A Duty of Care in Sport: What It Actually Means

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The "Duty of Care" in the legal and non-legal sense

In December 2015, as part of its "Sporting Future" strategy, the UK Government asked Baroness Tanni Grey-Thompson to conduct an independent review of the duty of care which sport has towards its participants.[1] That review—the "Duty of Care in Sport"—was published in April 2017 and follows seven themes:

1) education;
2) transition (within and when leaving a sport);
3) representation (of participants);
4) equality/diversity/inclusion;
5) safeguarding;
6) mental welfare; and
7) safety/injury/medical issues.

This review is undoubtedly an admirable analysis of what most would regard as good or best practice, particularly for larger (and certainly most professional) sports bodies. It contains many well-considered recommendations as to how they could be better structured and administered with greater consideration for the interests and welfare of participants whether joining, participating in or when retiring from sport. But what is actually meant meant by a "duty of care", words we have come to hear used to characterise whatever the speaker thinks should or should not have been done by authorities or individuals in a particular set of circumstances?

In many instances, the phrase "duty of care", like "fit for purpose", is nothing more than a portentous way of garnishing the speaker's views with a veneer of pseudo-legal authority because, if there is a duty at all, it is often a moral or social duty rather than a legal one. Baroness Grey-Thompson's report does not even try to offer a definition: she says in her introduction[2] that she has "adopted a deliberately broad definition of 'Duty of Care'—covering everything from personal safety and injury, to mental health issues, to the support given to people at the elite level. I looked across as broad a range of sports and levels … as possible".

Since it is in the law that the concept of a "duty of care" first arose and continues to be developed, the focus of this article is on explaining the circumstances in which a *legal* as opposed to moral or social duty is imposed by the law in a sporting context. As is evident to every lawyer, but may not be immediately apparent to an administrator who solemnly commends a particular policy as being as an expression of its "duty of care", the distinction is important because a breach of a legal duty renders the wrongdoer (and any sporting body legally responsible) liable in damages to the victim. So our notional administrator needs

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[1] In the context of the Cameron Government's expressed intention to introduce such a "duty": Department for Digital, Culture, Media & Sport, *Sporting Future: a New Strategy for an Active Nation* (17 December 2015).

[2] Department for Digital, Culture, Media & Sport, *Sporting Future: a New Strategy for an Active Nation*, p.4.

to be careful what he[3] wishes for: the consequences of widening the scope of legal responsibility beyond its current constraints are, self-evidently, very significant, particularly with substantially increased awards of damages for catastrophic injury following the change in the discount rate and at a time when many professional bodies, other organisations and private individuals have almost certainly got wholly inadequate levels of indemnity under their insurance policies.[4]

The difference between a moral and a legal duty

A simple example illustrates[5] the difference between a moral or social duty and a legal duty. Assume a friend and I are walking along a cliff top. My friend fails to notice that there is a sheer drop ahead. I realise that, if he walks on, he dies. It is beyond argument that I owe a moral—or social—duty to warn him. But I certainly owe him no legal duty because (adopting what is generally regarded as the favoured formulation for imposing a duty of care in relation to injury), first, I have *assumed* no responsibility for his safety, secondly, he is an adult and is not *relying* on me to look after him and, thirdly, the law has not (hitherto) regarded it as *reasonable* to impose a duty in such circumstances.

On the other hand, if one were to change the facts a little, a duty of care certainly does arise: for example, if my companion were a 10-year-old child or was visually impaired, or if the dangerous drop were not obvious and I had told him I knew the way and would look out for hazards. Then consider another variation on the original facts: what if I were to have seen that there was a family of five picnicking on the beach below the cliff on which anyone falling from the edge would be likely to land? I may owe my friend no legal duty to protect him from the consequences of his own foolhardiness: but surely I should do something to save the unfortunate family from terrible injury when he fell? This is a more difficult question, but the probable answer is still that I owe no such legal duty, whichever test is applied and however clear-cut my moral or social duty to say something to prevent the disaster.

The "duty of care" review's recommendations as good practice

In the context of sport, a similar distinction can and should be drawn between moral and legal duties. Baroness Grey-Thompson took "transition" as her second theme; in a nutshell, she makes recommendations as to how national governing bodies ("NGBs") should deal with those who come into and those who leave sport, particularly when they enter the outside world having spent many of their formative years in a highly competitive and closely regulated environment and, retiring for any reason, find themselves unprepared for life outside.

In those circumstances, it is surely good practice that a sport's governing body, or a club which has enjoyed the services of a player from a young age until retirement from the game, should help with that transitional process, at least if it has sufficient resources to do so. On the other hand, one should not lose sight of the fact that adults must also take responsibility for their own futures. In the case of horse racing, for example, the Injured Jockeys Fund (a charity of which I am a trustee) and the jockeys themselves (through a levy on their share of prize money) run the Jockeys Employment and Training Scheme ("JETS") to help with post-racing life and career development. This is an example of what may be thought good practice—an expression of a moral, but certainly not a legal, duty. And it is noteworthy that the responsibility has been undertaken not by racing's regulator and governing body (the British Horseracing

[3] For convenience only, I shall use the masculine throughout.

[4] A vivid example of how this might arise is *Harcourt v FEF Griffin* [2007] EWHC 1500 (QB); [2008] Lloyd's Rep. I.R. 386. The hearing (before Irwin J, as he then was) was concerned with whether the defendants could be ordered to disclose their level of insurance cover in a claim brought by a teenage tetraplegic arising out of a gymnasium accident. The judge ordered that the level should be disclosed since what was apparently the extent of the cover (£5 million) was likely to be insufficient to meet a claim valued by the claimant's advisers at £8 million–£10 million gross (£6 million–£7.5 million net allowing for some contributory negligence), regardless of whether one approached assessment as a lump sum claim or as a periodical payments order. With a discount rate of 0.75 per cent, the full value of the potential claim would now probably have been more than £25 million.

[5] An example discussed in the Privy Council decision in *Yuen Kun Yeu v Attorney General of Hong Kong* [1988] A.C. 175 PC (Hong Kong).

Authority ("BHA")) but by an independent charity and the jockeys on their own account. For reasons of principle to which I now turn, that arrangement cannot possibly be seen as a failure of any legal duty of care by the BHA nor would the law recognise any such legal duty as being imposed on the BHA even if JETS did not exist.

Principle and theory: The duty and standard of care[6]

Before reviewing the categories in which the law recognises and imposes a true legal duty, it is necessary to identify appropriate legal principles. In doing so, it is important to recognise that no separate principles apply to sport which do not also apply to other forms of human activities involving risk. What makes sport special from a legal point of view is that all parties realise that it involves risk and that, where there is a duty, the standard of care must allow for the particular and special circumstances in which harm may arise. As Longmore LJ observed in *Sutton v Syston Rugby Football Club*,[7] courts intervene in sport with considerable caution: he explained that it was "important that neither the game's professional organisation nor the law should lay down standards that are too difficult for ordinary coaches and match organisers to meet".

Of course, the issue is more profound than that. It is not merely a question of the law needing to take a sensible and broad approach to the standard of care.[8] The very imposition of a duty has serious implications for professional or amateur organisers and administrators who are placed at personal financial risk. Hence the importance of identifying the test for the imposition off a legal duty as well as the standard which will set its limits.

In some cases, the nature of the duty will derive from and depend on the particular relationship of the parties. Thus an employer owes contractual, common law and statutory duties to his employees particularly as regards matters affecting health and safety. The same will apply in the case of many clubs and sporting (including national) bodies to which players are contracted because employment, or something close to it, is actually or in effect the nature of the parties' relationship. Likewise, an occupier's duty to his visitors (which will clearly include players and spectators at grounds/events) and to trespassers is defined by statute.[9] Other duties are governed by statutory regulation, such as the Provision of Work Equipment Regulations 1998 (SI 1998/2306).[10]

It is in relation to other, less easily-defined, relationships where the search for a reliable test of general application which establishes when one party may be responsible to another for an act of negligence begins, at least for most law students, with the notorious snail in a ginger beer bottle.[11] There, Lord Atkin formulated the apparently simple "neighbour" test: a duty is imposed to take reasonable care in respect of acts or omissions which one might reasonably foresee could injure one's "neighbour" (someone one should have in mind as being reasonably likely to be affected by one's act or omission). However, that test alone has not proved sufficient as the two-men-on-the-cliff example demonstrates. So the modern law has sought to find other formulations.

First, it is important to recognise that the law draws a clear distinction between duties in relation to purely economic loss and those in relation to physical and psychiatric ("personal") injury. Aside from

[6] Both *Clerk & Lindsell on Torts* (London: Sweet & Maxwell) and *Charlesworth & Percy on Negligence*, 13th edn (London: Sweet & Maxwell) are very useful resources in any study.

[7] *Sutton v Syston Rugby Football Club* [2011] EWCA Civ 1182.

[8] In fairness to Longmore LJ, *Sutton v Syston Rugby Football Club* [2011] EWCA Civ 1182 was a straightforward case as regards duty given that the defendant was the occupier under the Occupiers' Liability Act 1957 as well as the organiser of the game. How far the "inspection" duty should extend to those who organise more informal events remains open to argument.

[9] Respectively the Occupiers' Liability Act 1957 and Occupiers' Liability Act 1984.

[10] See, for example, *Hide v Steeplechase Co (Cheltenham) Ltd* [2013] EWCA Civ 545; [2014] 1 All E.R. 405. However, the amendment to s.47 of the Health and Safety at Work Act 1974 introduced by s.69 of the Enterprise and Regulatory Reform Act 2013 reversed the previous presumption in favour of a breach of health and safety legislation as giving rise to civil liability.

[11] *Donoghue v Stevenson* [1932] A.C. 562 HL.

obligations which may derive from contract, "economic torts" are very narrowly confined; they include defamation, procuring a breach of contract, conspiracy, intimidation, unlawful interference and the like. The law would not, therefore, recognise a tort-law duty on a club or a sport's governing body to provide a structured programme for transition into ordinary life. If such a legal duty were to arise, it would have to derive from contract—that is, be provided for in the terms of membership which the sport's participants adhere to when joining (and accepting the jurisdiction of) that sport. In short, one can say with confidence that not only does tort law recognise no duty to promote economic welfare but there is not even a tort-law duty to take steps to prevent economic loss.

Secondly, the classic tests for the imposition of a duty of care in relation to personal injury are expressed in two separate (but overlapping) lines of case law. One such is the *Caparo* test of foreseeability, proximity and reasonableness which derives from the House of Lords decision in *Caparo Industries v Dickman*.[12] But the other test, which probably has the greater utility and application in personal injury litigation, is the three-stage test referred to above: the third component of it, reasonableness (a concept which inevitably incorporates policy considerations), is the same in both tests but the other two, assumption of responsibility and reliance, are the key constituents which determine whether one party has a duty to the other in relation to personal injury: see *Mitchell v Glasgow CC*, *Poppleton v Trustees of the Portsmouth Youth Activities Committee,Ministry of Defence v Radclyffe*, *Jennings v Forestry Commission* and *Fowles v Bedfordshire CC*.[13]

A duty only in relation to personal injury

It follows that one can say with confidence that, outside of contract, a sporting body owes no general legal duty to promote or ensure the economic or spiritual well-being of its participants. Instead, such duties as are owed are concerned with physical and mental *harm*: that is, if there is a duty, it is in relation to "personal injury", a concept which includes both physical and psychiatric harm. One must also recognise that, generally, tort law tends to concern itself with acts of *commission* rather than *omission*.

The first issue in any case is whether a body such as a club or country owes any duty at all. In some examples, this is self-evident. A club will be responsible if one employee—or someone for whom it is legally responsible[14]—injures another negligently or if a piece of equipment provided proves to be faulty or unsuitable for the activity in question and causes an injury. It certainly also owes a duty as occupier as regards the state of the building or pitch which it provides. But what about other, less obvious, potential for harm?

To date, courts have tended to take a broad approach and recognise that it may be reasonable to impose a duty in general terms although the nature and extent of any such duty will vary greatly according to the particular circumstances. For example, a professional sporting body which closely regulates the conduct of a sport for reasons of safety certainly owes a duty in relation to physical injury: we can see that in practice in the case of boxing.[15] It is also as an expression of such a duty[16] that a sport such as rugby has

[12] *Caparo Industries plc v Dickman* [1990] UKHL 2; [1990] 2 A.C 605. A case about negligent preparation of accounts rather than personal injury. However, its application in the context of personal injury cases can be seen in cases such as *Everett v Comojo (UK) Ltd (t/a Metropolitan)* [2011] EWCA Civ 13; [2012] 1 W.L.R. 150.

[13] *Mitchell v Glasgow CC* [2009] UKHL 11; [2009] 1 A.C. 874, *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] EWCA Civ 646; [2009] P.I.Q.R. P1, *Ministry of Defence v Radclyffe* [2009] EWCA Civ 635, *Jennings v Forestry Commission* [2008] EWCA 581; [2008] I.C.R. 988, and *Fowles v Bedfordshire CC* [1996] E.L.R. 51 CA (Civ Div).

[14] The concept of vicarious liability is a complex one and has been developed in recent often in the context of sex abuse claims and others. Space will not permit an extensive discussion of the issue here but the main jurisprudence is to be found in *Various Claimants v Institute of the Brothers of the Christian Schools* [2012] UKSC 56; [2013] 2 A.C. 1; *Maga v Birmingham Roman Catholic Archdiocese Trustees* [2010] EWCA Civ 256; [2010] 1 W.L.R. 1441 (both sex abuse cases) and in *Cox v Ministry of Justice* [2016] UKSC 10; [2016] A.C. 660; *Mohamud v Wm Morrison Supermarkets Plc* [2016] UKSC 11; [2016] A.C. 677; and *Fletcher v Chancery Lane Supplies* [2016] EWCA Civ 1112. For consideration of how this applies as between club and player in personal injury claims, see the football cases discussed later.

[15] See *Watson v British Boxing Board of Control Ltd* [2001] Q.B. 1134 CA (Civ Div).

[16] Though the duty might attach to the body with immediate responsibility for running the particular event rather than the governing (here I mean the rule-making) body directly because of the lack of proximity in the relationship with the player and/or lack of assumption of responsibility/reliance.

guidelines about uncontested scrums and (particularly for younger players) about contests between players of disparate sizes and why sports such as rugby and racing both have strict concussion protocols.

Accordingly, in those kinds of cases, there can be no doubt that those who are immediately responsible for the organisation of such events will be held to owe such a duty and, if so, the standard of care required will be informed by and may include compliance with such standards.[17] Equally un-controversially, those who provide safety equipment should ensure that it is of an appropriate standard. On the other hand, how far this duty extends to less structured relationships between clubs/sporting bodies and competitors/participants will depend very much on a principled analysis of the relationship and on the facts of the particular case. That will include the extent to which the club/sporting body has assumed responsibility for safety and the competitor/participant has relied on it as opposed to exercising free will.[18]

In those examples, there are obvious risks of physical harm. But not all physical risks are so clear-cut and psychiatric damage is much less so. How does the law deal with those?

Applying the two tests for establishing a duty of care which are set out above, clubs and national bodies can certainly *foresee* that athletes over whom they exercise direct control and authority may suffer harm if "asked" or "required" to do something which places them at unacceptable but not necessarily obvious risk of physical or psychiatric injury. Where such direct authority is exercised—which will certainly cover the relationship in contract between club or country and the player—it may well be that their relationship is one of sufficient *proximity* to give rise to a duty of care and that the club/country has *assumed responsibility* for the player and the player is *reliant* on that body for the proper regulation of his role in the sport.

If those constituents are all present, then the argument against the imposition of a duty of care which extends to such potential injury will be that, as a matter of policy, it is not *reasonable to impose such a duty*. Here, I recognise, there may be policy considerations against imposing a wide-ranging duty and, as is evident from the judgment of Longmore LJ in *Syston*,[19] courts are instinctively reluctant to interfere in the management of sport and a club or national body cannot be expected to fulfil the role of parent or nanny. But the relationship between, say, club and player may be very close to—and can actually be—that of employer-employee where duties of care in relation to physical and psychiatric harm are well recognised. It follows that the necessary constituents for a duty of care are in place. But issues of what is reasonably foreseeable[20] still arise.

Hence the answer to the question of how far, if at all, the duty of care extends to less obvious or immediate risks arising out of the physical or psychological demands that a club or national body places upon its athletes is not entirely straightforward. The extent of the duty and/or the standard of care required will also be infinitely variable according to circumstances. What may be perfectly acceptable treatment of a seasoned professional may be wholly inadequate when dealing with a vulnerable teenager.

In short, it is not possible to identify a single test of when liability will or will not arise. In the case of physical injury, for example, it is commonplace that coaches or clubs may expect their players to "go through the pain barrier" or "run off" an injury or to continue to play having taken pain-killing injections or drugs but without much regard for the harmful long-term consequences.[21] Indeed, there are many coaches

Accordingly, any duty would be more likely to be imposed on those (clubs and referees) with more immediately control of and responsibility for the players.

[17] Whatever standards are set in the way of guidelines by the sport's professional body or an organisation such as ROSPA will not necessarily define the standard which is no more and no less than "reasonable care in the circumstances". Nevertheless, published guidelines will help to inform the assessment of such standards; see *Tomlinson v Congleton BC* [2003] UKHL 47; [2004] 1 A.C. 46 and *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] EWCA Civ 646; [2009] P.I.Q.R. P1.

[18] And, of course, on whether the court is persuaded that it is reasonable to impose a duty in the circumstances of the case.

[19] *Sutton v Syston Rugby Football Club* [2011] EWCA Civ 1182.

[20] Consider, for example, *Rochester Cathedral v Debell* [2016] EWCA Civ 1094.

[21] Most high level athletes will tell you that it is rare indeed for them ever to feel 100 per cent fit: they know that the price of success is subjecting the body and mind to a level of pressure they would rather not bear and may even have adverse consequences in the longer term. But the stark choice they must make is between competing and not competing, between success and failure.

who would tell us that it is only by pushing athletes to and, if necessary, beyond what they believe are their limits that gold medal performance in achieved. How can the law allow for that? Will the courts say in such a case that the necessary three ingredients of the duty of care?[22] Hitherto, the law has not really sought to address this issue in those terms.

It may not be an answer in tort law to say "well, they are adults; no-one forced them" when that misunderstands both the realities of high-level competitive sport and the legal principles concerning "acceptance of risk", which I deal with directly below. A court might well hold that true freedom of choice does not exist because the pressures to compete are so intense and, accordingly, the athlete's ability to make an informed decision will not negate the duty he is owed. Instead, any element of real choice will be relevant to the flexible application of the required standard of care which must also allow for the intense pressure which goes with high-level competition.

In those examples, the focus was one of physical health. The same issue arises in a more subtle way in relation to psychological health where stresses may be equally harmful but society in general and sportsmen in particular may be less sensitive to their management and/or the symptoms of mental illness may be less apparent. Again, this does not mean there is no duty; rather, the standard of care recognises that psychological pressure is an inevitable feature of high-level competition. But a club or coach which places a player under pressure which is unacceptable in the circumstances as a matter of good practice may find he is in breach of duty. What should be done in such a case, when the club or coach has reason to suspect that a player is not mentally robust enough to cope, is to take and follow advice from a medical professional. In that way the club or coach may be able to show that it has discharged the duty of reasonable care in the circumstances.

Accepting risk

As the discussion above recognises, the law allows for the reality that contact sports, at least those involving adults, are played by people who participate in full awareness of the risks of physical injury and that all sport brings psychological pressures with which some will cope better than others.[23]

When those risks materialise and someone is injured or has a breakdown, it is probably more accurate to say that they fail because the participant's acceptance of risk means that the other party's duty does not extend to the circumstances in which such injury was sustained or is relevant to the standard of care than that the claim is defeated by the application of the maxim volenti non fit iniuria. So, even where clubs or governing bodies put pressure on an athlete to compete when there is an issue as to whether he is physically or mentally unfit, they are likely to have satisfied the required standard if an athlete decides that he is fit to play and that assertion is not apparently untrue.

Simply because a competitor realises that he may get injured does not mean he cannot possibly claim if he is. It is unlikely that his acceptance of risk is unqualified. For example, if you play football or rugby you take the risk that a tackle may cause you injury but, whilst you may have accepted that risk, you certainly will not have accepted the risk of gross carelessness or malicious attack by your opponent. If that is what happens, that opponent is likely to be held liable to you.

Similarly, your acceptance of risk is likely to be on the basis that it is not just your fellow competitors who must conduct themselves fairly and properly but also that those responsible for running the game do so according to the rules. So in *Smoldon v Whitworth*[24] a colts rugby player succeeded in his claim against the referee who had failed properly to apply the rules of scrummaging: as the Court of Appeal made clear,

[22] Whichever of the two tests is used.
[23] Indeed, those who cope best will probably do best.
[24] *Smoldon v Whitworth* [1997] P.I.Q.R. P133.

whatever players consent to as regards risk certainly does not include consenting to another player or the referee failing to do his duty as prescribed by the rules.[25]

Likewise, an occupier will not be liable to someone in respect of a risk willingly accepted by him.[26] As Lord Hoffmann emphasised in *Tomlinson v Congleton BC*[27] and as is repeated by May LJ in *Poppleton*,[28] occupiers and organisers who are not purporting to provide supervision or instruction have no responsibility for the activities of adults who choose to take what they should have realised were obvious risks. On the other hand, the nature of the relationship between the parties may be such that the court does not entirely exonerate the defendant even if the claimant chooses to take a risk. That is likely to be the case where the relationship is that of employer and employee and it may also be so where the relationship is close to that and/or where the claimant's freedom of choice is not genuine; see *Reynolds v Strutt & Parker;Ministry of Defence v Radclyffe*, discussed further below.[29]

We see how this works in practice in *Blake v Galloway*[30] where a plea of volenti failed at first instance in a case where teenagers had been engaging in horseplay and one got hurt and sought damages for negligence and battery.[31] The Court of Appeal allowed the defendant's appeal without deciding whether the claim was defeated by volenti on the basis that the claimant had tacitly consented to run the risk of injury by participating in the horseplay and that was very relevant to the issue of standard of care (which the defendant had not breached) and was also an answer to the claim in battery. We see exactly the same principle applied in claims between fellow competitors in other the racing and football cases.[32]

A similar issue also arises in relation to attendance at sporting events. Take horse or motor racing, or cricket, for example. In the case of cars and horses, there is inevitably a remote risk that they will leave the track and injure someone in the crowd.[33] If you stand on the apex of an unprotected corner at a motor-rally, you must realise there is a risk (remote though it may be) of a car coming off the track: ditto with a racehorse. Similarly, it is commonplace for a cricket ball to sail into the crowd, particularly at a 20/20 game. Were someone to be injured in such circumstances, could they claim? The answer is surely in the negative: almost everyone attending a game knows that this might happen and the overwhelming likelihood, as borne out by experience, is that no-one will be badly hurt. But the claim will probably fail because the court finds that the degree of risk and general acceptance of some risk is relevant to the standard of care rather than because of the application of a free-standing defence of "consent".[34] This was certainly the rationale behind the decision of the Court of Appeal in *Murray v Harringay Arena*[35] where a spectator at an ice-rink was hit in the eye by a puck which flew into the crowd.[36]

[25] Even so, the standard of care must be decided in light of the circumstances which include the fast moving nature of the game. What might otherwise be "mere" negligence would not be enough: what Lord Bingham called the "high threshold of liability" would have to be crossed to establish a breach of duty which, he said, would not be done easily.

[26] Occupiers Liability Act 1957 s.2(5) and the Occupiers Liability Act 1984 s.1(6).

[27] *Tomlinson v Congleton BC* [2003] UKHL 47; [2004] 1 A.C. 46 at [44]–[45].

[28] *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] EWCA Civ 646; [2009] P.I.Q.R. P1. Followed in another bouldering/rock-climbing case, *Maylin v Dacorum Sports Trust (t/a XC Sportspace)* [2017] EWHC 378 (QB).

[29] *Reynolds v Strutt & Parker LLP* [2011] EWHC 2263 (QB), *Ministry of Defence v Radclyffe* [2009] EWCA Civ 635.

[30] *Blake v Galloway* [2004] EWCA Civ 814; [2004] 1 W.L.R. 2844.

[31] This case also raised questions about consent as a defence to a claim framed in "trespass to the person", i.e assault/battery; see *Dann v Hamilton* [1939] 1 K.B 509; [1939] 1 All E.R. 59. The Court of Appeal in *Blake v Galloway* [2004] EWCA Civ 814; [2004] 1 W.L.R. 2844 favoured the approach which took consent as a relevant consideration in determining the duty and standard of care rather than as a free-standing defence, so favouring the approach of Kitto J (rather than that of Barwick CJ) in the decision of the High Court of Australia in *Rootes v Sheldon* [1983] A.L.R 33 HC (Australia).

[32] Relatively few in horseracing (*Caldwell v Maguire* [2001] EWCA Civ 1054; [2002] P.I.Q.R. P6 being perhaps the best-known example): rather more in football including *Condon v Basi* [1985] 1 W.L.R. 866 CA (Civ Div) and several others discussed further below.

[33] Which is exactly what happened in the seminal case of *Wooldridge v Sumner* [1963] 2 Q.B. 43 CA. See also *Murray v Harringay Arena* [1951] 2 K.B. 529; [1951] 2 All E.R. 320n, both cases in which spectators were struck by pucks at ice hockey matches.

[34] See *White v Blackmore* [1972] 2 Q.B. 651 CA (Civ Div).

[35] *Murray v Harringay Arena* [1951] 2 K.B. 529; [1951] 2 All E.R. 320n.

[36] See also *Browning v Odyssey Trust Co Ltd* [2014] NIQB 39 QBD (Northern Ireland) and Diplock LJ in *Wooldridge v Sumner* [1963] 2 Q.B. 43 CA.

In practice

So much for the theory. Let us now consider how and in what circumstances a duty of care has so far been recognised as arising in sport. In each case, as we have seen, the legal analysis has two stages. First, it must be established that there is a duty of care which extends to the circumstances in which the injury was sustained. Secondly, if so, the question is whether the defendant has discharged the required standard of reasonable care in the circumstances[37] which, for reasons explained above, will involve consideration of the extent to which the injured party has exercised free will in accepting the risk of injury. At the risk of repetition and for convenience, we can break down into separate (though, admittedly, overlapping) categories what has been and may in the future be the approach of courts to the question of the duty of care in sport.

Regulators, governing bodies, medical staff

- Those who regulate a sport, especially in relation to safety, are likely to be held to owe a duty if they have assumed direct responsibility for safety for the particular event: *Watson v British Boxing Board of Control Ltd*[38] (provision of appropriate medical facilities at ringside) is probably the simplest and clearest example. However, the way in which the duty is framed depends entirely on the circumstances. In boxing, where the infliction of physical injury is the direct or indirect point of the sport, the duty was framed as being one to provide proper medical facilities so that any injury sustained would be timeously and competently treated. Accordingly, it may not be easy to establish a duty (or breach of duty) if the regulator's responsibility is more general/less specific.
- Medical officials with direct responsibility for safety at sporting events—boxing is one example, but other sports such as racing and rugby are in almost identical positions—will owe a duty. A breach of that duty would render them liable as well as the stadium or club for whom they were working when an error was made. An obvious example would be a rugby case where a player showed obvious signs of concussion which were missed by the medical and support staff so that the player returned to the pitch and suffered another significant head injury with serious consequences.
- How far such a duty extends to players who are put under unreasonable pressure by, say, clubs or coaches to compete in circumstances where they are at particular risk of physical or psychiatric injury has yet to be identified and will very much be a fact-sensitive question.

Clubs and other sporting bodies; vicarious liability

- Sporting bodies exercising control over players at any level (at a national level, cricket and rugby are obvious example) will be liable if they have conducted themselves negligently. This necessary degree of control will be readily established if the relationship of the parties is governed by, or akin to, contract. Where there is such a duty, it will extend to taking reasonable care to prevent physical and psychiatric injury. As we have seen, the nature and extent of that duty can never be precisely defined. It might include putting strong pressure on a vulnerable player to play when unfit, whether physically or mentally, if the effect of doing so is to exacerbate or cause an injury.

[37] A test which, by its very nature, whilst in theory objective is in practice infinitely fact-sensitive because, whether it is a standard applicable to the special situation of sport or in ordinary, everyday, life, what will be required will always be "reasonable care *in the circumstances*". However, in the example addressed at the end of the preceding section, the reason why a duty does not ordinarily extend to responsibility for mental welfare is explained by the answer to the first of these questions.

[38] *Watson v British Boxing Board of Control Ltd* [2001] Q.B. 1134 CA (Civ Div).

- Clubs and sporting bodies will be vicariously liable[39] if those for whom they are legally responsible do wrong in the sense of causing personal injury. This may include assaults (sexual or otherwise) committed in the course of their duties.
- However, save where the activity in question is especially dangerous, the organiser/occupier will not be liable for those who are true independent contractors: see *Bottomley v Todmorden Cricket Club* and *Lear v Hickstead*.[40] Nevertheless, some duties are non-delegable; see *Woodland v Swimming Teachers Association*[41] (though the duty in that case was framed in such a way as to apply to limited groups such as those who are particularly dependent or vulnerable:[42] this was a case about who was or should have been providing supervision at a swimming pool; see further below, particularly in relation to swimming pool cases, under "Occupiers/providers of facilities").
- A club or sporting body may be liable even for another player's or employee's horseplay if it is committed in the course of his employment: *Aldred v Nacanco*.[43]
- Whether a "club" or a "sporting body" owes a duty of care will depend on the three ingredients for a duty of care, expressed as foreseeability/proximity/reasonableness or policy on the one hand, or as assumption of responsibility/reliance and reasonableness or policy on the other. That will be a fact-sensitive series of questions which I look at more closely under the heading "organisers" next.

Organisers and employers

- Organisers, particularly of dangerous events, will usually be held to owe a general duty and the standard of care required will depend on the extent of the risk and whether serious injury is foreseeable: see *Uren v Corporate Leisure (UK) Ltd* (organised games), *Perry v Harris* (bouncy castle), *Blair-Ford v CRS Adventures Ltd* (welly-wanging).[44] How far this applies to informal events run by amateur volunteers where the participants are adults is not a question to which one can give a definitive answer. I look at the issue in the context of safety equipment next.
- A duty will be readily established if the organiser has assumed responsibility for safety, as by the provision of lifeguards at a swimming pool who do not do their job properly: *RXDX v Northampton BC*,[45] *Woodland v Essex CC* and further under "Occupiers/providers of facilities" below.
- Employers' duties arise under statutory regulation and at common law. So the question will not be about whether any duty is owed by an employer but about the extent of the duty and standard of care; see, for example, *Uren v Corporate Leisure*. However, the question about the extent of that duty also raises the issue of whether the injury was sustained in the course of employment.
- That may not make a material difference if there is also a common law duty in negligence. In *Reynolds v Strutt & Parker LLP*, the employer was the organiser of an activities afternoon at a country park which included a cycle race. The claimant, like most of the competitors, did not wear a helmet and expert evidence was that, had he done so, he would probably not

[39] See above.
[40] *Bottomley v Todmorden Cricket Club* [2003] EWCA Civ 1575; [2004] P.I.Q.R. P18; *Lear v Hickstead Ltd* [2016] EWHC 528 (QB); [2016] 4 W.L.R. 73.
[41] *Woodland v Swimming Teachers Association* [2013] UKSC 66; [2014] A.C. 537.
[42] See also (but in a different context) *NA v Nottinghamshire CC* [2015] EWCA Civ 1139; [2016] Q.B. 739.
[43] *Aldred v Nacanco* [1987] I.R.L.R. 292 CA (Civ Div).
[44] *Uren v Corporate Leisure (UK) Ltd* [2011] EWCA Civ 66; (2011) 108(7) L.S.G. 16; *Perry v Harris* [2008] EWCA Civ 907; [2009] 1 W.L.R. 19; *Blair-Ford v CRS Adventures Ltd* [2012] EWHC 2360 (QB).
[45] *RXDX v Northampton BC* [2015] EWHC 1677 (QB).

have sustained the injury.[46] The judge rejected the argument that the claimant was in the course of his employment (so that the relevant regulations did not arise) but the organisers were held negligent because they had done no adequate risk assessment nor had they taken expert advice. It was not enough to leave it to the claimant to make his own decision.

- Similarly, in *MOD v Radclyffe*, although the claimant was technically off duty when he jumped into the lake with his senior officer's approval, the relationship of assumption of responsibility and reliance was still in place. It was, as May LJ explained, artificial to say that the claimant had made an informed and free choice.
- But not all clubs or organisers will necessarily be held to owe a duty of care as regards safety even if, as a matter of good practice or expression of social duty, they do actually take care. For example, it cannot sensibly be suggested that those who run a village cricket club or organise a sailing regatta on a small scale[47] will be held to owe an actionable duty of care to fellow players or competitors. That answer will arise from the application of each of the three limbs of either of the two tests of the duty of care and/or what one might hope[48] would be a sensible and pragmatic application of the standard of care and/or the principle of free will. But one would not need to change the facts much to produce a different answer: for example, if the sailing regatta were for children, the organisers would certainly be expected to insist on lifejackets and provide safety boats. On the other hand, it would (one hopes) be regarded as ridiculous if an adult member of the village cricket team who got hit on the head when not wearing a helmet tried to bring a claim against the captain. So it is impossible to lay down a single rule of universal application: all one can do is identify the principles and recognise that their application—and particularly that of the third element of reasonableness—is hugely fact and policy sensitive, as we see in the discussion of safety equipment which follows.

Safety equipment

- An employer certainly will and an event organiser may owe a duty which extends to recommending or, in some circumstances, requiring people to wear appropriate safety equipment; see above.
- As I have already said, such duty would certainly extend to insisting that younger children do so in the examples I have given. But the same duty will not necessarily extend to adults and how far it extends, even to children, will always depend on the circumstance; *Murray v McCullough*[49] (school not liable to 15-year-old girl who did not wear a gum shield for hockey); but compare *Reynolds v Strutt & Parker* in relation to helmets to be worn by cyclists in a race.[50]
- How far a body responsible for running an event should *require* rather than just advise competitors to use safety equipment will very much depend on the facts. For example, in cycling or motor-cycling events, even where adults are involved, organisers make it a rule

[46] The issue of causation is always important but is outside the scope of this article. As for whether it may be contributory negligence not to wear a cycle helmet, see *Smith v Finch* [2009] EWHC 53 (QB).

[47] Examples of sports in respect of which the author must declare a modest interest.

[48] However, experience tells us that judges are sometimes inclined, perhaps for understandable reasons of sympathy for the injured or bereaved, to set standards and apply hindsight in a way that has little regard for practical reality or common sense.

[49] *Murray v McCullough* [2016] N.I.Q.B. 52.

[50] A note of caution here: a first-instance decision may be persuasive but is not binding. Authoritative. decisions are only reached by the appellate courts. Very few "sports" cases go to the Court of Appeal: *Caldwell v Maguire* [2001] EWCA Civ 1054; [2002] P.I.Q.R. P6 is an obvious exception. Courts also tend to be cautious about laying down too many guidelines in relation to future conduct: note, for example, how May LJ in *Ministry of Defence v Radclyffe* [2009] EWCA Civ 635 felt the need to explain what he had meant in *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] EWCA Civ 646; [2009] P.I.Q.R. P1 (discussed further below).

that helmets are worn and in an offshore sailing race such as the Fastnet, various elements of safety equipment are compulsory. How far such rules are the product of good practice rather than the expression of a legal duty is not definitively settled. A rider who chooses not to wear a helmet and suffers a preventable head injury or a sailor who does not wear a lifejacket and drowns may have taken the risk himself and have no claim. But *Reynolds* suggests that wearing a helmet should have been made a rule and the crew member in a sailing race may not have the same freedom of choice as the skipper.[51]

- Since it is impossible to define precisely the circumstances in which a duty may or not be imposed on an event's organiser, the only prudent thing for any organiser to do is to make sure he is adequately covered by insurance.[52]

Occupiers, providers of facilities

- As occupiers of stadiums, pitches or facilities such as racetracks or velodromes, clubs or bodies will be responsible if they have not taken reasonable care to ensure that they are reasonably safe and suitable for the purpose for which they are to be used. But they cannot be expected to eliminate all risk, even for spectators: see *Murray v Harringay* and *Browning v Odyssey Trust*, both being cases in which spectators were struck by an ice hockey puck.
- Nevertheless, reasonable care is required to protect both categories of persons: see *Corbett v Cumbria Kart Racing*[53] (racing motorcyclist left track and hit adjacent ambulance) and *Phee v Gordon*[54] (discussed below, under "Competitors to each other").
- In relation to the standard of care, the adequacy (or otherwise) of the risk assessment will be a material (though not necessarily decisive) factor: see *Bowen v National Trust*;[55] *Corbett*; *Phee v Gordon*; *Reynolds v Strutt & Parker*; and *West Sussex CC v Pierce*.[56]
- Occupiers of land and people who hold parties, at least where adults are involved, do not necessarily have a supervisory responsibility for those who do foolish things, such as diving into shallow pools or ponds, where the risk of serious injury is obvious: see *Darby v National Trust*; *Cockbill v Riley*; *Risk v Rose Bruford*; *Bourne Leisure v Marsden*; *Clare v Perry*; and *Grimes v Hawkins*.[57] The situation is entirely different if the visitors are children or are expecting to (and should be) supervised as a matter of arrangement or common sense.[58]
- Appropriate design and operational advice will be relevant to the standard of care but the defendant will not be vicariously liable for bad advice given by outside and independent bodies: see *Wattleworth v Goodwood Road Racing*[59] (design and construction of racetrack); see also *Reynolds v Strutt and Parker*.

[51] Against whom the crew member would have a stronger claim than against the event organiser.
[52] See above in relation to the level of cover now required.
[53] *Corbett v Cumbria Kart Racing Club* [2013] EWHC 1362 (QB); [2013] L.L.R. 671.
[54] *Phee v Gordon* [2103] CSIH 18; 2013 S.C. 379.
[55] *Bowen v National Trust for Places of Historic Interest or Natural Beauty* [2011] EWHC 1992 (QB).
[56] *West Sussex CC v Pierce* [2013] EWCA Civ 1230; [2014] E.L.R. 62.
[57] *Darby v National Trust for Places of Historic Interest or Natural Beauty* [2001] EWCA Civ 189; (2001) 3 L.G.L.R. 29; *Cockbill v Riley* [2013] EWHC 656 (QB); *Risk v Rose Bruford College* [2013] EWHC 3869 (QB); [2014] E.L.R. 157; *Bourne Leisure Ltd (t/a British Holidays) v Marsden* [2009] EWCA Civ 671; [2009] 29 E.G. 99 (C.S.); *Clare v Perry (t/a Widemouth Manor Hotel)* [2005] EWCA Civ 39; (2005) 149 S.J.L.B. 114 and *Grimes v Hawkins* [2011] EWHC 2004 (QB). See also *Baldacchino v West Wittering Estate Plc* [2008] EWHC 3386 (QB).
[58] An interesting challenge is to decide at what age a duty of care might arise to supervise the activities of children—say on the trampoline or in the family pool. The age of majority (18) cannot be the decisive consideration: the house-holder could hardly be expected to tell a group of 17 year olds how to behave. For those aged, however, 14 or under a different answer might be given. Between those ages, whenever the author has canvassed this question amongst members of a knowledgeable audience, views have differed as to whether a supervisory duty can exist notwithstanding the inevitable variation that there will be in individual circumstances and, if so, at what age it arises on facts such as those in this example. A first instance case *Cockbill v Riley* [2013] EWHC 656 (QB) had to address some of these issues but whether it was right that the defendant should have admitted a duty of care is doubtful: hence the decision of little or no authoritative value.
[59] *Wattleworth v Goodwood Road Racing Co Ltd* [2004] EWHC 140 (QB); [2004] P.I.Q.R. P25.

- However, a club may be held liable if, for example, it has failed to check there were no obvious dangers on the pitch before a match began; *Sutton v Syston RFC*[60] (player alleged he was injured by broken boundary marker that a walking inspection should have revealed: club held not liable on appeal).
- Whilst those who run a sporting facility should ensure it is designed according to appropriate standards with suitable equipment,[61] unless they offer tuition or supervision they are not liable for adults who use (and abuse) the facility where the dangers are obvious: see *Poppleton v Trustees of Portsmouth YAC*[62] (bouldering walls)[63] and *Poole v Wright*[64] (go-kart provided and clamant wearing scarf which got caught). If there is a general expectation that supervision will be provided, or it is in fact provided, as may be true of some of the swimming pool cases discussed below, a duty may arise.
- If, however, they do give advice or let people engage in activities where the dangers are not self-evident, organisers/event managers should ensure that people are adequately prepared with proper advice: see *Lowdon v Jumpzone*[65] (Hyper-Jump ride).[66]
- Generally, if the dangers of the facility provided are self-evident and it is properly designed than the provider will have discharged his duties, at least as regards adults. Those who provide commercial swimming pools may have wider duties than those who are providing only a private facility.[67] But, again, there is no duty to guard against obvious risks, such as diving into shallow water where the depth is marked or readily ascertained and no supervision is offered: see *Evans v Kosmar;*[68] *Tomlinson v Congleton, Grimes v Hawkins*; and *Donoghue v Folkestone Properties*,[69] etc.

Referees and coaches

- Referees and coaches of contact and other sports with the potential for injury[70] will also owe a duty because they exercise a degree of control, albeit the standard of care may vary as between games played by professional adults and children: see *Vowles v Evans* and *Smoldon v Whitworth*.[71]

[60] *Sutton v Syston RFC* [2011] EWCA Civ 1182.

[61] See also *Wattleworth v Goodwood Road Racing Co Ltd* [2004] EWHC 140 (QB); [2004] P.I.Q.R. P25 and *Hide v Steeplechase Co (Cheltenham) Ltd* [2013] EWCA Civ 545; [2014] 1 All E.R. 405.

[62] *Poppleton v Trustees of Portsmouth YAC* [2008] EWCA Civ 646.

[63] See also *Maylin v Dacorum Sports Trust (t/a XC Sportspace)* [2017] EWHC 378 (QB) and *Pinchbeck v Craggy Island Ltd* [2012] EWHC 2745 (QB).

[64] *Poole v Wright* [2013] EWHC 2373 (QB); (2013) 157(33) S.J.L.B. 33.

[65] *Lowdon v Jumpzone Leisure UK Ltd* [2015] EWCA Civ 586.

[66] Or an activity such as bungee-jumping: providers will not only owe a duty to explain the risks and what to do but that explanation should include a warning about any dangers of risks to health that might not be obvious. Whether that duty would extend to declining the custom of an adult obviously unfit but nevertheless keen to have a go is a moot point. The duty would probably extend to clear explanation of the dangers but no further.

[67] The swimming pool cases are themselves interesting for what is and sometimes is not argued or conceded about duty of care; see, for example, *O'Shea v RB of Kingston* [1995] P.I.Q.R. P208. We are here concerned with accidents which happen when, for example, someone hits their head in shallow water and/or gets into difficulties when there is inadequate supervision; see, for example, *RXDX v Northampton CC* [2015] EWHC 1677 (QB), a case which was settled before it reached appeal. In some cases, the dangers of shallow water are obvious, no supervision is offered and no duty arises; see, for example, *Grimes v Hawkins* [2011] EWHC 2004 (QB), *Tomlinson v Congleton BC* [2003] UKHL 47; [2004] 1 A.C. 46 etc. In some of the older swimming pool cases, however, the defendant has apparently conceded that a common law or 1957 Act duty arises and so the issue in the case will have been whether that duty had or had not been discharged. Whether such concession was appropriate where the absence of supervision was self-evident and the clamant was an adult, must be doubtful. All that might be said from the other point of view is that in, say, municipal pools, there may be an expectation that lifeguards are present particularly if there are formal guidelines to that effect.

[68] *Evans v Kosmar Villa Holidays Plc* [2007] EWCA Civ 1003; [2008] 1 W.L.R. 297.

[69] *Donoghue v Folkestone Properties Ltd* [2003] EWCA Civ 231; [2003] Q.B. 1008.

[70] An umpire who allowed play to continue when the ground was too wet was found not liable by Judge Lopez in *Bartlett v English Cricket Board Association of Cricket Officials* , unreported, 27 August 2015 CC (Wolverhampton). This was on the basis that the real cause of the injury was the fielder's technique, not the state of the ground. However, a boxing referee who failed to stop a fight when he should or a cricket umpire who took no steps to prevent a bowler who was bowling dangerously to a defenceless batsman on a bad pitch might well be held liable.

[71] *Vowles v Evans* [2003] EWCA Civ 318; [2003] 1 W.L.R. 1607, *Smoldon v Whitworth* [1997] E.L.R. 249 CA (Civ Div).

- Coaches owe a duty to coach carefully and to take reasonable steps in accordance with good practice to minimise the risk of injury particularly in the case of potentially hazardous activities such as diving: see *Stratton v Hughes*[72] (gymnastics); *Fowles v Bedford CC* (accident in gymnasium) and *Ireland v David Lloyd Leisure*[73] (ditto). How far that duty extends to putting an athlete through a physical or mental pain barriers is, as already discussed, going to be a difficult and fact-sensitive issue.[74]
- Similarly, those who organise or provide teaching or supervision in sports such as skiing or tobogganing will owe a duty: see *Anderson v Lyotier;*[75]*Chittock v Woodbridge School*; and *R. (on the application of Robert) v Ski Llandudno*.[76] Whilst the test is an objective one, and someone is entitled to expect the same standard of care from a young as opposed to an old professional coach; see *FB v RANA*[77]—the circumstances of the parties and the facts of the case will always inform that standard: that is, the instructor or supervisor in an informal session, as where an experienced skier acts as the informal guide of a number of friends, will not necessarily have to meet the higher standard expected of a professional.

Competitors to each other

- Competitors owe duties of care to each other but the standard imposed allows for the heat and pressures of competition: see *Caldwell v Maguire*[78] (jockey's momentary carelessness not enough to establish liability); *Wilks v Cheltenham Homeguard Motor Cycle & Light Car Club*[79] (moto-cycle scramble rider likewise); *Elliott v Saunders;*[80]*Condon v Basi;*[81] and *Collett v Smith*[82] (football injuries).
- Even mere "horseplay" can amount to an assault/battery[83] or negligence; *Blake v Galloway*.[84] But a school supervisor would not reasonably foresee injury arising from 13-year-old children's playground games: *Orchard v Lee*.[85]
- What is or is not the appropriate standard will depend on the nature of the sport as well as all the circumstances, so in *Phee v Gordon* the Court of Session (Inner House) upheld a finding that both the club and the other player were liable when the claimant golfer was struck by mishit ball from an adjacent tee: it adjusted the first-instance findings of liability to hold the golf-course owners 80 per cent and the player 20 per cent liable. In a rather faster moving game, where instant decisions are needed, a court will be less inclined to find liability made out at least as regards the other player.

[72] *Stratton v Hughes* , unreported, 22 May 1998 QBD.
[73] *Ireland v David Lloyd Leisure Ltd* [2013] EWCA Civ 665.
[74] A parallel can be drawn with an employer's duty to watch out for and respond to warning signs that an employee is at risk of psychiatric harm. A valuable discussion of this issue can be found in Edward Bishop QC, *Kemp and Kemp: Quantum of Damages* (London: Sweet & Maxwell), Ch.32.
[75] The defendant was given permission to appeal against Foskett J's decision but the appeal was compromised—see [2010] J.P.I. Law 183, for further analysis.
[76] *Anderson v Lyotier (t/a Snowbizz)* [2008] EWHC 2790 (QB); *Chittock v Woodbridge School* [2002] EWCA Civ 915; [2002] E.L.R. 735; and *R. (on the application of Robert) v Ski Llandudno* [2001] P.I.Q.R. P5 CA (Civ Div).
[77] *FB v RANA* [2017] EWCA Civ 334. See also *Wilsher v Essex AHA* [1987] QB 730 CA (Civ Div).
[78] *Caldwell v Maguire* [2001] EWCA Civ 1054; [2002] P.I.Q.R. P6.
[79] *Wilks v Cheltenham Homeguard Motor Cycle & Light Car Club* [1971] 1 W.L.R. 668 CA (Civ Div).
[80] *Elliott v Saunders* (1994) N.L.J. 144 QBD.
[81] *Condon v Basi* [1985] 1 W.L.R. 866 CA (Civ Div).
[82] *Collett v Smith* [2008] EWCA Civ 583; (2009) 106(26) L.S.G. 18.
[83] "trespass to the person".
[84] *Blake v Galloway* [2014] EWCA Civ 814; [2004] 1 W.L.R. 2844.
[85] *Orchard v Lee* [2008] EWCA Civ 295; [2009] E.L.R. 178.

Spectators

- See also "Free will" above. Spectators must recognise that they are exposed to an element of risk at many sporting events.
- Nevertheless, the organisers should take reasonable steps to minimise that risk, which probably explains why the claimant succeeded in *Fenton v Thruxton*,[86] whereas a competitor at a 20/20 game struck by a cricket ball would not because the balance between the utility and purpose of the event and the risk of injury which is remote and very unlikely to be serious usually comes down against any breach of duty.[87]

[86] An accident at the Thruxton circuit—a County Court decision of Judge Hughes QC in 2008. This case is a good example of the organiser's or occupier's need to look beyond written guidelines or the risk assessment and manage risk actively.

[87] See *Murray v Harringay Arena* [1951] 2 K.B. 529; [1951] 2 All E.R. 320n and also *Perry v Harris* [2008] EWCA Civ 907; [2009] 1 W.L.R. 19. There echoes here too of s.1 of the Compensation Act 2006, a provision which may perhaps help to focus some judicial thinking; see *Sutton v Syston Rugby Football Club* [2011] EWCA Civ 1182. But, as the Court of Appeal observed in *Uren v Corporate Leisure (UK) Ltd* [2011] EWCA Civ 66; (2011) 108(7) L.S.G. 16, the provision has probably added little or nothing to the law, at least since *Tomlinson v Congleton BC* [2003] UKHL 47; [2004] 1 A.C. 46.