

A quarterback and a linebacker were competing against one another in a professional football game. At one point during the game, the quarterback attempted to throw the football to one of his teammates. At the same time, the linebacker was chasing the quarterback in order to tackle him before the ball could be thrown. Just as the linebacker was about to tackle the quarterback, the referee blew her whistle, indicating that the play was over and that the players should stop what they were doing. Nevertheless, the linebacker tackled the quarterback two seconds after the whistle was blown and broke the quarterback's arm.

If the quarterback files a negligence action against the linebacker, will the quarterback be likely to prevail?

- A. No, because the linebacker did not intend to break the quarterback's arm.
- B. No, because the quarterback assumed the risk of breaking his arm by playing football.
- C. Yes, because the linebacker breached the duty of care he owed to the quarterback.
- D. Yes, because the linebacker tackled the quarterback after the referee blew the whistle.

Explanation:

Assumption of risk

(tort defense)

	Applicability	Public policy limitations
Express	Plaintiff assented to liability waiver intended to cover type of conduct that caused plaintiff's harm	Not a defense when defendant: is plaintiff's employer is a hotel or common carrier is a public servant/service has substantially more bargaining power
Implied	Plaintiff voluntarily accepted known risk of harm	Not a defense when plaintiff: suffered intentional harm is member of statutorily protected class

A defendant is liable for **negligence** if he/she breaches a duty of care owed to the plaintiff and causes the plaintiff harm. However, **assumption of the risk** is a **complete defense** to negligence liability. Implied assumption of the risk arises when the plaintiff **voluntarily engages in an activity** with the **knowledge that it carries inherent risks**. For example, an athlete who participates in a sport impliedly assumes the inherent risks of that sport.*

Here, the linebacker may have breached the duty of care he owed to the quarterback by tackling him after the referee blew the whistle. However, this is the type of risk that is inherent to the sport of football, especially since the linebacker tackled the quarterback only two seconds after the whistle was blown. Therefore, the quarterback assumed the risk of being injured by a tackle while playing football, and he is unlikely to prevail in a negligence action **(Choices C & D)**.

*Spectators similarly assume certain risks inherent in watching the sport (eg, the risk of being struck by a game ball).

(Choice A) **Intent** is irrelevant to negligence, which merely requires proof that the defendant's conduct fell below the applicable standard of care.

Educational objective:

Implied assumption of the risk is a complete defense to negligence liability when the plaintiff voluntarily engages in an activity (eg, football) with the knowledge that it carries inherent risks (eg, risk of being injured during a tackle).

References

Restatement (Second) of Torts §§ 496A-496C (Am. Law Inst. 1981) (assumption of risk principles).

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