

Prevalence of Legal Liability in Sport Among Sports Council Personnel in South-South, Nigeria

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ABSTRACT

This study is on the prevalence of legal liability in sports, among male athletes in sport councils in South-South Nigeria. Nine research questions and six null hypotheses were tested at 0.05 alpha levels. The population for this study comprised of all the 3,321 athletes and coaches in south south Nigeria with a sample size of 645 respondents (140 coaches and 505 athletes). The study adopted the cross sectional survey design. The sampling technique used was multi stage sampling procedure. The research instrument was subject to both face and content validation by the researcher's supervisor and two experts in the field of measurement and evaluation. The reliability coefficient of 0.78 was obtained using the Pearson Product Moment Correlation statistical analysis. The collected data were analyzed using frequency, percentage, mean and standard deviation for the research questions, while multiple regression were used for the testing of the null hypotheses at 0.05 alpha level of significance. Prevalence of legal liability in sports is rare among Sports personnel in South-South Nigeria; 403 (62.3%) not being involved in prevalence, while only 242 (37.7%) experienced prevalence. Based on these findings, it was recommended among others that: Ministry of sport should introduce sporting activities, training and retraining from time to time in order to improve the knowledge of Sports personnel with issues relating to legal liability in sport.

Prevalence as defined by United States Department of Health and Human Services (2012) as the proportions of persons in a population who have particular disease or attribute at a specified point in time or over a specified period of time.

Prevalence of legal liability in sports among sports council personnel is very important to sport development. Consequently, coaches should be involved in studying laws that relates to sports in the course of their professional preparation. (Babalola and Alayode, 2012) stated that, it is worth noting today that, people are becoming more aware of their rights under the law. This has awakened the need to ensure that coaches are made to know the legal implications of negligent caused injuries in class or field of play. It is imperative that, when dealing with various types of physical education programmes, coaches must learn to protect themselves from any tortuous liability. To be able to do this, they must have knowledge on matters that can make

them vulnerable to legal liability in sports. Knowledge of legal liability in sports possessed by Sport personnel has become imperative with the rate of development and mass participation in sports by all and sundry. This can be seen in the Olympic and the Paralympic games of London 2012.

Therefore, knowledge of prevalence of legal liability in sports among sports council personnel in south-south, Nigeria will enhance the proper handling of athletes to prevent minor or major injuries or even death which may bring about law suit against the offender or the council as a whole. Due to this, coaches should see himself or herself as the most important manager in conducting programs within the standard of cares as required in sports profession.

The standard of care of sports personnel would be enhanced if the limit is known to which position allows them to operate and occupy their place of status as sports managers with their knowledge in legal suit and possess enough knowledge about it to avoid litigation for negligence. According to (Kodilinye and Aluko, 2003) they stated that negligence is the breach of legal duty to take care which results in damage, undesired by the defendant, to the plaintiff because negligence as a theory is established on the principle that any harm inflicted as a result of a breach of legal duty of care and damage must be compensated for, by the erring persons. while Kodilinye and Aluko, (2003) claim that it is a civil wrong involving a breach of duty fixed by the law, such duties being owed to persons generally and its breach being redressible primarily by an action for damages.

The exceptional magnitude and growth of almost every aspect of the sports industry today is undeniable. Ezedum, (2019) stated that sports facilitate economic development. Asagba, (2004) pointed out that sports have undergone transformation from ancient Olympic games to notable features in modern sports which includes link to technology, professional administration, athlete's socialization and sports being a business venture. Chappelet, (2008) identified several ways sports have been of economic value to developed nations. These areas were sports activities, sport events and sports equipment. Such development has not come without its share of growing pains. One such dilemma that has accompanied the growth of the sports industry has been the dramatic increase in sports related litigation over the past 30 years (Hronek and Spengler's 2000). Trojan, (2017) indicated that the average injury award is now over \$1.5 million There is considerable disagreement regarding litigation in sports and the effect it has on the sport industry. Critics of sport-related litigation condemn the continuous rise in the number of law suits filed and the enormous amounts of monetary damages that have become commonplace today. They claim that lawsuits are out of control, and if allowed to continue, will inevitably change the nature of sports as we know it, and eventually destroy sports. (Appenzeller and Lewis, 2000).

Studies have revealed that various sporting activities and recreation programme are prone to injuries. During a sixth school year period in Wloclawek region in Poland, in the year 2003, the study revealed accidents during break were 36.6% and out of that percentage physical education activity had 33.2%. 20.2% of the accidents were at the gymnasium (Sosnowska and Kostka, 2003). So many cases are coming out of sports due to mass participation, and hence, the need for the knowledge of legal liability in sport. Legal liability therefore, is the legal bond obligation to pay debts Mannig (2019), the researcher also added "to pay damages". He further stated that legal liability could be imposed by law on individuals or corporation to pay for harm

done to others. Such laws may be common laws, statute law or customs which over a period of time have taken on the same status as law. There are basically two major categories of laws: criminal laws and civil laws. Criminal laws regulate public conduct and are enforced by the government body that enacted them. Violation of criminal laws result in action by the government aimed at imposing some form of punishment. Various responsibilities are placed on the coaches by law to minimize injuries to athletes, if certain requirements are not met, the coach may be held financially, or even criminally liable Hamidreza, (2016). Also Apenzeller (2000) described legal liability as the condition of affairs that gives rise to an obligation to do a particular thing to be enforced by court action, which shows that the laws of a society dictates the rights and responsibilities of individuals as well as procedures for redress when the actions or inactions of others infringe upon those rights.

Sports personnel are those involved directly in the business of sports administration. They could be manager, coach, trainer, team official, agent, doctor, therapist employed by, or representing or otherwise but in this context, the researcher views Sport personnel as sports personnel for the purpose of this study. Subba (2014) opined that and coaches also occupy an important position in the socio-political system of a country. Also, coaches perform a role which is generally known to be indispensable in any modern community which is the development of human resources. In the context of this study, a coach is therefore the one who develops human resources by maximizing the potential of athletes through sport. There are six components that can assist a coach to function better in his/her carrier and they are: risk management, injury prevention, communication, nutrition, goal setting, and athlete development. Training the athlete has become wholistic activity focusing on the entire athlete, i.e mental and physical aspect Glover, (2007). Athletes on the other hand are those trained under a coach to perform optimally, those proficient in sports and other physical exercise. An athlete is a person who competes in one or more sports that involves physical strength, speed, or endurance. They may be professionals or amateur.

Legal liability in sport has a more in depth area which is known as law of tort. (Babalola and Alayande, 2012) noted that a tort is a legal injury or wrong committed upon a person or property. Which are into three structures as: intentional torts; strict torts, and most common, negligence tort. Negligence is the most common tort suit filed against coaches. It occurs when a coach fails to act as a reasonable and prudent person would act in a similar situation Manning, (2019).). An important element in determining negligence is failing to anticipate and eliminate unreasonable risks of injuries that a reasonably prudent person would have anticipated and eliminated. This has been termed the doctrine of foreseeability. Negligence is a tort that is often used to implicate coaches. It is very important that they understand the nuisances of tortious liability and its relationship to sport as a profession. They should also be aware of the legal defenses available to them if, despite all precautions, they are accused for negligence (Babalola and Alayode, 2012). To determine negligence in the case of a sports personnel, four basic questions will be asked: Do you owe the players a duty? Was the duty breached? Was your breach of duty responsible for the player's injuries? What is the extent of the actual injury or damage? For negligence to be established, all four of these questions must be answered in the affirmative Manning, (2019).

Knowing the inherent risk involved in sports activities, it is the role of sports personnel to care during sports activity. The coach is responsible for the care of the athlete as long as the council

is in session. Coaches owe the athletes a certain duty of care as supported by American court of Leahy v. School Board of Hernando Company Manning, (2019) that: The duty owed an athlete takes the form of giving adequate instruction in the activity, supplying proper equipment, making a reasonable selection of participants, providing non-negligent supervision of the particular contest and taking proper post injury procedures to protect against aggravation of the injury. From the case cited above it is obvious that the coach owes the athlete a duty to ensure proper supervision during sports activity and also the provision of standard equipment to avoid being dragged to court due to negligence. It is therefore imperative that coaches should know that they are to provide safety and protection for their athletes for they are being in loco parentis – that is being like a parent to the athletes. Manning, (2019) opined that, when in loco parentis a relationship occurs, a person must not allow any other person under his supervision in unreasonable or inconsiderable risk. If the care owed is not observed and an injury occurs, the person(s) responsible for the particular contest or activity are liable because negligence has occurred. Under the law of torts, everyone is held to a standard of behavior in all situations that is in concert with what other persons similarly situated would or should have done in like or similar situations Manning, (2019). The more knowledgeable sports personnel is about legal liability in sports and how it is applied the better able he or she will be, to work effectively within the purview and ambits of the law. The most likely reason a sports personnel or council will face legal action is in negligence where an athlete has been injured while under their protection. This may occur in a variety of settings. To satisfy the elements of the of negligence the athlete who becomes in law the plaintiff must prove that a duty of care was owed, that the duty was breached, by not maintaining the appropriate standard and that the injury was a reasonably foreseeable consequence of that breach of duty. It would be rare for a coach to face criminal charges but it could happen if a coach had an intention to harm or acted recklessly.

South- South Nigeria is an area endowed with human and natural resources, comprises of six states and they are Akwa-Ibom State, Bayelsa State, Cross River State, Delta State, Edo State and Rivers State. Each state has a sports council which houses all sports personnel that represent them in sporting activities both at local and international levels. The sports council personnel in the six states of the south-south geopolitical zone formed the respondents for this study. This region is part of the globe as far as sport is concerned as the growing trend is gradualizing and strongly creeping into the arena of sports in this region. This is noticeable in the trace of legal liability seen among sports personnel of this region, it is with this global threat that the researcher hopes to find a lasting solution through literature to this problem.

Participation in sports exposes the participants to a high probability of injury. This therefore saddles sports personnel with the important duty of exercising due standard of care, so as not to be liable to pay for any damage incurred in the process of discharge of their civic duty. According to Bjorklun (1989) participants generally assumes the risks inherent in sports, but not risk resulting from negligence. An athlete got drowned in a swimming pool during sporting hour in an institution in the south south Nigeria and the parents threatened to sue the institution involved.

Some of the sports personnel in South South Nigeria go through legal liability issues which has caused threats to their jobs, injuries to their bodies' damages to their properties and even loss of their lives. Therefore there is need to study the knowledge, prevalence, litigation and correlates of legal liability in sports among sports council personnel in south south Nigeria.

THE KNOWLEDGE OF PREVALENCE OF LEGAL LIABILITY OF SPORTS PERSONNEL

Everyone owes a duty of reasonable care to others in the course of their daily lives activity. A tort is committed when we fail to act as an ordinary and reasonably prudent person under similar circumstances and cause injury to another person. An individual who possesses a greater degree of skill and training in a particular field must act as a reasonably prudent person who possesses similar skill and training. Series of legal liability exist in sport. A few years ago, a high school freshman basketball player at Campbell County High School in Cold Springs, Kentucky suffered a severe break of his arm during basketball practice. His parents, true to the litigious American culture, sued the school's two basketball coaches. The negligence suit, filed against the coaches in their official capacity as employees of the board of education, claimed that the coaches mishandled the situation (Eric, Pugh, Jones, Johnson & Quandt 2011). Several legal cases have lead to more advanced legislation in the field of athletic training. Three specific legal cases involving athletic training include *Duda v. Gaines*, *Welch v. Dunsmuir Join Union School District*, and *Mogabgab v. Orleans Parish School Board*.

In the case of *Duda v. Gaines* a coach was found negligent for not having sought immediate medical attention for an injured athlete. A football player had dislocated his shoulder and the coach, lacking medical expertise in the area, reduced the dislocated shoulder and failed to refer the athlete to a physician. Three days later the shoulder dislocated again and the athlete suffered additional damage. It was the judgement of the court that the coach was negligent for not immediately referring the athlete the first time the injury occurred (Rowe & Miller, 2013). In *Welch v. Dunsmuir Join Union School District*, a judgement of \$118,192 against the school district resulted from negligence on the part of a coach Hamidreza, (2016). A player was injured during a football game. The coach, suspecting a neck injury, had the athlete move his hands and arms and grip his hand. As the athlete was able to do this, the coach removed him from the field with the assistance of eight boys. Upon reaching the sidelines, the injured athlete could not move his hands or arms. The court determined that moving the athlete in such a way resulted in the permanent quadriplegia that the athlete suffered and the coach was found negligent.

In *Mogabgab v. Orleans Parish School Board*, a jury found the coach negligent for not seeking immediate medical attention for an athlete suffering from heat exhaustion (Bjorklun, 1989). A football player became nauseous, vomited, and was unable to walk without assistance. The athlete was helped inside and his shirt removed. Medical attention, however, was not sought until over an hour later, after the athlete's condition had progressively deteriorated. The coaching staff notified the boy's parents, who in turn notified their family physician. The family physician was the boy at the school and had him rushed to the hospital. Despite hospitalization, the boy died seven hours later of heat exhaustion. Legislation in Athletic Training has also assisted in demonstrating the importance and necessity of medical coverage in secondary school athletes. Two specific pieces of legislation include the Dellums Bill and the adoption of public policy. The Dellums Bill helps demonstrate how legislation has evolved in Athletic Training. The Dellums Bill is a proposed initiative that is currently being revisited. First introduced in 1973, and then re-introduced in 1975. The Dellums Bill required that Certified Athletic Trainers be employed at all schools in the nation that conduct interscholastic athletic programs.

Secondly, the adoption of a public policy that requires Certified Athletic Trainers for interscholastic athletic programs is modeled by the state of Hawaii. The states of Delaware and

Virginia have the highest percentages of high school NATABOC Certified Athletic Trainers. Hawaii remains the only state requiring full-time Certified Athletic Trainers in all of its public secondary high schools (Buxton et al., 1995). The rate in increase of sports injuries, especially in secondary school is alarming and it is therefore important for physical education teachers to know the implication of these increase.

During 2000-2001, it was estimated that there were 3,921,069 male participants and 2,784,154 female participants in high school athletics. This participation survey, compiled since 1971 by the National Federation of State High School Associations (NFHS), has shown drastic increases in high school athletic participation over the past 5 years (2001). The NFHS estimates that there are approximately 1,500,000 high school, junior high school, and non-federation school football participants in the United States. With the increase in participation, there has been an increase in the number of injuries (National Federation of State High School Associations, 2001). According to the National Athletic Trainers' Association, the total injury toll for football each year will amount to over 500,000 when multiple injuries are included in the count. Multiple injuries are more than one injury per athlete. Also, 72% of those injuries will occur during practice sessions NATA (2002d). There were seven fatalities directly related to secondary school football during the 2001 football season NFHS (2001). Two studies in recent years have provided injury statistics on secondary school athletes. The first study was conducted from 1986-1988 and the second from 1995-1997. The 1986 to 1988 injury surveillance study examined injuries in football, boys and girls basketball and wrestling in more than 100 schools nationwide. The following is a summary of the results from the study. Sixty percent of the injuries occurred during practice and forty percent occurred during the games. An average of 331,865 high school football players were sidelined by injury at least once a year and when multiple injuries were included, the average annual injury count in football for each year was 552,229. Hip and thigh injuries were the most prevalent injuries at 17.4% and ankle and foot injuries were the second most prevalent injuries at 16.0%. General trauma was the most common classification of injuries at 28.2% and sprains were the second most common at 28%. Minor injuries, meaning the athlete was sidelined for seven days or less, comprised 72.5% of the injuries. Moderate injuries, meaning the athlete was sidelined for eight to twenty-one days, accounted for 16.7% of all injuries. Finally, 10.8% of the injuries were classified as major, meaning the athlete was sidelined for more than three weeks NATA (2002d).

Boys' Basketball, Sixty percent of the injuries occurred during practice and 59% of the game-related injuries occurred during the second half of the game. Of the male basketball players, twenty-two percent had at least a one time-loss injury each year. Almost 42% of the injuries were to the ankle and foot, 11% to the hip and thigh and 9% to the knee. The most common type of injury was sprains at 43%. The second most common type of injury was general trauma at 22% NATA(2002d). Girls' Basketball Fifty-nine percent of the injuries occurred during practice and 63% of the game-related injuries occurred during the second half of the games. The most common injuries were to the ankle (32%) and the knee (18%). Sprains were the most common type of injury (41%) and general trauma injuries were second most common types at 18% NATA (2002d). Sixty-six percent of the injuries occurred during practice. The most common injuries included shoulder and arm injuries, forearm, wrist, and hand injuries, and trunk injuries. Each of these categories accounted for 16% of the injuries. Sprains were the most common type of injury (30%) and general trauma injuries were second most common at 28% (NATA, 2002d). The 1995-1997 3-year injury surveillance study by the NATA provided a clear

picture of the extent of athletic injuries in the high school population. The study was conducted by John W. Powell, ATC, PhD and focused on characterizing the risk of injury associated with ten popular high school sports. The study compared the relative frequency of injury and selected injury rates among sports in addition to the participation conditions of each sport. The sports studied included baseball, softball, football, field hockey, soccer, basketball, volleyball, and wrestling. The data came from 246 Certified Athletic Trainers who represented schools of varying size from different geographic regions of the country. A total of 23,566 reportable injuries occurred and an average of 6,000 students were injured at least once a year. This study assists in supporting the professional goal of NATABOC Certified Athletic Trainers: to be experts in providing quality healthcare for the prevention, treatment, and rehabilitation of injuries. A summary of the findings of this 3-year study is presented below (Powell, 1999).

Baseball and Softball The most common injuries in high school baseball were general trauma (36.6%) and strains (32.7%). General trauma included, "abrasions, contusions, lacerations, bursitis, muscle cramps/spasms, etc." and strains included "injuries to the muscles and tendons." (NATA, 2002f) Most injuries occurred to pitchers (21.6%) and most occurred to the forearm, wrist, and hand (24.2%). The most common injuries in high school softball were general trauma (24.5%) and strains (31.3%). Again, most injuries occurred to the pitcher (16.9%) and the largest percentage (25.1%) of the injuries were to the forearm, wrist, and hand (NATA, 2002d). In high school basketball, the most common injuries in males and females were general trauma at 26.5% and 19.6%, respectively. Injuries occurred most often to the ankle and foot for both genders (NATA, 2002d). The most common injuries for high school football included general trauma (29.3%) followed by strains (21.7%). Most of the injuries (15%) occurred to the forearm, wrist, and hand (NATA, 2002d). The most common injuries in high school soccer were also general trauma injuries for both males and females (30.5% and 29.1%), respectively. The majority of these injuries occur to the ankle and foot with 30.2% of the males and 30.5% of the females reporting injuries of this type (NATA, 2002d). There were several discoveries based on the results of the study. An average of 55.5% of the reported injuries occurred during practice sessions. Only boys (59.3%) and girls' (57%) soccer showed a larger proportion of reported injuries in games than practices. Football had the highest injury rate of 8.1 per 1,000 athlete exposures. Volleyball reflected the lowest rate of injury with 1.7 injuries per 1,000 athlete exposures. The largest proportion of fractures came from boys' baseball (8.8%), basketball (8.6%), soccer (8.5%) and softball (8.4%). More than 73 percent of injuries restricted players fewer than eight days. The highest frequency of knee injuries appeared in girls' soccer (19.4%) while baseball had the lowest (10.5%) portion of such injuries.

The largest proportion of surgeries reported among the ten sports was for girls' basketball at 4.0% and the lowest was field hockey at 1.2%. Out of the total number of injuries requiring surgery, 60.3% were to the knee. Finally, field hockey was the only sport where sprains and strains accounted for less than 50 percent of the total injuries (NATA, 2002d). However, the reality is that in contact sports there is a continued risk of injury. If consent is only limited to the operation of the specific rules of the sport it will be overly restrictive. Consent must work therefore within a wider test than the sport's rules alone. In football for example, the commission of fouls in football due to 'illegal tackles' and the consequential injury have inevitability, and although are outside the legalistic interpretation of the rules, are inside 'the working or playing culture' of the game. This provides a wider area in which consent will be operative. As Glanville Williams states: "the consent by the players to the use of moderate force

is clearly valid, and the players are even deemed to consent to an application of force that is in breach of the rules of the game, if it is the sort of thing that may be expected to happen during the game.” The rules of sport featured in the examination of consent and the law of assaults in the second Law Commission Consultation Paper in 1995.⁴⁸ In comparison to the first Paper, there is a less doctrinal analysis of consent generally and a more practical approach stating that the “law must compromise between treating the victim’s consent as a complete Sports Participation and Criminal Liability defence and regarding it as wholly immaterial.” This, therefore, creates a continuum within which the intervention of the law needs to be determined.

Injury (including serious injury), caused within the rules of the sport will not be subject to a prosecution. The Law Commission proposes the ‘special exception’ to be: “that a person should not be guilty of an offence of causing injury if he or she caused the relevant injury in the course of playing or practicing a recognized sport in accordance with its rules.” This is a welcome highlighting of the crucial role that sporting rules should play in constructing consent. However a number of criticisms can be made of this proposal. First, as with the first Consultation Paper, there is general acceptance that intentional infliction of injury should lead to criminal liability and not be the subject of any exception. This is predicated on the premise that such intentional infliction will inevitably be outside the rules of the sport. The clearest examples are ‘off-the-ball’ acts of retaliation. However this may not be so straightforward a distinction to make. As Gunn argues in the context of boxing: “the sport itself, and its rules, require the participants to act with the intention of inflicting harm to others.” If this was the case, Gunn asserts that the sport of boxing would be intrinsically illegal. There is in fact little jurisprudence supporting the assertion that boxing is lawful. It seems to be purely a matter of public policy that it is not unlawful. The same problem could be applied to the plethora of martial art sports where again intentional force is applied within the rules. (NATA, 2002d)

Secondly, a distinction needs to be made on this test between conduct beyond those playing rules that concern the promotion of safety on the one hand and those that are designed to determine the dynamics of play on the other. In football, the rule prohibiting ‘tackles from behind’ promotes safety; on the other hand the rule that prohibits a kicked back-pass to the goalkeeper or the off-side rule concern the game’s dynamics and it would be absurd if they impacted upon the existence of criminal liability. Cricket and the use of short-pitched intimidatory bowling, commonly known as ‘bouncers’, illustrate the problems with this test. A hard leather ball heading towards the batsman at up to 100 miles an hour could clearly amount to at least an assault, and if there is physical contact it could lead to a more serious offence. There are safety based rules on what is considered intimidatory shortpitched bowling and the frequency they can be used by an individual bowler within a six-ball over. Both the number of bouncers that can be legitimately bowled per over and how it is determined has been modified a number of times making it tricky for the umpires to adjudicate upon. (NATA, 2002d)

In Test Cricket it currently stands at two balls that arrive at the batsman above shoulder height. Using the above test proposed by the Law Commission, what would be the position where the bowler having bowled the legitimate number of bouncers in an over, he or she is adjudged, perhaps in circumstances of some controversy over the umpire’s adjudication, to have bowled a third, seriously injuring the batsman? Third, this test determining the potential criminalization of sporting conduct within and without the rules ignores of course the

important relationship between the playing rules of the sport and the working or playing culture as elements of the normative rule structure which has already been alluded to above. A clear understand of the specificity of a particular sport is a crucial part of the determination of potential liability. By ignoring the wider playing culture in specific sports and reifying the rules alone as a determining guide, what may seen as being an attempt to provide consistency in application of the law may well lead to 'too specific' an intervention by the criminal law. This is particularly apposite at a time when the playing rules promoting safety of most team sports have become significantly more restrictive, e.g. prohibiting tackles from behind in football and spear tackles in rugby. It follows that if these rules are more restrictive, but are part of the guidelines for legal intervention, there is a real danger that the intervention of the criminal law will be deeper and more intrusive. (NATA, 2002d)

Concluding remarks on consent over ten years since the Law Commission's Consultation, there has been no new legislation in the area of the law of assaults. It continues to be an area of law in need of urgent reform and the Law Commission proposals on consent were a sound starting point. The construction of consent and its operation in the general law continues to be problematic and uncertain. As Omerod states: "English law's approach to the availability of a plea of consent to an offence against the person has been the subject of sustained and cogent criticism for its lack of clarity and coherence." In some areas of human conduct, case law has brought some clarity. A new legislative test has been introduced for consent in sexual offences. Sport as a human activity that is inherently physical does provide a conundrum, but there have been attempts to provide clarity and guidance. The current position culminating in *Barnes* seems to clearly support an objective construction of whether consent should be operative on the sports field. The criminal law can have a legitimate role to intervene in incidents where there is clear intentional or reckless retaliation, often, but not exclusively, in off-the-ball incidents. This is clearly outside the rules and playing culture. Where the incident is during play or 'on the ball', the criminal laws' involvement is highly problematic and as *Barnes* suggests should only where "conduct is sufficiently grave". Consideration of the rules of the sport and the playing culture needs to be an explicit criterion to be considered along with the others.

The subjective element of the test for consent based on the expectations of players to their involvement within the game and regulated by the rules and working culture of the sport is another vital element that needs to be fully considered. This runs the risk of blurring the distinction between the mens rea and actus reus, but the participants understanding of foreseeable play within the rules and playing culture is of import. Players consent to injuries that are incidental to physical contact within this sporting sphere and immunity from criminal liability needs to exist. This would indeed seem to be a necessary component of modern contact sports if they are going to continue to be played as in the past. Prosecutorial discretion – the solution?

In June 2005, the Crown Prosecution Service (CPS) held a conference entitled 'Crime in Sport', focussing on the criminal liability of a range of issues including corruption and match fixing, football hooliganism and on-field violence events including racial abuse. It was the regulation of on-field violence that was highlighted during the day with the CPS indicating that it was to review its policy concerning when and where prosecutions are brought, particularly in team contact sports. Nazir Afzal, the Sector Director for the CPS in London West argued: "The growing feeling among the public is that players are getting away with crime - that footballers

in particular escape punishment by criminal justice – and that is wrong ... It is unlawful to assault or racially abuse someone on the street and we prosecute for that. But when it comes to events on the pitch, we don't get involved, usually because there is no complaint and no police investigation." The CPS has recognised its existing policy towards violence on the pitch is ad hoc and there was no clarity or consistency in prosecutions together with little guidance for the police. This is in comparison with disorderly conduct by spectators and supporters in and around matches, where in addition to a range of public order offences and in the case of football its own specific legislation, clear prosecution guidelines have been developed. This specific focus on the sports field seems to be predicated on the belief that there needs to be firmer action concerning violent and abusive behaviour in the light of public concerns that players escape public prosecution for their actions. As with the discussion of the substantive law, the major issue in the exercise of prosecutorial discretion is determining where the line is to be drawn as to the type of conduct that will be prosecuted? (NATA, 2002d)

During the autumn of 2005, the CPS in collaboration with the Association of Chief Police Officers (ACPO) produced some draft guidelines charting the respective responsibilities of the police and the CPS.⁶⁰ The main stated principle is "That any conduct on the field of play which breaches the criminal law cannot be tolerated and, as with any criminal behaviour in any other walk of life, will be investigated and prosecuted whenever it is appropriate to do so." The Guidelines highlight that the police have discretion in how to deal with any incident including talking to an individual and /or issuing an informal caution, it will be for them to decide "which allegations of criminal behaviour are investigated". Once they decide on a potential offence, the CPS applies the standard two-tier test in deciding whether to bring a prosecution provides difficulty in sporting situations. First, sufficient evidence needs to be adduced to provide a realistic prospect of conviction. This means establishing that the evidence that can be used is reliable and that a jury or a bench of magistrates, properly directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. The Guidelines seem to lean heavily on the Objective Criteria stated by the Lord Chief Justice in *Barnes*. These Guidelines provide essentially an indication of the qualitative nature of the available evidence and whether the threshold that demarcates the criminal from the non criminal has been reached.

As noted earlier most prosecutions occur in amateur football and rugby. Sports Participation and Criminal Liability In professional team sport, the specific sporting culture and the prevalent 'code of silence' means injured parties are unlikely to make a complaint and other participants unlikely to give incriminating evidence as witnesses (NATA, 2002d). This clearly strikes at the 'reliability of the evidence'. Of course unlike, amateur sport, most professional sport is now videoed for television transmission so pictorial evidence is invariably available for on-the-ball incidents and sometimes for those off the- ball. However this has been criticised as it can often provide a two-dimensional image that is far from conclusive. Second, if the case does pass the evidential test, the CPS must then decide whether a prosecution is needed in the public interest. The CPS Guidelines list the following criteria:· the nature of the conduct in the context of the sport under consideration; · what was the degree of pre-meditation; did the offender seek to ensure that match officials were unsighted when the offence was committed;· who the conduct was directed at, e.g. other participants, match officials, spectators; · what was the impact on those other people and their subsequent behaviour, e.g. did the incident lead to further violence or disorder on the field of play or by spectators; · previous incidents of a similar nature; · any

action taken by the match officials or the governing bodies in relation to the incident. The CPS will only start or continue a prosecution if a case has passed both the evidential and public interest tests. It is useful to apply these guidelines to the prosecutions against Bowyer for his off-the-ball incident and in Barnes for the on-the-ball incident. Application of CPS Guidelines to the Bowyer-Dyer incident, although legally a common assault, was in the context of contemporary football, little more than a scuffle or using the vernacular, 'handbags' with none or only minor resulting harm. This can be usefully compared to the context of the daily occurrence of many similar incidents and indeed significantly more serious ones in British high streets that are not prosecuted. There was clear visual evidence to support a prosecution of Bowyer as the protagonist. Dyer's involvement was primarily in defending himself. How would this incident pass the public interest test? It was clearly a fight off the ball and away from play. There did not seem to be obvious premeditation although the individuals seem to have had words beforehand.

NATA, (2002d) The position of the match referee seems to have been irrelevant in the sense that no deception was achieved. The fight was between players of the same team which is a reasonably rare event compared with the more frequent and similar tussles between opponents in football and rugby. The crowd may well have been bemused by the incident and there was no indication of an adverse crowd reaction. Bowyer has no real reputation for violent conduct on the football field but has some notoriety with other non-football incidents.⁶⁴ The referee sent both players off and subsequent disciplinary action was taken. So why the prosecution? As Barnes argues: "One could certainly take the view that pursuing a criminal action against Bowyer is at least partly a result of political expediency." The fact that this was a 'fight' between two high profile footballers and indeed team mates before more than 50,000 spectators and subsequently millions on TV may provide support for making an example of the perpetrator. But this incident in terms of the physical force used occurs regularly in a range of sports including football, rugby and ice hockey throughout the country. It is not obvious how the public interest was served in albeit what was a minor criminal prosecution. The distinction between on the one hand, on-the ball incidents, and on the other, off-the ball incidents outside the play and the playing rules might be a better guidance on where the public interest test might be satisfied. This would target 'violent conduct' that is clearly not within the particular game.

The determination of whether the prosecution is in the public interest however is a balance between factors for and against prosecution. As the CPS states: "a prosecution will usually take place however, unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour." In Bowyer, it can be argued that even though the incident was clearly off-the-ball and outside the playing rules and culture, a prosecution was still not warranted in light of the guidelines. The Chief Crown Prosecutor for Northumbria, Nicola Reasbeck, saw it differently: "The criminal law doesn't cease to operate once you cross the touchline of a sports field neither does being disciplined by an employer or a sport governing body make an athlete immune to the law ...when we reviewed the case, we considered charges of assault as well as public order act offences and decided that the most appropriate charge was an offence under Section 4. In making that decision we had to be sure that both the evidential test and the public interest test were met." (NATA, 2002d)

Applying the Prosecution Guidelines to Barnes and the more problematic issues of on-the-ball incidents, the tackle from behind although outside the playing rules is one that occurs

frequently in matches at all playing levels, often leading to a determination of foul play by the referee. There was evidence of pre-meditation on Barnes part to commit the foul. It was committed after earlier altercations between the players. Where the incident is during the play the referee is always likely to see it. The conduct was directed at the victim - he was an opponent of course. It is likely that this incident created significant disquiet on the part of the teammates of the victim.

This is a common reaction and reflects the adrenaline-induced excitement and the culture found in team sports. There had been previous incidents in the match and Barnes was sent off for violent conduct. There was no evidence submitted of any history of violent conduct on Barnes' part in his past career. It not obvious that there is any outstanding case for bringing a prosecution on applying these criteria. If there were, then potentially similar prosecutions could arise for analogous circumstances every weekend around the country. The essence of most team sports is that physical endeavour and vigour are essential elements. As Di Nicola and Mendeloff state: "Much of sports appeal comes from its unrestrained qualities, the delight of its unpredictability, the exploitation of human error, and the thrill of its sheer physicalness." Team sports are mostly contact sport that can be characterised as heavy contact sports, e.g. rugby; medium contact sports e.g. football and ice hockey; or light contact sports, e.g. basketball. They all share rules and playing cultures that help demarcate what is legitimate or illegitimate. Where the physical contact is illegitimate it is often characterised in rather simplistic terms as sports violence or thuggery. (NATA, 2002d)

There is variation between different sports as to what is accepted beyond the rules. Significant physical contact takes place. Mistimed tackles in football occur regularly. In rugby, some tackling and rucking can seem brutal. Further, outside the rules but in the playing culture, minor fisticuffs during particular parts of the play in both rugby union and league are familiar events. In ice hockey, skirmishes between players are acknowledged as a routine part of many matches. Many spectators expect these and with the body protection used by the chance of injury is minor. The difference between these events happening in the street or other public place on the one hand and the sport arenas on the other is that sportsmen are subject to complex regulation by a network of normative rules including playing rules, disciplinary rules and codes of conduct. These sporting incidents are enforced by their clubs and governing bodies rather than prosecuted in the courts. The media generated 'moral panic' over incidents such as that involving Bowyer-Dyer in football needs to be put into context. These incidents happen periodically but are not endemic within that particular sport. Where they occur they are generally policed well by the relevant sporting body. Sports governing bodies have been criticised over administering deficient disciplinary measures, but increasingly reconstitution of Sports Participation and Criminal Liability.

It is therefore imperative for the coaches and to be aware that if they miss an assigned supervision, they are potentially liable due to negligent behaviour. If an accident or injury occurs when they should have been on supervision, they may be held responsible in the courts.

Objectives

1. Ascertain the prevalence of legal liability in sports among Sports council personnel in south- south Nigeria;

2. Determine the extent of relationship between gender, age, marital status, level of education and years of service in relation to prevalence of legal liability in sports among Sports council personnel in south-south Nigeria;

METHODOLOGY

The population for this study comprised of all the 3,321 athletes and coaches in south south Nigeria with a sample size of 645 respondents (140 coaches and 505 athletes). The study adopted the cross sectional survey design. The sampling technique used was multi stage sampling procedure. The research instrument was subject to both face and content validation by the researcher's supervisor and two experts in the field of measurement and evaluation. The reliability coefficient of 0.78 was obtained using the Pearson Product Moment Correlation statistical analysis. The collected data were analyzed using frequency, percentage, mean and standard deviation for the research questions, while multiple regression were used for the testing of the null hypotheses at 0.05 alpha level of significance.

Table 1: Sampled Coaches and Athletes according to their States.

S/N	STATE	COACHES		ATHLETES		TOTAL
		MALE	FEMALE	MALE	FEMALE	
1	AKWA-IBOM	5	2	80	20	107
2	BAYELSA	5	2	80	20	107
3	CROSS RIVER	5	2	80	20	107
4	DELTA	6	2	80	20	108
5	EDO	6	2	80	20	108
6	RIVERS	6	2	80	20	108
TOTAL						645

RESULTS

Table 2: Analysis of Average Prevalence of Legal Liability in Sports among Coaches and Athletes in South-South Nigeria

S/N	ITEMS	Yes	No
1	Have you been involved in any case as a result of participating in sports?	400 64.0%	225 36.0%
2	Have any of your colleagues in sports been involved in court case?	500 77.5%	145 22.5%
3.	Has the club you work with been sued to court before?	150 23.3%	495 76.7%
4.	Have you heard of any sport related case in court before now?	600 93.0%	45 7.0%
5.	Have any of your colleagues participated in any sports competition that resulted in a breach of the law?	400 62.0%	245 38.0%
6.	Have you read of any case in court involving sports men and women?	525 81.4%	120 18.6%
7.	As an athlete have you had issue with your colleague that resulted in a court case?	50 7.8%	595 92.2%

8.	Have you as an athlete had disagreement with your coach that resulted to a court case?	100 15.5%	545 84.5%
9.	Have you ever sued your sports council for not paying you what you expected?	104 16.1%	541 83.9%
10	Has the group you belong to in sport ever been sued by another group?	200 31.0%	445 69.0%
11	Do you have any pending case in court?	107 16.6%	538 83.4%
12	Have you ever sued your athlete to court for breach of contract?	80 12.4%	565 87.6%
13	Has your colleague ever sued an athlete for failure to comply with an agreed term?	123 19.1%	522 80.9%
14	Has any smaller club ever sued your own club due to disagreement?	55 8.5%	590 91.5%
	Average Score	242 37.7%	403 62.3%

Table 2 above revealed the prevalence of legal liability in sports among Sport personnel in South-South Nigeria. Majority of the participants 403 (62.3%) had not been involved in prevalence of legal liability in sports while a few participants 242 (37.7%) had experienced prevalence of legal liability in sports. From the average percentage scores of the participants (62.3%), it can be said that prevalence of legal liability in sports is rare among Sport personnel in South-South Nigeria.

CONCLUSION

This study showed that sports council personnel in south-south Nigeria have not experienced much of prevalence of legal liability in sports. It is therefore important to note that to continue the trend of less legal liability in sports in the region, care must be taken by all sports personnel in order to avoid unnecessary litigation which has taken over the developed countries of the world.

RECOMMENDATIONS

1. Government should ensure that only qualified personnel are employed into the sports industry.
2. Periodic maintenance and supervision should be carried out by the sport council in all sporting facilities/equipment in order to enhance productivity and performance.
3. Protective gadgets should be made readily available to coaches and athletes during training and competitions.

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