
SPECTATORIAL DUTY OF CARE IN SPORTS: FROM HOOLIGANISM TO GAME-DISRUPTION

Siddharth Saxena

Jindal Global Law School, O.P. Jindal Global University

16jgls-ssaxena@jgu.edu.in

ABSTRACT

The question of who is liable for the offending actions of spectators at sporting events is one that has remained largely unanswered. An understanding of the same becomes especially relevant in light of the increase in recent occurrences of riots, game-disruptions and intra-spectator violence. Therefore, the author hopes to provide a comprehensive answer to this question through a jurisprudential analysis and an application of the principles of tort law to sports within a comparative framework. There are three groups of people on whom such liability could lie — the stadium authorities, the clubs, and the spectators themselves. The lack of a universally applicable answer arises from the fact that the liability does not in every case fall on the same party, but, instead, it is often determined based on whom the duty of care was owed to, and the particular circumstances of the offence. It is even possible for the liability to fall on multiple parties simultaneously. However, the inability to achieve a singular answer should not be seen as counterintuitive. Instead, it holistically enhances the experience of the sport for various actors, because it decreases the likelihood of game disruptions in the future. This concurrent liability pre-emptively seeks to curb not only ordinary and reasonably foreseeable occurrences of violence, but it also allows for the existence of liability imposition and remedies when there is an extraordinary situation that could not have been foreseen.

KEYWORDS

Spectator violence, Game-disruption, Stadium authorities, Clubs, Spectators.

1. INTRODUCTION

On 2nd March 2016, during a semi-final match of the Greek Football Cup, a midfielder for the PAOK Football Club was taken down in the penalty area. The crowd was enraged by this as there was no call by the referee, which would have benefited them since it occurred late into the second-half when Olympiacos were leading 2–1. In the eighty-ninth minute, some of the outraged members of the crowd threw flares onto the field, forcing the members of the team and the referee to be escorted off. This incident caused the first leg of the two-game aggregate to be suspended.¹ A similar incident had occurred during the second day of the final Ashes Test between England and Australia in 1971, but with much more serious consequences. After one of the Australian batsmen was forced to retire due to an injury from accidentally ducking into a bouncer, beer bottles and cans were thrown at the English bowler responsible. Although the English captain initially withdrew his team from the match in disgust, he was forced to return because the match, along with the Ashes, would otherwise be awarded to the Australian team. While the field was being prepared for the match to be continued, one of the attendants was knocked unconscious by a beer can thrown out from the stands. This incident, finally, led to 14 fans being arrested and 190 others being removed from the stadium.²

Such instances of game-disruption are only a symptom of the more significant issue of spectator violence and misbehaviour, be it directed at the participants or other spectators. Spectator hooliganism, in that respect, is not a recent phenomenon. Instead, it has been an ever-present concern for authorities and other spectators alike. Incidents of spectator violence, whether gravely serious or not, can be traced back to more than a century ago. In 1879, international cricket saw one of its first major outbreaks of violence at the Sydney Cricket Ground. 2,000 spectators invaded the grounds during a match between the Australian and English cricket teams and held up the game for approximately 20 minutes. The English captain, Lord Harris, was also injured by one of the spectators during this incident, which is now popularly known as the Sydney Riot of 1879.³

¹ Tom Webb, *PAOK vs. Olympiakos Abandoned after Fans Light Flares and Throw Toilet Paper*, BLEACHER REPORT (Oct. 11, 2020, 10:26 AM), <https://bleacherreport.com/articles/2621393-paok-vs-olympiakos-abandoned-after-fans-light-flares-and-throw-toilet-paper>.

² Arunabha Sengupta, *Ashes 1970-71: John Snow fells Terry Jenner; England almost forfeit Test*, CRICKET COUNTRY (Oct. 11, 2020, 10:39 AM), <https://www.cricketcountry.com/articles/ashes-1970-71-john-snow-fells-terry-jenner-england-almost-forfeits-test-30574>.

³ Maximilian Reid, *Outside Off — Riot of 1879*, ROYAL AUSTRALIAN HISTORICAL SOCIETY (Oct. 11, 2020, 10:50 AM), <https://www.rahs.org.au/outside-off-riot-of-1879/>.

Instances of spectator violence have only increased in the recent past, while the question of liability—upon whom does the duty of care for curbing such spectatorial actions lie—has remained a legal lacuna. Therefore, through this paper, the author hopes to answer this question of liability, employing a jurisprudential lens and comparative analysis of the tortious legal frameworks set up in an array of common law jurisdictions.

There are three parties upon whom such duty of care could lie—the stadium authorities, the clubs, or the spectators themselves. However, there is no singular answer to the question of who is liable for instances of game disruption amongst these three parties. The liability can lie on any of the aforementioned parties, depending on the circumstances of the incident. Accordingly, the paper deals with the question of liability in three parts, each exploring the circumstances under which the stadium authorities, clubs and/or spectators may be held liable, respectively.

2. LIABILITY OF STADIUM AUTHORITIES

It has been well established across various precedents that the spectators attending a sporting event are to be treated as the business invitees of the stadium where the event is being conducted, at least for the purposes of determining the appropriate duty of care. *Roth v. Costa*⁴ was one such case, where the plaintiff, a concert attendee, had been on the receiving end of a criminal attack from one of the other spectators. Although this case deals with concert attendees and not spectators or sporting events, the principle devolved as to the nature of the relationship between the stadium authorities and the spectators would remain unchanged. It would be illogical to hold that the plaintiff would have no longer been a business invitee merely if it had been a sporting event. The nature of the injury she suffered was unrelated to the nature of the event sought to be experienced, so the precedent can be extended to sporting events as well.

The Australian High Court has held, in the case of *Rootes v. Shelton*,⁵ that merely because an injury has occurred during a sport or game would not be a reason to exclude the application of the laws against negligence. When the owner invites spectators to her premises, she is expected to satisfy three requirements.⁶ Firstly, she must exercise reasonable care. Secondly, she must disclose to her invitees all those dangerous conditions that exist on the premises, which are

⁴ 650 N.E.2d 545 (1995).

⁵ ALR 33 (1968).

⁶ *Harris v. Nichans*, 857 S.W.2d 222 (1993).

unlikely to be discovered by them of their own accord. Finally, she has a duty to remedy all such dangerous conditions that exist on the land. If she is unable to do so, she must at least inform the invitees thereof.

However, this does not mean that the owner of the stadium can simply allow the dangerous conditions to exist on her land by merely informing the invitees, as doing so would leave it open to a suit for negligence.⁷ Such was the particular scenario in *William v. Walnut Creek Amphitheatre Partnership*.⁸ The question, in that case, was as to whether the owner created and allowed the continued existence of a dangerous condition by constructing the amphitheatre on a hill and admitting too many invitees, even if the patrons were aware of these risks. The Court answered the question in the affirmative, holding that Walnut Creek was liable since they had negligently failed to rectify the condition even after coming to note their existence. It was this failure of the owner that led to the injury of the plaintiff.

The United Kingdom's Occupiers Liability Act imbibes most of the principles, regarding the liability of stadium authorities, discussed so far. It seeks to imbibe the common law position on duty of care and imposes it on all the occupiers.⁹ However, in practice, the Act does manifest a slight alteration of the jurisprudential positions discussed above. It places a lesser liability on the owner of the premises, as erecting warning signs that state that the organisers would not be liable for accidents to spectators, howsoever caused, and at the entrance to the venue allows them to effectively avoid liability.¹⁰

Finally, the principles applicable to stadium owners culminate in and are clarified by the American case of *Iacono v. MSG Holdings LP*.¹¹ Therein, a photographer, who was caught in between and injured by a riot during the Bowe-Golota boxing fight, sued the Madison Square Garden for its failure to exercise adequate crowd-control measures. The Court held the owners liable, as they could have easily prevented the foreseeable risk of precipitating incidents by exercising reasonable care to secure the stadium. A further clarification that arises out of this case is that the injury caused should have been reasonably foreseeable so that it could be expected of the business to remedy the cause of such injury. Therefore, “*a tortfeasor need not*

⁷ Keeran v. Spurgeon Mercantile Co., 191 N.W. 99 (1922).

⁸ 468 S.E.2d 501 (1996).

⁹ Occupier's Liability Act § 2, (1957).

¹⁰ White v. Blackmore, 2 QB 651 (1972).

¹¹ 801 N.Y.S.2d 778 (2005).

*have contemplated the particular event that occurred, as he may be held liable for anything that could be a natural and probable consequence of his actions.*¹²

However, we can clearly see from both the facts and principles of these cases that the owner of the premises is only likely to be held accountable for injuries occurring to the spectators. We must look elsewhere to locate the liability for actions committed by spectators against participants of the sport. The group upon whom such liability might fall would be the sporting clubs, whose fans are responsible for the misbehaviour.

3. LIABILITY OF CLUBS

Before we begin discussing the liability of clubs for actions committed against participants, we must continue to probe the question of actions committed against other spectators. When it comes to the liability of clubs, it often becomes much easier to place since the clubs may also be the owners of the stadium where the match is taking place. Therefore, not only might they become responsible for the actions of their fans, but they would also be responsible for ensuring the reasonable safety of all spectators watching the match. So, in such cases, the principle of reasonable care owed to business invitees would continue to apply, concomitantly.

In the case of *Harris v. Sheffield United Football Club*,¹³ the issue under consideration was as to whether the club was required to pay the police for its services rendering assistance to manage the crowd at their stadium. The answer to this question depended on determining whether the police were merely carrying out their public function, or whether there was a duty on the club to secure its own stadium — in which the police were only aiding them. The Court held that that the club owed a duty to the spectators and the football authorities, to ensure that the conditions were not such as to occasion a danger to any person or property. Therefore, the police were merely assisting the club in carrying out their necessary duty of ground regulation, crowd control and supervising entry to the venue, which the club could have also outsourced to a private party.

As has been briefly hinted at in the *Sheffield United Football Club* case, the liability of clubs can go beyond that which is owed to the spectators under tort law. They may also be liable under contractual agreements to the sporting authorities, whose guidelines they must comply

¹² *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242 (1990).

¹³ 2 All ER 838 (1987).

with. It is at this point that the duty owed to the participants may also be brought in. A particular example is that of the UEFA Disciplinary Regulations, which hold the clubs strictly liable for the actions committed by their supporters.¹⁴ Article 6 of this regulation provides:

that the “[m]ember associations and clubs are responsible for the conduct of their players, officials, members, supporters and any other persons exercising a function at a match at the request of the association or club.”

This seems to be similar to the approach taken towards accident cases in the American jurisdiction, wherein the breach of the statute is treated as negligence *per se*.¹⁵ The concretisation of this common law position is imbibed to avoid any controversy as to whether due care was exercised in a particular situation or not.

In the case of *PSV Eindhoven v UEFA*,¹⁶ the Court of Arbitration for Sports (CAS) was called upon to interpret and extrapolate the aforementioned Article of the UEFA Disciplinary Regulations. The claimant club had been fined CHF 30,000 by the UEFA Control and Disciplinary Body, in response to one of their supporters unruly screaming at Thierry Henry during a match against Arsenal. Obviously, the tribunal was bound to strictly apply the provision to the facts at hand. However, what is more, important for our understanding of the club’s liability is the CAS’ interpretation of the principle of spectator violence:

“The object of this rule is very clearly to ensure that clubs that host football matches shoulder the responsibility for their supporters’ conduct. (...) If clubs were able to extricate themselves from any responsibility by claiming that they had taken all measures they could reasonably be expected to take to prevent any breach of the UEFA rules, and if supporters still manage to commit such an act, there would be no way of penalising that behaviour, even though it constituted a fault in itself. (...) By penalising a club for the behaviour of its supporters, it is, in fact, the latter who are targeted and who, as supporters, will be liable to pay the penalty imposed on their club. (...) Its objective is not to punish the club as such, which may have

¹⁴ UEFA Disciplinary Regulations art 6, (2002).

¹⁵ EDWIN PEEL & JAMES GOUDKAMP, WINFIELD AND JOLOWICZ ON TORT (19th ed., Sweet & Maxwell 2015).

¹⁶ A 423 (2002).

done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters.”¹⁷

Therefore, it would not merely be enough for the club to take reasonable precautions to prevent any form of hooliganism, but they would be held responsible even if the supporters managed to commit an infringing act despite the club’s efforts to prevent them from doing so. The reason for imposing this higher burden is that it exposes the limitations of the reasonable measures discourse; even though an infringing action might have occurred and harm may have resulted from it to a participant of the sport, it is possible that no one would be held liable for the same because the club has extricated its responsibility by performing the bare minimum required. In such a case, it would become necessary for the disciplinary authority to hold the club liable and enforce upon it a burden to make the requisite changes, to curb the possibility of any future infringements. Furthermore, the authorities cannot move against the spectators themselves because they lack the jurisdiction to do so, as they are only owed a direct contractual obligation by the clubs.

Although in the case of *PSV Eindhoven*, it seems that the Court intended to target the supporters indirectly by penalising the club, who may later pass on the same to the infringing spectator, it may not necessarily be the same in practice. Instead, the possibility of passing on any liability to the spectators seems to be an auxiliary concern to the main aim of ensuring that clubs assume liability for the actions of their supporters. This line of argumentation becomes most obvious when we look at the later cases in which this principle has been applied. For example, in the case of *Feyenoord Rotterdam v UEFA*,¹⁸ where Feyenoord Rotterdam’s supporters had disrupted the match by rioting, both, inside and outside the stadium. The CAS imposed not only a hefty fine of CHF 1,00,000, which may or may not have been enforced against the rioting spectators but also disqualified the team from the UEFA Cup Competition for the period 2006 – 07.

It would be fair to conclude from the analysis so far that the liability of clubs, when treated in a separate capacity from their roles as the owners of the premises, is largely restricted to cases in which the infringing act has been carried out by their fans. However, in such cases, the scope of the actions for which they are liable is much wider than that of just the owner of a premise;

¹⁷ *Id.*

¹⁸ A 1217 (2007).

they can be held liable for the actions of their supporters committed against other spectators and the participants of the sport as well.

4. LIABILITY OF OTHER SPECTATORS

Increasingly, in jurisdictions such as the United Kingdom and Australia, there has been a shift towards holding spectators themselves accountable for their actions and involvement in violent misbehaviour. The means through which this liability has been imposed is a statutory framework that dictates their conduct in public spaces, and even specifically sporting stadiums. Not only is this a shift from the general trend of imposing liability upon the owners of the stadium and/or club, but it also indicates a shift away from an application of the general principles of tort law or contractual obligations to hold the parties liable.

The first legislation enacted to impose an obligation upon the spectators was the Occupier's Liability Act¹⁹ (previously discussed in the section on the 'Liability of Stadium Authorities'). An 'occupier', for the purposes of this Act, includes those exerting control over the premises and their visitors.²⁰

In 1986, for the first time, the courts were statutorily allowed to pass exclusion orders against those convicted of hooliganism.²¹ They did so by treating stadiums as public places, which meant that incidents occurring on the pitch or in the stands would be subject to public order offences.²² These powers were, subsequently, supplanted by the Football Spectators Act 1989, which specifically deals with offences committed by spectators during a football match. It gave the court the power to impose restriction orders, which prevented any spectators convicted of the requisite offences from attending matches outside England and Wales.²³ Therefore, this is the first instance we see of an extra-territorial imposition on spectators convicted of committing football-related offences.

In 1991, the Football (Offences) Act laid out those actions which may be construed as football-related offences, and for which spectators could be legally liable. Therein, it was made an

¹⁹ Occupier's Liability Act § 2, (1957).

²⁰ Shibumi Raje, *Event Organisers' Liability for Crowd Management and Crowd Safety*, THE SPORTS LAW & POLICY CENTRE BLOG (Sept. 28, 2018, 11:23 AM), <https://lawnk.wordpress.com/2012/09/30/event-organisers-liability-for-crowd-management-and-crowd-safety/>.

²¹ Public Order Act, (1986).

²² *Cawley v. Frost*, 64 CHR 20 (1971).

²³ Football Spectators Act § 3, (1989).

offence for a person to throw any projectile into either the playing area or any other area where persons may be present.²⁴ The Football (Offences) Act also deals with the chanting of indecent or racist slogans²⁵ and made it an offence to invade the pitch or to enter any other area generally having restricted access.²⁶

Similar prohibitions are made under the Australian Major Sporting Events Act, 2009. Sections 63 and 65 prohibit persons from possessing *lit* or *unlit* distress signal or firework, while Section 64 makes it an offence to throw a lit distress signal or firework (this refers to the particular instance described in the facts at the beginning of this paper). More generally, Section 68 prohibits the throwing or kicking of projectiles within the stadium, and, under Section 67, spectators are prohibited from entering the play area and disrupting the sporting event.

The Football (Offences and Disorder) Act 1999 amended the Act of 1989 to introduce the concept of banning orders, both domestic and international. However, the Football (Disorder) Act 2002 removed this technical distinction between domestic and international banning order. Instead, it imposed a requirement on the courts to simply seize the hooligan's passports and to impose a banning order that may extend up to a 10-year period.²⁷ The 2002 Act is in many ways much more stringent than any of the previous Acts. A banning order can also be imposed on a mere complaint by the police, if the court is satisfied that either the person has contributed to disorder at a football match within the United Kingdom or outside, or if there is a reason for believing that imposing a banning order might prevent the same in the future.²⁸ During a control period, a person may also be prevented from leaving England, and can, instead, be directed to appear before a magistrate within 24 hours if it is suspected that she has caused disorder at a football match, or that imposing a ban on such person may prevent such disorder in the future.²⁹

Section 87 of the Major Sporting Events Act provides similar powers to the courts in Australia. This Section allows the courts to impose banning orders against persons in certain cases such as throwing projectiles within the stadium and possessing prohibited or dangerous articles. These orders may be applied for a period of up to 5 years, and must also specify the events and/or areas from which the person is prohibited entry. Although banning orders cannot be

²⁴ Football (Offences) Act § 2, (1991).

²⁵ *Id.* at § 3.

²⁶ *Id.* at § 4.

²⁷ Football (Offences and Disorder) Act § 14E (3), (1991).

²⁸ *Id.* at § 14D.

²⁹ *Id.* at § 21A.

imposed for entering the play area, she may be asked to leave the event if she is reasonably suspected of infringing,³⁰ and an infringement notice may be issued to her by the police under the Infringements Act of 2006.³¹ Similarly, under the Major Sporting Events Act, Section 86 deals with repeat offenders, who, by an order of a magistrate, may be prevented from entering any event venue if they are reasonably suspected of being likely to disrupt the event.

There has been a strong pushback by the spectators against this extension of powers, who feel that it is a violation of their liberty and freedom. However, the Court, in *Gough v. Chief Constable of Derbyshire*,³² was of the view that these banning orders represent a contravention of neither the European law on the free movement of persons nor the European Convention on Human Rights. They did go on to delimit the scope of these banning orders though, by explaining the grounds on which they may be imposed:

“Banning orders were only to be imposed where there were strong grounds for concluding that the individual had a propensity for taking part in football hooliganism. It was proportionate that those who had shown such a propensity should be subject to a scheme that restricted their ability to indulge in it.”

An issue that may arise *ex-ante* while holding a particular spectator or group of spectators liable is that of identifying the person(s) responsible. These borderline cases, where it may be difficult to identify the perpetrator, usually arise in fast-paced incidents, such as where, for example, a single projectile is thrown on to the field or an indecent slur has been uttered by one of the spectators. There are three possible ways in which the offenders may be identified. Firstly, in the modern age of technology where most sporting events are recorded and broadcasted, it is quite likely that the incident would have been caught by one of the multiple cameras present in the stadium. Secondly, the infringing spectator could have been identified by one of the numerous security personnel that are usually present in and around the stands — as part of the reasonable security measure that every stadium authority is expected to maintain. Finally, if a general area has been identified where the action was thought to be committed, the person may be identified by speaking to and involving the other spectators in that area of the stand.

³⁰ Major Sporting Events Act § 83, (2009).

³¹ *Id.*, at § 91, (2006).

³² 2 All ER 985, (2002).

Although the focus in the United Kingdom has been on football-related violence and disorder, the principles and strategies used in these statutes can be imported and applied to any other sporting event, as had been done in Australia through the Major Sporting Events Act. The success of these banning orders has been undeniable on two grounds. Firstly, it has efficaciously limited and excluded the movement of those convicted of football-related offences from the stadiums.³³ Secondly, combined with other preventative measures, it has been universally well-received by:

“The police, both at home and abroad, by the football authorities, UEFA, FIFA and the overwhelming majority of fans who appreciate that they are the main beneficiaries when troublemakers are removed from their seats.”³⁴

5. CONCLUSION

It may seem, from the discussion in the previous section on the liability of spectators, that due to the arrival of these statutes, the liability can be singularly imposed on the spectators themselves. However, as had been stated in the introduction, any such search for a single group to place the entire liability on would be simply fleeting. The reason for this is that, at any point in time, more than one such liability can and does often co-exist. The best example of such concurrent liability would be when a spectator, during a football match carries out an infringing action against one of the participants of the sport. Although she may be held personally liable under the Football (Disorder) Act 2002, the club, whose supporter she is, would also be held strictly liable under the guidelines of the sporting authority.

We must not, however, look at this inability to achieve a singular answer to place the liability on only one group of persons as counterintuitive or problematic. Rather, it enhances the experience of the sport for spectators and participants, because it further decreases the likelihood of hooliganism or game disruption in the future. To only impose banning orders on the spectators, would take away any responsibility that could be placed on the clubs or stadiums to prevent such occurrences from happening in the first place. Therefore, not only does this concurrent liability pre-emptively seek to curb ordinary and reasonably foreseeable

³³ SIMON GARDINER ET AL., SPORTS LAW (4th ed., Routledge 2012).

³⁴ Home Office, *Football (Disorder Act) 2002 — Report to Parliament*, (Oct. 1, 2018, 1:41 PM), <https://homeoffice.gov.uk/documents/Football-Disorder-2006.html>.

occurrences of violence, but it also allows for the existence of liability imposition and remedies in case of extraordinary and unforeseeable situations.