

CHAPTER 30

CRIMINAL LAW AND SPORT

FOCUS TOPICS

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FOCUS OBJECTIVES

To understand and appreciate:

- ▶ the criminal law applies to sporting events;
- ▶ there are some offences where a player consents to a certain level of violence and possible injury;
- ▶ there are some offences where the consent of the player is irrelevant to criminal liability; and
- ▶ criminal excuses, defences and party provisions are relevant also to sport.

30.1 CRIMINAL LAW AND SPORT

Although every sport has its own rules and code of conduct, this does not mean the criminal law is excluded from the 'playing field'. The difference is that the rules of the game apply only when you are participating in that sport, whilst the criminal law applies to everyone at all times. **No rules of any sport can make lawful what the criminal law determines to be unlawful.** Whether you are a professional player or a school student playing in your lunch break criminal laws still apply. The rugby player who hits his tackler on the jaw, breaking it, could be convicted of assault occasioning bodily harm, just as could a Grade Seven student who spear tackles a classmate during a lunchtime football match.



30.2 CRIMINAL ASSAULT



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In Volume 1, it was explained that the definition of assault (s 245 of the *Criminal Code* (Qld)) sets out two ways by which an assault can occur. Both are relevant to sporting situations. One way is when there is an **attempted or threatened application of force**, which is accompanied by behaviour, such as a gesture, which makes the victim believe the threat could be carried out. A hockey player, who raises his stick at the umpire and threatens to strike the umpire with it, may be guilty of this type of assault, provided the umpire has an apprehension that violence is imminent. The other way is by **application of force** to the victim where this occurs **without express or implied consent**. Consent is the crucial element here.

If you walked up to a person in the street and tackled them, that act would be an unlawful assault. But if you were playing football (provided it was not touch football) on the school oval and tackled another player, that would not be an assault. By agreeing to play the game knowing that a tackle was allowed under the rules, you have by implication consented to being tackled. But have you consented to every type of tackle? Whilst players don't tell everyone participating in a match what they do, or do not consent to each time they play, the courts have established tests to determine this issue of consent.

WHAT IS THE TEST IN QUEENSLAND?

Lergesner v Carroll [1991] 1 Qd R 206

The Supreme Court of Queensland said:

Each case must be looked at in the light of its own facts.

In sporting activities, which involve hard and repeated contact, 'all the reasonable incidents of the application of force which normally attached to the sport when played in accordance with the rules may be inferred to fall within a player's implied consent'.

So, by playing a sport, you are giving **implied consent to what normally occurs** when the rules of the game are followed. Where an incident occurs which is not allowed under the rules, it can be argued the player did not consent and that a criminal assault has been committed.

However there are some contact sports **where the rules of the game are repeatedly breached**. This was considered in the following case.

Case Study

C

McAvaney v Quigley 1992 58 A Crim R 457

Facts: In an AFL game marked by repeated incidents which could have resulted in players being reported for rule violations, the accused struck a blow to an opponent's face.

Legal Issue: Is consent to assault different in sports where players know that rules will be repeatedly breached?

Decision: 'In our opinion, players of the game of Australian Rules contemplate that the game will be played in circumstances where there will be

numerous breaches of the rules and accept within reasonable limits this fact.

By its nature ... a player cannot expect, nor is he entitled to expect that every opposition player will play strictly according to the rules. In other words, he must be taken to accept the risk that opposing players will not always abide by the rules and it cannot be said that every infringement of the rules resulting in physical contact that results in injury can amount to a criminal act.'

This means that in sports where rules are commonly breached, the court must decide **whether the degree of violence exceeded that to which consent was given.**

ASSAULT OCCASIONING BODILY HARM

This is a more serious kind of assault because **actual harm** has been done to the victim. The harm must amount to **interference with health or comfort**. If it can be established that the harm was the result of contact allowed within the rules, then the injured player has given implied consent for that bodily harm to occur. By giving consent it means the player causing the injury will not be convicted of this offence.

▶ WHAT DO YOU THINK?

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Leigh Matthews, a prominent AFL player (later coach of the Brisbane Lions) was the first football player to be charged with assault occasioning bodily harm to another player. During an on-field brawl in 1985, Geelong's Neville Bruns had his jaw broken by a round arm-right hit by Matthews.

In an interview 23 year later, Matthews said:

"It was an ugly game and when the game turned ugly, I turned the ugliest. He kind of walked past and I walked up belted him one and I thought 'Oh s---, what did I do that for?' And then I thought 'they'll be coming' and they were coming. It all happened in the spur of the moment but it doesn't go away."

GEELONG ADVERTISER, APRIL 17TH, 2008.

Following a League investigation, Matthews was deregistered as a player for four weeks. He pleaded guilty to the assault charge in court and fined \$1000, although after an appeal this was reduced to a 12-month good behaviour bond.

- ▶ Does the possibility of a criminal conviction for assault act as a deterrent to players not to get into brawls on the field? [E]
- ▶ Many similar situations since 1985 have been dealt with internally by the football organisation through imposing bans or match suspensions and have not result in criminal charges heard in court. Do you think assaults on the field are an internal matter for sporting organisations, or a public matter which should be heard in a criminal court? [E]
- ▶ Police are generally reluctant to interfere in events that occur on sporting fields. Should police monitor football games and other contract sports and lay charges of assault when it occurs? Or should they only act when a complaint is brought by an injured party? Give reasons for your views. [K] [E]

C

Case Study

Jensen v R 1994 (Unreported) Supreme Court of South Australia.

Facts: A netball player lost some teeth when hit across the face during a match. The ball was out of play but the two players were jostling to gain an advantageous position for when the ball returned into play. It led to a conviction for assault occasioning bodily harm with an eight-month imprisonment term.

Legal Issue: On an appeal against severity of sentence, the appellant argued that an assault committed in the course of a competitive sport should be regarded less seriously than an assault committed under different circumstances.

Decision: The majority of the court felt that an assault committed in the course of competitive sport should not be treated less seriously than an assault in other circumstances. The distinction was made between netball, which is a non-contact sport, and Australian Rules football to highlight the

fact that the use of physical aggression would have been totally unexpected in the course of a netball game. The appeal was allowed.

One judge, however, disagreed and would have dismissed the appeal on the basis that, in general terms, an assault on the sporting field should be treated differently. He said: 'In the course of play contact is made one with the other, tempers flare and blows are sometimes struck. The striking of a blow in these circumstances is a less serious type of assault than are many other types.'

1. Do you agree with the majority or the dissenting judge? Should assaults in the sporting field be treated differently from non-sporting situations? [E]
2. What other consequences, apart from a criminal conviction, could have resulted? [E]

P

Practical application

In a game of rugby league one player tackles another. It is a 'ball and all' tackle where you try to stop both the ball and the player. To do so you need to hit high up on the body. A 'ball and all' tackle is legal under the rules of the game, provided no initial contact is made with the other player's neck or face. The tackler's shoulder hits the ball carrier high on the chest and the tackler's forearm hits the jaw of the ball carrier and breaks it. Is the tackler guilty of assault occasioning bodily harm?

1. What evidence would you look at to decide this? [K] [I]
2. How would you work out what had been consented to? [I]
3. Would the injury amount to bodily harm? [K]
4. Should there be a different outcome if the tackler meant to hurt the ball carrier than if it took place by accident? [K] [E]

SEXUAL ASSAULT

Sexual assault also can occur in a sporting context. When a player or coach touches a player without their consent in a way that the law deems is indecent, a sexual assault has been committed. A gymnastics coach who touched a gymnast's breasts and thighs claiming it was necessary to assist her when using the apparatus but who did so in a way that made the gymnast feel uncomfortable was convicted of this offence.

Repeated sexual assaults, particularly by a person of trust, such as a coach or trainer, amount to sexual abuse. Queenslander, Kerri Randle, a dual Olympian, gave evidence in court that between the ages of twelve and sixteen she was sexually abused by her swimming coach. Her coach pleaded guilty and was convicted of five counts of sexual assault. Other cases against Australian coaches and administrators have settled out of court.

**▶ WHAT DO YOU THINK?**

- ▶ Should the Government's Royal Commission into Child Abuse be expanded to include sporting organisations in addition to institutions and churches? Why, or why not? [K] [E]
- ▶ Coaches who work with children in Queensland have to be vetted and have a 'blue card'. Do you think this will have reduced the incidence on sexual abuse, or not? [E]

30.3 CRIMINAL OFFENCES IN WHICH CONSENT OF THE PLAYER IS IRRELEVANT

There are several offences in the *Criminal Code 1899* (Qld) where consent, even express consent by a player to serious harm, is irrelevant. These include the offences of doing grievous bodily harm, wounding, manslaughter and murder. This means that when a player receives a serious or fatal injury as a result of an event that took place within the rules of the sport, the defendant cannot rely on the fact of implied or express consent for an acquittal. The reason is that absence of consent does not have to be proved by the Crown. However, the defendant can rely on the excuses and defences in the *Criminal Code* such as accident, provocation and self-defence.

VOL1
CH 7.3**Case Study**

R v Hardy, as reported in *The Guardian* July 27, 1994

Facts: There was a brawl halfway through a rugby union game during which Hardy struck the deceased on the jaw, causing him to fall hitting his head on the ground. He later died. Hardy argued that he had been hit repeatedly on the back of head by the deceased and the only way he knew how to stop the deceased was to turn and hit him in the jaw.

Legal Issue: Was Hardy acting in self-defence when he struck the player?

Verdict: Yes, he was acting in self-defence and so was not guilty of manslaughter.

Practical application

Could a legal excuse or defence apply in these scenarios?

- ▶ A player takes a penalty goal but it verges off course, hitting the referee in the face? [K] [E]
- ▶ After being heavily tackled, a player gets up and runs 20 metres down the field after the tackler, and as he punches him in the face says, "I am just giving you what you gave me." [K] [E]
- ▶ As they go onto the track, a sprinter whispers to her competitor, "You are ugly and hairy enough to be on steroids." This upsets and surprises her competitor so much, she suddenly turns and pokes her in the eye. [K] [E]



GRIEVOUS BODILY HARM

This offence involves the unlawful doing of grievous bodily harm.

C

Case Study

R v Johnson (1986) 8 Cr App R

Facts: During a lawful tackle in a rugby union game, the defendant bit the victim's earlobe and tore it off.

Legal Issue: Did this amount to doing grievous bodily harm?

Decision: Yes, grievous bodily harm extends to disfigurement. The defendant was convicted and sentenced to six months jail.

MURDER AND MANSLAUGHTER

These two offences become relevant when a fatality occurs because of an act or omission by another player. The general principle was set out in an old English case of *R v Bradshaw*.

C

Case Study

R v Bradshaw (1878) 14 Cox 83

Facts: During the course of a football game, the accused killed another player when he struck him in the abdomen with his knee. This occurred when the accused jumped in the air to get the ball from the other player. The referee saw the tackle and thought nothing unfair, or outside the rules, had taken place.

Legal Issue: Was the accused guilty of manslaughter, or had the accused by keeping to the rules of the game, made his opponent's death an event that occurred by accident?

Directions of Trial Judge to the Jury:

"No rules or practice of any games whatever can make that lawful which is unlawful by the law of the land and the law of the land says you shall not do that which is likely to cause the death of another."

But where a player keeps to the rules of the game "*... it may be reasonable to infer that he is not acting in a manner which he knows will be likely to be productive of death or injury.*"

Jury's Verdict: Not guilty.



When a player dies as a result of what occurred during the playing of a sport, manslaughter, not murder, is the more likely criminal charge. This is because, for murder the prosecution needs to establish an intention to kill or to do grievous bodily harm, which can be difficult to establish in a sporting context. There have been a few cases, such as *R v Moore* (1898), set out below, and *R v Southby* (1969) where murder has been charged, but in each the jury has brought back the alternative and lesser verdict of manslaughter. A conviction for manslaughter can also be difficult. In two Queensland cases in the 1990s, that of Heke which involved a high tackle in a rugby league match, and that of Natera which involved a blow to the head in rugby union game, juries acquitted both accused of manslaughter.



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Case Study

C

R v Moore (1898) 14 TLR 229.

Facts: In a soccer game the accused jumped at another player who had been thrown violently against the goalkeeper's knee. This jumping caused the player's death.

Legal Issue: Had there been an intention to kill or do grievous bodily harm as required for murder? If not, was the death unlawful amounting to manslaughter?

Judge's directions to the jury: There was no evidence supporting intention to cause serious

injury or death. However ... 'Football was a lawful game, but it was a rough one and persons who play it must be careful to restrain themselves so as not to do bodily harm to any other person.

No one had a right to use force which was likely to injure another, and if he did use such force and death resulted, the crime of manslaughter had been committed.

Verdict: Guilty.

▶ **WHAT DO YOU THINK?**

- ▶ What benefit can an injured player get from criminal charges being brought against another player?
- ▶ Is there a moral or legal duty on the community to bring sportsmen and sportswomen to account when their actions amount to a breach of the criminal law? [E]
- ▶ What are the difficulties that could arise proving the commission of a criminal offence in a sporting situation? [I] [E]
- ▶ Why might a jury acquit when death results on the playing field? [E]

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▶ **WHAT DO YOU THINK?**

Three teenage amateur footballers in the Netherlands have been charged with manslaughter and serious assault after allegedly beating a linesman to death. They were unhappy with one of his rulings in the game.

The President of FIFA, Sepp Blatter said: '*Football is a mirror of society, and sadly, the same ills that afflict society, also manifest themselves in our game*'.

- ▶ Do you agree with this statement? [E]
- ▶ Why do you think the boys reacted in such way to a linesman's decision? [E]

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SUMMARY OFFENCES

In Queensland, the *Summary Offences Act 2005*, (Qld) s 24, set out the offence of 'Throwing Things at a Sporting Event'.

Practical application

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Section 24 of the Summary Offences Act states:

- (1) A person at a sporting event must not throw or propel an object that may
- (a) injure a person; or
 - (b) damage property; or
 - (c) disrupt the event.

Subsection (1) does not apply to a person actually participating in a sporting event who throws or propels an object the person ordinarily throws or propels as part of the sporting event.

It also does not apply to a person who is a spectator at a sporting event who returns an object ordinarily used in the sporting event to a person actually participating in the sporting event in a way not intended to contravene subsection.

▶ Which court would hear a charge brought under s 24? [K]

▶ What defences could be used by a person accused of this offence? [K] [I] [E]

▶ The maximum penalty is 10 penalty units or six months imprisonment. In what circumstances do you think the maximum penalty should be given? [E]

▶ Explain the situations where the law will not apply. [K] [I] [E]

30.4 PARTIES TO OFFENCES

When a player is injured in a sporting event, it is usually another player who is charged with a criminal offence. However, it is possible that a **coach or other players, possibly the team captain**, could also be charged. If a coach or captain encouraged either aggressive or violent play generally throughout the game, or told a player to execute that particular tackle or manoeuvre which resulted in the death or injury, this could make them an accessory to the offence.



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As well including ‘counselling’ or procuring, the party provisions cover ‘every person who aids another in committing an offence’. Case law has determined that **‘aids’ can extend to positive encouragement**. Perhaps the most famous case of aiding is that of Tonya Harding.

Tonya Harding was an American ice-skating champion with high hopes of winning an Olympic gold medal at the 1994 Winter Olympics. Her main rival was Nancy Kerrigan. Harding knew, and approved of, a plan for two men to seriously injure Kerrigan by breaking one of her legs, in order to prevent her competing at the games. Kerrigan sufficiently recovered from her injuries to win the silver medal. Harding pleaded guilty to conspiring to injure her rival. She received three years of probation, 500 hours of community service and a \$160,000 fine. She also was banned for life from competing or coaching by the national US Skating organisation.

Where there is **grossly negligent conduct on the part of organisers**, criminal liability for manslaughter can extend more widely. During the 1992 French FA Final in Corsica, the collapse of a grandstand which caused the death of several spectators led to the President of the French Soccer Federation being charged with manslaughter.

30.5 OTHER WAYS CRIMINAL LAW IMPACTS UPON SPORT

Criminal law is also relevant to a range of other events that can happen in a sporting context. These can range from stealing sporting equipment, fixing or rigging matches, bribing players and the doping of horses and greyhounds. The American National Basketball League was in damage control in 2007 when Tim Donaghy, one of the leading NBA referees, pleaded guilty to gambling on professional games in which he had officiated. He admitted using his inside knowledge of the game to help a co-conspirator to stake tens of thousands of dollars on games. He was convicted and sentenced to 15 months in federal prison.

Corruption and bribery is not limited to basketball. The cricket world was rocked initially by the admission by Hanse Cronje, the then captain of the South African cricket team that he had accepted money from a bookmaker in exchange for information, pitch reports and match fixing. Australian cricketers, Mark Waugh and Shane Warne, were fined \$10,000 and \$8,000

respectively for accepting money from an Indian bookmaker in exchange for information about pitch and weather conditions during the 1994 tour of Sri Lanka. Rugby, soccer, boxing and tennis have had to deal with players, coaches and referees being implicated in illegal activities.

In 2007, amid growing claims that match-fixing was occurring in the international tennis circuit, **Tennis Australia** established an **anti-corruption commission**. The Australian Open now has special investigators and analysts to monitor betting and any other suspicious activity.

Soccer too has been under the spotlight after police in Europe uncovered in 2012 an extensive criminal network that fixed the results of hundreds of games in Europe and Asia in order to win major sums of money. Players, referees and officials of all levels were involved in the extensive match-fixing racket. 14 people were convicted and imprisoned in 2012. There are over 100 prosecutions underway. The Interpol police investigation continues. Football Federation Australia does not believe match-fixing is a problem in Australia but issued a statement that it is committed to 'protecting the integrity of Australian football against match fixing.'

▶ **WHAT DO YOU THINK?**

- ▶ Senator Nick Xenophon has argued that ball-by-ball and micro-betting has made all sports ripe for corruption and match fixing. He has argued for these forms of betting to be made illegal. Do you agree, or disagree, with micro-betting? [K] [I] [E]
- ▶ Do you think any betting on sports events should be allowed? Give reasons for your answer. [E]



Criminal acts have reached the highest level of sport, including the Olympics. **The International Olympic Federation** has also had to deal with claims of vote-rigging, bribery, corruption and embezzlement by some prominent officials, including one of its former Vice Presidents who was convicted and jailed for corruption in regard to South Korean National Olympic Committee and the World Taekwondo Federation.

▶ **WHAT DO YOU THINK?**

Many of the major sports deal with the allegations of bribery and corruption in their sport by having their national or international Association investigate any claims. Fines, suspensions and lifetime bans can be imposed. Do you think these allegations should be heard 'in-house' or heard in the country's criminal courts? What are the benefits and disadvantages of these two alternatives? [E]



Hypothetical



You are a lawyer. You are asked to advise the following clients whether a criminal offence has been committed.

- ▶ Client A was in a scrum in a rugby union match, when opposing player B spat in his eye. It caused A's eye to water and was sore for several hours. B told the coach he was merely clearing his throat at the time. [K] [E]
- ▶ Client C is the manager of a local cricket team. At the end of the last match he saw D run onto the field and remove the stumps. D is refusing to return them. [K] [E]
- ▶ The hockey coach instructed E, your client, at half time 'to take out her opponent F'. E deliberately struck F's leg whilst intercepting a pass. It caused F to fall, hitting her head on the stick. She died as a result of the injury. F argues that she was just following the coach's instructions. [K] [E]

H

Hypothetical

- ▶ G, the President of the local Badminton club, discovered that the club's secretary, H, has left town and withdrawn all the money from the club's bank account. [K] [E]
- ▶ In a gymnastic competition a school's coach, I, set the parallel bars 10 cm further apart than are specified under the competitions rules. Your client, J, a young gymnast, missed the bar, fell and broke her arm. [K] [E]
- ▶ In a water polo game one player, K, grabbed the bathers of your client, L, and pulled on them so forcefully that they ripped. They cannot be worn again. [K] [E]
- ▶ During a softball game, a fielder, M, whilst running to catch the ball, has a cardiac arrest and dies. [K] [E]
- ▶ Golfer, S is about to tee off when his caddy says, "B will deposit \$10,000 into your bank account if your swing goes poorly and you lose the tournament." [K] [E]
- ▶ In a Davis Cup competition one of the single's players, N, complains on three occasions to his coach that he is feeling unbearably hot and exhausted. The temperature is over 40 degrees on the court. Despite the player's obvious distress, the coach refuses to let the player default the match on the basis that winning this match is vital for the team and for Australia. The player collapses and dies on the court. The autopsy reveals severe dehydration and heat stroke caused the death. [K] [E]

30.6 CRIMES OFF THE FIELD

In addition to criminal offences that may arise on the field or in the administration of a sport, criminal acts can be committed by sportspersons which are unrelated to the game they play. Clearly, they will be charged and tried for these offences and, if found guilty by a jury or by a magistrate, will be sentenced and given an appropriated penalty. However, what additional consequences, if any, should this have for their sporting life or career?

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▶ *WHAT DO YOU THINK?*

Butterfly swimmer, Nicholas D'Arcy was charged with assault occasioning bodily harm. He hit teammate Simon Cowley during a brawl on the night the Australian Olympic team was named. Cowley required extensive surgery to repair and rewire his cheekbone, jaw and nose. D'Arcy pleaded guilty to the charges. He received a 14-month suspended jail sentence.

- ▶ Why would D'Arcy make the decision to plead guilty? [K] [I]
- ▶ Was the suspended jail sentence sufficient? What factors would the judge have taken into account? [K] [I] [E]
- ▶ D'Arcy has stated that the media is unfair and biased against him. Do you think the media has a duty to report on such cases, or should young athletes be allowed privacy in what occurs 'off field'. [E]
- ▶ It was controversial when D'Arcy was selected for the London Olympics team. Should a past criminal conviction be a bar to national selection? Why or why not? [E]

Disappointed at not winning a medal at the London Olympics, an Australian rower who had consumed large amounts of alcohol, went out and smashed the windows of two businesses. He was wearing his Australian Team tracksuit at the time. He avoided a conviction by making an apology to the businesses and paying for the repairs.

He is quoted as saying: "We'd all been disappointed. You don't want to go to the Olympics and finish sixth".

Do you think that such disappointment excuses his actions? Is it an excuse that could be raised under Queensland's criminal law? Would the defence of 'intoxication' relieve him of criminal responsibility, if he had been charged in Queensland with wilful damage to property? [I] [E]

What action, if any, should the Australian Olympics Organisation take in such cases? [E]



▶ WHAT DO YOU THINK?

South African Olympian and para-Olympian gold medallist, Oscar Pistorius, known as the blade runner, admitted to killing his girlfriend in February. He claimed he did so in the mistaken belief he was shooting at a home intruder. He has pleaded not guilty to murder.

- ▶ If this killing had occurred in Queensland what defence or excuse would be relied on in his trial? [K]
- ▶ Most of his sponsors have stopped their sponsorship. Given that Pistorius has not been convicted of any offence, is it fair to do so for a charge (not a conviction) of murder? [E]
- ▶ Do you think he should be selected for the South African team in the next international athletics event? [E]

Practical application



In 2007, after several players in the AFL had been found guilty of criminal offences, including domestic violence, sex offences and assault, the executive drew up a Personal Conduct Policy that would be included in all future contracts. It was to cover coaches, administrators, umpires as well as the League's 640 players.

The Policy allows the AFL to discipline players found to have been involved in conduct which is **unbecoming or likely to prejudice the reputation or interests of the AFL or to bring the game of football into disrepute**. It means that players and officials found guilty of criminal offences, including the use or threat of violence, partner abuse, theft and other property crimes, sex offences, substance abuse, disorderly conduct, fraud or money laundering, could also be fined, suspended or removed from the competition.

- ▶ Do you think 'players are held to a higher standard' than others in the community or would any other employees be in a similar position? [E]
- ▶ In your opinion, do the criminal actions of a player 'off the field' bring the game itself into disrepute? [E]
- ▶ Should all sporting associations adopt similar strict codes? [E] Have they done so? [I]
- ▶ As players will be punished by the courts for any conviction, do you think that further punishment by the AFL or other sporting bodies amounts to double punishment? If so, should a judge take this factor into account when deciding on a sentence? [K] [E]

REVIEW

1. Can the rules of a sport exclude the criminal law from applying to it?
2. What are the elements required for an assault to be proven in a sporting context?
3. What is the test in Queensland for deciding what a player has consented to when playing a sport?
4. What additional element is needed for an assault to be a sexual assault?
5. What is the difference between assault occasioning bodily harm and the doing of grievous bodily harm?
6. When a player dies on the sporting field, what are the possible criminal charges than can be laid?
7. Why has corruption in sport become so prevalent?