

# Chapter 1

## The Redefinition of Fairness in Sports Since the Arrival of Comparative Fault Tort Reform

**Rodney J. Blackman**  
*United States Sports Academy, USA*

### ABSTRACT

*Tort reform advocates take varying dispositions regarding whether or not comparative fault tort reform has sufficiently compromised the ethical practices of sports industry practitioners. It follows that two of the best place to look for evidence supporting or refuting such claims is in the laws that govern sports and the sports cases that have been brought before the courts regarding the rights of individuals within the communities in which those individuals exist. Consequently, the aim of this chapter is to provide an overview of the role of comparative fault tort reform in sports cases. Examination appears regarding how that role has factored into meeting societal demand calling for a re-definition of fairness, as well as changes in the ethical codes of sports practitioner acumen.*

### INTRODUCTION

It is not unfair to say the world is an increasingly democratized world. The practice of some form of democracy, where individuals have an effective voice in their own societal affairs, has been given root on a global scale. In addition, democracy inherently suggests freedom. Not surprisingly then, notions of freedom have entered the social consciousness of individuals from many different countries. It follows that freedom begets the concept of fairness. Interestingly, the concept of fairness is often

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considered first by individuals as the freedoms of the individual. As individuals perceive according to a natural tendency for self-centeredness, fairness then becomes what is fair for each individual, as viewed from each individual's own perspective. Accordingly, in democratized countries fairness is of increasing importance to the individuals that constitute the various societies of the world.

In matters of democratic governance, the collective conscience of a society directs the shape and manifestations of its laws. In America, this is observable through legislative or judicial actions which create effects that change the laws within individual jurisdictions. At times, changes observed in one jurisdiction are likewise adopted in other jurisdictions. Freedom for these societal shifts and their concomitant influencing of the rule of law is protected by the US Constitution. Accordingly, such freedom allows and provides the underpinnings for the establishment of societally accepted ethics, and ethical behavior. Ethics as a concept is representative of considerations regarding what is right and what is wrong. Ethical tendencies in a society are manifest in social norms, as well as legal governance. Ethics as reflections of societal determinations of right vs wrong, proper vs improper, or appropriate vs. inappropriate are continually being influenced by societal consciousness.

Given the historical popularity of sports in American culture, one particularly meaningful way to examine societal and legal shifts that point to ethical reflections of societal consciousness appears in the context of sports. Sports commonly include fundamental concepts such as following rules, scoring, committing fouls, and receiving penalties. In fact, these are essential to the nature of sports. Effectively, they also present commonly understood structures for unpacking potentially confusing meanings and nuances of legal maneuverings and manipulations. In many legal matters, the sports paradigm is useful for identifying a more concrete articulation of the sacred and profane. The manifestation and application of the legal aspects of sports can thereby provide clear perspective on the American societal consciousness. Accordingly, this chapter will provide insight for understanding ethical shifts in sports over the past 40+ years, how the values attached to these shifts have been clarified, and consequently, how fairness has been redefined.

## **THE ADVENT OF COMPARATIVE FAULT TORT REFORM IN SPORTS**

The law is a codified approach to human interactions. As such, the role of the law, at least in part, is to maintain the delicate balance between individual rights and community interests. Historically, until the mid-1980s, community interests were weighted more heavily, and perceived to be more important than individual rights. This was manifested in a variety of ways, notable among which was the establishment of,

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