

RECKLESS CONDUCT AND INFORMED CONSENT

Fact Pattern:

Near the end of the first half of a National Football League game between the Denver Broncos and the Cincinnati Bengals, after a play ended, and while the Bronco's Dale Hackbart was kneeling, Bengal's Fullback, Charles Clark hits Hackbart on the back of the head and neck with his forearm, badly injuring him. The incident occurred after the Bengals attempted a forward pass play during which Charles Clark ran into a corner of the north end zone as a prospective receiver. That took him into an area which was the defensive responsibility of Hackbart. The thrown pass was intercepted near the goal line by a Denver linebacker who then began to run the ball upfield. Acting out of anger and frustration, but without a specific intent to injure, Charles Clark stepped forward and struck a blow with his right forearm to the back of the kneeling plaintiff's head with sufficient force to cause both players to fall forward to the ground. Both players arose and, without comment, went to their respective teams along the sidelines.

They both returned to play during the second half of the game. Hackbart made no report of this incident to his coaches or to anyone else during the game. Hackbart experienced pain and soreness to the extent that he was unable to play golf as he had planned on the day after the game, he did not seek any medical attention and, although he continued to feel pain, he played on specialty team assignments for the Denver Broncos in games against the Chicago Bears and the San Francisco Forty-Niners on successive Sundays. The Denver Broncos then released Hackbart on waivers and he was not claimed by any other team. After losing his employment, Hackbart sought medical assistance, at which time it was discovered that he had a neck injury.

Question:

If a person consents to participate in an event where violence is usual, does that person also consent to whatever actions may be committed against him in the event?

Rule

Consent to one violent activity does not give implied consent to violence done outside the bounds of the activity.

Discussion

One of the most obvious characteristics of football, played at any level is that all of the players engage in aggressive, violent physical behavior. The rules of play which govern the method and style by which the NFL teams compete include limitations on the manner in which players may strike or otherwise physically contact opposing players. The written rules are difficult to



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understand and, because of the speed and violence of the game, their application is often a matter of subjective evaluation of the circumstances. Officials differ with each other in their rulings. Many violations of the rules do occur during each game. Ordinarily each team receives several yardage penalties, but many fouls go undetected or undeclared by the officials. Disabling injuries are also common occurrences in each contest. Hospitalization and surgery are frequently required for repairs. Protective clothing is worn by all players, but it is often inadequate to prevent bodily damage. Professional football players are conditioned to „play with pain“ and they are expected to perform even though they are hurt. The standard player contract imposes an obligation to play when the club physician determines that an injured player has the requisite physical ability. The large and noisy crowds in attendance at the games contribute to the emotional levels of the players. Quick changes in the fortunes of the teams, the shock of violent collisions and the intensity of the competition make behavioral control extremely difficult, and it is not uncommon for players to „flare up“ and begin fighting.

If the game of football is inherently violent and dangerous and if the rules of the game already specify a penalty as a proper remedy for a late or intentional hit, and if Hackbart consented to participate in an activity where violence is the norm, has Hackbart consented to whatever acts are committed against him during the course of the game? The rules of the NFL prohibit the intentional striking of blows and the general customs of the sport also prohibit such conduct. These principles are intended to establish reasonable boundaries so that one football player cannot intentionally inflict a serious injury on another. The mere understanding of a sport's generally violent nature and the choice to participate does not extinguish all rights to recover for truly egregious conduct that is beyond the pale even of what professional football commonly entails.