damage

Harm is the third element required for negligence (Carpenter, 2000). The breach must have resulted in damages or losses to the plaintiff's person, property or interest (Dougherty et al., 1994). Absence of harm means there is no negligence. The old basketball phrase applies: "No harm, no foul"(Carpenter, 2000).

Before an individual can be held responsible for damages suffered by another, the possibility of harm must be shown to have been reasonably predictable (Goldberger et al., 2007). In other words Harm must be considered reasonably foreseeable to allow recovery (Feiner, 1997). While any given injuries to some particular athletes not have been predictable, the likelihood of an injury to players most certainly was. Thus, the yardstick by which foresee ability is judged is whether the possibility of an injury should have been apparent to a prudent referee acting under the same or similar circumstances (Goldberger et al., 2007).

Causation

The fact that the defendant negligently breached a duty owed to the plaintiff is not sufficient grounds for a successful lawsuit. The plaintiff must prove that the particular injury for which compensation is sought was actually caused or aggravated by the defendant's negligent act (Dougberty et al., 1994). In other word, athlete must show that the negligence action of referee was the "cause in fact and proximate or legal causes of his or her harm (Schubert et al., 1996; Hart & Ritson, 2002). No attempt will be made by the court to ascertain all the causes, and the defendant would not be asked to explain why he acted the way he did, the only issue of interest is the defendant's contribution to the plaintiff's injury. The injury suffered must be the consequence of the defendant's breach of duty, and that "but for" the negligent conduct, the injury would not have occurred (Hart & Ritson, 2002).

While volumes have been written on the concept of proximate cause, for purposes of this discussion, two questions must be answered:

1. Causation in fact. Did the injury occur because of the defendant's act, or would it have occurred anyway? Or did the negligence of the defendant cause or aggravate the injury in question?
2. Proximate cause (legal cause). Was the connection between the act and an injury strong enough to justify imposing liability? (Standler, 1999).

If the answer to these questions are no, then regardless of the amount of carelessness present, the injured athlete cannot recover damages for negligence from the referee (Goldberger et al., 2007). The causation does not need to be direct: defendant's act (or failure to act) could begin a continuous sequence of events that ended in plaintiff's injury, a so-called "proximate cause". (Standler, 1999). These questions are often made more complex in the case of a referee, however, because of the intervention and actions of a third party. When one athlete is injured as a result of the actions of another, and a referee is sued, the proximate cause issue revolves around the question of whether the actions of the player who caused the injury could reasonably have been controlled by the referee. One way of addressing this question is seen in the use of the But-For test. That is, to hold all factors of the incident constant except for the alleged negligence and, thus, to determine whether, but for the negligence of the referee, the injury would not have occurred (Goldberger et al., 2007; Healey, 2005).

Judicial Review of A Referee's Decision

There have been two distinct areas in which suits against referees have been filed: the personal injury area, in which the referee is sued for negligence, and judicial review of a referee's, decision. The first part is explained. The area of judicial review of a referee's decision is one that has been infrequently litigated. Generally, courts are reluctant to review playing field decisions, whether involving errors in judgment or misapplication of a rule. Plaintiffs have not been successful in this area, and the courts will continue to show their reluctance to become involved in decisions on the playing field unless fraud or corruption can be found (Wong, 2010).

CONCLUSIONS

All peoples in societies and in different occupations are exposing to civil liability. Generally, any illegal actions that cause damage to people lead to legal liability. However, extent of liability are different from person to person according to the amount of lose, situation of the damaged person, and et cetera. Imposing legal liability also covered the world of sport. Which means that in the sport activities and

competitions, like other areas, a person would be liable if he or she performs an illegal action and caused damaged to other persons.

With regard to the importance of referees' profession in different sport fields and their different roles in a sport match, and also regarding to their tasks and duties, they might be liable for any failure to display reasonable competence resulting in injury to a player, including failure to implement relevant rules, designed in this instance to protect against injury.

To determination of whether or not a referee is responsible, many factors are considered by courts. For Instance:

- A duty of care owed the player by the referee.
- Breach of that duty by the referee.
- Damage to the player resulting from the breach.
- The foresees ability of harm.
- The degree of certainty that player has suffered the alleged harm.
- The closeness of connection between the referees' alleged misconduct and potential injury.

The above stated elements shall; individually, be examined in relation to referees officiating during sports competitions. It should be noted that the absence of any of these elements, will bar recovery of damages under the law.

Suggestion

Although separating the accidents from sport activities and competitions is impossible, however, observance of regulations and rules and serious struggle with deliberately errors and neglects could reduce that to minimum and prevent the unacceptable behavior in sport. It is imperative therefore; that all those involved in administering sport make concerted efforts to reduce the risks to which participants are exposed. Also, the codes of ethical behavior should be developed in all sports for players, parents, spectators, referees and officials.

On the other hand, the society has now become sophisticated and people are willing to seek legal redress for perceived wrongs. Many circumstances exist in the field of sports through which administrators, including coaches and referees could become entangled in legal dispute. There is no doubt that members of the society are getting increasingly aware that they can receive legal compensations for injuries sustained in the field of sports. Due to the increased risk for injuries and the awareness of people for their legal rights, there is the need for coaches and referees to have a basic working knowledge of the law as it relates to sports.

The following liability checklist will help officials, referees, and umpires protect themselves against possible litigation:

1. Inspect playing surface, including sidelines and end lines, for visible and potential hazards.
2. Determine if weather conditions are appropriate for competition and do not allow coaches or other athletic officials to influence the decision.

3. Inspect game equipment such as bases and goalposts.
4. Ensure that players wear safety equipment required by the rules of the league or athletic association.
5. Inspect players' equipment for safety and make sure that players are not wearing any potentially dangerous jewelry or accessories.

In this way, education is needed to all of the essential and effective matters. Also, publishing various journals related to the referee cases in different sports can develop their knowledge and face them to new referee cases.

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