

RECONCEPTUALISING THE STANDARD OF CARE IN SPORT: THE CASE OF YOUTH RUGBY IN ENGLAND AND SOUTH AFRICA

S Greenfield*, AJ Karstens, G Osborn*** and JP Rossouw******

SUMMARY

Sport is an important area of civil society in both South Africa and England, and this article is broadly concerned with the relationship between sport and personal injury. More specifically, the article compares how rugby is regulated by the tort of negligence in England and delict in South Africa respectively. Regarding liability, for sport there are very specific factors that need to be taken into account. The article is concerned with, firstly, the broader context of sport as an important social and cultural activity, and secondly the specific sporting context that includes the rules of the game as well as the playing culture, with a focus on rugby at junior level. Through a critical and comparative analysis of how the standards of care in sport have been developed in both jurisdictions, the aim of this article is to consider how sport specific elements can be incorporated into the traditional legal principles. This comparative analysis contextualises the various discussions in the light of the differences between the English tort of negligence and the South African law of delict. Our argument is that the context and specificity of rugby should be more explicitly taken into account when evaluating potential liability. To establish a standard of care for sport is complex, with many factors to be taken into account and balanced against one another. The law of negligence/delict therefore needs to be adaptable and flexible to resolve new situations where injuries have occurred. Even in established situations where liability has been previously determined, novel events do occur and knowledge develops that requires a reconsideration of the principles that govern liability. In junior rugby, the

* Steve Greenfield, LLB MSc Deputy Head of Westminster Law School, University of Westminster E-mail S.Greenfield@westminster.ac.uk

** AJ Karstens, TDPE MEd, Senior lecturer, Faculty of Education Sciences, North-West University, Potchefstroom. E-mail kassie.karstens@nwu.ac.za

*** Guy Osborn, BA DipLaw LLM PhD Barrister Professor of Law, University of Westminster. E-mail G.Osborn@westminster.ac.uk

**** JP Rossouw, TDPE, BA, MEd, DEd, Director: Edu-HRight Research Unit, Faculty of Education Sciences, North-West University, Potchefstroom. jp.rossouw@nwu.ac.za

risk of very serious injuries is relatively small and the law needs to tread a cautious path through liability, ensuring it is a vehicle that promotes sport rather than creating barriers to its enjoyment and practice. A greater understanding of sport, informed by detailed research, can unearth new areas of potential liability that will need to be considered in the future.

KEYWORDS: Negligence; Delict; Standards of care; Sport; South Africa; England; Public Policy; Litigation; Youth Rugby.