

# Tackling the Legal Aspects of Rugby Related Injuries

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## INTRODUCTION

Rugby is a much loved sport in South Africa, played by over 804 000 people from grassroots to professional level. Despite its popularity, due to the physical nature of the game, there is a high possibility of sustaining an injury, which can have a huge impact on a young player's career and livelihood.

This often leads to questions surrounding the legal remedies a parent or individual may have access to, when dealing with the potentially devastating effects of these injuries.

## CONSENT AS A DEFENCE

When taking part in a physical sport such as rugby, there are inherent risks that a participant consents to. Consent, however, does not cover all possibilities and we need to examine the difference between "on the ball" offences and "off the ball offences". "On the ball" offences will include any injuries that occur whilst partaking in the sport, of which consequently an injury arises. "Off the ball" offences are actions taken that do not fall within the rules or nature of the game.

To better explain this, Professor Steve Cornelius uses the example of a "beware of the dog" sign on a property. Should an individual enter the property, they consent to the risk that they may encounter an unpleasant interaction with a dog. However, should they not enter the premises, and they still encounter the dog due to external factors such as a hole in the fence, it cannot be said that they consented to this risk.

In a rugby context, an injury arising from a scrumming incident or a tackle is a risk that the player consents to, whereas should they be punched during a ruck or are targeted illegally whilst not in play, it is not within the spirit of the game and it cannot be said that they consented to that risk.

## INTENTIONAL INJURY

A personal injury claim relies on the elements of delict to be proven, namely conduct, wrongfulness, fault,

causation and harm. If the conduct of the "wrongdoer" is consistent with normal sporting activities, a claim is unlikely to succeed.

There is a fine line, which is often difficult to distinguish and prove, between a player intentionally aiming to injure or hurt an individual, and merely becoming overzealous and "losing their head". In the case of *Hattingh v Roux NO and Others* [2011] ZAWCHC, during a schoolboy rugby match, it was determined that the Defendant had intentionally aimed to injure the Plaintiff by partaking in activities which were contrary to the rules of the game.

The court ruled in the favour of the Plaintiff and highlighted the shortcomings of the special defence of consent raised by the Defendant, as the injury sustained was not as a consequence of the normal risk a participant in a scrum would have consented to.

## OTHER ISSUES SURROUNDING SPORTS INJURIES

Injuries are unavoidable when partaking in physical sports such as rugby, and as such, appropriate measures need to be put in place to accommodate this. This duty rests upon the organisers and they may be held liable should they fail to do so.

In the case of *Foster and Another v Member of the Executive Committee, Education, North West Province and Others* [2020] ZAGPPHC, the Plaintiff was injured during a rugby match, after a player fell on his neck. Although this injury was the result of a relatively normal risk the Plaintiff would have consented to, the issue arose after the medical staff carried him off of the field, without using any neck or spine support equipment. Consequently, the Plaintiff suffered further injuries from the medics' negligence, which resulted in him becoming a paraplegic.

The court ruled that the high school had not taken reasonable steps to prepare for the inevitable occurrence of an injury, and as such, the State was found to be liable.

## CONCLUSION

Ultimately, it is important to understand which risks you are tacitly consenting to when playing a physical sport such as rugby. Even an “illegal” high tackle can fall within the nature of the game, and this does not necessarily mean you have a claim for personal injury. Injuries often occur whilst playing within the ambit of the rules or nature of the game, however, should external or extraordinary factors be present, there are remedies available in law to protect you.



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