

The Civil Liability Imposed on the Exerciser in Sports Injury

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Abstract

That fact that most of the persons got injured in sports event, in which he realized the risks and nevertheless voluntarily participated, makes sports injury event so unique to tort events and so complicated when inquiring the civil liability imposed on the exerciser.

The most disputed issue is what will be the best defense of exerciser who injured others. The “assumption of risk theory” and the derived “intentional-reckless doctrine” and “inherent risk doctrine” commonly, though not unanimously, applied in common law to bar the claim or recovery by the injured party, might not be readily applicable to the tort fabric in our civil law. For those who realized the risks in some kind of sports and nevertheless voluntarily participated in or speculated nearby did not necessarily express or imply that they would like to assume the risks herein, and even they assumed, the risks exempt, by our civil law, the categories of death and heavily wounded situation, which are not uncommon in sports injured events. Moreover, in certain sports, the injured co-participant or speculator did not always have the chance to express or imply his willingness to the assumption of risks time before he got injured. And all these indicate that the old doctrine “one who consents cannot receive an injury”, the “assumption of risk” and theory of a kind might not be a good defense for the exerciser injured others during exercise.

This article advocated that “permissible risk theory” might serve as a good defense, and hold that the exerciser owed no duty to protect others from risks only when if the duty imposed would require that an integral part of the sport be

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abandoned, or would discourage vigorous participation in sporting events, and as a matter of policy, the risks would be permissible by the contemporary society after weighting material factors including the specific game involved, the ages and physical attributes of the parties, their respective skills at the game and their knowledge of its rules and customs, their status as amateurs or professionals, the type of risks which inhere in the game and those which are outside the realm of reasonable anticipation, the presence or absence of protective uniforms or equipment, the degree of zest with which the game is being played. Meanwhile, it will be comparative negligence if the injured person who realized the risks and nevertheless voluntarily participated in or speculated nearby failed to exercise ordinary care for the safety of himself.

Keywords: sports injury, torts, illegality, negligence, exempt from illegality, assumption of risks, willingness to the assumption of injury, permissible risk, inherent risk doctrine, intentional-reckless doctrine