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Philippine Sports Torts: Adopting a Standard of Care for Sports Competitions and Establishing Vicarious Liability for Professional Coaches

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ARTICLES

PHILIPPINE SPORTS TORTS: ADOPTING A STANDARD OF CARE FOR SPORTS COMPETITIONS AND ESTABLISHING VICARIOUS LIABILITY FOR PROFESSIONAL COACHES

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I. A BROKEN JAW AND THE NEED FOR PROTECTION

A. An Errant Tackle: A Case Study[1]

In a rainy September morning in 2004, the Ateneo de Manila University Men's Soccer team hosted the San Beda College Soccer team in a tune-up game. At that time, both teams were steadily preparing for their respective title defenses—the Ateneo Blue Booters won the University Athletic Association of the Philippines (UAAP) soccer crown, while the San Beda Red Lions had won the National Collegiate Athletic Association (NCAA) soccer title—and the game was supposed to be a measure for both squads in their hopes of reclaiming their respective titles. It was also a chance for the coaches to field in new players and to see whether these young hopefuls had what was needed to play on the best Philippine collegiate soccer teams.

One of those young hopefuls was Chino Tobias, a freshman from the Ateneo team. Tobias played goalkeeper in high school and was hoping to make the team in his freshman year. Ompong Merida, coach of the Ateneo squad, gave Tobias the nod that morning and sent the freshman to man the posts. It was a day Tobias would never forget—and for all the wrong reasons.

Tobias was tasked to face a San Beda squad determined to prove themselves against their counterparts. The Red Lions, composed mostly of national team recruits, attacked the Ateneo goal incessantly. Spearheading the attack was prized recruit Dan Padernal, an Ilonggo who was known for his football prowess but notorious for his dirty play. Five years earlier in an Olympic qualifying

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1. Author was the captain of the Ateneo Football Team and was present during the incident.

match between the Philippines and Japan, Padernal seriously injured rising Japanese football star Shinji Ono with a heinous tackle from behind. At that time, the Philippines were already losing 11–0, and Padernal's tackle was more likely a result of frustration than of hard-nosed defending. The tackle tore one of Ono's left knee ligaments, and the future of Japanese football was forced to watch the 2000 Sydney Olympics on the bench.[2]

This time, the score was nil-nil, with the Red Lions' attack kept at bay by the combined efforts of the Blue Booters and their upstart goalkeeper.

And then it happened.

A San Beda attack was foiled inside the Ateneo box, with the ball rolling into the area of Tobias. Tobias dove for the ball, securing it safely in his arms. The play was supposed to be over—but Padernal, never one to give up, sprinted and then slid on the muddy pitch to win the ball from Tobias. The momentum of his slide tackle brought him straight to Tobias who was caught unaware. With a sickening sound, Padernal's knee caught Tobias squarely on the jaw.

Helped by his teammates, Tobias gingerly stood up and was immediately substituted. He was no longer in any condition to play. Blood was pouring from his mouth, and his jaw was grotesquely out of place. A medical check-up that afternoon revealed a broken jaw that required immediate surgery. It took Tobias three months to recover from the incident, and more than a year to get back on the pitch.[3]

Despite the yellow card brandished to Padernal, the Ateneo team was not happy with the incident. Coach Ompong Merida reported the incident to the Ateneo University Athletics Office, and fearing for the safety of his players, requested that Padernal be banned from playing within the Ateneo premises or whenever San Beda played Ateneo. The Ateneo University Athletics Office heeded this policy and a ban on Padernal was imposed.

Fingers pointed to Padernal as the sole culprit of the injury—there was no doubt that he caused the injury. In legal jargon, his sliding tackle was the proximate cause of Tobias' broken jaw. However, can he be held liable in court for the injury of Tobias? In other words, was his act an actionable tort?

While Padernal naturally took the brunt of the blame, whispers of blame soon swirled around the actions and decisions of San Beda coach Aris Caslib. Coach Caslib knew of the rough and tough nature of his prized recruit. At the time of the incident, Padernal had already played two to three years under the tutelage of coach Caslib. Moreover, the San Beda coach was fully aware of the

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2. Kumi Kinohara, *Reds' Ono Looking to Recover His Form Before Seeking New Challenges Abroad*, JAPAN TIMES (Jan. 4, 2000), http://www.japantimes.co.jp/sports/2000/01/04/soccer/j-league/reds-ono-looking-to-recover-his-form-before-seeking-new-challenges-abroad.

3. E-mail from Chino Tobias to Ignatius Michael D. Ingles (June 10, 2011) (on file with author) (Note: Tobias did not file any legal action against Padernal. He and his family, however, requested the Philippine Football Federation for a ban on Padernal. The request was not heeded.).

Shinji Ono incident. And yet, despite this knowledge, Caslib continued to field the fiery Padernal. Was Caslib also to blame for Tobias' injury?[4]

The injury suffered by Tobias is a stark example of the danger of sports, especially contact sports such as soccer. Injuries are commonplace in sports; some say it is even inherent in sports.[5] But when does the infliction of injuries cross the legal line and give rise to legal liability? And should coaches be liable for the tortious acts of their players?

B. Game Plan

The main legal issue I seek to address is the void in Article 2180 of the Philippine Civil Code of the Philippines (Civil Code).[6] Article 2180 enumerates persons who are vicariously liable for the tortious acts of those under their care and supervision.[7] The enumeration does not include coaches and their players, even if the relationship between coaches and players is also characterized by supervision and responsibility.

I propose that coaches be held liable for the tortious acts of their players. I

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4. The Case Study will be answered in the conclusion of the article and will serve as a test case for the application of the proposals of the article.

5. RAYMOND L. YASSER, TORTS AND SPORTS: LEGAL LIABILITY IN PROFESSIONAL AND AMATEUR ATHLETICS 3 (1985).

6. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

7. *Id.*

> The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
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> The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.
>
> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a).

Id.

argue that the coach-player relationship is akin to the other instances of vicarious liability enumerated in the Civil Code, and thus, the coach should also be held vicariously liable for the tortious acts of his players. In Section III, I argue that the relationship between a coach and his players is one wherein the coach has a special responsibility over the players. In Section IV and V, I also provide guidelines that will delineate the scope of a coach's responsibility for the acts of his players: when should a coach be liable for the tortious conduct of his players? When should he be absolved from liability? I conclude by proposing an amendment to Article 2180 of the Civil Code to include vicarious liability on professional coaches.

However, before vicarious liability can be applied, the principal tortfeasor must first be held liable.[8] This leads to the second legal issue I seek to address: the absence of Philippine jurisprudence on the duty or standards of care applicable to sports or sporting competitions. Hence, in Section II, I also establish standards for making participants in sports competitions liable for injuries of other participants. Because of the peculiar circumstances inherent in sports competitions, the duty and standard of care required in sports are different from other situations.[9] No such standards have been articulated in present Philippine laws or jurisprudence.

Without a set standard, injured players in the Philippines find it difficult to recover, especially when faced with tort defenses such as the assumption of risk.[10] Participants in contact sports naturally assume the risk of injury because these injuries are inherent and foreseeable in these sports.[11] Assumption of risk is a defense recognized in the Philippines as well. Thus, torts based on negligence occurring in sports competitions most likely fail.[12] Hence, I propose a different duty of care that must be breached in sports cases in order to allow recovery by the injured party. This duty of care is the duty to refrain from the reckless disregard of safety rules,[13] a duty recognized in the United States that should be adopted in the Philippines.

C. A Snapshot of Philippine Sports

One may think that the field of sports has little or nothing to offer society or law, especially in the Philippines. Sports is often relegated to the back pages

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8. Jose v. Court of Appeals, G.R. Nos. 118441–42 (S.C., Jan. 18, 2000) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/2000/jan2000/118441_42.html.

9. WALTER T. CHAMPION, SPORTS LAW IN A NUT SHELL, 110 (4th ed. 2009).

10. *Id.* at 144.

11. *Id.*

12. *Id.*

13. YASSER, *supra* note 5, at 3–4.

of newspapers, with sports stories only making the front pages when Manny Pacquiao brings home another title or the Gilas Pilipinas Basketball Team winning with the odds stacked against them. The lack of professional leagues in the country also gives the impression that sports are neither taken seriously nor a worthy investment of time, skill, or money. A quick comparison with countries with big sporting industries like the United States, China, or Spain further boost that impression.

Nothing can be further from the truth. The country may not yet have won a gold medal in the Olympics, or have multi-million dollar professional leagues for every sport, but the Philippines is still no different from the more developed countries when it comes to its culture and its relationship with sports. The country is not a stranger to the fanfare, the controversies, and the money that come with the world of sports.

A quick drive around Metro Manila would show that basketball is *the* sport in the country. Pictures of basketball players endorsing products in the main thoroughfares and basketball courts donated by congressmen dot *barangays* everywhere. The country's love for the game is evident in Rafe Bartholomew's book *Pacific Rims*[14] where he talks about how the Philippines has embraced the game in practically every aspect of the Philippine culture.

The rivalries involved with basketball, and the fanfare that comes with them, mimic those in the United States and in Europe. Just like how the Boston Celtics-Los Angeles Lakers rivalry ushered in a new age for the National Basketball Association (NBA), the same has been said of the Crispa-Toyota rivalry in the 1970s and its impact on the country's premier professional basketball league, the Philippine Basketball Association (PBA).[15] Sports rivalries and their fans have also impacted the amateur level—with the well-known rivalry between Ateneo and De La Salle University even reaching the sports pages of *The New York Times* in 2007.[16]

While basketball is still the favorite sport in the Philippines, other sports have also caught on with the Filipino public. Manny Pacquiao's worldwide success as a boxer has created a growing interest in the sport. Gyms and sports clubs have included boxing as one of the workouts open to their members. With the recent success of the Philippine National Soccer Team, soccer has also gained popularity with Filipinos. The United Football League, revamped in 2009, has become the closest thing to a professional soccer league that the

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14. *See generally* RAFE BARTHOLOMEW, PACIFIC RIMS: BEERMEN BALLIN' IN FLIP-FLOPS AND THE PHILIPPINES' UNLIKELY LOVE AFFAIR WITH BASKETBALL (2010).

15. Norman Lee Benjamin Riego, *BEST OF FIVE SERIES: The Rivalry That Gave Birth to the PBA*, ABS-CBN SPORTS (Apr. 12, 2015), http://sports.abs-cbn.com/basketball/news/2015/04/12/best-of-five-series-the-rivalry-gave-birth-pba-1744.

16. Raphael Bartholomew, *A Nation's Passion Lives in a Rivalry of Green vs. Blue*, N.Y. TIMES (Sept. 23, 2007), http://www.nytimes.com/2007/09/23/sports/23rivalry.html.

country has seen in more than a decade.

To say that a study of sports and its relation to torts law is irrelevant is turning a blind eye to the country's love of sports—and the dark side that comes with it. While the Philippines might not have a sports industry as developed as that of the United States, one need only look at the hoopla and fanfare surrounding sports to see that sports is just as well-received in the Philippines as in any other country. Furthermore, the very nature of sports as competition, its hold on society's psyche, and the underlying business and monetary interests nowadays have raised the stakes in sports.

Today, there is so much at stake—losing can ruin your reputation and have you tagged as a match-fixer[17] and winning can mean big endorsement contracts. These are reasons enough for a coach to adopt an over-aggressive tactic to beat an opponent or for players to play dirty, even to the extent of deliberately hurting others.[18] Dirty play has always been part of sports, but it does not mean that it should be condoned. It remains, obviously, unsportsmanlike. Resorting to dirty play can lead to serious injuries (remember Tobias' broken jaw or Shinji Ono's derailed career). And of equal importance, it leads to alienation from one of the key characteristics of sports—the purity of honest competition.

It is within this sphere that this Article operates. The proposal and guidelines allow those victimized by dirty play to have civil redress within the Philippine legal system. And, hopefully, it makes coaches and players think twice before they resort to such unsportsmanlike tactics.

II. ALL EYES ON THE PLAYER

This Section proposes that a different standard of care be applied to torts occurring in sports competitions: the duty to refrain from the reckless disregard of the safety rules of a sport.[19] Recognition of such duty has been the recent trend of United States (U.S.) sports torts cases and U.S. courts have allowed recovery based either on intentional torts or from the breach of said duty (gross negligence or recklessness).[20] Currently, Philippine jurisprudence is bereft of the application of torts law principles in the context of sports. This Section addresses this void by adopting the standards learned from the U.S. cases to allow recovery in instances of sports torts. A general overview of this standard and its application in U.S. cases is first discussed, followed by an overview of

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17. Joey Villar, *Barroca Dropped from FEU for Good*, PHIL. STAR (Sept. 20, 2009), http://www.philstar.com/sports/506641/barroca-dropped-feu-good.

18. Sharwin L. Tee, *From the 50 Peso Seats: Open Letter to Commissioner Chito Salud*, FIFTY PESO SEATS (Apr. 19, 2011), http://fiftypesoseats.blogspot.com/2011/04/open-letter-to-commissioner-chito-salud.html.

19. YASSER, *supra* note 5, at 4.

20. GLENN M. WONG, ESSENTIALS OF AMATEUR SPORTS LAW 412 (2d ed. 1994).

torts law in the Philippines that highlights laws and jurisprudence that support the adoption of this standard.

A. A Warning to the Timorous

Traditionally, injuries occurring in sports competitions have been accepted as commonplace.[21] They were considered as a "natural outgrowth of the competitive and physical nature of sports."[22] This point cannot be denied. Some sports actually require a certain amount of violence. American football and rugby would not be the same without the sacks or the scrums, nor would soccer be the world's most popular sport without the occasional slide tackle. And who can deny that violence is needed, even essential, in sports like taekwondo or mixed martial arts? Boxing without the actual punching would be nothing more than two sweaty men skipping and dancing around a square ring for an hour. Not even Manny Pacquiao, known for his knack for music and after-fight concerts, would appreciate such a scene.

As such, in the earlier decades of the last century, cases involving sports injuries were rarely brought to court in the U.S.[23] The legal landscape at that time "did not want to place an unreasonable burden on active participation in sports."[24] This was understandable—participants in sports competitions already "assume[d] to voluntarily embrace any danger that might occur in a sporting activity."[25] If an athlete suffers a dislocated shoulder from a late hit or a busted nose in a tussle for a rebound, the injured player could not (at least successfully) bring his opponent to court. The best he could do was complain to the referee or take the matter into his own hands and retaliate.[26] In fact, in the 1929 case of *Murphy v. Steeplechase Amusement, Co.*, which involved a man who sued an amusement park after he fell off a rollercoaster (which the New York court considered a "sport"), Judge Cardozo, in what could best describe the attitude at that time, quipped: "the timorous may stay at home."[27]

The timorous, however, have not stayed at home. And fortunately for them, the attitude of the court towards the liability of sports participants has changed through the years.[28] Currently, injured players have found redress and success

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21. *Id.* at 411.

22. *Id.*

23. *See* CHAMPION, *supra* note 9, at 110.

24. *Id.*

25. *Id.* at 111.

26. *See* Hackbart v. Cincinnati Bengals, Inc. (*Hackbart II*), 601 F.2d 516, 521 (10th Cir. 1979).

27. CHAMPION, *supra* note 9, at 110 (quoting Murphy v. Steeplechase Amusement Co., 166 N.E. 173 (N.Y. 1929)).

28. *See id.* at 111.

in U.S. courts. Recent U.S. cases have veered from the old attitude and have allowed injured athletes and participants to recover from fellow participants.[29] This recent trend is studied below and serves as the basis in adopting the standard of care and the duty not to be reckless in the Philippine setting.

B. Overcoming the Defense

There is an old saying in sports that the best defense is a strong offense. But when it came to recovery based on sports torts, the best defense was the assumption of risk.[30] In the early twentieth century, participants and players were considered to have assumed the risk of getting injured as it was a normal part of the game, and this defense "would block all attempts [of] recovery."[31]

In the 1926 case of *McLeod Store v. Vinson*,[32] the Court of Appeals of Kentucky had the chance to rule on the liability of a guinea pig race organizer for injuries sustained by a minor, as the latter was chasing down a guinea pig.[33] While, strictly speaking, this is not a case involving a participant-on-participant injury (as the minor sued the organizer), the ruling remains instructive when it comes to the assumption of risk in sports. The court, ruling against the minor, stated that "[a]n ordinary boy of that age is practically as well advised as to the hazards of baseball, basketball, football, foot races, and other games of skill and endurance as is an adult."[34] In other words, the minor was held to have assumed the risks of joining the guinea pig race, and was therefore precluded from recovering any damages.

Three theories have been used in the attempt to overcome this defense and recover from injuries in sports competitions.[35] The first theory is based on negligence.[36] The second is based on intentional tort.[37] The third is based on the reckless disregard of safety rules.[38] Each theory will be discussed in this Section.

i. First Theory: Recovery Through Negligence

29. *See id.*
30. *Id.* at 144.
31. *Id.*
32. 281 S.W. 799 (Ky. 1926).
33. *Id.* at 799.
34. *Id.*
35. YASSER, *supra* note 5, at 3.
36. *Id.*
37. *Id.*
38. *Id.*

U.S. cases have shown that a theory of negligence is simply not enough to overcome the defense of assumption of risk.[39] A prime example is *Kabella v. Bouschelle* wherein two kids were playing an informal game of tackle football.[40] Kabella had the football and Bouschelle attempted to tackle him.[41] As Bouschelle wrapped his arms around Kabella in an attempt to bring him to the ground, the latter shouted, "I'm down."[42] Bouschelle did not heed Kabella's cries and continued the tackle and slammed him into the ground.[43] Kabella dislocated his hip and sued for more than $100,000 in damages under the theory that Bouschelle was negligent in his acts.[44]

The Court of Appeals of New Mexico ruled against Kabella. It said that Kabella's theory of negligence was not enough to overcome the fact that he assumed the risks of injury in playing an informal game of tackle football.[45] Moreover, the appellate court stated that there was no showing of intent or recklessness on the part of Bouschelle.[46]

In *Keller v. Mols*, two minors were playing a game of floor hockey.[47] Keller played goalie and was not wearing any protective equipment.[48] Mols took a shot at the goal, sending the puck whizzing through the air.[49] Unfortunately, the plastic puck did not find the back of the net, but found Keller's face instead.[50] Keller sued, claiming Mols was negligent for shooting the puck in his direction, knowing that he (Keller) did not have any protective equipment.[51] Ruling against Keller, the Appellate Court of Illinois stated that Keller's contention of negligence could not be sustained because of his voluntary participation in a contact sport (where injuries could be reasonably foreseen).[52] Moreover, the court pointed out that Mols' shot was neither "willful [nor] wanton conduct."[53]

While negligence is not enough, plaintiffs have managed to recover by using two theories: first, that the defendant intentionally and deliberately inflicted the injury; and second, that the injury resulted from a reckless disregard

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39. *Id.* at 22.

40. Kabella v. Bouschelle, 672 P.2d 290, 291 (N.M. Ct. App. 1983).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *See id.* at 293.

46. *Id.* at 293–94.

47. Keller v. Mols, 509 N.E.2d 584, 585 (Ill. App. Ct. 1987).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 586.

53. *Id.* at 585.

for safety.[54]

ii. Second Theory: Intentional Torts

One of the earliest sports torts cases is *Griggas v. Clauson*.[55] This case showed that recovery from injuries sustained in sports competitions was possible on the basis of an intentional tort theory. Decided by the Illinois Appellate Court in 1955, the case involved a rather violent incident that occurred during a basketball game.[56] Griggas and Clauson played against each other in an amateur basketball game.[57] While Griggas had his back turned on Clauson, the latter suddenly punched him, causing the former to fall on the floor unconscious.[58] Clauson was not content with the blow and continued to curse the fallen Griggas.[59] Griggas spent the next month in the hospital and subsequently sued Clauson.[60] Unsurprisingly, the court ruled in favor of the injured party, ordering Clauson to pay $2,000 in damages.[61]

In 1957, a Tennessee court once again ruled in favor of the injured party after an intentional tort was committed by an opposing player. In *Averill v. Luttrell*,[62] the parties were from opposing teams in a minor league baseball game in Tennessee.[63] Luttrell was up at bat, while Averill crouched behind him as catcher.[64] After a few pitches almost "nicked" him, Luttrell threw his bat towards the pitcher's mound in anger.[65] Surprisingly, it was Averill, the catcher, who took exception and struck Luttrell on the back of the head.[66] The blow rendered Luttrell unconscious, and he suffered a broken jaw as he hit the ground.[67] The court ruled for Luttrell, saying "the assault made by Averill 'was no[t] part of the ordinary risks expected to be encountered in sportsmanlike play.'"[68]

These two cases show that intentional torts occurring within sports

54. YASSER, *supra* note 5, at 23.
55. 128 N.E.2d 363 (Ill. App. Ct. 1955).
56. *Id.* at 364.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 364, 366.
62. 311 S.W.2d 812 (Tenn. Ct. App. 1957).
63. *Id.* at 812.
64. *Id.* at 813.
65. *Id.* at 814.
66. *Id.*
67. *Id.*
68. *Id.*

competitions will allow recovery by the injured party. These intentional torts are obviously not assumed by the players as ordinary risks of the game, effectively overcoming the defense of assumption of risk. This, of course, makes sense. A basketball player does not step onto the court foreseeing that an opponent might punch him, nor does a batter foresee that an opposing catcher will strike him unconscious. An athlete simply does not assume an unforeseeable risk.

The problem arises when the act that led to the injury is not coupled with intent to harm. Intent is, of course, hard to prove. In *Griggas* and *Averill*, the intent was obvious: the blows happened out of nowhere, unprovoked, and were not even part of the flow of the game. In *Griggas*, the intent was made more obvious when Clauson continued to threaten the unconscious Griggas.[69]

But what if the injury occurs during the run of play? In the Case Study, how do we determine Padernal's true intent? He was, after all, going for the ball in a muddy and slippery field. Will such action manage to overcome the assumption of risk, considering that the intention of the defendant can be easily masked as a reasonable display of aggression or competitive spirit, which are both part of the game?

iii. Third Theory: Reckless Disregard of Safety Rules

Nabozny v. Barnhill introduced the concept of recklessness and safety rules violations in the arena of sports torts in 1975.[70] Nabozny was the goalkeeper of the amateur soccer team that played against Barnhill's team.[71] Twenty minutes into the game, two players (Barnhill and Gallos, who was Nabozny's teammate) chased the ball into Nabozny's area.[72] Gallos won the footrace and passed the ball back to his goalkeeper.[73] Gallos turned around and ran to an open position to receive the ball back from Nabozny.[74] The latter got down on a knee, picked the ball up, and secured it against his chest.[75] Barnhill, however, did not give up on the play and continued to sprint towards Nabozny.[76] To the surprise of most (and eerily similar to the case of Padernal and Tobias), Barnhill unleashed a kick to the left side of Nabozny's head, causing "severe injuries."[77]

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69. *See* Griggas v. Clauson, 128 N.E.2d 363, 364 (Ill. App. Ct. 1955).

70. Nabozny v. Barnhill, 334 N.E.2d 258, 261 (Ill. App. Ct. 1975).

71. *Id.* at 259.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 260.

76. *Id.*

77. *Id.*

Nabozny filed an action to recover damages for the acts of Barnhill.[78] During trial, witnesses testified that Barnhill violated a FIFA rule that "any contact with a goalkeeper in possession in the penalty area is an infraction of the rules, even if such contact is unintentional."[79] On appeal, the Illinois Appellate Court was faced with the issue of "whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant."[80] Ruling for Nabozny, the court stated that while "the law should not place unreasonable burdens on the free and vigorous participation in sports by our youth,"[81] athletic competition should not "exist in a vacuum."[82] It added, "[S]ome of the restraints of civilization must accompany every athlete onto the playing field."[83]

The court also took into account the violation of the safety rules committed by Barnhill. It recognized that while some rules "secure the better playing of the game as a test of skill[,]"[84] others "are primarily designed to protect participants from serious injury."[85] These safety rules charge players "with a legal duty to every other player on the field to refrain from conduct proscribed by a safety rule."[86]

To the argument of Barnhill that he was immune from any liability arising from an injury occurring during a game, the court stated, "a player is liable for injury in a tort action if his conduct is such that it is either deliberate, wi[l]lful or with a reckless disregard for the safety of the other player so as to cause injury to that player."[87]

In deciding the case, the court was also aware that it was departing from the old tradition of leaving the "timorous at home," as it said, "We have carefully drawn the rule announced herein in order to control a new field of personal injury litigation."[88] *Nabozny* highlighted that a showing of a reckless disregard for safety rules on the part of the defendant is another avenue to recover from a sports tort.

The lessons of *Nabozny* were strengthened the following year in *Bourque v.*

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78. *Id.* at 259.

79. *Id.* at 260. (The Fédération Internationale de Football Association, or FIFA, is the international governing body for football.).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 261 (emphasis added).

87. *Id.* (emphasis added).

88. *Id.*

Duplechin.[89] This Louisiana case showed the interplay between the duty to avoid reckless behavior and the defense of assumption of risk. Bourque was a second baseman for his amateur softball team, while Duplechin played for the opposite team.[90] Duplechin had managed to get on first base after hitting a single.[91] He ran for second base after his teammate hit a ground ball.[92] The hit was fielded by Bourque's teammate who threw the ball to Bourque to execute a double-play.[93] Bourque tagged second base and threw the ball to first base.[94] However, Duplechin continued his sprint towards Bourque and clotheslined the latter.[95] At that time, Bourque was standing four or five feet away from second base.[96] The umpire quickly threw Duplechin out of the game for unsportsmanlike conduct.[97]

Bourque sued Duplechin and an insurance firm for damages.[98] The defendants raised the defense of assumption of risk, claiming "that Bourque assumed the risk of injury by participating in the softball game."[99] They also raised the defense of contributory negligence on the part of Bourque.[100]

Ruling for Bourque, the Louisiana Court of Appeals stated that "Bourque assumed the risk of being hit by a bat or a ball[,]"[101] or the risk of "an injury resulting from standing in the base path and being spiked by someone sliding into second base, a common incident of softball and baseball."[102] Borque, however, "did not assume the risk of Duplechin going out of his way to run into him at full speed when Bourque was five feet away from the base."[103] Stating it generally, the court said:

> A participant in a game or sport assumes all of the risks incidental to that particular activity which are obvious and foreseeable. A participant does not assume the risk of injury from fellow players acting in an unexpected or unsportsmanlike

89. 331 So. 2d 40 (La. Ct. App. 1976).
90. *Id.* at 41.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.* at 41–42.
97. *Id.* at 42.
98. *Id.* at 41.
99. *Id.*
100. *Id.*
101. *Id.* at 42.
102. *Id.*
103. *Id.*

way with a reckless lack of concern for others participating.[104]

As to the duty breached by Duplechin, the court said that he was "under a duty to play softball in the ordinary fashion without unsportsmanlike conduct or wanton injury to his fellow players."[105]

The application of these lessons is not limited to the amateur sports scene. In *Hackbart v. Cincinnati Bengals, Inc.*,[106] the court had a chance to apply these lessons to professional sports. Hackbart was a football player for the Denver Broncos in the National Football League (NFL), while Clark played for the Cincinnati Bengals.[107] Hackbart played the position of safety.[108] Clark played fullback.[109] At the time of the incident, the Bengals were in possession of the ball and they attempted to pass the ball towards the end zone for a touchdown.[110] However, a Broncos player intercepted the ball and ended whatever hopes the Bengals had in scoring a touchdown.[111] At this point, Hackbart fell to the ground, while Clark stood behind him; both watched the play continue up field.[112] In frustration, "but without a specific intent to injure,"[113] Clark struck Hackbart on the back of his head.[114] The blow remained unnoticed by players, coaches, and referees alike and the game continued on.[115]

Later that day, Hackbart started to feel pain and soreness on the back of his head but he still did not seek medical assistance.[116] He continued to play for the Broncos for two more weeks until he was dropped from the lineup.[117] Only then did Hackbart go to a doctor and discover that he suffered a neck injury.[118]

Hackbart filed a case against Clark and the Bengals for damages, claiming that "Clark's foul was so far outside of the rules of play and accepted practices of professional football that it should be characterized as reckless misconduct."[119] The judge ruled for Clark, stating that the "level of violence

104. *Id.* (emphasis added).
105. *Id.*
106. 435 F. Supp. 352 (D. Colo. 1977).
107. *Id.* at 353.
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *See id.*
116. *Id.*
117. *Id.* at 354–55.
118. *Id.* at 354.
119. *Id.* at 355.

and the frequency of emotional outbursts in NFL football games are such that Dale Hackbart must have recognized and accepted the risk that he would be injured by such an act as that committed by the defendant Clark."[120] The judge further stated that Hackbart "assumed the risk of such an occurrence"[121] and that "even if [Clark] breached a duty which he owed to [Hackbart], there can be no recovery because of assumption of the risk."[122]

The judgment was reversed on appeal.[123] The circuit judge held that "there are no principles of law which allow a court to rule out certain tortious conduct by reason of general roughness of the game or difficulty of administering it."[124] Moreover, the appellate court considered that the NFL Rules prohibited players from striking other players on certain areas of the body, like the neck or the head.[125] Since Clark's strike violated such safety rules, he was liable.[126]

The appellate court also discussed the difference between intentional acts and reckless acts. The former consisted of assault or battery, which both call for an intent to cause a particular harm.[127] On the other hand, "[t]o be reckless[,] the [a]ct must have been intended by the actor,"[128] but without the intent "to cause the harm which results from it."[129] While both intentional and reckless acts could be a basis for a tort action, the appellate court emphasized, "[T]hese two liability concepts are not necessarily opposed one to the other."[130] Hence, the plaintiff can choose between the two depending on the factual circumstances.

In Hackbart v. Cincinnati Bengals, Inc. (*Hackbart II*), the appellate court considered Clark's blow an act of recklessness.[131] The court noted, "Clark admittedly acted impulsively and in the heat of anger, and even though it could be said from the admitted facts that he intended the act, it could also be said that he did not intend to inflict serious injury which resulted from the blow which he struck."[132]

The lesson learned in *Hackbart II* is the delineation between intentional acts and reckless acts. This gives the plaintiff a choice on the theory to pursue. Both

120. *Id.* at 356.
121. *Id.*
122. *Id.*
123. Hackbart v. Cincinnati Bengals, Inc. (*Hackbart II*), 601 F.2d 516, 527 (10th Cir. 1979).
124. *Id.* at 520.
125. *Id.* at 521.
126. *Id.*
127. *Id.* at 525.
128. *Id.* at 534.
129. *Id.*
130. *Id.*
131. *Id.* at 525.
132. *Id.* at 524.

theories have been shown to overcome the defense of assumption of risk.

While *Hackbart II* stated the difference between intentional acts and reckless acts, it did not distinguish negligent acts from reckless acts. The delineation is essential as only a theory based on recklessness will enable the plaintiff to overcome the assumption of risk defense. Raymond Yasser defines recklessness as "conduct which creates a higher degree of risk than that created by simple negligence."[133] Hence, the difference between recklessness and negligence is that the former "creates a higher degree of risk" than the latter.[134]

Recovery through theories based on intentional tort or reckless disregard of safety rules was reaffirmed in the 1990 Nebraska case of *Dotzler v. Tuttle*.[135] Dotzler and Tuttle were playing a pick-up basketball game at an Omaha YMCA.[136] The two collided near the free-throw line and the collision sent Dotzler "flying backward [nineteen] or [twenty] feet."[137] Dotzler fell and fractured both his wrists.[138] The Nebraska Supreme Court remanded the case for a new trial, but not before summarizing the rules on participant liability:

> Adopting the rationale of the majority rule, we hold that a participant in a game involving a contact sport such as basketball is liable for injuries in a tort action only if his or her conduct is such that it is either willful[ly] [intentional] or with a reckless disregard for the safety of the other player, but is not liable for ordinary negligence.[139]

Using either theory is not a guarantee that recovery can be made. Each case must still be decided according to its particular circumstances. For example, in *Barrett v. Phillips*,[140] the plaintiff Barrett sued a high school and an athletic association after his son was killed during a high school football game.[141] Barrett's theory revolved around the defendants' alleged violation of a rule prohibiting players over nineteen from playing (Barrett's son died in a collision with a twenty-year-old).[142] The court ruled that this was not a safety rule (like that in *Nabozny*) and that there was no "causal relation between the violation

133. YASSER, *supra* note 5, at 4.

134. *Id.*

135. Dotzler v. Tuttle, 449 N.W.2d 774 (Neb. 1990).

136. *Id.* at 776.

137. *Id.*

138. *Id.*

139. *Id.* at 779 (emphasis added).

140. 223 S.E.2d 918 (N.C. Ct. App. 1976).

141. *Id.*

142. *Id.* at 919.

and the injury res[ult]ing in the boy's death."[143] Analysis of this case would reveal that Barrett failed in two aspects: first, the violated rule was not a safety rule, hence *Nabozny* would not apply; and second, the violation of the rule was not the proximate cause of the death.

Another example is *Gauvin v. Clark*.[144] Gauvin and Clark played opposite each other in a collegiate hockey league.[145] After a face-off wherein the two tussled for the puck, Gauvin felt a blow in his abdomen area.[146] The blow came from Clark who hit Gauvin with the "butt-end" of his hockey stick.[147] Gauvin was severely injured by the blow—he underwent surgery to remove his spleen and was forced to miss school.[148]

The court found that "[t]he safety rules which govern the game of hockey prohibit 'butt-ending,'"[149] and that there was indeed a violation of this safety rule.[150] Despite this, the Supreme Court of Massachusetts still ruled against Gauvin. The Court claimed that it was not enough that a safety rule was violated: the violation must be "predicated on reckless disregard of safety."[151]

The cases show that for a theory based on reckless misconduct to prosper in a case wherein the plaintiff is injured, it is imperative that two requisites occur: first, a violation of a safety rule (as in *Nabozny*); and second, the violation must have been through a reckless act (as stated in *Clark* and defined by Yasser), and not through a merely negligent one.

The trend of the cases also shows that "as a matter of policy, it is appropriate to adopt a standard of care imposing . . . a legal duty to refrain from reckless or intentional conduct."[152] The breach of this duty gives rise to a tort action. In summarizing the effect of these decisions, Yasser stated it best: "It does appear . . . that sports activity is one area of human behavior where the participants are indeed insulated from liability for ordinary negligence. Perhaps this is one thing that makes sports a special and unique form of human experience—participants are free to be unreasonable (but not reckless)."[153]

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143. *Id.* at 920.

144. 537 N.E.2d 94 (Mass. 1989).

145. *Id.* at 95.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 96.

151. *Id.* at 97.

152. Jaworski v. Kiernan, 696 A.2d 332, 339 (Conn. 1997).

153. YASSER, *supra* note 5, at 28.

C. Applying the Three American Theories in the Philippine Setting

The three theories—negligence, intentional tort, and reckless disregard of safety rules—have been used in the U.S. in approaching sports participant liability cases. While actions based on the first theory have failed to overcome the defense of assumption of risk, the second and third have proven successful in recovering damages for the injured participant.

Which of these theories are already sufficiently covered by present Philippine laws and jurisprudence? What tort principles recognized and used by the Supreme Court allow or contradict the adoption of these theories, namely the third theory?

This Section shows that existing Philippines laws and jurisprudence readily cover the first and second theories, while it has yet to adopt the third theory. Allowing such theory to prosper in the local legal system is predicated upon the adoption of lessons learned from *Nabozny*—namely, a legal duty must exist to refrain from reckless acts which disregard safety rules. As such, this Section provides a survey of supporting laws and jurisprudence that will allow the adoption of this legal duty.

i. Philippine Torts

Torts are "wrong[s] independent of a contract, which arise[] from an act or omission of a person which causes some injury or damage directly or indirectly to another person."[154] The governing provision for torts is found in Article 2176 of the Civil Code.[155] The provision teaches that a tort occurs whenever one damages or injures another by an act or omission, through fault or negligence.

ii. Negligence in the Philippines: Synthesis with the First Theory

Torts cover negligent acts.[156] Negligence is the "failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand."[157] *Picart v. Smith* provided the test of negligence:[158]

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154. ERNESTO L. PINEDA, TORTS AND DAMAGES (ANNOTATED) 2 (2009 ed. 2009).

155. CIVIL CODE, § 2176, Rep. Act 386 (Phil.). "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)." *Id.*

156. *See id.*

157. United States v. Barias, G.R. No. 7567 (S.C., Nov. 12, 1912) (Phil.).

158. Picart v. Smith, G.R. No. L-12219 (S.C., Mar. 15, 1918) (Phil.).

> Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing conduct or guarding against its consequences.[159]

As can be gathered from the definition, negligence depends on foreseeability: hence, if the risk is unforeseeable, then one cannot be considered negligent. Also, negligence is a relative term and the existence thereof is judged by the surrounding circumstances.[160] Hence, the act of one in a certain situation may be called negligent, while the same act in another situation may not be called such. For example, a man who throws stones over a fence into a schoolyard may be negligent if he hits one of the students because it is foreseeable that kids are in the schoolyard. However, a man who throws stones over a fence into a deserted lot on the other side may not be negligent if he hits a person because it is not foreseeable that a person will be in the deserted lot.

A claim of negligence can be trumped by the defense of the assumption of risk. Hence, like in the U.S., a theory based on negligence will most likely fail in Philippine courts.[161] Philippine jurisprudence has recognized assumption of risk as a viable defense in personal injury cases.[162]

Assumption of risk is a "voluntary assumption of a risk of harm arising from the negligent conduct of the defendant. It presupposes an intentional exposure to a known peril."[163] This defense was used in the 1949 case of *Alfiada v. Hisole*,[164] wherein a caretaker of carabaos was gored to death.[165] The Court ruled against the recovery of the plaintiff and stated "being injured by the animal under those circumstances, was one of the risks of the occupation which he had voluntarily assumed and for which he must take the consequences."[166]

With sports generally played under the same rules and with the same competitive and vigorous spirit in the U.S. as it is in the Philippines, a valid defense based on assumption of risk likewise applies. The defendant can argue that the injured player assumed the risk of an injury by participating in a sports competition. After all, injuries are foreseeable risks in sports.[167] For professional sports, injuries can be seen as "one of the risks of the occupation

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159. *Id.*

160. PINEDA, *supra* note 154, at 8.

161. Champion defines negligence the same way jurisprudence defines it: actions falling beyond the reasonable man standard. CHAMPION, *supra* note 9, at 110.

162. *See* Afialda v. Hisole, G.R. No. L-2075 (S.C., Nov. 29, 1949) (Phil.).

163. PINEDA, *supra* note 154, at 74.

164. *Afialda*, G.R. No. L-2075.

165. *Id.*

166. *Id.*

167. WONG, *supra* note 20, at 411.

which [a player has] voluntarily assumed."[168] In the Case Study, Padernal can validly argue that Tobias assumed the risk of an injury while playing football, considering the wet and muddy conditions that morning. Hence, adopting the negligence theory in the Philippines leads to the same outcome as in the U.S.: no recovery. Because of the particular nature of sports competitions, assumption of risk will trump an action based on negligence.

iii. Intentional Torts in the Philippines: Synthesis with the Second Theory

Originally, the Philippine Civil Code Commission did not want to use the term "tort" to avoid the broad coverage which the term implied in common law countries.[169] However, Philippine jurisprudence has freely interchanged the two terms. The current state of jurisprudence includes intentional acts within the application of Article 2176.[170] In *Naguiat v. National Labor Relations Commission*, the Supreme Court stated, "Essentially, 'tort' consists in the violation of a right given or the omission of a duty imposed by law. Simply stated, tort is a breach of a legal duty."[171] It did not make a distinction between fault or negligence—an act was a tort as long as a legal duty was breached. Hence, intentional torts are covered by Article 2176.

Moreover, the wording of Article 2176 makes it clear that intentional acts are included in the scope of torts—the damage caused to another may have occurred either through "fault or negligence."[172] The former implies damage was intended. Fault has also been defined to be the "execution of a positive act but the act was done contrary to the normal way of doing it and ultimately causing damage or injury to another."[173] For example, throwing a stone at a little boy with the intention of hitting him is a tort based on fault.

Torts also covers acts that are already covered under the Philippine Revised Penal Code. Hence, those injured by such acts can recover from those liable because "[r]esponsibility for fault or negligence under [Article 2176] is entirely separate and distinct from the civil liability arising from negligence under the Penal Code."[174] This allows the injured party to file a separate civil

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168. *Afialda*, G.R. No. L-2075.

169. PINEDA, *supra* note 154, at 3–4 (citing REPORT OF THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, 161–62).

170. *See id.* at 5.

171. Naguiat v. Nat'l Labor Relations Comm'n, G.R. No. 116123 (S.C., Mar. 13, 1997) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/1997/mar1997/116123.htm.

172. CIVIL CODE, § 2176, Rep. Act 386 (Phil.).

173. PINEDA, *supra* note 154, at 7–8 (emphasis omitted).

174. CIVIL CODE, § 2177.

action to recover damages, but he "cannot recover damages twice for the same act or omission of the defendant."[175] This puts to rest any doubt that the current state of torts law in the Philippines includes intentional acts, as acts under the Revised Penal Code are essentially and generally done with intent.

Hence, Philippine laws and jurisprudence already cover the second theory. A sports participant can recover from an injury sustained in a sports competition if he manages to prove that the defendant intentionally inflicted his injury. For example, if the *Griggas* case were to happen in a Philippine collegiate basketball game, the injured player can sue on the basis of intentional tort. The plaintiff can also sue on the basis of *Naguiat*.

The problem with using this approach is the difficulty of proving intent. Note that the factual circumstances of *Griggas* and *Averill* clearly show that an intent to harm was present—the attacks were unprovoked, and were either done in a menacing manner (*Griggas*) or after the play was supposed to be over (*Averill*). But what if the factual circumstances were not as clear-cut as these two cases? In the Case Study, it is not readily apparent that Padernal's tackle was coupled with intent to harm. Therein lies the need to adopt the U.S. standard of care in the Philippines.

iv. Reckless Disregard of Safety Rules: Supporting Philippine Laws and Jurisprudence

The present Philippine legal landscape is similar to the American legal landscape pre-*Nabozny*. The Supreme Court has yet to encounter any case that involves sports torts, specifically, participant or player liability.[176] There is a present dearth in our local jurisprudence in determining the standard of care and the duty corresponding to it when it comes to participant or player liability. This works as an injustice to injured parties who do not have any recourse against unsportsmanlike and reckless plays, leaving them with the options of complaining to the referees,[177] retaliating[178] or following Justice Cardozo's advice to the timorous to simply "stay at home."[179] Either way, the

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175. *Id.*

176. The closest the Supreme Court has come to deciding a sports torts issue in the Philippines was *Philippine Soap Box Derby, Inc. v. Court of Appeals*, G.R. No. 108115 (S.C., Oct. 27, 1995) (Phil.). However, that case involved a suit for damages based on alleged wrongful acts of match officials, and not acts or injuries of the participants themselves. In terms of deaths in the sports context, the Supreme Court has already decided on such an event in *De la Cruz v. Capital Insurance & Surety Co.*, G.R. No. L-21574 (S.C., June 30, 1966) (Phil.), but the decision dealt of an insurance issue, rather than torts.

177. Which rarely works as any athlete will attest to.

178. *See* Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516, 521 (10th Cir. 1979).

179. CHAMPION, *supra* note 9, at 110 (quoting Murphy v. Steeplechase Amusement Co., 166 N.E. 173 (N.Y. 1929)). (Note: The injured player also has the option of complaining to the referee or the sports governing body, just like what Tobias did when he requested the Philippine Football Federation

constitutional policy of prioritizing sports "to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development"[180] is thrown out the window.

Thus, there is a need for a Philippine standard that serves as a middle ground between the theories of negligence and intentional torts and allow participants to recover from injuries sustained during sports competitions. Adopting the legal duty to refrain from a reckless disregard of safety rules in sports competitions addresses this need. This should be the standard in future sports torts cases involving participant injuries and liability. Philippine laws and jurisprudence support the adoption of this duty.

First, both the U.S. and the Philippines observe the same basic torts principles. In both jurisdictions, there must be a legal duty, a breach of that duty, and a causal connection between the breach and the injury to maintain actions based on torts.[181] In *Spouses Custodio v. Court of Appeals*,[182] the Court emphasized this, stating:

> in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff—a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.[183]

This duty consists of maintaining the standard of care, which the circumstances justly demand.[184] For example, an electric company was held to have a duty to maintain "a very high degree of care" in the operation of its

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for the ban on Padernal. This option, however, is not viable for the player who wants to recover damages. The sports governing body can reprimand, suspend, or fine the player for such actions, but this will only cover professional and organized leagues. It will not cover instances such as informal or pick-up games. Moreover, fining a player for causing injury to another does not guarantee that the money from the fine will go to the injured player. The money collected from the fines are usually placed in the budget of the organizer for the current or upcoming season.).

180. CONST. (1987), art. II, § 17 (Phil.).

181. CHAMPION, *supra* note 9, at 111–16.

182. G.R. No. 116100 (S.C., Feb. 9, 1996) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/1996/feb1996/116100.htm.

183. *Id*. (emphasis added).

184. United States v. Barias, G.R. No. 7567 (S.C., Nov. 12, 1912) (Phil.).

business because of the dangers it had on the lives of the public.[185] A common carrier, on the other hand, has the duty "to carry passengers safely . . . using the utmost diligence of very cautious persons, with a due regard for all the circumstances."[186] For banks, the degree of diligence required is "more than that of a good father of a family[,]"[187] considering that it is imbued with public interest.[188] Absent any standard imposed by law or contract, the degree of diligence required will be that "of a good father of a family."[189] Hence, given that both jurisdictions follow the basic torts principles, there is no obstacle in adopting a legal duty, which applies specifically to a certain context (sports competitions).

Second, both the U.S. courts and the Philippine Supreme Court recognize the importance of considering the connection between rules and the injuries or situations that they seek to prevent. The Philippine Supreme Court has already paved the way for the application of the legal duty to abide by safety rules in a 1973 decision. In *Teague v. Fernandez*,[190] the Supreme Court held Teague liable for violating a safety ordinance (maintaining two staircases in a building) that caused overcrowding and subsequent injuries to some students.[191] While the Court recognized that the violation of the safety ordinance was not the proximate cause of the accident *per se*, the Court still held Teague liable because "the accident . . . was the very thing which the statute or ordinance [would have] [p]revent[ed]."[192] The same logic was used in *Barrett*, albeit leading to a different result. There, the U.S. court denied recovery to the plaintiff because the accident (death of a high school student) was *not* the very thing that the rule (prohibiting older players from joining) would have prevented.[193] The injury must be one that the rule would have prevented.

Third, the Philippine Supreme Court has also recognized the need for the causal connection between the injury and the violation of the safety rule. In *Sanitary Steam Laundry, Inc. v. Court of Appeals*,[194] the Court stated that one "must show that the violation of the statute was the proximate or legal cause of

185. Carlos v. Manila Elec. R.R. & Light Co., G.R. No. L-10838 (S.C., Mar. 1, 1916) (Phil.).

186. CIVIL CODE, § 1755, Rep. Act 386 (Phil.).

187. Canlas v. Court of Appeals, G.R. No. 112160, (S.C., Feb. 28, 2000) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/2000/feb2000/112160.htm.

188. *Id.*

189. CIVIL CODE, § 1163.

190. G.R. No. L-29745 (S.C., June 4, 1973) (Phil.).

191. *Id.*

192. *Id.* (citing 38 AM. JUR. *Negligence* § 168 (1941)).

193. Barrett v. Phillips, 223 S.E.2d 918, 919–20 (N.C. Ct. App. 1976).

194. G.R. No. 119092 (S.C., Dec. 10, 1998) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/1998/dec1998/119092.htm.

the injury or that it substantially contributed thereto."[195] It also stated that a violation of a law is "without legal consequence unless it is a contributing cause of the injury."[196] This stands on equal footing as *Barrett* wherein the U.S. court stated that there must also be a causal connection between the violation of the rule and the injury.[197]

Teague or *Sanitary Steam Laundry, Inc.* does not indicate the degree of violation needed to make such violation a breach of a legal duty. The two Philippine cases seem to indicate that *any* violation (whether negligent or reckless) will give rise to liability as long as "the accident . . . was the very thing which the statute or ordinance was intended to prevent."[198] It must, however, be remembered that in sports, only a reckless violation of a safety rule will lead to liability. This stems from the natural risks associated with sports and its recognition under the law.[199]

Fourth, the U.S. and the Philippines share the same concept of recklessness. In the U.S., for an act to be reckless, "the act must have been intended by the actor,"[200] but without the intent to cause the harm which results from it.[201] Yasser defines it as "conduct which creates a higher degree of risk than that created by simple negligence."[202] In the Philippines, recklessness

> consists in voluntary, but without malice, doing or fa[i]lling to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing o[r] failing to perform such act, taking into consideration . . . [the] circumstances regarding persons, time and place.[203]

Hence, in adopting the legal duty to refrain from reckless disregard of safety rules, the Philippine courts need not look far for an adequate definition of recklessness.

The foundations for adopting this proposed legal duty are already present in Philippine laws and jurisprudence. Analysis reveals that the basic concepts of the proposed legal duty are already present in the Philippine legal system, albeit

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195. *Id.*

196. *Id.*

197. *Barrett*, 223 S.E.2d at 920.

198. Teague v. Fernandez, G.R. No. L-29745 (S.C., June 4, 1973) (Phil.) (citing 38 AM. JUR. *Negligence* § 168 (1941)).

199. CHAMPION, *supra* note 9, at 144.

200. Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516, 524 (10th Cir. 1979).

201. *Id.*

202. YASSER, *supra* note 5, at 4.

203. REVISED PENAL CODE, Act No. 3815 art. 365, as amended (Phil.) (emphasis added).

scattered through different laws and doctrines. All that is needed to adopt such legal duty in sports is to simply synthesize these different concepts into an overarching doctrine—and this is exactly what I have done in this Subsection. Thus, there is no legal obstacle in adopting this duty to refrain from reckless disregard of safety rules in sports competitions; and, in the words of Ultimate Fighting Championship ring announcer Bruce Buffer, "it's time" to enrich the Philippine legal system with it.

III. BUT WATCH THE COACH, TOO

Now that standards have been placed to make a player liable, I propose that Article 2180 of the Civil Code be amended to make coaches vicariously liable for the tortious acts of their players. In this Section, I show that coaches stand on the same footing as those persons enumerated under Article 2180 and thus should be held liable for the acts of their players. An overview of vicarious liability is first discussed—its concept, the rationale behind it, and the defenses available to the vicarious obligor. A discussion on the relationship between coaches and players follows. Finally, I conclude with arguments on why coaches should be held vicariously liable.

A. Vicarious Liability, Concept

The principle of vicarious liability states, "one is not only liable for his own quasi-delictual acts but also for those persons for whom he is responsible under the law."[204] It is also called "imputed liability."[205] Article 2180 of the Civil Code enumerates those who may be held vicariously liable:

> The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of

204. PINEDA, *supra* note 154, at 81.

205. *Id.*

> their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.
>
> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.[206]

The enumeration is exclusive.[207] According to Philippine Civil Law expert Arturo Tolentino, the article must be "construed restrictively"[208] because it is an "extraordinary responsibility created by way of exception to the rule that no person can be liable for the acts or omissions of another."[209] Thus, the enumeration cannot be extended to persons not covered by the article.[210] For example, in *Philippine Rabbit Lines, Inc. v. Philippine American Forwarders*,[211] the Court construed the article restrictively and held that "owners and managers of an establishment or enterprise . . . do not include the manager of a corporation [because it] may be gathered from the context of Article 2180 that the term 'manager' ('director' in the Spanish version) is used in the sense of 'employer.'"[212]

The liability of the vicarious obligor is primary and direct, not subsidiary.[213] The vicarious obligor is "solidarily [sic] liable with the tortfeasor."[214] The liability is "not conditioned upon the insolvency of or prior recourse against the negligent tortfeasor."[215] Hence, the plaintiff can immediately sue the vicarious obligor if he so chooses.

While those responsible for them may be held liable, the actual tortfeasors are "not exempted by the law from personal responsibility."[216] Pineda states

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206. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

207. ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 612 (reprt. 2002).

208. *Id.*

209. *Id.*

210. *Id.*

211. G.R. No. L-25142 (S.C., Mar. 25, 1975) (Phil.).

212. *Id.*

213. PINEDA, *supra* note 154, at 84.

214. *Id.*

215. *Id.* (citing de Leon Brokerage v. Court of Appeals, G.R. No. L-15247, 4 S.C.R.A. 517 (S.C., Feb. 28, 1962) (Phil.)).

216. PINEDA, *supra* note 154, at 83.

that "[t]hey may be sued and made liable alone"[217] when the vicarious obligor proves due diligence on his part.[218]

B. Groundwork of Vicarious Liability

Tolentino explains that the basis of liability "arises by virtue of a presumption *juris tantum* of negligence on the part of the persons made responsible under the [A]rticle."[219] It is "derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage."[220] Tolentino, quoting Giampietro Chironi, gives two requisites for vicarious liability to apply: first, there must be the duty of supervision present;[221] and second, there must be the "possibility of making such supervision effective."[222]

Pineda adds that the basis of such liability is "not *respondeat superior*, which under American jurisprudence means that the negligence of the servant is conclusively the negligence of the master. Rather, the basis of Article 2180 is the principle of *pater familias*. The reason for the master's liability is negligence in the supervision of his own subordinates."[223]

Parents are held liable based on the "presumption of failure on their part to properly exercise their parental authority for the good education of their children and exert adequate vigilance over them."[224] The same principle makes guardians liable for the acts of their wards.[225] Teachers and school heads are held liable because "they stand *in loco parentis* and are called upon to 'exercise reasonable supervision over the conduct of the child.'"[226] Employers are liable for the acts of their employees because they have both the duty to supervise them and the power to make the supervision effective.

C. Defenses of the Vicarious Obligor

The vicarious obligor is not without any defenses. The last paragraph of

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217. *Id.*

218. *Id.*

219. TOLENTINO, *supra* note 207, at 611.

220. *Id.*

221. *Id.* at 612.

222. *Id.*

223. PINEDA, *supra* note 154, at 82–83 (citing Bahia v. Litonjua, G.R. No. 9743 (S.C., Mar. 3, 2015) (Phil.).

224. TOLENTINO, *supra* note 207, at 612.

225. *Id.* at 614.

226. PINEDA, *supra* note 154, at 114 (quoting Palisoc v. Brillantes, G.R. No. L-29025 (S.C., Oct. 4, 1971) (Phil.)).

Article 2180 provides, "[t]he responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."[227] In *Bahia v. Litonjua*, the Court emphasized this: "the presumption [of negligence] is *juris tantum* and not *juris et de jure*, and consequently, may be rebutted."[228] Hence, the vicarious obligor is relieved from liability if he proves that he was not negligent in the supervision of those under his responsibility.[229]

Take for example *Cuadra v. Monfort* wherein minor Monfort accidentally hit Cuadra in the eye with a headband while they were playing in school.[230] In ruling against the vicarious liability of Monfort's parents, the Court said:

> there is nothing from which it may be inferred that the defendant could have prevented the damage by the observance of due care, or that he was in any way remiss in the exercise of his parental authority in failing to foresee such damage, or the act which caused it.[231]

In the case of employees, the employer must show that he observed "due diligence in the selection and supervision of [his] employees."[232]

D. Imposing Vicarious Liability on the Coach

i. Void in the Current State of Philippine Law

The current state of Philippine law does not make coaches liable for the acts of their players. While arguments may be raised that coaches are already covered under the enumeration in Article 2180 (namely, as employers/managers or as teachers), analysis reveals that the present law does not cover the whole gamut of situations of coaches and players.

First, coaches cannot be considered as "owners and managers of an establishment or enterprise"[233] or "[e]mployers … not engaged in any business or industry."[234] A coach cannot be considered an employer of his players. No

227. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

228. G.R. No. L-9734 (S.C., Mar. 31, 1915) (Phil.).

229. PINEDA, *supra* note 154, at 117 (citing Radio Commc'ns of the Philippines, Inc. v. Verchez, G.R. No. 164349, 520 S.C.R.A. 384 (S.C., Jan. 31, 2006) (Phil.); Victory Liner, Inc. v. Heirs of Andres Malecdam, G.R. No. 154278, 394 S.C.R.A. 520 (S.C., Dec. 27, 2002) (Phil.)).

230. Cuadra v. Monfort, G.R. No. L-24101 (S.C., Sept. 30, 1970) (Phil.).

231. *Id.*

232. Metro Manila Transit Corp. v. Court of Appeals, G.R. No. 104408 (S.C., June 21, 1993) (Phil.).

233. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

234. *Id.*

employer-employee relationship exists between them. For an employer-employee relationship to be present, the following must exist: "(1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control."[235] While the first and third requisites are present in a coach-player relationship, the second and fourth requisites are lacking. The coach does not pay the wages of the player. Moreover, it is debatable whether the coach controls the "manner and means [employed by the player] to be used in reaching that end."[236]

Barring any situation wherein the coach himself is the owner of the team, the coach is but an employee of the team (if professional) or the school (if amateur). Even if the term "manager" is used to describe the position of a coach (as is the case in England), coaches are still not covered under Article 2180 because of *Philippine Rabbit Lines Inc.*, which stated that the "term 'manager' . . . is used in the sense of 'employer.'"[237] Hence, a coach cannot be held vicariously liable as an owner, a manager, or an employer.

In the amateur sports scene like the UAAP or the NCAA, it is tempting to argue that coaches can be held liable as "teacher or heads of establishments of arts and trades"[238] because of their connection to the school. However, this is not the case. The Supreme Court interpreted the provision to restrict "teacher" to mean "teachers-in-charge."[239] Coaches in academic schools are not teachers. And even if they were considered teachers, they are still not liable because coaches are rarely "teachers-in-charge"[240] or those "designated by the dean, principal, and other administrative superior to exercise supervision over the pupils in the specific classes or sections to which they are assigned."[241]

Coaches cannot be designated as "heads of establishments of arts and trades"[242] for the simple reason that sports teams are not "establishments of arts and trades."[243] Even assuming that the a coach was a head of an establishment engaged in teaching the finer aspects of a sport (like the Ateneo Football Center), he is still not covered by the provision because a school engaged in

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235. Almirez v. Infinite Loop Tech. Corp., G.R. No. 162401 (S.C., Jan. 31, 2006) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/2006/jan2006/G.R.%20No.%20%20162401.htm.

236. *Id.*

237. Phil. Rabbit Bus Lines, Inc. v. Phil. Am. Forwarders, Inc., G.R. No. L-25142 (S.C., Mar. 25, 1975) (Phil.).

238. CIVIL CODE, § 2180.

239. PINEDA, *supra* note 154, at 111.

240. *Id.* at 113 (citing Amadora v. Court of Appeals, G.R. No. L-44745 (S.C., Apr. 15, 1988) (Phil.).

241. PINEDA, supra note 154, at 113 (citing Amadora v. Court of Appeals, G.R. No. L-44745 (S.C., Apr. 15, 1988) (Phil.).

242. CIVIL CODE, § 2180.

243. *Id.*

teaching sports is not an "establishment[] of arts and trades."[244] It is not "technical or vocational in nature."[245] Moreover, this paragraph does not cover coaches of professional sports teams, like the PBA, because these teams are neither "schools" nor "establishments of arts and trades."[246] It also does not cover amateur sports teams which are not school-based (like barangay basketball leagues) because the players are not "pupils and students or apprentices."[247]

Arguments classifying coaches under other persons in Article 2180 are easily dispensed with. Coaches are neither the parents nor the guardians of their players.[248] They are obviously not the State nor are the players considered "special agents."[249] Hence, it is evident that the current state of the law on vicarious liability does not cover the liability of coaches over the acts of their players. This is an unfortunate oversight because the rationale behind imposing vicarious liability on those enumerated in Article 2180 equally applies to coaches as well.

ii. Same Responsibility, Same Duty of Supervision, Different Treatment

Vicarious liability is imposed because of responsibility. The law imposes liability on the one responsible for the presumptive neglect in his supervision over his child, ward, employee, student, or secret agent.[250] For those who have not experienced first-hand the relationship between a coach and a player, this responsibility is easily discounted. The responsibility of a coach is not simply limited to "one who instructs players in the fundamentals of a [competitive] sport and directs team strategy."[251]

The relationship between coaches and players are likewise founded on responsibility and supervision. Contrary to the dictionary definition, a coach does more than just instruct and "direct team strategy." Like those enumerated in Article 2180, they also "exercise reasonable supervision"[252] over their

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244. *Id.*

245. PINEDA, *supra* note 154, at 111 (citing Amadora v. Court of Appeals, G.R. No. L-47745 (S.C., Apr. 15, 1988) (Phil.).

246. CIVIL CODE, § 2180.

247. *Id.*

248. *See id.* (Save for the situations wherein the coach is the *parent* of one of his players, but in these cases, he will only be liable for the acts of his child, and not of his other players.).

249. *Id.*

250. TOLENTINO, *supra* note 207, at 611.

251. *Coach*, MERRIAM-WEBSTER DICTIONARY, http://www.merriam-webster.com/dictionary /coach (last visited Dec. 15, 2016)

252. PINEDA, *supra* note 154, at 114 (citing Palisoc v. Brillantes, G.R. No. L-29025 (S.C., Oct. 4, 1971) (Phil.)).

players.

A coach therefore should be held vicariously liable for three reasons. First, they exercise a duty of supervision and have the power to make this supervision effective over their players. Second, they are familiar with the personalities and traits of their players. Third, the nature of a coach itself makes the coach responsible.

Applying Chironi's two requisites, a coach should be held vicariously liable because a coach has the duty to supervise and the power to make this supervision effective over his players.

Duty to Supervise

The main role of the coach is to bring the best out of his player. He does this by supervising his players. In an article on improving the quality of coaching, Mike Voight points out the four responsibilities of a coach.[253]

The first is creating an atmosphere that fosters "quality attitude."[254] Coaches are given the responsibility of shaping the mental attitude and focus of their players.[255] They are "aware of their specific coaching philosophy and behaviors, as well as the effects these attitudes and behaviors have on their athletes."[256] To achieve this, coaches must supervise and improve training sessions by incorporating lessons on mental toughness to different drills.[257] The duty also includes creating barriers between a player's sports life and his non-sports life to further enhance a player's focus.[258]

The second responsibility is creating an atmosphere that fosters "quality preparation."[259] This involves improving the performance of players during training and practice sessions.[260] Coaches must supervise training sessions more closely by stating the objectives and directions of each exercise in a clear and explicit manner.[261] It also involves a sense of introspectiveness for the coaches who must "[critique] one's structuring of practice sessions."[262]

The third responsibility is creating an atmosphere that fosters "quality

253. Mike Voight, *Improving the Quality of Training Coach and Player Responsibilities*, 73 J. PHYSICAL EDUC., RECREATION & DANCE 43, 43–44 (2002).

254. *Id.* at 44.

255. *Id.*

256. *Id.*

257. *See id.*

258. *Id.*

259. *Id.*

260. *See id.*

261. *Id.*

262. *Id.*

execution."[263] This responsibility revolves around creating match-like situations for the players to go through, react, and learn from.[264] It also involves a coach's keen eye for players' mistakes and use of "teachable moments."[265] Creating match-like situations and improving how a player reacts to these situations requires close supervision and adequate feedback to the players.[266] A coach must do all this while appealing "to each athlete's most salient learning style by using different teaching modalities."[267] This entails a working knowledge of each player's character, disposition, and potential.

The fourth responsibility is creating an atmosphere that fosters "quality control."[268] This involves constant improvement of one's coaching approach and techniques.[269] This can only be achieved by having a hands-on approach during training and games.[270] Every practice must be studied closely to determine how it benefited the players, and if detrimental, how these can be improved.[271] Coaches must be in tune with their players and not be apprehensive in receiving feedback from their players.[272] This requires open communication between the coach and the player and a certain sense of "emotional commitment" on the side of the coach.[273]

These four responsibilities of a coach pertain to the improvement of the players in the skills, fitness, and IQ that come with the sports. Undoubtedly, all these entail the duty of a coach to supervise his players.

Possibility of Making the Supervision Effective

A coach also has the power of "making [the] supervision effective."[274] The coach is given wide discretion in making [the] supervision effective.[275] The coach does this in a number of ways.

First, a coach makes his supervision effective by having the power to choose and drop players. In the world of sports, it is common knowledge that coaches

263. *Id.*

264. *Id.*

265. *Id.* (Note: "Teachable moments are those prime opportunities coaches use to teach, instruct, direct, encourage, praise, and punish." - Voight).

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. TOLENTINO, *supra* note 207, at 612.

275. *Id.*

have the final word on whom to include in a team's line-up for the season. In European football leagues, coaches have a huge influence on who the next player to be recruited will be. The coach is free to decide which player fits into his coaching philosophy and which player does not. For example, former Barcelona FC coach Pep Guardiola re-instilled a more fluid and passing-oriented mentality to his players when he took over the club in 2008, and chose players who fit this playing style.[276]

Second, a coach makes his supervision effective by determining which players play and which players get benched. At the end of the day, players who have impressed the coach by their skills or discipline get the nod to play. Players who also fit into particular situations presented by the flow of the game also get the nod. Benching a player can mean numerous things—a sign of a lack of trust, a reprimand to the player, or simply the lack of need for the player's skill set.[277] But whatever reason there is, one thing remains constant—the decision is left to the discretion of coach.

Third, a coach makes his supervision effective by imposing his own mentality and strategy on the game. As Voight pointed out, the supervision of a coach extends to the mental focus and attitude of the player.[278] The supervision can sometimes be seen as a form of control. A coach can instill a certain mentality for his players to adopt, whether this mentality is an aggressive one or a passive one all depends on him. Players who do not fit the mold of a coach's mentality are either forced to change their style or leave the team. For example, NBA coach Chuck Daly brought a hard-nosed defensive mentality when he became head coach of the Detroit Pistons in the late-1980s.[279] The Pistons became known as the "Bad Boys" and anyone watching them at that time would attest that each player (led by Dennis Rodman and Bill Laimbeer) embraced the mentality with their tough play.[280]

Given that the two requisites of Chironi for vicarious liability are present, it should follow that coaches should be vicariously liable for the acts of their players.

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276. Michael Walker, *Pep Guardiola Was the Boy Born to Lead Barcelona; an In-depth Look at the Nou Camp Sensation*, DAILY MAIL ONLINE (Apr. 19, 2010), http://www.dailymail.co.uk/sport/football/article-1267325/Pep-Guardiola-boy-born-lead-Barcelona-depth-look-Nou-Camp-sensation.html.

277. Author was a soccer coach from 2004–2006, and these were the main considerations in fielding his players.

278. Voight, *supra* note 253, at 44.

279. Tony Meyer, *Chuck Daly: The Ultimate Bad Boy*, BLEACHER REPORT (Mar. 7, 2009), http://bleacherreport.com/articles/135447-chuck-daly-the-ultimate-bad-boy.

280. Benjamin Morris, *Just How Bad Were the 'Bad Boys'?*, FIVETHIRTYEIGHT (Apr. 15, 2014), http://fivethirtyeight.com/features/just-how-bad-were-the-bad-boys/.

Coach's Familiarity with the Players

Coaches should also be liable for the acts of their players because they are familiar, or at least in a position to be familiar, with the traits, personalities, and character of their players.

The coach is present in every training session and game. He knows how each player will react to certain situations, especially those that test his character. With the physical, emotional, and mental hardships that his players endure from each training session and game, the coach is in the position to see how each player copes with the hardships, losses, or disappointments. Does the player fight through the hardship and improve? Does the player give up? Does he take it in stride? Or worse, does the player take out his frustrations on others? Knowing these traits are part of the duty of a coach in order to improve both the player's and his own performance.

In fact, coach Karen Cacho, a former coach of the Ateneo women's soccer team, states the importance of knowing her players on an individual basis:

> I would describe my relationship with my players in a case to case basis. Although [sic] i [sic] am dealing with a team or unit, i [sic] have to respect the fact that they are individuals and each has its own unique mood, understanding, character etc. As a coach you have to consider this and be cautious as to how you communicate and treat each one separately.[281]

The coach also chooses his players. After consulting with his staff, the coach has the final say on who makes the team. This decision process entails that the coach study a potential player as a whole—from the skill set of the player, to his physical fitness, to his capability in fulfilling a need for the team, to his temperament, and even up to the player's relation with his other teammates. All these aspects are taken into consideration.[282]

This familiarity with his players, borne from his constant interaction with them and the fact that he chose them to play for his team, validly raises the argument that he knows of any violent or reckless demeanor that the player may possess. Thus, when a player recklessly injures an opponent, the coach must be held liable for allowing such a player to endanger the safety of other players.

The Nature of the Coach As Having Responsibility over Players

By the very nature of the job, the coach is responsible over his players. The

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281. E-mail from Karen Cacho, Former Coach of the Ateneo Women's Football Team to Ignatius Michael D. Ingles (May 18, 2011) (on file with author).

282. Author was a football coach from 2004–2006 and experienced this firsthand.

responsibility is something innate in the role of a coach, akin to how a parent feels naturally responsible for his or her child, or how a teacher feels naturally responsible for his or her student. As can be seen from the interviews below, coaches feel this responsibility is intrinsically linked with the job.

Coach Hans Peter Smit, long-time coach of the De La Salle University and De La Salle Zobel football teams, states that he "always [feels] responsible for all [his] players."[283] The successful coach also "personally goes beyond [the professional coach-player relationship]" because of his nature to "nurture [his] players."[284] Because of this, he describes his relationship with his players as a "a mentor; father-son; father-daughter; manager; guidance counselor."[285] This responsibility, he claims, "has nothing to do with the school or the club that I work for."[286] Instead, it just comes out naturally for him.[287] In fact, his responsibility over his players extends after training or games, and sometimes even extends to other teams:

> It go's [sic] way beyond training/games. Even if they are away from me I take it as my responsibility that they are always on their best behavior. I believe in Fair Play! I will berate my players if I see them not playing for the merits of the game. I would even berate players from the other team if I see the same.[288]

This sentiment is shared by coach Sandy Arespacochaga, former coach of the Ateneo men's basketball team. The former UAAP standout states that his responsibility over his Blue Eagles stem from "the nature of being a coach and more so from being a coach of the school."[289] For coach Sandy, the responsibility is not limited to teaching the X's and O's of a basketball game: "I think coaches from Ateneo have to act like teachers to the players also, and that would mean teaching proper values in and out of the court as well (not to mention helping players focus on academics)."[290] Like coach Hans, coach Sandy believes that "coaches have to teach players to be responsible outside of

283. E-mail from Hans Smit, De La Salle Univ. to Ignatius Michael D. Ingles (May 15, 2011) (on file with author).

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. E-mail from Sandy Arespacochaga, Ateneo de Manila Univ. to Ignatius Michael D. Ingles (May 16, 2011) (on file with author).

290. *Id.*

the court also."[291]

Coach Cristina Garcia, although just a few years older than her players in the Ateneo Women's Football team who she coached in 2010, felt the same way as her more experienced counterparts. She felt that she was "entrusted by [her players'] parents to make sure they [we]re ok."[292] This reposed trust made her feel "very responsible"[293] for her players. However, her responsibility over them extended only to matters related to her duties as a coach—like games, trainings and out-of-town trips.[294]

This sense of responsibility over players is not limited to those who coach professionally. Even volunteer coaches feel the same way. Matthew Jaucian coached Gawad Kalinga kids the basic skills of football. As a volunteer coach, he still felt responsible "for both their well-being and how they carry themselves."[295] Considering the plight and poor background of his players, coach Matthew felt that he "took over the responsibility of [his players'] parents in providing a model of what a good responsible adult should be."[296] While his sense of responsibility stemmed from carrying the name of Gawad Kalinga,[297] Coach Matthew felt responsible "simply because whoever they become will ultimately reflect on me."[298] Coach Matthew not only took on the role of a coach, but a role model as well.

The responsibility of the coach stems from the very nature of the role of a coach. While there are some cases where the responsibility stems from a contractual obligation, in almost all cases, the source of this responsibility goes beyond contracts. As attested to by the coaches themselves, this responsibility is innate. The responsibility exists simply because they are coaches.

If the tie that binds an employer to the acts of his employee or the state to a special agent is a contract, what more when the source of the responsibility is the very nature of the relationship itself? This is the case with parents and their children, guardians with their wards, teachers and their students. So it is with coaches and players. This reason alone should make coaches liable for the tortious acts of their players.

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291. *Id.*

292. E-mail from Cristina Garcia, Ateneo de Manila Univ. to Ignatius Michael D. Ingles (May 18, 2011) (on file with author).

293. *Id.*

294. *Id.*

295. E-mail from Matthew Jaucian, Gawad Kalinga to Ignatius Michael D. Ingles (May 20, 2011) (on file with author).

296. *Id.*

297. Gawad Kalinga is a Philippine-based movement aimed at alleviating poverty in the Philippines.

298. E-mail from Matthew Jaucian, Gawad Kalinga to Ignatius Michael D. Ingles (May 20, 2011) (on file with author).

iii. Defenses Applicable to the Coach

While I seek to impose liability on the coach, the coach is not without any defenses. He can avail himself of the defense found in the final paragraph of Article 2180, which states that "[t]he responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."[299] This combats any injustice that may arise from imposing liability on the coach who exercised "all the diligence of a good father of a family to prevent damage"[300] to other players.

Kavanagh v. Trustees of Boston University[301] is instructive when it comes to a defense that a coach may have against vicarious liability. Kavanagh was a Manhattan College basketball player and played opposite Boston University player Folk.[302] A scuffle ensued between the opposing teams and Kavanagh came in to intervene.[303] As Kavanagh was breaking up the scuffle, Folk punched him square in the face.[304] Folk was ejected, while Kavanagh left with a broken nose.[305] Kavanagh filed a case against coach Wolff of Boston University, claiming that Wolff was negligent in not taking the appropriate steps to prevent the fight.[306]

The Supreme Court of Massachusetts disagreed with Kavanagh and denied recovery.[307] One of the reasons posed by the Court focused on the vicarious liability of the university and the coach:

> [N]either the university nor its coach had any reason to foresee that Folk would engage in violent behavior. He had never done so before, he had no history suggestive of potential violence on or off that basketball court, and nothing in his conduct during the earlier part of the game provided any warning signal that

299. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

300. *Id.*

301. 795 N.E.2d 1170 (Mass. 2003).

302. *Id.* at 1173.

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.* at 1172–73 (One of Kavanagh's other theories dealt with the aggressive demeanor of Coach Wolff. He claimed that Wolff's demeanor made him liable for the attack. Analysis of the case reveals that this theory, if applied to our jurisdiction, attacked Coach Wolff as a principal tortfeasor, and was not under a theory of vicarious liability. On that point, the Court held that the coach still was not liable, and would only be liable if his own acts were reckless in their own right, or that he deliberately instructed the player to commit the attack. On the latter point, the coach would be liable as a joint tortfeasor in our jurisdiction under Article 2194. This is not part of the scope of this study.).

307. *Id.* at 1179–80.

> Folk was on the verge of a violent outburst.[308]

Hence, a coach faced with such vicarious liability can argue that he had no knowledge of prior violence on the part of his player and therefore, could not foresee, much less prevent, an attack from occurring.

Another defense can be inferred in the case of *Tomjanovich v. California Sports*.[309] In this case, NBA player Rudy Tomjanovich was punched in the face by an L.A. Lakers player, Kermit Washington.[310] Tomjanovich suffered serious injuries, including "skull fractures, facial lacerations, loss of blood, and leakage of brain cavity spinal fluid."[311] Tomjanovich sued Washington and the L.A. Lakers. In suing the Lakers on vicarious liability, Tomjanovich claimed that the team not only knew of the violent disposition of Washington, but also even encouraged it by having Washington featured in a magazine as a league enforcer.[312] The jury ruled in favor of Tomjanovich, and on appeal, a settlement was reached.[313] While the *Tomjanovich* case sought vicarious liability against a team, the same principles can be applied to a coach. A coach can use the defense that he did not encourage the violent conduct.

A coach can also proffer the defense used by employers when faced with vicarious liability suits by proving due diligence in the selection and supervision of their employees.[314] Coaches can show that they have previously reprimanded their players for unsportsmanlike conduct or reckless fouls, and also prove that during the process of selection, the player involved had no prior record of violent or reckless play.

IV. END GAME

Sports injuries happen. Basketball players land awkwardly going for a rebound and twist their ankles. The legs of a soccer player turn black and blue from all the tackles they have to endure on the field. Boxers and mixed martial artists look like bloody caricatures after heated fights. And occasionally, a rugby player loses a chunk of his ear in a scrum. These are all part of the game, risks that the players can reasonably foresee and are often not complained about. The law has no business in these injuries, lest the competitive spirit and vigor

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308. *Id.* at 1178.

309. No. H-78-243, 1979 WL 210977 (S.D. Tex. 1979).

310. CHAMPION, *supra* note 9, at 150 (citing Tomjanovich v. Cal. Sports, Inc., No. H-78-243, 1979 WL 210977 (S.D. Tex. 1979)).

311. *Id.*

312. *Id.*

313. *Pro Basketball History Revisited: Pro Basketball Legal Cases 1974-84*, APBR (Apr. 24, 2011), http://apbrbasketball.blogspot.com/2011/04/pro-basketball-legal-cases-1974-84.html.

314. Lilius v. Manila R.R. Co., G.R. No. L-39587 (S.C., Mar. 24, 1934) (Phil.).

involved in sports competitions be doused with the fear of possible litigation.[315]

Some injuries, however, are not foreseeable. And this is where the law should step in. These injuries are sustained because of the intentional or reckless acts of players who have no regard for the rules established to protect the safety of the players. A point guard does not reasonably foresee a frustrated center elbowing him mid-flight as he soars for a lay-up. A soccer goalie does not foresee that an opposing forward will kick him in the head after the play is over. Even with emotions running high, a football player does not foresee an unprovoked blow to his head. These sorts of acts have no place in sports. They overstep the boundaries of sportsmanlike competition and turn tests of skill into cringe-inducing acts of violence.

In these situations, the law should allow recovery to the injured player. However, because of the risks assumed whenever one joins a sports competition, the standard needed for recovery should not be so low as to induce fear of litigation for every tackle or foul. Neither should it be too high as well and forget that some fouls and tackles are not foreseeable.[316]

The U.S. cases discussed in Section I have already provided this standard—the duty to refrain from the reckless disregard of safety rules. While this standard has yet to be adopted in the Philippines, the foundations of the standard can already be found in existing laws and jurisprudence. Adopting it poses no problem. Moreover, it protects the athlete. It does not coddle him; he will still not recover from foreseeable injuries. But it does not protect the reckless player either; his acts that disregard safety rules will not go unpunished.

While the player is the one toiling and working hard in the field, rink, or court, placing the blame solely on him is unjust. Coaches play an immense role in shaping how their players approach a game. In the end, they should also be responsible for the acts of their players. Coaches have the duty to supervise and the power to make their supervision effective, similar to those relationships in Article 2180. Their constant interaction with their players also makes them familiar with their players' tendencies, giving them valuable insight to the different traits, characteristics, and personalities of their players. More importantly, the very nature of the role of a coach makes him or her responsible for his or her players. This responsibility is innate in a coach. It exists with or without the presence of contracts.

The coach shares the same responsibility that a parent has over his child, a guardian has over his ward, an employer has over his employees, a teacher or head of establishment of arts and trades has over his student or apprentice, and the State has over its special agents. Thus, the coach should be held vicariously liable for the acts of his players.

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315. Jaworski v. Kiernan, 696 A.2d 332, 338 (Conn. 1997).

316. *See id.*

V. A CALL TO THE PHILIPPINE CONGRESS AND COURTS

A. Amending Article 2180 and Guidelines for Interpretation

In line with my arguments, I recommend that Article 2180 of the Civil Code be amended to include the following paragraph:

> Professional coaches shall be liable for the damages caused by their players during the course of competitions involving contact sports, so long as the players are in the team roster or, for individual contact sports, under the supervision of the coach, at the time of the incident.

Likewise, to hold the coach vicariously liable, the following requisites must occur.

First, the player must be liable for a tortious act. To fulfill this requisite, the plaintiff must prove that the act of the defendant player was either intentional or a breach of the duty to refrain from the reckless disregard of safety rules. In the case of the latter, a safety rule must have been violated, and the act that violates the rule must have been reckless and not merely negligent.

Second, the coach must be a professional. At the outset, the meaning of "professional" in this provision must not be restricted to the common notion of a coach under contract by a team or school (like Norman Black or Phil Jackson). It applies equally to coaches who, while not under contract or receive remuneration, have a considerable amount of experience coaching a particular sport. This is to emphasize that the responsibility of a coach goes beyond a contractual tie. Hence, a coach who has been coaching a school team for a considerable amount of time can be held vicariously liable, even if he does it for free.

The qualification that one must be "professional" is needed to prevent the unjust situation wherein "weekend" coaches or mere stand-ins in barangay or office leagues are dragged into court because of vicarious liability. One must remember that vicarious liability is "created by way of exception to the rule that no person can be liable for the acts or omissions of another[,]"[317] hence its application should be limited.

While there is no strict definition as to what a professional coach is, the presence of a coaching contract is a patent factor to consider one as a professional coach. If the coach is under a coaching contract, then he must automatically be considered a professional coach. However, it must again be

317. TOLENTINO, *supra* note 207, at 612.

emphasized that the absence of a coaching contract is not determinative that one should not be considered a professional coach. As such, courts can also consider the length of time one has been coaching a particular sport. The longer one has been coaching, the more he can be considered as a professional.

The distinction between a professional coach and a non-professional coach is a reasonable one. A professional coach, as gleaned from the factors above, is one whose experience and exposure to the sport make him more aware of its hazards and should thus make him more responsible for the tortious acts of his or her players. Hence, this provision will fortunately not apply to a man asked by his friends to stand-in as "coach" during a barangay basketball league. However, if the man continues as coach for a considerable amount of time and takes on the duties of a coach, then this provision possibly applies to him.

Third, the tortious act must have happened in a contact sport. A contact sport is one "that necessarily involves body contact between opposing players."[318] Examples of contact sports are soccer, basketball, rugby, hockey, baseball, and boxing. Hence, the provision will not apply to sports such as badminton, tennis, synchronized swimming, or billiards. Injuries are more foreseeable in contact sports, hence the distinction. Thus, coaches are duty-bound to guide their players to refrain from such behavior accordingly. It is unfair to impose vicarious liability on a coach for an injury that was unforeseeable because of the very nature of the sport. A limited application of this provision prevents any absurd situation wherein a tennis coach will be forced to defend himself against vicarious liability because his player intentionally throws his racket at his opponent.[319]

Fourth, the tortious act must have occurred during a sports competition. Sports competition should be interpreted to mean the actual game or match itself. This includes practice games and training sessions. It includes the period of warm-up until the players have cooled down after the game or training session. For example, if a scuffle ensues while players are warming up, the coach may be held vicariously liable. It should not be interpreted to extend beyond the game. For example, in a two-week event like the *Palarong Pambansa*, where the games are scheduled throughout, the coach should only be liable for the tortious acts of the players *during* the actual games. Moreover, if the tortious acts of the players occur a considerable time after the game, the coach should not be liable. Hence, if a basketball player gets into a fight in the parking lot after a game, the coach is not liable.

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318. *Contact Sport*, VOCABULARY, https://www.vocabulary.com/dictionary/contact%20sport (last visited Dec. 15, 2016).

319. Note, however, that there is no distinction between contact sports and non-contact sports when it comes to the liability of the player. As long as the player breaches his duty to refrain from reckless acts done in disregard of safety rules, the player will be held responsible, regardless of what sport is involved.

Fifth, the player was on the team roster, or under the supervision of the coach (for non-team sports) at the time of the incident. This includes players who are on the bench. For example, in case a bench-clearing brawl occurs during a basketball game, the coach should still be held vicariously liable. Moreover, it should be interpreted to include players who are not formally listed on the team roster, but who play under the coach or are on the team at that time. For example, players fielded by the coach during try-outs come within this interpretation.[320]

Lastly, the coach must be the head coach of the team or the player at the time of the incident. Thus, while the assistant coach, physical trainers, weight trainers, and team managers are often referred to as "coach" by the players, they are not held liable under this article. The limitation to the head coach stems from the nature of his position as the one who has the final word and discretion in team matters. While the assistant coaches and managers have their own say on team and player matters, this power is limited to advising the head coach, advice which the head coach has the discretion to heed or not. This also includes instances wherein the coach is not *actually* on the sidelines at the time of the incident (e.g., he was suspended or absent) because his absence still does not discount the fact that he chooses which players make the team and that he knows the traits and personalities of his players. This is not unjust because the coach can still avail of the defense by showing, according to the circumstances, that he was still diligent in "prevent[ing the] damage."[321] A lack of any one of these requisites will not make a coach vicariously liable.

To protect himself from liability, the coach may use a number of defenses. He can argue he was not aware of the violent or reckless nature of his player. He can also prove that the player had never engaged in violent or reckless acts in the past, and thus the player's action was unforeseeable from his point of view. Further, he can argue that he previously reprimanded the player for previous violent or reckless acts. Furthermore, he can show that he never encouraged such violent or reckless acts in the past, and that he always encouraged the values of fair play and sportsmanlike conduct. Lastly, he can demonstrate that he was diligent in both the selection and supervision of his players.

This list of defenses is not exclusive. As long as the coach shows that he exercised "all the diligence of a good father of a family to prevent damage,"[322] he should be relieved of liability. The courts should look at the factual circumstances, keeping in mind the standards proposed by this article.

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320. While it may be argued that imposing liability on the coach for try-out players is unjust since he is not familiar with them, I believe that it is not unjust. The coach can still avail of the defense that he was not aware of the violent or reckless nature of the player trying-out.

321. CIVIL CODE, § 2180, Rep. Act 386 (Phil.).

322. *Id.*

B. Answering the Case Study

Applying the recommendations to the Case Study, it seems Padernal is liable for his rash tackle on Tobias. His slide tackle was a reckless disregard of a safety rule. It was reckless because the slide tackle was clearly intended, even if the injury was not. The act of tackling was voluntary. He did not slip on the muddy field. He was trying to win possession of the ball, even if Tobias had already secured it. It likewise disregarded a safety rule. FIFA Rules state, "When a goalkeeper has gained possession of the ball with his hands, he cannot be challenged by an opponent."[323] It also states, "[A] player must be penalised for playing in a dangerous manner if he kicks or attempts to kick the ball when the goalkeeper is in the process of releasing it."[324] This is no doubt a safety rule; it prevents injury by prohibiting dangerous play. These two rules protect the goalie from dangerous play when he has the ball, or even when he is in the process of kicking it back into play. Hence, Padernal is liable for Tobias' injury.

Applying the proposed amendment to Article 2180 and the recommended guidelines makes coach Caslib liable. First, Padernal's slide tackle committed a tortious act. Second, the act occurred during a sports competition, which in this case, was a practice game between Ateneo and San Beda. Third, Padernal was on the San Beda team roster. Even if he was not, he was still fielded by the coach Caslib. Fourth, coach Caslib was the head coach of San Beda at that time.

The defense in Article 2180 is not available to Caslib. He already knew of Padernal's reckless nature. Padernal was his player both in San Beda and in the youth national teams. He even recruited Padernal to play for San Beda. Hence, Caslib cannot claim that he was unaware of Padernal's traits as a player. These all point to coach Caslib's responsibility over his players' acts, a responsibility that leads to his vicarious liability under the proposed amended Article 2180.

EPILOGUE

A month after Tobias' injury, Ateneo faced San Beda again, this time in an official pre-season tournament match. Pursuant to the ban, Padernal sat on the bench when the two teams kicked off. However, in the second half and with Ateneo leading 1–0, coach Caslib, knowing full well of the ban on Padernal and the consequences of playing him, brought Padernal into the pitch. The Ateneo team walked out of the game, forfeiting their 1–0 lead and handing the game to the Red Lions.

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323. FIFA, LAWS OF THE GAME 2010/2011, 112 (2010), http://www.fifa.com/mm/document/affederation/generic/81/42/36/lawsofthegame_2010_11_e.pdf (last visited Dec. 15, 2016).

324. *Id.* at 113.