

**The legal profession and the
medical profession working
together to improve work related
safety: Legal viewpoint**

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Introduction

This talk will consider how legal actions and medical evidence relating to sporting incidents have resulted in changes to the law or rules of the sport that have helped prevent further serious injuries.

You may query whether that is straying off the topic of this symposium on workplace injuries.

By way of answer:-

Introduction

'Games might be and are the serious business of life to many people. It would be extraordinary to say that people could not recover from injuries sustained in the business of life, whether that was football, or motor racing, or any other of those pursuits which are instinctively classed as games but which everyone knew quite well to be serious business transactions for the persons engaged therein'

Cleghorn v Oldham [1927] 43 TLR 465 (Swift J)

Rugby



Smoldon v Whitworth & Anor [1996] EWCA Civ 1225

- Game involved a much higher number of collapsing scrums than the typical average. Scrums were coming together in in a rushed way and with excessive force.
- Referee was held to be liable for his repeated failure to enforce the CTPE sequence for engaging in scrums.

Vowles v Evans [2003] EWCA Civ 318

- Referee breached rules of the sport by allowing a flanker to take the place of a prop without checking his experience in the “front row”.
- Welsh RFU was held to be vicariously liable as employer.

American Football & Rugby – concussion injuries



American Football & Rugby – concussion injuries

- 2002 study by Dr Bennet Omalu found link between brain disease in former American football players and concussion.
- US law suit resulted in NFL paying out \$765m to former players.
- “NFL Head, Neck and Spine Committees Protocols” implemented.
- The International Rugby Board followed suit and introduced a Head Injury Assessment Protocol.

American Football & Rugby – concussion injuries

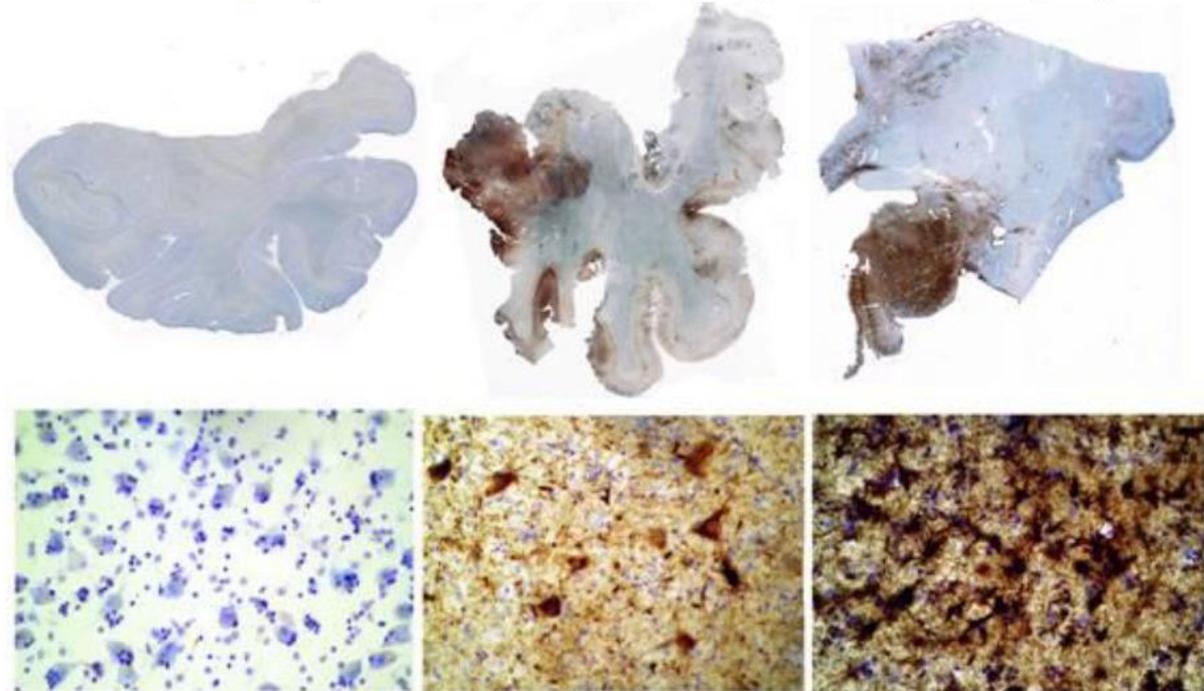
Chronic Traumatic Encephalopathy (CTE) is a progressive degenerative disease found in athletes with a history of repetitive brain trauma



Control (65)

Footballer (45)

Boxer (73)



Boxing

'The conduct of the activity of professional boxing carries with it, for the small body of men that take part in it, the need for the provision of medical assistance to treat the injuries that they sustain and minimise their adverse consequences.'

Watson v British Boxing Board of Control [2001] QB 1134 (Lord Phillips)



Watson v British Boxing Board of Control [2001] QB 1134

- Watson sustained a subdural haemorrhage resulting in brain damage and hemiparesis in WBO title fight with Chris Eubank.
- Expert medical evidence showed that the injuries were significantly worsened through lack of ringside resuscitation.
- The British Boxing Board subsequently introduced a number of safety measures, including an anaesthetist and two teams of paramedics at the ringside.

Quad bikes / ATV



Quad bikes / ATV

- Stewarts recovered £2.9m for a woman who sustained T6 paraplegia when she went off a cliff in a quad biking excursion in Iceland organised by her employer as part of a marketing incentive weekend.
- Her international employer and the specialist tour provider learnt the importance of advance risk assessment of the route and local provider.

Quad bikes / ATV



Hulse v Virgin / VLE and Branson

- Stewarts also recovered a substantial sum for a woman whose husband was killed when he went off a cliff during a quad bike trip at Sir Richard Branson's luxury Moroccan hotel the Kasbah Tamadot.

Quad bikes / ATV

- At the inquest the Coroner concluded that Mr Hulse's death was *"contributed to by 1) defects in the quad bike 2) inadequate instruction and safety equipment and 3) it was an unsuitable route for an inexperienced rider"*.
- VLE's MD Jon Brown confirmed that they had ceased quad biking at all of their resorts and said: *"We are truly sorry for anything we did or did not do that contributed to the failures.... What happened should not have done"*

F1 – motor sports



F1 – motor sports

- Stewarts represent the family of the F1 driver Jules Bianchi who died in July 2015 following an accident during the Japanese GP in October 2014.
- The FIA commissioned their own report and rapidly implemented a number of new rules, notably the virtual safety car.
- Through their legal claim, Jules Bianchi's family seek to demonstrate that further rules changes should be made to help minimise the risk of further deaths.

Concluding thoughts

- Serious injury claims require experienced lawyers and doctors to work together.
- These claims help seriously injured people rebuild their lives and often reimburse medical/benefit costs to the State.
- They also cause employers, governing bodies and their insurers to think very carefully about risk assessment.

Concluding thoughts

- They often result in the enhancement of the rules and regulations or their enforcement which reduces the risk of future serious injuries, without diminishing the appeal of the sport.
- The lessons we learn from these sporting accidents are equally applicable to other work place accidents.
- In the UK annual work place fatalities have reduced from 651 in 1974 to 92 in 2014/15 as a result of H&S legislation and a strong enforcement body.

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