Care on the court

Mark James and Fiona Deeley discuss the duty of care between sports participants and the emerging test of reckless disregard.

Since Condon v Basoli (1991) ER 453, there has been criticism and debate over the correct standard of care that should be applied in cases where a potentially negligent act has caused injury to a co-participant. The majority of these decisions have upheld the test of negligence in all circumstances. However, the judgment has been phrased in terms of negligence being a disregard for the health and safety of the co-participant.

This has led to a growing body of opinion that a new test – perhaps even a new standard of reckless disregard is emerging. In Gough v Maguire & Fitzgerald (2001) EWHC 2303, this proposed new standard was rejected by the Court of Appeal and a more precise explanation of the appropriate duty of care owed by sports participants to each other was explained. The affirmation of the test of negligence in all circumstances and a clearer definition of those circumstances will be of considerable assistance to claimants.

Background to the decision

The argument that reckless disregard should be the appropriate test is currently advanced by defendants. It originates from the judgment in Woolridge v Sunniside in 2 QB 43, a case involving injuries to a spectator at an equestrian competition. The defendant lost control of his horse and fell, and injured a spectator who was taking photographs at the edge of the arena. It was held that a spectator accepts the risk of the judgment or skill of a competitor going all out to win, but does not accept the risk of a participant having a reckless disregard for his safety. Essentially, it was recognised that a sporting competitor, bent on winning the contest, was not to be all but oblivious of spectators.

Further judicial reference to this subject can be found in more recent cases involving injuries to participants. In Condon v Basoli, the trial judge stated that, although the defendant had been guilty of dangerous foul play and having a reckless disregard for the plaintiff's safety, in Eadie v Saunders (1994), the defendant, in breach of the ordinary negligence standard set by Condon v Basoli was applicable in such cases but went on to find that the defendant was guilty of dangerous and reckless disregard and was therefore not in breach of the duty of care owed.

The question is, do the above judgments allow a participant-defendant who carries
Disregarding reckless disregard

The judge said that the test to be applied to a case of reckless disregard for safety (in the circumstances at issue here) was that the defendant had no regard for the possibility of injury to others by his careless conduct.

We have also a clear indication of what should be the standard of proof in ordinary negligence cases. It is not necessary for the plaintiff to prove his case by a preponderance of the evidence. The plaintiff must prove that the defendant's conduct was negligent and that the plaintiff was injured as a result of the defendant's negligence.

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