Care on the court
James, MD and Deeley, F

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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 Basi [1981] 3 All ER 453, there has been expansion and debate over the correct standard of care to be applied to participants where a potentially negligent act has caused injury to a co-participant. The majority of the decisions have upheld the test of negligence in all instances. However, the judgment has been phrased in terms of negligence footing because there has been a reckless 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 Condon v Basi [2001] EWHC 1689 (QB) the Court of Appeal upheld the test and explained the appropriate duty of care owed by sports participants to each other. The affirmation of the standard of negligence in all the 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 becoming advanced by defendants. It originates from the judgment in Woolridge v Summit [1972] 2 QB 43, a case involving injuries to spectators. The defendant lost control of his horse and bolted, and injured a spectator who was taking photographs at the edge of the arena. It was held that a spectator accepts the risk of a horse's judgment or skill in a competition, but 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, with intent 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 Basi [2001] EWHC 1689 (QB) the trial judge stated that, although he was prepared to formulate a specific duty of care for football, the defendant had been guilty of dangerous foul play and having a reckless disregard for the plaintiff's safety. In Eadie v Saunders (1994), unrep, Drake J held that the ordinary negligence standard set in Condon v Basi was applicable in such cases but went on to find that the defendant was not guilty of dangerous and reckless play and was therefore not in breach of the duty of care owed.

The question is: do the above judgments allow a participant-defendant who commits

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The judges' statements in these cases differ. They were unnecessary for determining the negligence standard to apply and was actually applied in each case. However, up until now, the views for participant-claimants bringing claims in respect of their injuries have been balanced by the judicially claimed being to ordinary standard of negligence, they appear to have given judgment in terms of the lower standard of reckless disregard and dangerous play.

Johnson v Maguire & Fitzgerald 1994. Peter Calwell, a professional boxer, suffered career-ending injuries and while riding in a race. Calwell sought a claim for personal injury and earnings against two defendants who were riding in the same race. The accident was caused by two horses ridden by Calwell, the defendants and a fourth jockey, Byrne. Calwell was the inside horse, neck and neck, with Byrne following close behind. As they reached a left hand bend, the two defendants pulled slightly ahead of Byrne, taking the bend at 90 degrees while Calwell was only 45 degrees. Tuckey LJ added that 'there would be no liability for errors of judgment, oversights or lapses of which any participant might be guilty in the context of a fast-moving contest. Something more serious is required.' Thus, the court accepted that negligence in sport is dependent on the game being played and the risks involved in playing it. Reckless disregard was an expression of the degree of evidence required, not a new standard of care.

Rejection of reckless disregard
In rejecting the reckless disregard test, the court concluded that there is in fact no inconsistency between the conclusions reached in Smoldon and Woodbridge because it is the same test that is being applied. The level of care required is that which is appropriate in all the circumstances. The difficulty is in providing evidence of the breach when the circumstances in which the injury took place include sport. Just as the Master of the Rolls in Condon said that the circumstances were very different in football when compared to a walk in the country, so also are they very different when comparing the playing and spectating of sport. The normal course of events, a spectator will be at little or no risk from a competitor, therefore a spectator would have to be shown to have performed with a considerable degree of negligence for the safety of spectators before he could be held to have failed to exercise such care as was reasonable in the circumstances.

Likewise, because of the inherent risks involved with sports such as rugby, boxing and football, considerable latitude is granted to sports participants by requiring of them only negligence in the circumstances of the sport that they are participating in. Thus, in racing, careless riding is insufficient, as would be a mistimed tackle.

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