

Research on the Application of the "Assumption of Risk" Rule in Campus Sports Injury Accidents in Colleges and Universities

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Abstract: *The application of the assumption of risk rule in the field of campus sports has complicated problems like limitations on cognitive ability of underage students, different kinds of activities and the particularity of schools. According to its normative structure and jurisprudence base, we gave a typological definition and determined the risks contained in campus sports activities; analyzed the criteria of determining the subjective and objective elements and exclusionary conditions in campus sports injury accidents based upon them; explored the normative coordination between this rule with the school's duty of safety assurance and the principle of fault liability. Through our research, we concluded that: The application of the assumption of risk rule in campus sports need accurately identify inherent risks, wherein the difference in cognitive abilities among underage students is an important moderating factor for identifying elements. It will supplement the exemption effect through a reasonable damage-sharing mechanism aiming at balancing the normativity between exempting non-fault participants from liability and protecting the rights and interests of injured students.*

Keywords: *Assumption of risk, campus sports injury, inherent risk, duty of safety assurance, tort liability*

Introduction

Accidents will happen inevitably when confrontation happens unavoidably in campus sports activities. Establishing the assumption of risk rule provides a new normative basis for allocation of liability in the field of recreational and sporting activities; however, there exists many complicated factors such as the underage students' cognitive ability still under development, diversified organization form of sports activities and the duality of the school's educational responsibility and duty of safety assurance if it is applied in the context of campus. Although there are relatively sufficient general interpretations of the assumption of risk rule based on existing researches, we lack systematic analysis focused on the situation of campus sports. Particularly concerning some key issues such as the criteria for determining the requirements for application and the normative coordination with the school's duty of safety assurance, there lacks targeted theoretical response. We analyze four aspects: the normative structure of the assumption of risk rule, risk identification of campus sports activities, the determination of the requirements for application and the coordination with other liability regimes, which aims at providing an interpretive reference for accurately applying this rule in the field of campus sports.

1. The Normative Structure and Jurisprudential Basis of the Assumption of Risk Rule

1.1 The Institutional Evolution and Normative Expression of the Assumption of Risk Rule

The institutional origin of the assumption of risk rule is based on the legal maxim "volenti non fit injuria". It came into being during the Roman law period. The assumption of risk rule evolved from a complete defense to a relative one in the common law tradition: thus the change of the status of this rule in the exemption system in tort law took place. Gradually there emerged an evolution of the assumption of risk rule from theory to judicial practice, then to legislation in China. The acceptance of the assumption of risk rule by the Chinese tort liability system indicates that the legislature has clearly chosen allocation of the risks involved in sports injuries. Under "general application with exceptional exclusions": the first part provides the general rule of exemption while the second part bans exemption due to intent or gross negligence. Such normative design not only satisfies the practical needs of

allocating inherent risks in sports activities but also reserves space for construction of the doctrine when applying the rule specifically. Normatively, it differentiates tort liability between participants and organizers of recreational and sporting activities wherein the latter are still subject to the standard of liability under the general duty of safety assurance.

1.2 The Jurisprudential Basis of Legitimacy of the Assumption of Risk Rule

Justification of the assumption of risk rule – principle of autonomy of will, logic of risk allocation and social utility. According to the principle of autonomy of will, the knowledge and acceptance by the participant towards the inherent risks of sports activities is a presumptive manifestation of his intention to take on the risk that has created (on the normative level) the legal effect of exemption of other participants from liability; the inherent risks in sports activities are involved in the process of the sport itself, and its occurrence can not be assigned to the wrongful conduct of anyone, but it should be better (from the point of view of distributive justice), if he takes on these risks himself or herself instead of transferring them to other participants. The aspect of social utility: the assumption of risk rule, by the rational distribution of liability risks, prevents inhibiting the normal development of sports activities caused by excessive concern about liability, preserving the basic vitality of sports activities as a form of social interaction and cultural practice. It is basically an extension of the principle of fault liability used when dealing with recreational and sporting activities involving assumption of risk, complementing and refining the use of fault liability^[1].

1.3 The Systematic Positioning and Functional Differentiation of the Assumption of Risk Rule

The uniqueness of the assumption of risk rule lies differently compared with institutions such as consent of the victim, contributory negligence, and fair liability on its scope of application, subjective cognition, and legal effects. The differences exist between the assumption of risk and consent of the victim: the former mainly applies to the field of recreational and sporting activities with specific risks where the victim generally aware about the occurrence of harm whereas the latter could apply widely to general conduct and activities which need the victim to have a relatively clear awareness about the content of the harm; The institution difference between assumption of risk and contributory negligence – the former leads to the legal consequence of full exemption from liability but the latter just reduce liability proportionally – criteria for determining each of them lie in the subjective cognition and objective behavioral standards of the participant; Exclusional relationship exists between assumption of risk and fair liability – they are structurally opposite regarding their prerequisites for application. Fair liability assumes that no one is at fault, however, the application of the assumption of risk rule requires that there should not be any intent or gross negligence by other participants. Understanding the institutional boundaries is a theoretical prerequisite for correctly applying the assumption of risk rule.

2. The Typological Construction and Risk Identification of Campus Sports Activities

2.1 The Typological Definition of Campus Sports Activities

There exist various organization modes and characteristics among all kinds of campus sports activities with significant difference in risk structure and intensity of participants' expression of intention. There at least are several basic types of campus sports according to organizational forms like physical education curriculum teaching, extracurricular physical exercise, sports team training and intramural sports competitions. Physical education curriculum teaching which has a compound characteristic of education and normativity, student's participation might be compulsory so their subjective consciousness about activity risks and degree of voluntariness differs greatly compared to others type of campus sports activities; Extracurricular physical exercise follows the fundamental principle of students' voluntary participation as well as the school bears corresponding organizational and management responsibilities, it is generally less risky than organized competition; Sports team training has an attribute of not only skill instruction but also competitive preparation and the participating students usually have certain specialized sports experience, their cognitive ability towards the inherent risks during the training process is relatively higher; Whereas intramural sports competitions best matches the typical scenario assumed under the assumption of risk rule because of its significantly high intensity of confrontation and level of risk over daily physical education teaching and exercise activities. Above mentioned typological differences are of fundamental importance to determine if the assumption of risk rule has the prerequisites for application^[2].

2.2 Sources and Types of Risks in Campus Sports Injury Accidents

Sources of risks for injuries in campus sports accident are composite which cannot be described as a single factor. Classified according to the mechanism of risk occurrence, it includes several kinds: inherent risks of certain sports, facility and equipment risks, organizational and management risks, and participant's own condition risks. The first one is hidden in the rules of motion of certain sports, which is an inevitable part of sports activities, and the harm caused thereby belongs to the regulatory scope of the assumption of risk rule. Risks resulting from facilities and equipment arise because of unsafety venue and apparatus; these risks usually do not belong to those risks that participants can accept by expressing their intention, therefore, the corresponding harm shall be attributed based upon the principle of fault liability. Organizational and management risks mean the performance of the school concerning the activity arrangement, safety instructions and on-site supervision, whose normative evaluation should be compared with the duty of safety assurance. Risks due to participants' own conditions include individual factors like student's physical status, athletic ability and risk awareness; this kind of risk has great reference value when judging the subjective element under the assumption of risk rule. Different sources of risks have different normative significance, affecting the judgment about whether or not the assumption of risk rule applies appropriately.

2.3 The Benchmark of Inherent Risks in Campus Sports Risk Identification

The identification of inherent risks is essential to apply the assumption of risk rule. Inherent risks are those types of risks which can hardly be avoided in the normal course of a certain sport by its inherent rules of motion without substantial changes due to the exercise of reasonable care on part of the organizers or participants. There are three characteristics of inherent risks: inherentness in occurrence (origin of risk lies in the technical features and confrontational attributes of the sport); inherentness in persistence (risk accompanies the whole process of an activity and it cannot be totally eliminated) and non-eliminability (possibility of occurrence cannot be eliminated through the exercise of proper duty of care). Identification of inherent risks in campus sports requires comprehensive consideration regarding the degree of confrontation in the sport; the skill level of the participants; the organization nature of the activity. The inherent risks in physical education teaching and competitive sports have different degrees, we need to consider the cognitive ability and capacity to bear risks of underage students while determining criteria. Establishment of a framework for identifying risk in campus sports based on the benchmark of inherent risks prevents improper expansion or restriction of the scope of application of the assumption of risk rule so as to ensure that the rule will be properly applied within the field of campus sports in accordance with its normative purpose^[3].

3. The Requirements for Application of the Assumption of Risk Rule in Campus Sports Injury Accidents

3.1 Determination of Subjective Elements: Knowledge, Voluntariness, and Cognitive Ability

To apply the assumption of risk rule, there must exist a subjective state of knowledge of the risks and voluntary acceptance thereof. The difficulty with determining the subjective element in campus sports arises from the fact that the core issue lies on the question of the cognitive ability and capacity to express intention of underage students. Knowledge refers to actually aware of the inherent risks contained in a specific sports activity—this does not mean merely knowing what kinds of risks are involved; rather, it also involves a basic feeling regarding their likelihoods occurring. Voluntariness refers to freely choosing to participate in this activity without any coercion or improper interference. There are various factors affecting underage students' levels of risk awareness, including age, educational attainment and sports experience which cannot be measured according to one single standard. In general, younger students (in the compulsory education stage), lack enough awareness of the risks of sports activities thus making it hard to determine the subjective element required for assumption of risk whereas senior students who possess considerable sports experience or have special athletic talents can have a high level of awareness of the risks of particular sports reaching a level constituting assumption of risk. Often participation in physical education curriculum teaching implies some kind of compulsion – we need to consider if the voluntariness element has been fulfilled and we should avoid using the assumption of risk rule in a blanket manner.

3.2 Determination of Objective Elements: Recreational and Sporting Activities, Other Participants, and Inherent Risks

Basic factors for the objective elements of the assumption of risk rule are: the nature of the activity; the party causing the harm; the attributes of the risk. As regards the nature of the activity, those which belong to the scope of our rule fall under the category of recreational and sporting activities with a certain degree of risk --campus sports activities as a whole meet this condition but the borderline lies in the different degrees of risk amongst various sports. The essential difference regarding the risk attributes between high-competitive ball games and general physical training — the inherent confrontational risks of the first one will be included in the scope of the assumption of risk rule whereas the second one shall be considered based upon specific circumstances. Regarding the party causing the harm, this rule applies only to the harm caused by other participants—we can not attribute such harm to the school teachers, coaches or on-site management personnel—it does not fall within the scope of this rule. As regards the attributes of the risk, only the harm caused by inherent risks will fall within the assumption of risk rule—In case of harm caused by facility defects or organizational negligence we should attribute it according to the principle of fault liability. Meeting the above mentioned objective elements is a prerequisite when using the assumption of risk rule if there is no fulfillment of any of them then the rule cannot apply^[4].

3.3 Determination of Exclusionary Conditions: Standards for Identifying Intent and Gross Negligence

The Assumption of Risk Rule does not exempt because of the existence of intention or gross negligence of other participants. Determination of the exclusionary condition is very complicated with respect to sports injuries. Intention means the one who knows that his/her behavior will cause harmful consequences but he/she pursue or permit them happen; in sports competition, this generally manifests as malicious fouls or intentional acts of injuring others. Gross negligence means failure to exercise the most basic duty of care which an ordinary person would exercise in such circumstances, deviating far from the normal range of negligence. Some conducts in sports competitions may be dangerous by its technical movements, however, they do not meet the legal standard of gross negligence. Not all conduct violations of sports rules amount to a wrong act under tort law; some rule violations only fall within the category of ordinary rule infractions without meeting the standard of gross negligence. To determine whether there exists gross negligence in campus sports, we should take into consideration the age and athletic ability of the participants. Sports interaction among minors: Since the technical control capability and risk assessment abilities of the participants are still developing, the evaluation on the degree of negligence has different standards than those of sports activities between adults.

4. Normative Coordination between the Assumption of Risk Rule and the Campus Sports Tort Liability System

4.1 The Normative Relationship between the Assumption of Risk Rule and the School's Duty of Safety Assurance

A normative coexistence exists between the school's duty of safety assurance when organizing sports activities and the assumption of risk rule: although the assumption of risk rule can exempt the tort liability of others, it cannot exempt the school (activity organizer)'s duty of safety assurance. Contents of the school's duty of safety assurance specifically includes such things as risk disclosure and safety education prior to the activity, on-site supervision and protection during the activity, and timely help after an accident. When the school does not fulfill these duties causally connected to the occurrence of harm, the school has corresponding tort liability. The application of the assumption of risk rule and the performance of the school's duty of safety assurance do not substitute each other—they all independently perform their own norms. Determining the liability of campus sports injury accidents requires individual analysis regarding whether the behavior of other participants meets the conditions for the application of the assumption of risk rule and whether the school fulfills its duty of safety assurance—the two should not be confused together. There is an essential difference between the organizer's liability of the school and the liability of participants about the basis of the law and the criterion for determining them—former is based on the duty of safety assurance while the latter is based on the assumption of risk rule as a ground for exemption^[5].

4.2 The Order of Application between the Assumption of Risk Rule and the Principle of Fault Liability

The assumption of risk rule and principle of fault liability constitute a hierarchy of applications on attributing liability for campus sports injury accidents: If a campus sports injury accident happens, we shall firstly check whether it comes from the inherent risks of the sports activity and whether the harmful act is intentional or gross negligence; if meeting the conditions of using the assumption of risk rule, then the liability of other participants will be exempted (without any further checking fault liability), otherwise we shall return back to the principle of fault liability and check whether other participants commit ordinary negligence. This order of application reflects the normative function of the assumption of risk rule as a special ground for exemption, reflecting the value choices made by the legislature in allocation of risks in sports activities. As regards the special case of campus sports, correctly understanding this order of application has great significance in avoiding arbitrariness in determining liability. We can understand that the assumption of risk rule and principle of fault liability embody the relationship between a special provision and a general provision which prevail with the former when satisfying its constituent elements.

4.3 The Mechanism of Liability Allocation in the Application of the Assumption of Risk Rule

What if assuming risk rule exempts others' liability? What about sharing the harm the injured student suffers? It's this link of institutional coordination in refining liability allocation mechanism. School as an educational institution should bear corresponding liability (based upon the existence of fault on the part of the school) not performing their duties of safety assurance; social insurance mechanisms or sports injury insurance shall be able to provide necessary financial compensation to the injured student based upon the assumption of risk rule. Relying solely on the assumption of risk rule to exempt other participants from liability but lacking a complementary damage-sharing mechanism results in an unfair situation when the injured student bears all losses alone. We need to coordinate using the assumption of risk rule together with determining school liability, insurance claim mechanisms and other social relief measures so that we can reasonably remedy victims and exempt other participants from liability at the same time. A reasonable liability allocation mechanism seeks a normative balance between exempting non-fault participants from liability and protecting the basic rights and interests of the injured student.

Conclusion

Application of the assumption of risk rule for injuries caused by campus sports accidents is not only a response to the logic of allocating inherent risks in sports activities but also a functional complementation to the principle of fault liability in a certain field. Its legitimacy rests upon the three-fold foundation of autonomy of will, risk allocation, and social utility. Typological definition and risk identification of campus sports activities are the factual basis for the application of this rule while construction of the benchmark of inherent risks prevents inappropriate scope of application. As to the requirement of application, the cognitive ability of underage students is the key moderating variable when it comes to judging subjectivity; Objective elements need to meet the three factors of the nature of the activity, the party causing the harm, and the attributes of the risk; as to the exclusionary condition, judgment of intent and gross negligence takes into account the particularity of sports competition and the age factor of the participants. In terms of the normative coordination, there exists a parallel coexistence relationship between the assumption of risk rule and the school's duty of safety assurance and it is a hierarchy of priority application over the principle of fault liability as its special provision. Damage sharing after the application of the rule requires further achievement via the school's supplementary liability and insurance mechanism. Interesting research can be done about the actual pattern of application of the rule based on judicial adjudication materials or explore relevant foreign normative solutions from a comparative law perspective.

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