

Topic 5 – Sporting Violence

- Sportspeople may be held criminally liable for death/injury caused on the sporting field.
- The **perpetrator** will argue that the conduct should be **dealt** with via the competitions' **disciplinary body rather than a court.**
 - o However, certain conduct is sufficiently grave/serious so that it must be categorised as criminal.

Offences

Is the person dead?

Offence	Actus Reus	Mens Rea
Murder (<i>Crimes Act 1958</i> (Vic), s 3)	Voluntary act by the accused causes the death of a human being	<ul style="list-style-type: none"> - Intent to kill - Intent to cause grievous bodily harm - Recklessness as to death - Recklessness as to causing grievous bodily harm
Unlawful and dangerous manslaughter (<i>Crimes Act 1958</i> (Vic), s 5)	An unlawful and dangerous voluntary act by the accused causes the death of a human being	<ul style="list-style-type: none"> - Intent to do the unlawful and dangerous act
Negligent manslaughter (<i>Crimes Act 1958</i> (Vic), s 5)	Voluntary act by the accused or Omission to fulfill a duty to act causes the death of a human being	<ul style="list-style-type: none"> - Accused fell greatly short of the standard of care which a reasonable person would have exercised; and - which involved a high risk that death or grievous bodily harm would follow - such that the doing of the act merits criminal punishment

Is the person injured?

Offence	Actus Reus	Mens Rea
Assault <i>Summary Offences Act 1966</i> (Vic) s 23	Unlawfully assault or beat another person	<ul style="list-style-type: none"> - Intentionally - Recklessly
Assault <i>Crimes Act 1958</i> (Vic) s 18	Without lawful excuse cause injury to another person	<ul style="list-style-type: none"> - Intentionally - Recklessly
Assault causing serious injury <i>Crimes Act 1958</i> (Vic), ss 16 and 17	Without lawful excuse cause serious injury to another person	<ul style="list-style-type: none"> - Intentionally (16) - Recklessly (17)
Serious injury in circumstances of gross violence <i>Crimes Act 1958</i> (Vic) ss 15A and 15B	Without lawful excuse cause serious injury to another person in circumstances of gross violence	<ul style="list-style-type: none"> - Intentionally (15A) - Recklessly (15B)

Are the elements of the crime made out? ('Other sports', not combat)

(a) Intentional

- Did the defendant *subjectively intend* to cause contact and harm to the person?
- Examples:
 - o e.g. Leigh Matthews behind the play king hit
 - Only incident where **police have laid charges** for a violent act on a football field, charged \$1000 for assault, then reduced to a 12-month good behaviour bond
 - No debate that Matthews **intended to punch the player** as he ran past
 - o Bounty Hunting (New Orleans Saints)
 - **Club-sanctioned bounty program** where the club put in a performance-based pay system for their players, based on how severely they injured opponents. Payments for knocking out a payment, for carting off, a \$10,000 bounty on one particular quarterback
 - **Clear intention**, payment for hurting an opposing player
 - o Targeting harm (cannonball tackle) – clear intention
 - Was a practice in the NRL where players were **taught to tackle in a way to injure their opponent** by tackling the kneecaps
 - Tackle was **intended** to cause injury
 - o Causing unintentional harm
 - **Bryant v Police [2003]** (karate chop to break hold on jumper broke nose)
 - Football case, one player attempted to break the hold that a player had on his jumper in a scuffle using a karate chop, hit the person in the nose and broke the nose
 - Issue: was this an intentional act designed to cause harm?
 - **Held:** no liability should attach to the act, it was a **voluntary act but not intended to cause harm**, just designed to break the tackle
 - o Revenge:
 - Nicholas Williams: very late tackle which badly broke the leg of opponent

(b) Reckless

- Did the defendant *foresee* that the injury (grievous bodily harm) is possible and still went ahead with the conduct?
- Within the course of play but outside the rules
 - o Spear tackle
 - o Chris Judd chicken-wing tackle
- Outside the rules and spirit of the sport – more likely reckless
 - o **R v Stanley**
 - Elbow to the head, fracturing the player's jaw
 - Was kind-of in the course of play, a late strike, not so far as Leigh Matthews
 - Player was charged with recklessly causing injury, sentenced to 9-months imprisonment
 - **Judge emphasised that this was not only outside the rules, it was outside the spirit of the game**
 - Strong implication from judgment was that if activity takes place within the rules of the game, can never be a criminal offence

- Within the course of play and within the rules?
 - Probably not reckless

(c) The Negligent Act – criminal

- Test for mens rea
 - o Did the accused fall greatly short of the standard of care which a reasonable person would have exercised; and
 - o Which involved a high risk that death or grievous bodily harm would follow; such that
 - o The doing of the act merits criminal punishment
- What circumstances would result in an act on the sporting field meriting criminal punishment?
 - o Person on shooting range turning onto the crowd
 - o Indiscriminate acts
 - o Potentially acts of defiance
- Which sports involve a high risk that death or grievous bodily harm would follow?
 - o Motorsport
 - o Combat sports – referee fails to stop
 - o Fencing, archery, shooting

Other considerations

- Sport on 'public policy grounds'
- The nature of the competition's disciplinary body. Courts tend to see them as the appropriate forum to deal with on-field assaults, provided –
 - o Disciplinary body is properly constituted and functioning effectively
 - o Conduct is not sufficiently grave that it should be properly categorised as criminal
 - o *R v Barnes; Watherston*
- The sporting context also can result in a criminal assault being placed in a different category when it came to determining penalty: *McAvaney*

Lawful defences (excuses)

1. Contact is permitted

- The contact (and its associated risks and harm) is expressly permitted by law

2. Self-defence

- Is the self-defence reasonably necessary in the circumstances but also reasonably proportional to the threat the D encountered?

3. Consent – NEXT PAGE IN EXAM

- The 'victim' consented to the contact (and its associated risks and harm)
 - o But people can only consent to **permissible** levels of harm
 - o One cannot consent to actual bodily harm (*R v Brown*; *R v Stein*) – EXCEPTION (implied sporting consent)

Consent determined **objectively** (and not upon views of an individual player): *Carr*

- *R v Carr*: What the reasonable person in that sport, in that circumstance would have consented to? Victim will always say that after the event they did not consent

Scope of consent

- (1) Contact *permitted* by the *express rules* of the sport; or

(2) Contact within the players' contemplation as a recognised part of the sport (even if not within the rules) = implied sporting consent

Implied Sporting Consent

- There is a **sporting exception** to the rule **that a person cannot consent to actual bodily harm** (*R v Brown*; *R v Stein*) (the challenge is agreeing on the scope of that exception)
- [The **attacker**] will argue that the injured party **impliedly consented** to the contact by participating in the sport
- Determining the scope of implied consent is **inherently difficult** – each case must be decided on its **own facts**

Relevant factors to implied sporting consent

No single factor is conclusive – weighing up of factors (*Barnes*)

- **Degree of risk of injury**
 - o Contact v collision v non-contact
 - o Consent will vary depending on classification
- **Nature of the sport**
 - o Legitimate v illegitimate
 - o Friendly / training v competitive
 - Consent to higher level of contact in a competitive game rather than a friendly match/training
 - o Amateur v professional
- **Norms of the sport**
 - o Some sports have a red card rule – is this an indication that this sport is less tolerant to physical contact and therefore you should expect LESS of it?
 - *Re Lenfield*: sending off was conclusive evidence that the contact was not consented to cf. *Barnes* where it was relevant evidence, but not conclusive
 - o Ice hockey = consensual fighting as facilitated by the rules. Other sports ban this outright
- **Degree of violence used**
 - o Pushing and shoving v standing on toes v being hit from behind: *Abbott*
 - Judge said that pushing and shoving and standing on toes consenting to but king hit was not
- **State of mind of the accused**
 - o In determining whether you consent, it depends on the state of mind of the perpetrator: instinctive reaction, error or misjudgement? May consent to reflexive action but do not consent to intentional harm
- **State of mind of the victim**
 - o Willing v unwilling participant in the conduct
 - I.e. in ice-hockey, do they participate?
 - *Vertuzzi*: skated away and chased around the ring = action in running away eliminated an idea that he could have consented to this action

