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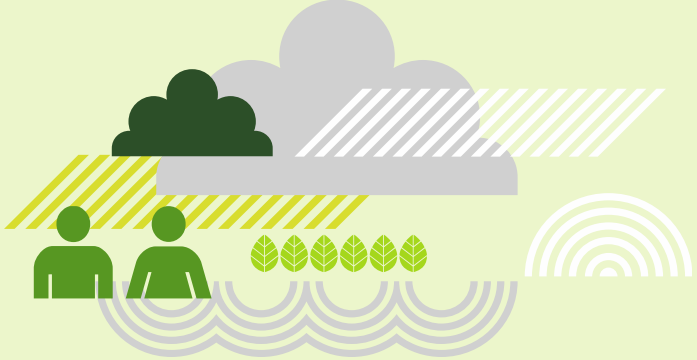

CILA

Out With the Old and In With the New

by the Liability SIG

Kieran Walshe, Partner, DWF LLP
Craig Faulkner, Complex Loss Specialist, Cunningham Lindsey
Martyn Gabbitass, Technical Director, QuestGates

London Chambers
10.12.15

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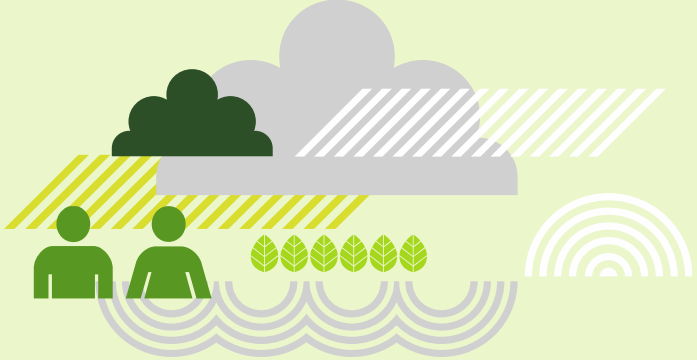

CILA

Sports Liability

Craig Faulkner

Cunningham Lindsey

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Cunningham Lindsey

Negligence in Sports Law-Historic Framework and Recent Case Law

Craig Faulkner
Cunningham Lindsey Major and Complex Loss Team

MCL Team

Player to Player Liability

Condon v Basi (1985)

Condon established that participant can be liable to another for injury due to negligent challenge/tackle

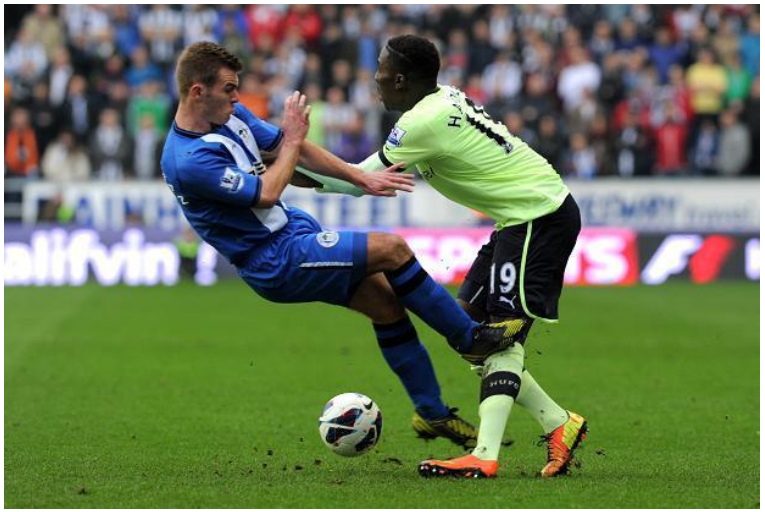
The claimant suffered a broken leg in a sliding tackle from 4 m away with foot 9 inches off the ground, defendant sent off

Tackle was so late it showed a “reckless disregard” for the other player’s safety

Basi’s actions amounted to a reckless disregard for another player’s safety

…continued.

- Tackle was not malicious but this was not a factor in the judgment
- Court of Appeal dismissed the appeal
- Damages of £4900 awarded - not a high value case



Caldwell v Maguire and Fitzgerald (2001)

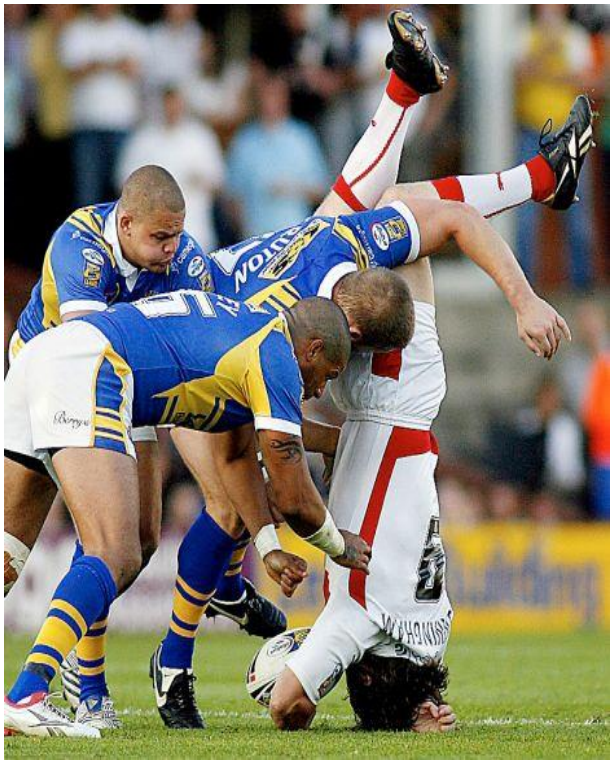
- Caldwell was a professional jockey, unseated by the actions of two other jockeys
- Accident occurred in the last 100m of a very close steeple chase race
- Both Defendants were involved in a close race, one “cut up” another on the inside line when only ¾ length clear
- The horse refused to go through the gap, veered into the path of the claimant’s horse causing him to be unseated and suffer serious injury
- Defendants were suspended for 3 days after steward’s enquiry for careless riding
- First instance decision dismissed the claimant’s case

Caldwell v Maguire

- Court of Appeal considered the case in light of *Condon*
- Held that the threshold for establishing liability was high
- Defendants were guilty of an error of judgement in the closing stages of a fast moving sporting contest
- This error did NOT amount to a reckless disregard for the other jockeys' safety
- Momentary lapse of judgement was not negligence. The Jockey Club's suspension was considered but not prima facie evidence of negligence

Rugby-spear tackle

- Jarrod McCracken v Melbourne Storm Rugby League Club(2005)



Rugby

- Claimant suffered career ending injuries in a spear tackle
- Two Melbourne Storm player “upended” Jarrod McCracken when he was 10 meters from the try line
- He was raised to “an unusual height” by two opposition players who then deliberately allowed him fall heavily
- Claim brought against both Melbourne Storm and individual players
- Both players had breached their duty of care, and Melbourne Storm were vicariously liable for the actions.
- Damages of $90,000 awarded

Historic Cases

- R v Bradshaw (1878) - Herbert Doherty died following a serious tackle in a football game, charged with manslaughter. Referees said the tackle was hard but fair - defendant was acquitted in the criminal trial
- "*If a man is playing according to the rules and practice of the game and not going beyond it, it may be reasonable to infer that he is not actuated by any malicious motive or intention, and that he is not acting in a manner which he knows will be likely to be productive of death or injury. But, independent of the rules, if the prisoner intended to cause serious hurt to the deceased, if he knew that in charging as he did, he might produce serious injury and was indifferent and reckless as to whether he would produce serious injury or not, then the act would be unlawful.*"

Historic Cases

- R v Moore (1898) - defendant jumped into the back of a player with both knees, causing an internal rupture
- He died a few days later, defendant convicted of manslaughter
- "*No-one has the right to use force which was likely to injure another, and if he did use such force and death resulted, the crime of manslaughter had been committed*"
- https://www.youtube.com/watch?v=p_st29mlQwU

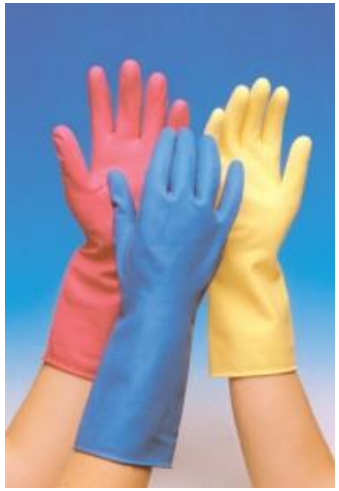
Vicarious Liability

Gravil v Caroll and Redruth Rugby Football Club (2008)

- Carroll was a semi professional player and had a contract of employment with Redruth RFC
- He assaulted Gravil by punching him, causing a “blow out” of the eye socket
- His contract contained a clause that he would not assault anyone on the filed of play
- The act was closely connected with his employment, applying Mattis v Pollock(nightclub doorman) and Lister v Hesley Hall (sexual assault)
- Redruth was vicariously liable as employer

GB v Stoke City Football Club Ltd (2015)

- Claimant was an apprentice with Stoke City in 1986 and 1987
- Alleges that the first team goalkeeper assaulted him as part of an “initiation” tradition



Vicarious Liability

- Allowed to proceed out of time (s33 Limitation Act 1980)
- Claimant failed to establish that the incidents occurred as alleged
- Claimant alleged that his performance and career progression had been affected by the acts, but evidence indicated his performance had improved over the alleged period
- ***Obiter* comments** - there was insufficient proximity between the alleged acts and the goalkeeper's employment so Stoke City would not have been vicarious liable even if the claimant had established the acts occurred

Volenti non fit Injuria

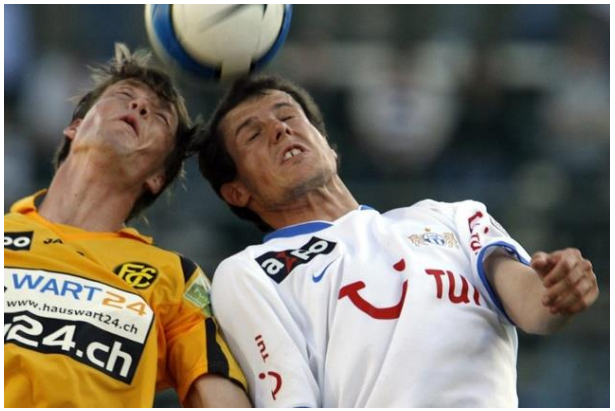
- Volenti is not often a successful defence
- A player agrees to the inherent risks of the sport ***BUT*** does not consent to injury as a result of negligence

Three requirements:

1. Player agrees to waive any right of action against the defendant for breach of duty
2. Agreement must be voluntary and not forced onto the player
3. Player must have full knowledge of the risk

Volenti

- Rootes v Skelton (1968), "....the participants may have agreed to the inherent risks of that sport...but that does not eliminate all duty of care from one participant to another"
- Inherent risk are accepted - e.g. clash of heads in football, injury from repeated punches in boxing
- But where negligence is established volenti will not apply



Spectators

- Fenton v Thruxton and MCRCB (2009)
- Claimant was a spectator at Campbell Corner, an official viewing area, British Superbike Championships
- Bike lost control and left the circuit, crashing into spectators
- Thruxton defence was based on their reliance of the MCRCB inspections which had not identified any issues with safety at Campbell corner
- Thruxton owed common law and statutory duty (OLA 1957) to the claimant and could not plead “passive reliance” on the governing body

Watson v British Boxing Board of Control (2001)

- Michael Watson suffered serious brain damage in a fight with Chris Eubank
- It was 7 minutes before doctors attended, Watson was not given oxygen
- In a coma for 40 days and suffered irreparable brain damage
- He had consented to the inherent risks of boxing but this did not extend to waiving his right to recover from BBBC as a result of their failure to provide adequate medical care at the ringside
- Proper emergency treatment would have minimised the effect of the injury
- Damages of £1m awarded, later reduced to £400,000

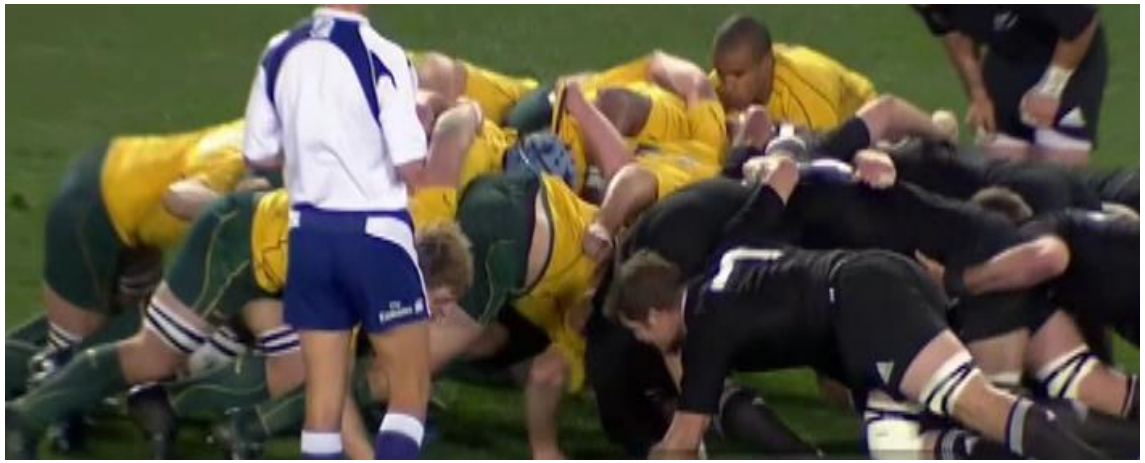
Referees and Officials

Smolden v Whitworth and Nolan (1997)

- Claimant was age 17 and suffered serious spinal injury when a scrum collapsed towards the end of a game
- Specials scrum rules applied to Colts under 19 games - scrums had a “crouch, touch, pause, engage” sequence that was not followed by the referee (Nolan-D2)
- Claim against D1 (the opposition hooker) was dismissed

Smolden v Whitwoth and Nolan

- Referee had breached his duty to the claimant. The proper scrum process was not followed and there had been four or five collapses in the course of the game - higher than average
- Referee's appeal was later dismissed - the claimant had consented to the ordinary risks of the game but not to the referee's failure to control the scrum



Referees

Vowles v Evans and Welsh RFU(2003)

- Claimant was confined to a wheelchair after spinal injuries sustained a scrum
- Second XV amateur game
- Loose head prop was injured early on in the game, his replacement was inexperienced in that position
- Claimant's team refused referee's offer of uncontested scrum, designed to avoid injury when front row forwards are inexperienced
- Scrum collapsed in final minutes of the game
- Referee was negligent when he gave the players the option of uncontested scrums

Vowles v Evans

- Welsh RFU rules required all front row forwards to be experienced
- He should have taken control following the earlier injury and required teams to agree to uncontested scrums
- Welsh RFU had agreed that they were vicariously liable for the referee's actions if deemed negligent
- NB: referee was a personal injury solicitor
- Another example where *Volenti* did not apply, not the "ordinary risks" of the game

More recent cases

Sutton v Syston Rugby Football Club (2011)

- Claimant was 16 years old, taking part in a touch rugby training session
- He injured his knee when he fell on a small piece of plastic in the ground, left by the cricket club from a boundary marker
- Syston had not carried out an inspection but argued that the plastic was not visible and would not have been spotted during a walk through inspection
- Court of Appeal agreed and overturned the original decision
- There was a duty to carry out an inspection but this hazard would not have been spotted, causation not established
- Compensation Act 2006 considered - socially desirable activity

Bartlett v England and Wales Cricket Board Association of Cricket Officials (2015)

- Heavy rain in the two days before the amateur game
- One team was keen to play due to their strong league position
- Shortened game started at 4pm, ground was wet
- In the first over of the game, the claimant attempted a sliding stop near the boundary, sustained an injury to his knee
- Similar to Simon Jones' injury, Brisbane 2005
- https://www.youtube.com/watch?v=Iwcth5UilsQ

Recent Cases

- Alleged that the umpires had been pressurised by opposition captain and the game had started in unsafe conditions
- Outfield was wet but not dangerous
- Claimant had used the incorrect technique and lead with the wrong leg
- Case dismissed

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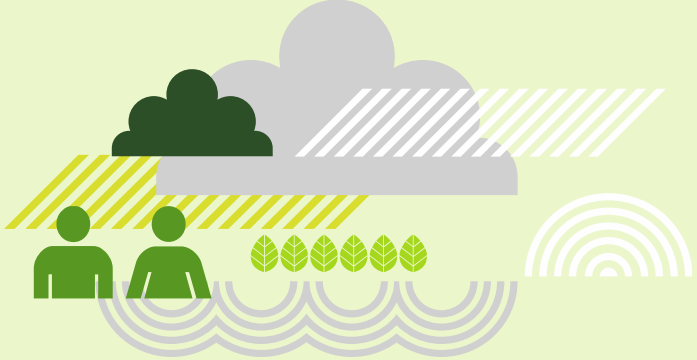

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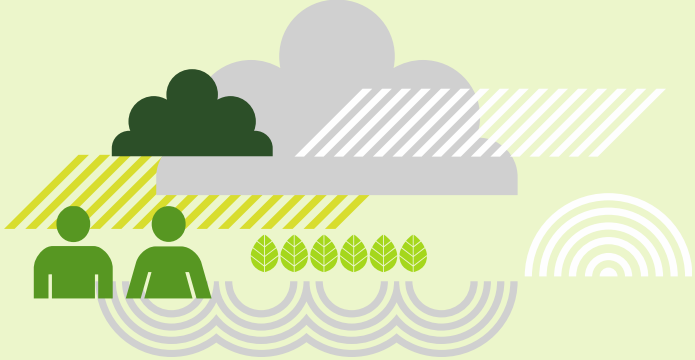

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Q. & A.