

Taekwondo and Sports Law: Issues of Liability for Injuries Sustained in Tournaments

Introduction

Since the formation of the World Taekwondo Federation (WTF) in 1973, the popularity of taekwondo as a competitive sport has increased rapidly worldwide.¹ In the United States, tournaments are held at the local, state, national and even international level. A natural consequence of the increased number of practitioners testing their abilities in competition is an increase in the number of injuries resulting from such competition.

The law of sports that addresses the liability that may result from injuries sustained during sports activities is the area of sports law that has received the most judicial analysis.² While most of the cases have involved mainstream sports such as football and baseball, the legal principles set forth in the cases should apply with equal force to any injury cases that could arise from taekwondo competition.

This is the first of two papers that will address the issues

¹ **Yeon Hee Park et al., Tae Kwon Do: The Ultimate Reference Guide to the World's Most Popular Martial Art** 5 (1989).

² Cym H. Lowell, Liability for Injuries in Sports Activities in Law and Amateur Sports 40 (Ronald J. Waicukauski ed., 1982).

of liability that may arise when injuries result from tournaments. Part I of this paper presents the applicable law in this area to familiarize the reader with the basis upon which most claims for recovery are sought. Part II discusses the specific issues of liability that may arise from injuries sustained in taekwondo competition. The limited scope of this first paper will address participant liability and coach liability.

I. Principles of Negligence Law

Negligence is an unintentional tort³ that is concerned with the conduct or actions of an individual.⁴ Negligence is distinct from intentional torts which focus on the intent or state of mind of the individual committing the act.⁵ Thus, an individual may be negligent even though she did not intend to commit the act or to harm the plaintiff. Conduct is negligent if it "falls below the standard established by law for the protection of others against an unreasonably great risk of harm."⁶

In most cases, the standard for measuring whether conduct is negligent is that of the ordinary, reasonable person under similar circumstances.⁷ Said another way, a person may be negligent if she either fails to do something that a reasonable person would have done, or does something that the reasonably prudent person would not do.⁸ However, if an injury was not foreseeable and the exercise of reasonable caution would not have prevented the injury, it may then be classified as an unavoidable

³ A tort is a "private or civil wrong or injury . . . for which the court will provide a remedy in the form of an action for damages." **Black's Law Dictionary** 1036 (1991).

⁴ **Robert C. Berry and Glenn M. Wong, Law and Business of the Sports industries, Volume II: Common Issues in Amateur and Professional Sports**, 284 (1986).

⁵ Id.

⁶ Id.

⁷ Lowell at 41.

⁸ Id.

accident.⁹ Such an accident would probably not be actionable.

In order to successfully recover for a claim of negligence, a plaintiff must establish certain elements. First, she must prove that the defendant owed her a duty of care.¹⁰ Second, she must prove that the defendant breached this duty. Third, she must show that

⁹ Id.

¹⁰ "A duty of care is an obligation, recognized by law, which requires an individual or a group to conform to a particular standard of conduct toward another." **Berry & Wong** at 287.

defendant's conduct was the proximate cause¹¹ of her injuries. And finally, she must establish that she suffered damage as a result of the defendant's conduct.

Even if a person is found to have been negligent, however, that is not the end of the inquiry. Liability will not be imposed if the defendant can show that the plaintiff's own conduct was such that recovery should be barred. The first doctrine that may bar recovery is contributory negligence. "Any act of the plaintiff that amounts to a lack of ordinary care and contributes to the proximate cause of the injury is contributory negligence."¹² There is no requirement that the plaintiff have actually appreciated the risk involved. It is sufficient if the risk was known or a reasonable person should have known and avoided the risk.¹³ If a plaintiff is found to have been contributorily negligent, then recovery will be completely barred.

Some states wishing to avoid the harshness of this rule have adopted comparative negligence statutes. These statutes allow the jury or fact-finder to divide the responsibility between the two negligent parties by determining the proportionate degree of

¹¹ The determination of proximate cause will depend upon "whether the defendant's negligent act was connected to the plaintiff's harm to such an extent as to be considered the legal cause of it." Id. at 289.

¹² Id. at 298.

¹³ Id.

negligence that should be attributed to each party.¹⁴ Each party then pays her pro rata share of the damages.

Courts may also bar plaintiff from recovery if the assumption of the risk doctrine applies. "[A] party who voluntarily assumes a risk of harm arising from the conduct of another cannot recover if harm in fact results.¹⁵ In contrast to contributory negligence, plaintiff must have known and fully appreciated the risks involved in order for assumption

¹⁴ Id. at 299.

¹⁵ Lowell at 42.

of the risk to apply.¹⁶ In addition, the risk assumed must have been carefully and reasonably agreed to by plaintiff.¹⁷

¹⁶ **Berry & Wong** at 300.

¹⁷ Id.

II. Liability for Injuries

By applying the above legal principles, courts have developed a large body of case law governing the liability issues raised by injuries sustained in sports activities. This section discusses the rules of law established by the cases and analyzes the application of these rules to claims that could arise from taekwondo competition related injuries.

Participant Liability

Injuries suffered by participants are the most immediate type of liability that may result from sports activities. In the past, the physical nature of sports lead people to believe that injuries resulting from such activities were merely a natural consequence.¹⁸ The traditional belief was that a participant should be barred from recovering for an injury caused by another participant because all participants assume the risks inherent in the sport.¹⁹ Recently, however, the cases in this area have eroded this traditional view. These decisions recognize that participants do not necessarily assume the risk of injuries caused by another participant's gross recklessness.²⁰ Moreover, participants do not necessarily consent to intentional attacks

¹⁸ Id. at 320.

¹⁹ Id.

²⁰ Id.

from other participants who act outside the rules of the sport.²¹

A general rule may be stated as follows: "voluntary, sui juris participants in lawful sporting activity assume, as a matter of law, all of the ordinary and inherent risks in the sport, as long as the activity is played in good faith and the injury is not the result of an intentional or willful act."²² Such participants can be said to accept the dangers inherent in a sport so long as they are obvious and necessary.²³

²¹ Id.

²² Lowell at 42. "A sui juris person is one possessed of full legal capacity." Id.

²³ Murphy v. Steeplechase Amusement Company, Inc., 250 N.Y. 479, 482 (1929).

Due to the combat nature of taekwondo competition, there are many ordinary and inherent risks for which competitors may be held responsible. For example, if a competitor does not properly warm up before her match, she may set her body up for injury.

Taekwondo places great physical demands upon one's body:

"muscles and joints work quickly and repeatedly as the hands and feet snap out powerfully to strike and kick. If the body has not been properly prepared for this type of activity, cramping can develop in the muscles or, more seriously, injury can occur to the joints, ligaments and tendons."²⁴ A competitor who has not properly warmed up before sparring could easily pull a muscle or a ligament. Such an injury is an obvious danger that will most likely be charged to the competitor. Absent other facts, such an injury probably would not be actionable.²⁵

However, the "general rule that is based on voluntariness of participation will be inapplicable where the injured participant can establish that the injuries were either the result of other than good faith competition or the product of risks that are not ordinary or inherent in the sport in question."²⁶ For example, the acts of other participants may create a situation that would

²⁴ **Park** at 7.

²⁵ A court would probably take into consideration the particular competitor's level of experience with taekwondo to determine whether she knew or should have known the risks.

²⁶ **Lowell** at 43.

render the general rule inapplicable. "An unreasonable risk of injury may be created by the lack of skill or improper conduct of other participants or by the manner in which a particular activity is conducted."²⁷

In taekwondo, the lack of skill of one's opponent is a common cause of injury. The potential for such injuries is especially a concern among beginning practitioners who may lack the ability to execute controlled kicks or may deliver kicks that are too low. To balance safety against a realistic fighting situation, the sparring rules of taekwondo place certain restrictions on contact sparring.²⁸ Competitors must wear protective padding and

²⁷ Id. at 44.

²⁸ **Park** at 140, 141.

may only attack to the front of the opponent's head and body.²⁹ Despite such rules, injuries may still occur, for instance, because a competitor lacked the skill to avoid kicking to a restricted area.

Whether such an injury was the result of an unreasonable risk that was neither ordinary nor inherent, however, is arguable. An important factor in the determination might be the level of experience of the competitors. The finder of fact may be more willing to find that it was an unreasonable risk if the competitors were both highly skilled and experienced practitioners of taekwondo. One would not normally expect such an injury to result from a match between two top-notch competitors. Thus, whether a competitor assumed the risk of a taekwondo injury due to an opponent's lack of skill would be a question of fact.

Injuries may also result in taekwondo due to the improper conduct of an opponent. The United States Taekwondo Union ("U.S.T.U.") has established many specific competition rules that are to be followed in any tournament sanctioned by the U.S.T.U.³⁰ Penalties in the form of warnings and deduction of points may be imposed on any competitor who violates a rule. Examples of penalties include "intentionally stomping or kicking any part of

²⁹ Id. at 141.

³⁰ The United States Taekwondo Union, Inc., **U.S. Referee Seminar** 67 (1995).

[the opponent's] leg or foot," "attacking the fallen opponent," "intentional[ly] attack[ing] after the Referee's declaration of Kalyeo (break)" and "hitting the opponent's face with the hand or fist."³¹

When intentional or reckless conduct is involved, "the courts in . . . recent cases have suggested that the assumption of risk doctrine may be less important than has typically been true when the conduct in question is less severe."³² In the case of Nabozny v.

³¹ Id. at 85-86.

³² **Lowell** at 44.

Barnhill,³³ defendant soccer player kicked the opposing team's goalkeeper in the head while the ball was in the possession of the goalkeeper. The goalkeeper suffered permanent skull and brain damage. Contact with a goalkeeper who has possession of the ball is a clear violation of the rules of soccer. Although the trial court directed a verdict for the defendant, the appeals court ruled that the trial court erred. The appeals court noted that "a player is liable for injury in a tort action if his conduct is such that it is either deliberate, wilful or with a reckless disregard for the safety of the other player so as to cause injury to that player. . . ."³⁴

Many of the penalties in taekwondo focus on the intent of the competitor. If the injured competitor can show that she was harmed by the intentional or reckless conduct of the opponent, she may have a good case for establishing that she did not assume the risk of injury. Furthermore, if the injury resulted from a clear violation of the U.S.T.U. rules, the situation would be similar to that in Nabozny.

Coach Liability

Since coaches usually have the most direct control over the activities of athletes, they often find themselves named as

³³ 334 N.E. 2d 258 (Ill. Ct. App. 1975).

³⁴ Id. at 261.

defendants in injury claims.³⁵ A coach has a duty to exercise reasonable care for the safety of athletes who are under her supervision.³⁶ To fulfill this duty, a coach must properly instruct athletes in how to play the sport and make sure that the athletes are in good physical condition.³⁷

However, a coach is not an insurer of the athlete's safety.³⁸ As long as a coach takes all reasonable measures to reduce the likelihood of injury in sports that require an

³⁵ **Lowell** at 61.

³⁶ Id.

³⁷ Id. at 61-62.

³⁸ Id. at 62.

inevitable amount of physical contact, the duty of care will be satisfied.³⁹ For example, where a high school football player suffered a broken neck from charging head first into approaching tacklers, the court rejected the player's claim that the coach was negligent.⁴⁰ The court reasoned that the "coach's function is to minimize the possibility that the body contacts may result in something more than slight injury."⁴¹ In this case, the coach had supervised the player in an extensive training program that involved "calisthenics, running and other forms of muscular exercise . . . intended to place the players in sound physical condition so that they could withstand the shocks, blows and other rough treatment with which they would meet in actual play."⁴²

Where the coach fails to minimize the possibility of injury, however, liability may be found.⁴³ For example, where a coach failed to properly instruct his wrestlers in how to use and defend against certain dangerous holds, the coach was found liable for the resulting injury.

In taekwondo, it is likely that a coach would not normally be held liable for injuries resulting from competition as long as the coach took all reasonable steps to minimize the possibility

³⁹ Id.

⁴⁰ Vendrell v. School District No. 26C, Malheur County,

⁴¹ Id.

⁴² Id.

⁴³ Lowell at 62.

of injury. During the training leading up to the competition, this might consist of not only providing proper instruction in sparring techniques, but also leading competitors in exercises intended to adequately condition their bodies.

Conclusion

Although the leading cases in this area of sports law have involved mainstream sports such as football and soccer, the legal principles announced should be just as relevant to cases that might arise from taekwondo injuries sustained from a tournament. As the popularity of taekwondo competition continues to increase, it is important to be aware of the potential issues of liability.