

1949

## TORTS-ASSUMPTION OF RISK-FLYING PUCKS AND THE ICE HOCKEY SPECTATOR

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### Recommended Citation

James F. Gordy S.Ed., *TORTS-ASSUMPTION OF RISK-FLYING PUCKS AND THE ICE HOCKEY SPECTATOR*, 48 MICH. L. REV. 240 (1949).

Available at: <https://repository.law.umich.edu/mlr/vol48/iss2/16>

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TORTS—ASSUMPTION OF RISK—FLYING PUCKS AND THE ICE HOCKEY SPECTATOR—Plaintiff and her husband attended an ice hockey game being sponsored by the defendant. Both testified that they knew nothing about the game. They asked for the “best seats in the house” and were seated in the front row of an unprotected section, immediately adjacent to the ice and behind a low wooden wall. During the progress of the game, plaintiff was struck and injured by a puck driven from the ice. Defendant had furnished screened areas, which were unfilled at the time; he had prominently displayed many large placards warning of the danger of flying pucks and advising of the availability of screened seats on request, and he had caused loud-speaker warnings of the danger of pucks to be made. Plaintiff testified that they neither saw nor heard these warnings. Defendant was precluded from showing the practices of other places in safeguarding ice hockey rinks. The jury returned a verdict for the plaintiff. On appeal, *held*, new trial granted on all issues. Defendant was prejudiced by excluding his offered evidence, and the inadequate damages awarded should be retried. However, it was a proper question of fact for the jury as, “it cannot be held as a matter of law, that the general public has, at this particular date, become so familiar with

the hazards of this sport and of the actual appreciation of the seriousness of the risk as to bring them within the 'common knowledge' rule and under the doctrine of assumption of risk."<sup>1</sup> *Shurman v. Fresno Ice Rink, Inc.*, (Cal. App. 1949) 205 P. (2d) 77.

To impose upon a plaintiff the doctrine of voluntary assumption of risk, and thereby preclude his recovery, requires on his part an actual knowledge of the existence of the danger and an appreciation of the seriousness of the risk.<sup>2</sup> This is logical since one cannot be said to assume a risk or consent to a danger of which he is unaware. However, the standard must, of necessity, be objective; "the plaintiff cannot be heard to say that he did not comprehend a risk which must have been obvious to him."<sup>3</sup> Clearly there are certain risks which anyone of adult age must be held to appreciate. He is treated as a reasonable man, and is presumed to know those things which a reasonable man at that time and place would know, though he himself is in fact ignorant.<sup>4</sup> In the usual case a plaintiff's actual knowledge and appreciation of the danger will be a question for the jury, but where it is clear that any person of normal intelligence in his position must have understood the danger, the issue must be decided as a matter of law.<sup>5</sup> Thus, in the case of baseball, it has been almost universally held that the danger of injury to a spectator from thrown or batted balls is so openly apparent, notorious and inherent in the nature of the game, that the hazard is a matter of common knowledge to all, and when he voluntarily occupies an unscreened portion of the pavilion he assumes, as a matter of law, the risk of being struck.<sup>6</sup> But as to the assumption of risk by a patron who occupies the unscreened portion of the stands at an ice hockey rink, and is struck by a puck leaving the ice during the course of play, there is a difference of opinion.<sup>7</sup> Some courts apply the rule applicable to baseball games, holding that the risks incident to ice hockey are so well known to the general public that a spectator will be held as a matter of law to have knowledge of the risk of injury from flying pucks.<sup>8</sup> Other courts distinguish baseball and refuse to adopt the rule of assumption of risk as a matter of law, pointing out that the basis of the rule lies

<sup>1</sup> Principal case at 81.

<sup>2</sup> PROSSER, TORTS 385-6 (1941); *Edwards v. Kirk*, 227 Iowa 684, 288 N.W. 875 (1939); *Fitzgerald v. Connecticut River Paper Co.*, 155 Mass. 155, 29 N.E. 464 (1891); *Alexander v. Great Northern Ry. Co.*, 51 Mont. 565, 154 P. 914 (1916).

<sup>3</sup> PROSSER, TORTS 386 (1941).

<sup>4</sup> 2 TORTS RESTATEMENT 778-9 (1942).

<sup>5</sup> PROSSER, TORTS 387 (1941).

<sup>6</sup> 142 A.L.R. 871 (1943); *Blakeley v. White Star Line*, 154 Mich. 635, 118 N.W. 482 (1908); *Brisson v. Minneapolis Baseball & Athletic Assn.*, 185 Minn. 507, 240 N.W. 903 (1932); *Quinn v. Recreation Park Assn.*, 3 Cal. (2d) 725, 46 P. (2d) 144 (1935); *Keys v. Alamo City Baseball Co.*, (Tex. Civ. App. 1941) 150 S.W. (2d) 368; *Grimes v. American League Baseball Co.*, (Mo. App. 1935) 78 S.W. (2d) 520.

<sup>7</sup> 149 A.L.R. 1164-82 (1944).

<sup>8</sup> *Modoc v. City of Eveleth*, 224 Minn. 556, 29 N.W. (2d) 453 (1947); *Ingersoll v. Onondaga Hockey Club*, 245 App. Div. 137, 281 N.Y.S. 505 (1935); *Hammel v. Madison Square Garden Corp.*, 156 Misc. 311, 279 N.Y.S. 815 (1935).

in the fact that the risks and hazards of baseball are common knowledge,<sup>9</sup> but that the dangers incident to spectators attending ice hockey games are not so generally known as to be matters of common knowledge, and therefore it cannot be said as a matter of law that such dangers are assumed by the spectator.<sup>10</sup> The reason for their distinction is the relatively recent innovation of the game of hockey, and the fact that it is not so widely known or played. These courts hold that the question of a hockey spectator's actual knowledge of the dangers and his assumption of risk in selecting an unscreened seat is a question for the jury. However, in view of the preeminence of sports on the American scene at this time, with ice hockey being played by both professionals and amateurs, with many schools sponsoring teams competing in this sport, and with the attendant publicity given hockey via the newspapers, radio, newsreels, and every other organ reaching the public, it hardly seems possible that a reasonable person could escape knowing something about the game and appreciating its dangers.<sup>11</sup> A person attending an ice hockey game ought to occupy the same status as a spectator at a baseball game and the same rules should be applied to both. To hold otherwise is to place an unreasonable burden on the owner of a hockey rink. It should not be incumbent on him to inquire of every person whether or not he had ever witnessed a like performance; rather he should be entitled to a legal presumption that his customers assume the risks incident to the game.

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<sup>9</sup> 21 *TEMPLE L. Q.* 288-90 (1948).

<sup>10</sup> *Tite v. Omaha Coliseum Corp.*, 144 Neb. 22, 12 N.W. (2d) 90 (1943); *Thurman v. Ice Palace*, 36 Cal. App. (2d) 364, 97 P. (2d) 999 (1939); *Shanney v. Boston Madison Square Garden Corp.*, 296 Mass. 168, 5 N.E. (2d) 1 (1936); *James v. Rhode Island Auditorium*, 60 R.I. 405, 199 A. 293 (1938); *LeMoine v. Springfield Hockey Assn.*, 307 Mass. 102, 29 N.E. (2d) 716 (1940).

<sup>11</sup> 17 *BOST. UNIV. L. REV.* 485-94 (1937).