Legal Bibliography Pathfinder

I. Introduction

This pathfinder is geared towards sporting arena owners and managers. It is meant to provide them with information regarding their duty to the patrons of these arenas and how that duty was shaped. It is important to include the information about how the arena owner’s liability has changed over the years, because for each sport, the liability changes to accommodate the conditions inherent to that particular sport but its still based on the general concepts that shape all of these spectator liability cases.

The main issues of this liability stem from whether or not the fan is aware of the risk. This awareness varies per sport. For example, since the early 1900s spectators at baseball games have been considered to be aware of the risks of attending the games, but in other sports this is often not the case.

The key sources of information are the journal articles. Several of these articles discuss how certain concepts are applied to different sports. Other key sources are the Cases which helped shape these concepts.
II. Overview of Materials and Resources

The first concept to be discussed is the ‘open and obvious’ rule from tort law. Are the dangers of attending the sporting event either known or recognizable by a person of average intelligence? If so, then the arena owner is not liable for any injury that results from ‘open and obvious’ dangers of attending the sporting event. The event attendee is seen to assume primary assumption of risk. Foul balls in baseball have been considered an ‘open and obvious’ danger for about a century and most courts recognize this. The primary assumption of risk of potentially being struck by a foul ball has become known as the Baseball rule. However, the risk of being hit by a puck in hockey wasn’t considered an ‘open and obvious’ danger until the middle of the 20th century.

In wrestling, the defense of primary assumption of risk is generally not recognized. For wrestling, the courts make case-by-case determinations based on the knowledge of each particular plaintiff. In auto racing, most spectator injuries are caused by flying debris, and although injuries can be severe, they are not common. In addition to this, the cars are designed to come apart in accidents to protect the drivers, and in most cases, the spectator is unaware of this fact. Therefore, the spectator is not usually considered to be aware of the ‘open and obvious’ danger before attending the race.

This first concept is often discussed along with the next concept of ‘limited duty.’ The frequent discussion of both together leads to some confusion, but they are in fact two different concepts. This concept of ‘limited duty’ asks if the arena’s owner did his or her best to shield the attendees in the most dangerous parts of the arena. This concept results in the netting behind home plate in baseball and behind the goals in soccer. Although the spectator is assuming the risk by attending a game that poses known dangers, the arena
owner is still responsible to put in a good faith effort of protection. The Akins case in 1981 further developed this concept of limited duty. The Akins rule established that at least some protected seating be provided. This seating is usually provided to the areas of the stadium at the most risk. Once this is done, the arena owner is only liable to those who are injured while in the protective seating.

The third concept for discussion in relation to the liability of arena owners to injured spectators is the recently developed concept of the distraction exemption of the ‘open and obvious’ rule. In 1965, the Restatement (Second) of Torts adopted the distraction exception. This sounds like what it is. The spectator assumes the risk of any ‘open and obvious’ danger while attending a sporting event unless there is a distraction that is not caused by a necessary part of the game. In some cases, the distraction has been considered the antics of the mascot or the inability to pay attention to the game while performing necessary tasks such as going through the arenas walkways to reach a bathroom. What is and isn’t considered a distraction is debatable and there is no established precedent as the there are many divergent rulings.
III. Annotated List of Sources

Restatements

Rest 2d Torts § 343 (1934)

- Establishes the ways in which an owner is liable for physical harm caused to his invitees on his land. The first Restatement of Torts adopted the open and obvious rule which is rooted in English and American common law. This rule began to be criticized in the mid 20th century.

Rest 2d Torts § 343A(1) (1965)

- Due to the criticism of the open and obvious rule in the first restatement of torts, the ‘distraction’ exception of the open and obvious rule was adopted by the Restatement (Second) of Torts.

State Statutes

Baseball Facility Liability Act, IL ST CH 745 § 38/5 (1992)

- This act adopts the Akins rule and requires that stadium owners fulfill the concept of limited duty by supplying a certain number of protected seats.


- This is another codification of the Akins limited duty rule.

Cases

Blakeley v. White Star Line, 154 Mich. 635, 118 N. W. 482 (Mich. 1908)

- This case was located through the Law Review Article by Turner. It is one of the earliest cases cited that I could find. It demonstrates the beginning of the establishment of the concept of primary assumption of risk in cases dealing with a sporting premise’s liability in relation to a spectator’s injuries.

Wells v. Minneapolis Baseball & Athletic Ass’n, 122 Minn. 327, 142 N. W. 706 (Minn. 1913)

- This case was found through law review articles located on Westlaw. This case, which occurred not too long after the above cited case, helped establish the concept of limited duty. These two concepts, primary assumption of risk and limited duty, have evolved together and the majority of courts now have a two
element rule used in these types of cases. This two part rule would address the following questions: Was the spectator aware of the risk? and Did the stadium owner do his or her best to protect the spectators seated in the most dangerous areas?


- This case is interesting because it demonstrates how the concept of “open and obvious danger” could be applied to a sport other than baseball. This case is older and occurred before the sport of hockey was as popular as it is today. In this case, the plaintiff who had never been to a game before and was unfamiliar with the rules was hit with a puck. Therefore the court awarded for Shanney, because it was believed that she was unaware of the danger and was not properly warned.


- This case is cited in three of the four articles included in this pathfinder. It is an important case because it helps to clarify the difference between the doctrines of limited duty and primary assumption of risk. Although these two legal concepts frequently overlap, it is important to recognize that they are two separate issues.


- This case was found in the article by Turner. It is an important case in the establishment of what is necessary for owners to satisfy the concept of limited duty. In most cases, this means (1) that protective seating is provided and (2) owners are only liable for the injuries of spectators sitting in these protected seats.

Law Review and Legal Periodical Articles

Kenneth R. Swift, I Couldn’t Watch the Ball because I Was Watching the Ferris Wheel in Centerfield, 22 Entertainment and Sports Lawyer 1 (2005)

- This article was found through Westlaw. It was chosen because, like the other chosen articles, it discussed the history of how limited duty and primary assumption of risk have developed and been applied to spectator injury cases. However, it was also chosen because it discusses the history of the “open and obvious” rule in tort law and how the Restatement (Second) of Torts allowed an exception that was then applied to these spectator injury liability cases.


- This article was found using Westlaw. I included this article because it is the only one that actually discusses statutes that have resulted from the ideas of limited
duty and primary assumption. In addition to this, it discusses in more detail than the other articles the idea of the protection that could be provided for fans could potentially take away from the experience of attending a sporting event and lower attendance.


- This article was found using Westlaw. I chose this to include in the pathfinder, because it was the most recent legal periodical or law review article I could find. I also chose it because it does an excellent job of tracing how the Baseball Rule has shaped these types of cases for other sports.

Walter T. Champ, Jr., “At the Ol’ Ball Game” and Beyond: Spectators and the Potential for Liability, 14 American Journal of Trial Advocacy 495 (Spring, 1991)

- This article was found through its citation in the Swift article. Although the article focuses on baseball, it does a good job of discussing the theory of this issue and how it could be applicable to other spectator sports.

Legal Newspaper Article


- This article demonstrates the well-known Baseball Rule. Baseball is considered such a part of American life that U.S. courts consider the risk of foul balls to be an “open and obvious” danger that requires no warning from the stadium owners. Spectators are considered to attend baseball games at their own risk.

*Court Says Fan Can Sue if Hit by Foul Ball At Concession Stand*, Mealey’s Personal Injury Report 14, July 29, 2004.

- This article was found via LexisNexis. It demonstrates the distraction exception to the “open and obvious” rule of tort law.

ALR Annotations and Legal Encyclopedia Articles

James L. Rigelhaupt, Jr., annotation, *Liability to Spectator at Baseball Game Who Is Hit by Ball or Injured as Result of Other Hazards of the Game*, 91 A.L.R. 3rd 1 (1979)

- This article is a good source for information pertaining solely to this concept in the sport of baseball. It was referenced in the law review article by Swift.

Internet Sites
American Society for Testing and Materials is standards development organization. It is the source for technical standards for materials, products, systems and services. Both the NHL and the American Hockey League have erected safety netting in almost all arenas to the specifications developed by ASTM. The above link directs you to a webpage that allows for searches of the various standards. Standards, including safety measures, for the construction of hockey rinks, basketball courts, soccer fields, and various other sporting arenas can be found and purchased from this site.

The Philadelphia Phillies are a Major League Baseball team. Above is a link to the Guest Code of Conduct. Included on this web page is a section titled “Risks of Baseball” which advises the guests that assume all the risks of attending games. They should be vigilant at all times despite the many distractions that can occur during games.

The above link is a post from the Sports Law Blog about exception to the Baseball Rule of distractions. The specific distraction discussed in this post is the mascot.