

1  Sports Participant Liability & Assumption of Risk

2  CONTACT SPORT EXCEPTION ALLOWS FOR PARTICIPANT NEGLIGENCE

3  Pfister v. Shusta (Ill. 1995)

only willful/wanton misconduct

4  Willful and Wanton: course of action which shows actual or deliberate intent to harm

5  OR, if not intentional, shows utter disregard for safety of others

6  Issue: whether participants involved in a contact sport,

NOT whether the sport was formally organized or coached

7  Here, informal game of kick the can similar to soccer or floor hockey

8  degree of physical contact among participants inherent in game

9  no allegation of willful or intentional misconduct

10  PARTICIPANT IMMUNITY FOR ORDINARY CONTACT SPORT MISCONDUCT

KARAS v. STREVELL

SUPREME COURT OF ILLINOIS

February 22, 2008

- 11  Jaworski v. Kiernan  
(Conn. 1997)

#### Recklessness Standard for Participants

- 12  adult soccer game, trip from behind,  
in violation of league rules

- 13  Legal Duty Factors  
(1) normal expectations of participants in sport or activity  
(2) encourage vigorous participation while weighing participant safety  
(3) avoidance of increased litigation  
(4) decisions in other jurisdictions

- 14  Normal expectations of participants in contact sports

adopt recklessness or intentional conduct duty of care standard

- 15  Greer v. Davis  
(Tex. App. 1996)

Evidence of Intentional Misconduct

- 16  Whether collision was purely accidental or result of defendant's  
intentional or reckless conduct

- 17  testimony " I was aiming right at the SOB" after near miss on previous  
at bat

- 18  Savino v. Robertson

(Ill.App. 1995)

Competition Includes Warm-Up Practice?

- 19  P no less a participant merely because warming up for activity
- 20  P voluntarily consented, understood & accepted inherent dangers in sport  
due to co-participant's negligence
- 21  liability only for willful/wanton misconduct or recklessness  
488 So.2d 739
- 22  Ritchie-Gamester  
v.  
City of Berkley  
(Mich.1999)
- 23  NOVAK  
v.  
LARMAR INSURANCE CO.
- 24  P, softball 1st base, struck in face by D running to 1st.  
  
Participant does not assume risk of injury from fellow players
- 25  acting in an unexpected or unsportsmanlike way with a reckless lack of concern for participant.

- 26  D not substantially inside baseline; P placed head near base  
  
nothing illegal, unsportsmanlike about being partially inside baseline,
- 27  D was not negligent, simply inherent part of game  
  
both players assumed risk of collision in game played competitively  
maximum diligence
- 28  SIEBER  
v.  
WIGDAHL
- 29  P's husband killed in collision  
struck from behind by D during polo game.
- 30  D liable for violation of safety rule in contact sport  
  
if conduct is either deliberate, willful or with a reckless disregard of  
safety of other player
- 31  Player legal duty other players on field to refrain from conduct  
prohibited by safety rule.
- 32  Jury could find D deliberate, willful or with reckless disregard P's safety
- 33  i.e. D saw play & deliberately rode into P's horse in an attempt to knock  
horse over.

34

GINSBERG

v.

HONTAS

35  P injured by D in recreational softball game

game officiated by umpire applying major league rules, allowed sliding

36  P assumed inherent risks of injury associated with participating in ballgame.

37  Umpire testified slide within rules of game

if roll or body block, expelled from game

38  D not airborne when players collided

umpire neither warned D for obstructing play, nor expelled D from game.

39  Fortier v.

Los Rios Community College

Aggressive Play Inherent in Non-Contact Football Class

40  no evidence D acted wantonly, recklessly or with total disregard of safety of P.

41  P injured in collision with other player going for ball

in "advanced football" class  
other player trying to intercept ball

42  P alleged instructors negligent in supervision & instruction of activity

43  Conversely, NO duty of care owed for inherent risks

In heat of active sport, participant's normal energetic conduct

44  often accidentally includes careless behavior

no liability for violation of rules of game, would deter vigorous  
participation

45  Enormous social & economic costs to require equipment

for what was essentially flag or touch football diminished participation  
opportunities in organized, recreational football

46  Participants Do Not Assume Increased Risk of Injury

Deangelis v. Izzo  
N.Y.App. 1993

Unskilled opponent increases risk

47  Karate sparring with other beginning student after 8 lessons

whether negligent instruction & sparring activity

48  Whether P had assumed risk of injury

issue: participant's knowledge  
of risks posed & inherent  
in karate sparring

49  Issue whether conditions as safe, or dangerous, as they appeared to be

extent karate novice  
aware of danger

50  Clark v. Wiegand  
Ind. 1993

Serious Knee Injury known Risk

51  Whether assumed risk, having experienced judo injuries

P appreciated risk of  
having wind knocked out of her  
but not risk of serious knee injury

52  Issue: whether syllabus actually cautioned regarding judo as contact sport

and risk of aggravating pre-existing injuries

- 53  Kuehner v. Green  
Fla.App. 1981

Consent to Confront Certain Dangers

- 54  Whether leg sweeps on concrete floors inherent risk in karate
- 55  whether risk assumed, or willful violation of recognized or formal rules designed to protect participants
- 56  Here, P subjectively recognized danger of leg sweeps and voluntarily proceeded to spar in face of such danger
- 57  Bushnell v. Japanese-American Cultural Center  
Cal.App. 1996

Participant Assumes Risk of Challenging Instruction

- 58  P Broke leg, elementary judo throw  
35 yrs old, weekly classes for 1 yr
- 59  Instructor  
P's practice partner  
faster & faster throws,  
  
working up to full speed



- 60  Completed drill 24x, then broke leg on last attempt  
  
possibly due to instructor speed
- 61  To impose liability would discourage judo instructors  
  
to stretch students to learn new moves  
deleterious effect on sport
- 62  Not unreasonable for instructor to challenge student  
  
even if injured  
in failing to meet challenge
- 63  *Kahn v. East Side Union High School District*, 4 Cal. Rptr. 3d 103  
(2003)
- 64  plaintiff Olivia Kahn was a 14-year-old novice member of defendant's  
Mt. Pleasant High School women's junior varsity swim team.
- 65  October 13, 1994, Kahn was participating in a competitive swim meet
- 66  she broke her neck while attempting a practice dive from a starting  
block  
  
into the three-and-one-half-foot-deep racing pool located at the school.
- 67  "diving into three and a half feet of water from the deck of a pool or  
from a starting block is extremely dangerous,

68  and is ultra-hazardous

if done by a swimmer without adequate training.”

69  [T]he risks associated with learning a sport may themselves be inherent risks of the sport,

70  instructor or coach generally does not increase the risk of harm inherent in learning the sport

71  simply by urging the student to strive to excel or to reach a new level of competence...

72  [I]nstruction in a sport frequently entails challenging or "pushing" a student to attempt new or more difficult feats,

73  liability should not be imposed simply because an instructor

asked the student to take action beyond what, with hindsight, is found to have been the student's abilities.

74  “[a]bsent evidence of recklessness, or other risk-increasing conduct liability should not be imposed

75  “discourage instructors from requiring students to stretch, and thus to learn,

would have a generally deleterious effect on the sport as a whole.”

76  Kahn’s allegations and evidence in this particular instance “went far

beyond claim

coach made an ordinary error of judgment

77  in determining that she was ready to perform the shallow-water dive.”

78  rock climbing class fatality  
Roettgen v. University of California

79  COLLIER v.  
NORTHLAND SWIM CLUB  
35 Ohio App.3d 35 (1987)

80  P, 11 1/2 yrs,  
injured racing dive 3 1/2',

failure to warn & supervise,

81  Child: like age, intelligence under circumstances,

appreciate obvious risks

82  Whether P assumed risks of diving into shallow water  
from the side of pool,

whether P's age & experience precluded awareness or knowledge  
of risks incidental to diving,

83  Whether D was negligent in permitting diving  
from deck area into 3 1/2' water

84  First Female in School Football  
Hammond  
v.  
Board of Education of Carroll County

85  No duty to warn of obvious risks

86  here, injury normal, obvious & usual incident of activity

No evidence that P's injuries different or more severe  
because she was female

87  JUNIOR LIFEGUARD COMPETITION PARTICIPANT ASSUMES  
RISK OF INJURY

Lupash v. City of Seal Beach (Cal.App. Dist.4 1999)

88  PARTICIPANT ASSUMES RISK OF INJURY INTEGRAL TO SPORT

AMERICAN POWERLIFTING ASSOCIATION

v. COTILLO

Court of Appeals of Maryland

October 16, 2007

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