

## SHAKE IT OFF: POTENTIAL CIVIL LIABILITY OF HANDSHAKE LINES

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After a sporting event, it is tradition for the opponents to line up with their respective teams and then walk in a line while each player shakes the hands of the opposing team. This act, otherwise known as a “handshake line,” occurs at all levels of sports.<sup>1</sup> The handshake line is supposed to be a sign of sportsmanship, as well as respect for your opponent and even the game itself.

The reality though, is that handshake lines have become less a show of respect and more a breeding ground for aggression and violence. Coaches, players, and other team personnel who are still emotional from a difficult loss or are harboring some sort of ill will against the opposing team are put in a situation where they can easily exact physical revenge. For a practice that is not essential to play the game, the continued use of handshake lines increases the likelihood for violence and potential legal liability.<sup>2</sup> This is

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<sup>1</sup> Although not as common in professional sports, the National Hockey League (“NHL”) does engage in handshake lines in the playoffs. See Jeff Z. Klein, *Tracing the Origin of Handshake Lines in the N.H.L.*, N.Y. TIMES (May 31, 2014), <https://www.nytimes.com/2014/06/01/sports/hockey/tracing-the-origin-of-handshake-lines-in-the-nhl.html>. Additionally, it is common practice in the National Basketball Association (“NBA”) and the National Football League (“NFL”) for the players and coaches to meet on the field/court following the game to shake hands, and players who refuse to participate are often criticized. See, e.g., William C. Rhoden, *A Handshake Is Not Too Much to Ask, Even From a King*, N.Y. TIMES (June 1, 2009), <http://www.nytimes.com/2009/06/02/sports/basketball/02rhoden.html> (criticizing NBA player LeBron James for walking off the court angrily without shaking hands with his opponents). In the NFL, handshake lines have also resulted in altercations. See Eric Branch, *Jim Harbaugh, Jim Schwartz have postgame tiff*, SFGATE (Oct. 17, 2011, 4:00 AM), <http://www.sfgate.com/49ers/article/Jim-Harbaugh-Jim-Schwartz-have-postgame-tiff-2326660.php>; see also *infra* Part I(C).

<sup>2</sup> Violence from a handshake-line altercation can result in criminal actions being brought against the aggressor, as well. For example, a New York man was convicted of criminally negligent homicide and third-degree assault after sucker punching an opponent after an adult-softball game. See The Associated Press, *ME’s office: NY softball player’s death a homicide*, N.Y. DAILY NEWS (July 3, 2008, 12:32 PM), <http://www.nydailynews.com/news/crime/office-ny-softball-player-death-homicide-article-1.346642>; Linda Quinlan, *Irondequoit man convicted of homicide in softball player’s death*, DAILY MESSENGER (Apr. 3, 2009, 3:19 AM), <http://www.mpnnow.com/x1098985647/Irondequoit-man-convicted-of-homicide-in-softball-players-death>; The Associated Press, *New York Softball Player Sentenced for Deadly Blow to Back of Opponent*, FOX NEWS (July 23, 2009), <http://www.foxnews.com/story/2009/07/23/new-york-softball-player-sentenced-for-deadly->

ironic as handshakes are said to have originated “as a way to convey peaceful intentions” because “[b]y extending their empty right hands, strangers could show that they were not holding weapons and bore no ill will toward one another.”<sup>3</sup>

Recently, a handshake line gone wrong gave rise to potential legal liability when the University of Florida softball team squared off against Auburn University during the 2017 spring season.<sup>4</sup> After Auburn beat Florida and the teams were engaging in the handshake line, the Florida head coach pushed an Auburn player on the shoulder for not raising her hand to shake his hand.<sup>5</sup> The coach’s actions were caught on camera, and it appeared as if it was an intentional action on the coach’s part.<sup>6</sup> The Auburn player reacted in self-defense, pushing the coach in the back, and the teams then separated the two individuals.<sup>7</sup> Following the fracas, the story began to unravel that there was history between the Florida coach and the Auburn player that may have prompted the coach’s actions.<sup>8</sup> The handshake line, unfortunately, gave the coach and player involved the forum to release their lingering aggression.

Although this was an unfortunate situation, the coach’s actions could potentially result in a civil lawsuit.<sup>9</sup> Unwanted physical contact against another has legal ramifications.<sup>10</sup> Part I of this Article will detail the many violent incidents that have occurred during post-game handshake lines at all levels of sport and involving both genders. Part II will explore the efforts taken by coaches and leagues to mitigate the risk of handshake-line violence. Part III will discuss the various civil legal consequences that can result from a physical altercation in a handshake line. Finally, this Article will conclude by arguing that handshake lines should simply be eliminated from post-game sporting events, as emotions are too high following a game and the ritual is an unnecessary, walking liability.

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blow-to-back-opponent.amp.html; *see also infra* notes 66-68 and accompanying text (detailing how a Vancouver hockey coach was sentenced to fifteen days in jail for tripping a player during a handshake line).

<sup>3</sup> Evan Andrews, *What is the origin of the handshake?*, HISTORY (Aug. 9, 2016), <http://www.history.com/news/ask-history/what-is-the-origin-of-the-handshake>.

<sup>4</sup> Associated Press, *Florida coach, Auburn player in heated softball shoving match*, N.Y. POST (Mar. 28, 2017, 8:16 AM), <http://nypost.com/2017/03/28/florida-coach-auburn-player-in-heated-softball-shoving-match>. *See infra* Part I(A)(4), for a more detailed discussion on the incident.

<sup>5</sup> Associated Press, *Florida coach, Auburn player in heated softball shoving match*, *supra* note 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The authors found no indication to date as to whether the player will seek legal action against the coach.

<sup>10</sup> Indeed, at least one court has held an athlete liable for the injuries he caused during a handshake-line fight. *See Overall v. Kadella*, 361 N.W.2d 352, 356 (Mich. Ct. App. 1984); *see also infra* notes 94-100 and accompanying text.

## I. RECENT HANDSHAKE LINE ALTERCATIONS

Although handshake lines have always been considered to be a necessary demonstration of respect to the opposing team,<sup>11</sup> a rising tide of physical violence taking place during this longtime ritual calls into question its necessity to sports given the potential of civil liability. Some of the more recent violent events are detailed below.<sup>12</sup>

## A. Intercollegiate Sports

## 1. North Dakota vs. Minnesota Men's Hockey (2012)

In 2012, following a 6-2 loss to the University of Minnesota, University of North Dakota student-athlete and 2007 Ottawa Senators draft pick, Ben Blood, used the post-game handshake line as an opportunity to shove University of Minnesota's Kyle Rau.<sup>13</sup> Blood was apparently retaliating for an incident that occurred just before the final whistle, where a Minnesota player came off the bench and used his stick to slash at Blood's legs.<sup>14</sup> Following the shove, Blood also got in a fight with Minnesota student-athlete, Seth Ambroz.<sup>15</sup>

Blood was stripped of his assistant captain position for instigating the fight, but was not suspended by his team, the Western Collegiate Hockey Association, or The National Collegiate Athletic Association ("NCAA").<sup>16</sup>

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<sup>11</sup> See Klein, *supra* note 1; see also Harold Uhlman, *The Handshake – It's All About Respect*, THINK BLUE LA (Apr. 2, 2014, 6:00 AM), <http://www.thinkbluel.com/2014/04/the-handshake-its-all-about-respect/>; Nicholas Goss, *A Winning Tradition: What the Post-Series Handshake Line Means to Hockey*, BLEACHER REPORT (June 23, 2013), <http://bleacherreport.com/articles/1653502-a-winning-tradition-what-the-post-series-handshake-line-means-to-hockey>.

<sup>12</sup> For a comprehensive list of post-game handshake-line incidents dating back to 1994, see *Postgame Handshakes*, DONALD COLLINS, <http://www.donaldcollins.org/post-game-handshakes.html> (last visited Jan. 4, 2018).

<sup>13</sup> See Greg Wyshynski, *Bad Blood: Handshake line fight between North Dakota and Minnesota in NCAA (Video)*, YAHOO! SPORTS (Jan. 16, 2012, 11:04 AM), <https://sports.yahoo.com/blogs/nhl-puck-daddy/bad-blood-handshake-line-fight-between-north-dakota-160440434.html>; see also badgersioux, *End of game UND vs. Minnesota 1/14/2012*, YOUTUBE (Mar. 4, 2012), <https://www.youtube.com/watch?v=tRiA8wdFkkM>. This video—an upload of a broadcast of the game—included a telling quote from one of the broadcasters: “You know I wonder sometimes . . . why they go through with [handshake lines] after something like that, but I realize this is the exception instead of the rule.” *Id.* at 1:57.

<sup>14</sup> Wyshynski, *supra* note 13.

<sup>15</sup> *Id.*

<sup>16</sup> See Roman Augustoviz, *WCHA satisfied with UND's punishment of Blood, won't suspend him*, STAR TRIBUNE (Jan. 18, 2012), <http://www.startribune.com/wcha-satisfied-with-und-s-punishment-of-blood-won-t-suspend-him/137526348/> (“The league is satisfied with UND’s response to the incident . . . and no further action will be taken . . .”).

According to University of North Dakota head coach, Blood was also subject to additional internal-team discipline.<sup>17</sup>

## 2. Iona vs. Monmouth Men's Basketball (2016)

In January, 2016, the rivalry between Iona College and Monmouth College spilled into the post-game handshake line when Iona player, Jordan Washington, slapped Monmouth's Chris Brady in the face following a 110-102 Monmouth victory.<sup>18</sup> The slap sparked a skirmish between the two teams that involved both players and coaches, and even threatened to extend into the stands at multiple points, until arena security got involved.<sup>19</sup>

While it was not clear what provoked the fight, Monmouth had drawn headlines for its "eccentric bench celebrations," and prior to the game, Iona coach, Tim Cluess, had expressed his disapproval of these celebrations.<sup>20</sup> The fight was not the first dispute between the two teams; Cluess and Monmouth coach, King Rice, had exchanged words the previous year during the Metro Atlantic Athletic Conference ("MAAC") semifinal after Rice accused an Iona player of faking an injury.<sup>21</sup>

Following the handshake-line event, Iona suspended Washington for two games.<sup>22</sup> In a later statement, Cluess said that his team "will use better judgment in the future, regardless of provocation."<sup>23</sup> Both teams were also "reprimanded" by MAAC commissioner, but the conference did not levy any additional punishment against the schools or any of the student-athletes involved.<sup>24</sup>

## 3. Seton Hall vs. St. John's Men's Basketball (2016)

In another post-game altercation in college basketball, players from Seton Hall University ("SHU") and St. John's University ("SJU") had to be

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<sup>17</sup> Augustoviz, *supra* note 16.

<sup>18</sup> See *Tempers flare after Monmouth-Iona game*, ESPN (Jan. 16, 2016), [http://www.espn.com/mens-college-basketball/story/\\_/id/14579908/iona-gaels-monmouth-hawks-fight-game](http://www.espn.com/mens-college-basketball/story/_/id/14579908/iona-gaels-monmouth-hawks-fight-game).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Josh Newman, *Monmouth-Iona continues to build steam following verbal incident*, ASHBURY PARK PRESS (Mar. 8, 2015, 8:58 PM), <http://www.app.com/story/sports/college/monmouth-university/2015/03/08/monmouth-iona-continues-build-steam-following-verbal-incident/24626609/>.

<sup>22</sup> *Jordan Washington suspended 2 games for slapping Hawks player*, ESPN (Jan. 16, 2016), [http://www.espn.com/mens-college-basketball/story/\\_/id/14582906/jordan-washington-iona-gaels-suspended-2-games-unsportsmanlike-incident-vs-monmouth-hawks](http://www.espn.com/mens-college-basketball/story/_/id/14582906/jordan-washington-iona-gaels-suspended-2-games-unsportsmanlike-incident-vs-monmouth-hawks).

<sup>23</sup> *Id.*

<sup>24</sup> Mike MacAdam, *Monmouth-Iona rivalry goes from verbal to physical*, THE DAILY GAZETTE (Jan. 20, 2016), [https://dailygazette.com/article/2016/01/20/1220\\_maccolumn](https://dailygazette.com/article/2016/01/20/1220_maccolumn).

restrained after SHU won a close game in the final seconds.<sup>25</sup> The quarrel followed a heated game between two conference rivals and ended with SHU's Isaiah Whitehead and Ismael Sanogo having to be separated from SJU players, Ron Mvouika and Christian Jones, near center court, while SHU's Derrick Gordon was restrained and led off the court by one of his assistant coaches.<sup>26</sup> Despite the lack of suspensions imposed, SHU coach Kevin Willard did state that “[s]ometimes the handshake line isn't the greatest idea” due to the threat of physical action between two heated teams.<sup>27</sup>

#### 4. Florida vs. Auburn Women's Softball (2017)

As discussed earlier, a softball game between the University of Florida and the University of Auburn made national headlines when following a 1-0 victory by Auburn over Florida, Florida coach, Tim Walton, shoved Auburn student-athlete, Haley Fagan, during the post-game handshake line.<sup>28</sup> After Fagan appeared to refuse to give Walton a high-five, Walton gave her a shove on the shoulder, causing Fagan to turn around and shove Walton back.<sup>29</sup> Fagan then had to be restrained multiple times by teammates after attempting to go after Walton in a physical manner.<sup>30</sup>

This incident may have been influenced by the Fagan family's history with Florida and Coach Walton, as two of Fagan's sisters played softball at Florida but were among three players dismissed from the team before the 2012 NCAA tournament due to, what their father referred to as, “an altercation on the team.”<sup>31</sup> Both of the Fagan sisters later transferred from Florida.<sup>32</sup>

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<sup>25</sup> Daniel O'Leary, *Video: Post-game scuffle follows St. John's last-second loss to Seton Hall*, N.Y. DAILY NEWS (Feb. 21, 2016 4:21 PM), <http://www.nydailynews.com/sports/college/video-post-game-scuffle-st-john-last-second-loss-article-1.2539179>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Chuck Scilken, *Auburn softball player Haley Fagan goes after Florida Coach Tim Walton following shove in handshake line*, L.A. TIMES (Mar. 28, 2017), <http://www.latimes.com/sports/sportsnow/la-sp-auburn-florida-softball-20170328-story.html>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*; see also Andy Marks, *UF softball starters have been released from team, players' dad says*, THE GAINESVILLE SUN (May 20, 2012, 12:25 AM), <http://www.gainesville.com/news/20120519/uf-softball-starters-have-been-released-from-team-players-dad-says>.

<sup>32</sup> James Crepea, *Florida softball coach Tim Walton, Auburn SS Haley Fagan push each other in handshake line*, ALA. LOCAL NEWS (Mar. 28, 2017, 6:08 PM), [http://www.al.com/sports/index.ssf/2017/03/florida\\_softball\\_coach\\_tim\\_wal.html](http://www.al.com/sports/index.ssf/2017/03/florida_softball_coach_tim_wal.html).

Walton did apologize after the game in a statement, saying:

My intent was to give a high-five to each opposing player as we do after every game. Apparently, her hand wasn't up as I said "good game" and I touched her shoulder. I should have paid close attention and did not intend to upset her. I regret that this has taken attention away from the effort and sportsmanship both teams displayed all weekend.<sup>33</sup>

No suspensions were issued by the NCAA or the Southeastern Conference following the incident, and there is no evidence that either school took any action against any individuals involved.

### *B. High-School Sports*

#### 1. Steubenville High School vs. Beechcroft High School (2014)

After a contentious 29-21 victory for Steubenville High School over top-seed Beechcroft High School in a Division IV regional-football final, the two teams came to blows in the post-game handshake line in a fight that involved, players, coaches, parents, and police officers.<sup>34</sup> The two teams had just ended a game marred by pushing and shoving after Beechcroft defensive players had attempted to jump the snap and steal the ball as the Steubenville offense kneeled down to run out the clock.<sup>35</sup> After the game ended, the fighting continued in the handshake line, spread across nearly the entire field, and ended only when police arrived to restore order.<sup>36</sup>

No arrests were made, nor were any serious injuries reported.<sup>37</sup> Although the schools were publicly reprimanded for the incident by the Ohio High School Athletic Association ("OHSAA"), none of the players or coaches were suspended by either school or by the OHSAA.<sup>38</sup> Notably, if the fight had occurred during the game, according to OHSAA rules, the

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<sup>33</sup> SI Wire, *Florida softball coach apologizes after postgame tussle with Auburn player*, SPORTS ILLUSTRATED (Mar. 27, 2017), <https://www.si.com/more-sports/2017/03/27/auburn-florida-softball-haley-fagan-tim-walton-altercation>.

<sup>34</sup> Adam Jardy, *Steubenville 29, Beechcroft 21: Postgame brawl, loss ends Beechcroft's season on a sad note*, COLUMBUS DISPATCH (Nov. 22, 2014, 12:01 AM), <http://www.dispatch.com/content/stories/sports/2014/11/22/beechcroft-steubenville.html>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Ryan Lewis, *OHSAA won't suspend Steubenville football players following brawl for Division IV state semifinal with Benedictine*, CLEVELAND LOCAL NEWS, (Nov. 25, 2014, 1:23 PM), <http://highschoolsports.cleveland.com/news/article/-812748011866145744/ohsaa-to-not-suspend-steubenville-football-players-following-brawl-for-div-iv-state-semifinal-game-with-benedictine/>.

players involved would have been ejected with automatic one-game suspensions, and more detailed accounts by the officials would have been recorded and used for sufficient punishment, if warranted.<sup>39</sup> However, since the incident occurred just after play ended, rather than before the final whistle, officials under OHSAA rules were not obligated to eject players or report details of the incident to the OHSAA.<sup>40</sup>

## 2. Garland High School vs. Garland Lakeview High School (2016)

In another example of a post-game fight following a heated high-school football game, Garland High School and Garland Lakeview High School (“Lakeview”) used the post-game handshake line as an opportunity to continue an in-game dispute.<sup>41</sup> The genesis of the fight came from an ejection of one player from each team after a punch was thrown in the fourth quarter of Lakeview’s 44-18 rout of Garland.<sup>42</sup> Although the fight lasted for a mere seventy-five seconds, police were required to separate the players.<sup>43</sup>

## 3. Arlington Martin High School vs. North Crowley High School (2016)

Just a few days after the Garland-Lakeview incident, another post-game handshake line ended in a brawl between two Texas high-school football teams, Arlington Martin High School and North Crowley High School.<sup>44</sup> After an Arlington Martin defensive back returned a North Crowley pass for a touchdown with twenty-seven seconds left in the game to seal a 51-28 victory, Arlington Martin elected to kick an onside kick and was able to successfully regain possession of the ball.<sup>45</sup> The North Crowley team took offense to this perceived disrespect, and some players began shoving each other as the teams lined up to shake hands.<sup>46</sup> The brawl quickly turned ugly, and a video of the altercation shows an unidentified North Crowley player on the ground being kicked and stomped on by several Arlington-

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<sup>39</sup> Lewis, *supra* note 38.

<sup>40</sup> *Id.*

<sup>41</sup> Cam Smith, *VIDEO: Fight erupts in postgame handshake line of Texas crosstown face off*, USA TODAY HIGH SCHOOL SPORTS (Oct. 17, 2016), <http://usatodayhss.com/2016/video-fight-erupts-in-postgame-handshake-line-of-texas-crosstown-face-off>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Tempers flare in handshake line after Arl. Martin recovers onside kick up big with 27 seconds left*, SPORTSDAY HS (Oct. 21, 2016), <https://sportsday.dallasnews.com/high-school/high-schools/2016/10/21/tempers-flare-handshake-line-arl-martin-recovers-onside-kick-big-27-seconds-left>.

<sup>45</sup> *Id.*

<sup>46</sup> Brian Gosset, *Arlington Martin-North Crowley brawl sparks investigation*, FORT WORTH STAR-TELEGRAM (Oct. 25, 2016, 4:02 PM), <http://www.star-telegram.com/sports/dfwvarsity/prep-football/article110269357.html>.

Martin players.<sup>47</sup> After the fight was broken up, a North Crowley player punched a Arlington-Martin player, which started a second fight.<sup>48</sup>

Police were then required to clear the field, but no arrests were made nor charges filed following the event.<sup>49</sup> Further, despite the violent nature of this incident, a district-executive committee investigating the incident voted 6-0 not to take any action beyond undisclosed, school-level punishment.<sup>50</sup>

#### 4. St. Thomas Aquinas High School vs. Dwyer High School (2016)

About a month after the prior two handshake-line altercations, two more high-school football teams created a similar incident following a 37-0 rout by St. Thomas Aquinas High School over Dwyer High School in the Florida Class 7A regional semi-finals.<sup>51</sup> According to St. Thomas Aquinas coach, a Dwyer player threw a punch at a St. Thomas Aquinas player during the handshake line, which started a skirmish between the teams.<sup>52</sup>

After this exchange was eventually broken up by police officers, coaches, and administrators, and the teams were separated, a group of Dwyer players escaped their coaches and ran after the St. Thomas Aquinas team, starting another fight.<sup>53</sup> Once all of the fighting ended, the Dwyer team was escorted to the busses, as coaches and administrators retrieved the team's belongings from the locker room while a pair of local police officers stood guard.<sup>54</sup>

Following the game, the Florida High School Athletic Association ("FHSAA") suspended five players from each school for one game each and required them to complete a sportsmanship course.<sup>55</sup> Both teams were

<sup>47</sup> Gosset, *Arlington Martin-North Crowley brawl sparks investigation*, *supra* note 46.

<sup>48</sup> Payton Smith, *District Takes No Action After Martin-North Crowley Fight*, TEX. HS FOOTBALL (Oct. 27, 2016), <http://texashsfootball.com/district-takes-no-action-martin-north-crowley-fight/>.

<sup>49</sup> Gosset, *Arlington Martin-North Crowley brawl sparks investigation*, *supra* note 46.

<sup>50</sup> Brian Gosset, *District decides against further punishment for football brawl*, FORT WORTH STAR-TELEGRAM (Oct. 27, 2016, 9:24 PM), <http://www.star-telegram.com/sports/dfwvarsity/prep-football/article110784537.html>.

<sup>51</sup> Wells Dusenbury, *Players brawl after St. Thomas ousts Dwyer in rout*, SUN SENTINEL (Nov. 19, 2016, 1:45 AM), <http://www.sun-sentinel.com/sports/highschool/football/broward/fl-hs-fb-dwyer-st-thomas-aquinas-1119-20161118-story.html>.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Wells Dusenbury, *St. Thomas, Dwyer hit with fines, probation in brawl aftermath*, ORLANDO SUN SENTINEL (Nov. 29, 2016, 8:23 PM), <http://www.sun-sentinel.com/sports/highschool/football/fl-hs-fb-fhsaa-brawl-report-1130-20161129-story.html>. Oddly, the suspensions ended up having very little effect on the players involved, as two of the five Dwyer players were graduating and thus had played in their last game (their team was eliminated in the game with St. Thomas Aquinas) and the other three could play a spring sport like track or weightlifting and simply sit out a meet to serve the suspension. *Id.* The suspensions also had little effect on the St. Thomas Aquinas players, as



also placed on probation and required to pay a \$700 fine, and the Dwyer football team was barred from playing a spring game.<sup>56</sup> Each school also indicated that they would impose their own additional punishment on the players involved, including possibly kicking players off the teams.<sup>57</sup>

### C. Professional Sports

While the majority of recent handshake-line conflicts have been in the context of amateur sports, one infamous professional-sports confrontation occurred in October, 2011, when former San Francisco 49ers head coach, Jim Harbaugh, and former Detroit Lions head coach, Jim Schwartz, nearly came to blows following a game where the 49ers upset the previously unbeaten Lions.<sup>58</sup> Harbaugh, clearly excited from his team's close victory, ran towards Schwartz for the traditional coaches' handshake and "greet[ed] Schwartz near midfield with an aggressive handshake that was followed with a rap on Schwartz's back."<sup>59</sup> Schwartz took offense to Harbaugh's conduct, running after his rival coach and bumping into him from the side, which started a skirmish between both teams that culminated with several players on each team needing to be restrained.<sup>60</sup>

Afterwards, Harbaugh conceded that he may have gotten a little carried away with his handshake, said that he had been "really revved up," and "really went in" with "a strong kind of a slap, grab handshake."<sup>61</sup> Schwartz was still unhappy about Harbaugh's approach to the handshake after the

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four of the five players were eligible to play in the regional final, despite the suspension. *Id.* One St. Thomas Aquinas player was given a two-game ban, and was also barred from the upcoming playoff game. *Id.*; see also Adam Lichtenstein, *Five Dwyer players suspended for roles in playoff brawl Fort Lauderdale-St. Thomas Aquinas*, PALM BEACH POST (Nov. 23, 2016), <http://highschoolbuzz.blog.palmbeachpost.com/2016/11/23/football-five-dwyer-players-suspended-for-roles-in-playoff-brawl-fort-lauderdale-st-thomas-aquinas/>.

<sup>56</sup> Dusenbury, *supra* note 55.

<sup>57</sup> Lichtenstein, *supra* note 55. Dwyer athletic director told the Orlando Sun-Sentinel that the football team will be required to perform community service and that the suspended players will take a leadership course in addition to the FHSAA required sportsmanship course. Dusenbury, *supra* note 55.

<sup>58</sup> See Branch, *supra* note 1. Even though professional football does not have a traditional post-game handshake line, like in amateur sports or professional hockey, it is tradition for the head coaches to shake hands, which has led to a number of headlines and awkward situations, including the incident between Harbaugh and Schwartz. See Barbara Barker, *Why must NFL coaches shake hands?*, NEWSDAY (Oct. 17, 2011, 6:19 PM), <http://www.newsday.com/sports/columnists/barbara-barker/why-must-nfl-coaches-shake-hands-1.3251759> (questioning the necessity of handshake lines); see also David Fleming, *Flem File: Handicapping NFL handshakes*, ESPN (Dec. 7, 2012), [http://www.espn.com/blog/playbook/fandom/post/\\_/id/15068/flem-file-handicapping-nfl-handshakes](http://www.espn.com/blog/playbook/fandom/post/_/id/15068/flem-file-handicapping-nfl-handshakes) (predicting what may happen between coaches during the last few weeks of the 2012 NFL season based on prior history between certain coaches).

<sup>59</sup> Branch, *supra* note 1.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

game, stating that while he understood why Harbaugh was so excited, there was “a protocol that goes with this league” that Harbaugh did not follow.<sup>62</sup>

#### D. International Incidents

Post-game handshake-line fights are not exclusive to the United States; in fact, some international encounters have resulted in far more serious legal ramifications than those mentioned above. In 2011, two teams in Kazakhstan playing in an under-10 league (mostly nine-year-old players) began brawling after a player from the winning team taunted the losing team’s captain while the teams were lining up for the post-game handshake.<sup>63</sup> Similar incidents also occurred in a Russian under-10 hockey league in 2015,<sup>64</sup> and a Swedish under-18 hockey league in 2016<sup>65</sup>—both of which also involved large groups of minors brawling after a game.

In a much more severe instance, Vancouver pee-wee hockey coach Martin Tremblay was arrested in 2012 after tripping an opposing player while the teams were shaking hands, which caused two players—one thirteen-year-old player and one ten-year-old player—to fall to the ice.<sup>66</sup> While the ten year old was unharmed, the thirteen-year-old intended target of Tremblay’s actions injured his wrist and had to wear a cast.<sup>67</sup> Tremblay, plead guilty to one count of assault, and was sentenced to fifteen days in a provincial corrections center.<sup>68</sup> However, no evidence exists that any civil actions were filed against Tremblay by the parents of the injured child.

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<sup>62</sup> Branch, *supra* note 1.

<sup>63</sup> Greg Wyshynski, *Video: Massive hockey brawls way more adorable with 9 year olds*, YAHOO! SPORTS (Dec. 13, 2011), [https://sports.yahoo.com/nhl/blog/puck\\_daddy/post/Video-Massive-hockey-brawls-way-more-adorable-w?urn=nhl-wp19713](https://sports.yahoo.com/nhl/blog/puck_daddy/post/Video-Massive-hockey-brawls-way-more-adorable-w?urn=nhl-wp19713).

<sup>64</sup> See Samer Kalaf, *Little Russian Hockey Kids Brawl During Team Handshake*, DEADSPIN (Mar. 4, 2015, 6:02 PM), <http://deadspin.com/little-russian-hockey-kids-brawl-during-team-handshake-1689497573>; Mike Cole, *Russian Youth Hockey Brawl Breaks Out During Postgame Handshake Line (Video)*, NESN (Mar. 4, 2015, 12:17 PM), <http://nesn.com/2015/03/russian-youth-hockey-brawl-breaks-out-during-postgame-handshake-line-video/>.

<sup>65</sup> Dave Brown, *Swedish Junior Hockey Teams Rack Up 871 Penalty Minutes After Fighting in Handshake Line*, VICE SPORTS (Dec. 5, 2016, 1:24 PM), [https://sports.vice.com/en\\_us/article/swedish-junior-hockey-teams-rack-up-871-penalty-minutes-after-fighting-in-handshake-line](https://sports.vice.com/en_us/article/swedish-junior-hockey-teams-rack-up-871-penalty-minutes-after-fighting-in-handshake-line).

<sup>66</sup> See *Hockey coach gets jail time for trip*, ESPN (Feb. 27, 2013), [http://www.espn.com/espn/story/\\_id/8993128/pee-wee-hockey-coach-martin-tremblay-gets-15-days-jail-tripping-player](http://www.espn.com/espn/story/_id/8993128/pee-wee-hockey-coach-martin-tremblay-gets-15-days-jail-tripping-player). For a video – with personal edits of the publisher – of this incident, see BambinoGames, *Youth Hockey Coach Trips Opposing Player During Handshake (my response)*, YOUTUBE (June 28, 2012), <https://www.youtube.com/watch?v=6Shd7WfUMks>.

<sup>67</sup> Tamsyn Burgmann, *Minor hockey coach sentenced to 15 days in jail for tripping opposing child player*, TORONTO STAR (Feb. 26, 2013), [https://www.thestar.com/sports/hockey/2013/02/26/minor\\_hockey\\_coach\\_sentenced\\_to\\_15\\_days\\_in\\_jail\\_for\\_tripping\\_opposing\\_child\\_player.html](https://www.thestar.com/sports/hockey/2013/02/26/minor_hockey_coach_sentenced_to_15_days_in_jail_for_tripping_opposing_child_player.html).

<sup>68</sup> *Id.*

Although United States law does not affect these examples, they do serve as important barometers for the potential dangers of handshake-line fights. United States sports policymakers would be well served to keep these situations, as well as the United States incidents outlined above, in mind when considering how to adjust, administrate, and implement handshake-line policies.

## II. EFFORTS TO MITIGATE THE RISK OF HANDSHAKE LINES

Following the events described above, a number of commentators have called for the end of post-game handshake lines. After the fight between North Dakota and Minnesota's hockey teams involving North Dakota's Ben Blood,<sup>69</sup> Yahoo! Sports blogger, Greg Wyshynski, stated, "If nothing else, this incident reestablishes something we've always said: The handshake line, despite being put over as the grandest of grand traditions in hockey, is *begging for trouble*."<sup>70</sup>

The Iona-Monmouth fight<sup>71</sup> sparked a column by Mike DeCourcy of Sporting News arguing that the altercation, which "killed an instant classic," is "one more good reason for the handshake line to be banished to history along with peach baskets and canvas sneakers."<sup>72</sup> In April, 2017, Chad Garner of the Fitchburg (MA) Sentinel & Enterprise penned a column questioning whether the tradition "honestly display[s] true sportsmanship" in light of the "potential verbal or physical altercations . . . between two teams that just finished competing hard against one another."<sup>73</sup>

These views are not solely reserved for reporters, as many coaches have called for the end of handshake lines, as well. In the aforementioned Sentinel & Enterprise column, a number of youth coaches told stories of the "not-so-glamorous side of the postgame handshake," including incidents where coaches have used the post-game handshake to "firmly hold [the opposing] coach and say nasty stuff to him," or how a bad attitude by one team "can definitely lead to fights."<sup>74</sup>

Unfortunately, thus far, these comments have been the minority opinion. Efforts to actually curb the risk of this activity have been met with backlash

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<sup>69</sup> See *supra* Part I(A)(1).

<sup>70</sup> Wyshynski, *supra* note 13; see also badgersioux, *End of game UND vs. Minnesota 1/14/2012*, *supra* note 13, at 1:57.

<sup>71</sup> See *supra* Part I(A)(2).

<sup>72</sup> Mike DeCourcy, *Iona-Monmouth melee killed an instant classic; we should kill the handshake line*, SPORTING NEWS (Jan. 16, 2016, 10:42 AM), <http://www.sportingnews.com/ncaa-basketball/news/monmouth-iona-fight-video-jordan-washington-handshake-lines/1aerbv77huifz66iqg6puubd>.

<sup>73</sup> Chad Garner, *Is it time to retire the postgame handshake?*, SENTINEL & ENTERPRISE (Apr. 2, 2017, 7:02 AM), [http://www.sentinelandenterprise.com/highschoolsports/ci\\_30895505/is-it-time-retire-postgame-handshake](http://www.sentinelandenterprise.com/highschoolsports/ci_30895505/is-it-time-retire-postgame-handshake).

<sup>74</sup> *Id.*

and hostility. In 2013, the Kentucky High School Athletic Association (“KHSAA”) issued a directive to their member schools, stating that post-game handshakes should not take place unless they can be “properly supervised,” and threatening penalties against member-school athletic programs and additional penalties against individuals and schools for “any incidents by an individual squad member (including coaches) or group of squad members that results in unsporting acts immediately following the contest.”<sup>75</sup> This directive was heavily criticized (mostly in columns mischaracterizing the KHSAA’s actions as a complete ban on the practice),<sup>76</sup> and the KHSAA was forced to issue a statement clarifying their original directive to state that they were not banning handshake lines, but rather looking merely to regulate them to ensure proper supervision.<sup>77</sup>

Clearly, any efforts to do away with handshake lines will be met with opposition, as they are an oft-expected practice in sports. Towards the end of a January, 2017, a college-basketball game between Rider University and

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<sup>75</sup> *Commissioner’s Directive on Postgame Activity*, KY. HIGH SCHOOL ATHLETIC ASSOCIATION (Oct. 8, 2013), <http://khsaa.org/10082013-commissioners-directive-on-postgame-activity/>. To the authors’ knowledge, the KHSAA is the only high-school athletic association—or any athletic league in general—to issue such a directive; *see also There’s No Shaking Hands in Baseball*, KUDDA BLOG (Feb. 6, 2015), <http://kudda-files.com/blog/coaching-101/theres-no-shaking-hands-in-baseball/>. However, other international organizations have taken steps to ban handshakes in certain contexts. For example, starting with the 2016-17 season, Hockey Calgary has banned postgame handshakes between game participants (coaches and players) and referees, citing rampant bullying by coaches, team officials, parents, and players in both their organization and Hockey Alberta. *See* Ryan White, *Hockey Calgary does away with postgame handshakes involving officials*, CTV CALGARY NEWS (Sept. 22, 2016, 9:30 PM), <https://calgary.ctvnews.ca/hockey-calgary-does-away-with-postgame-handshakes-involving-officials-1.3084987>.

<sup>76</sup> *See* George Sells, *Handshakes After High School Games Banned in Kentucky*, FOX 2 NOW ST. LOUIS (Oct. 9, 2013, 6:28 PM), <http://fox2now.com/2013/10/09/handshakes-after-high-school-games-banned-in-kentucky/>; *see also* Cameron Smith, *Kentucky Officials Issue Sad Directive Asking Schools to Stop Postgame Handshake Lines*, YAHOO! SPORTS (Oct. 10, 2013, 6:29 AM), <https://sports.yahoo.com/blogs/highschool-prep-rally/kentucky-officials-issue-bizarre-directive-asking-schools-stop-102913032.html>; *Post-game Handshake Ban Idiotic*, NATIONAL ALLIANCE FOR YOUTH SPORTS (Nov. 1, 2013), <http://www.nays.org/blog/post-game-handshake-ban-idiotic/>; Eric Sondheimer, *Post-game Handshake Controversy in Kentucky*, L.A. TIMES (Oct. 9, 2013), <http://articles.latimes.com/2013/oct/09/sports/la-sp-vi-postgame-handshake-controversy-in-kentucky-20131009> (quoting Moorpark High School athletic director, who stated: “To be blunt, it was stupid. It’s a game. You have to be able to shake hands afterward. Who’s running the house—the kids or the coaches?”).

<sup>77</sup> *Commissioner’s Directive on Postgame Activity*, *supra* note 75. Even after this clarification, many still mischaracterize the KHSAA’s actions as a “handshake ban.” *See There’s No Shaking Hands in Baseball*, *supra* note 75 (“Rather than address these isolated incidents and confront the coaches who were not doing their job of teaching proper values, Kentucky decided to ban the handshake for everyone, thus supporting the old adage of ‘one bad apple.’”); *Post-game Handshake Ban Idiotic*, *supra* note 76 (calling Kentucky’s postgame handshake line ban “idiotic” on November 1, 2013, even though the KHSAA had clarified that the directive was not a handshake line ban on October 8, 2013).

Siena University, which included questionable officiating and several fights between both players and coaches, Rider coach, Kevin Baggett, appeared to instruct his team during a timeout to walk off the court without submitting to the customary handshake line.<sup>78</sup> As the Rider team walked off the court following Siena's eventual 78-68 victory, the Siena crowd booed and threw trash at Rider players and coaches while Siena coach, Jimmy Patsos, went through an "imaginary handshake line" by himself.<sup>79</sup>

### III. POTENTIAL LEGAL CONSEQUENCES OF HANDSHAKE LINES

Handshake-line altercations can result in a number of civil causes of action brought against the aggressor, the employer, the sports-facility owner or operator, and in some cases, the schools. A civil wrong committed against another person is called a tort.<sup>80</sup> Torts primarily consist of intentional torts and negligence, both of which are applicable to handshake-line altercations.<sup>81</sup>

#### *A. Intentional Torts*

Generally, when the action itself is committed intentionally and the actor also intends the corresponding harm, then it is considered an intentional tort.<sup>82</sup> The two intentional torts that would likely arise from a handshake-line physical skirmish would be: (1) assault and (2) battery. Historically, an aggressive handshake was considered a potential legal issue.<sup>83</sup>

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<sup>78</sup> Mike Rutherford, *Rider-Siena Fight Results in One Coach Going Through an Imaginary Handshake Line*, SB NATION (Jan. 17, 2017, 9:54 PM), <http://www.sbnation.com/college-basketball/2017/1/17/14306020/siena-rider-fight-video-handshake-jimmy-patsos>.

<sup>79</sup> *Id.*

<sup>80</sup> *Tort*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>81</sup> *Id.* See generally John F. Carroll, *Torts in Sports – "I'll See You in Court!"*, 16 AKRON L. REV. 537 (1983) (analyzing various tort claims' applicability in sports). With some exceptions, tort claims in the context of sports are no different than tort claims outside of sports. *Id.* at 537 ("As one attorney put it while prosecuting a hockey violence case: 'An assault is an assault whether it occurs in a parking lot, at a country club, or on a hunk of ice rented by the NHL.'" (citing Ray Kennedy, *A Nondecision Begg the Question*, SPORTS ILLUSTRATED (Jul. 28, 1975), <https://www.si.com/vault/1975/07/28/606678/a-nondecision-begg-the-question>)). In particular, the assumption of the risk defense to negligence claims has a unique test and application in the sports context that can bar negligence claims when the plaintiff assumed the risks inherent to the particular sport. See *infra* note 142 and accompanying text. Assumption of the risk, however, is not a valid defense to intentional tort claims – one does not assume the risk of intentional conduct. See, e.g., *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 524 (10th Cir. 1979).

<sup>82</sup> *Tort*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>83</sup> See Andrews, *supra* note 3 ("As is often suggested today, the Victorian shake was supposed to be firm but not overly strong. One 1877 guide counseled its readers that, 'a gentleman who rudely presses the hand offered him in salutation, or too violently shakes it, ought never to have an opportunity to repeat his offense.'").

## 1. Assault

Assault is committed in the civil context when one person intentionally places another person in apprehension of immediate bodily harm or offensive contact.<sup>84</sup> Assault is therefore a mental intrusion and not a physical intrusion.<sup>85</sup> The person in danger must have knowledge of the impending physical contact and be “apprehensive of its imminent threat to his safety.”<sup>86</sup> Because actual physical contact is not required to maintain a cause of action for assault, the plaintiff could potentially recover damages for fright and humiliation.<sup>87</sup>

For example, in one case, a member of the University of Virginia swim team, who was hazed by older team members, was able to successfully plead a claim of assault through his allegations that team members “made sudden and threatening movements towards him,” “repeatedly slammed shut a door near [him],” threw buckets of liquid and poured water on him, and threatened him with sodomy “in a ‘menacing way.’”<sup>88</sup> The defendants’ conduct was found to create “a reasonable apprehension of an imminent battery” in the plaintiff’s mind, as the defendants’ conduct as a whole was sufficient to show that the plaintiff felt he was in an unsafe situation where the defendants’ threats could be perceived as real and imminent.<sup>89</sup>

In the context of a handshake-line fight, any player, coach, or team personnel in fear of an impending punch or shove or any unwanted physical contact should be able to maintain a lawsuit for assault. The cause of action would survive even if the player, coach, or team personnel was not actually hit or shoved; the mental intrusion would be sufficient. However, if instead the player, coach, or team personnel was sucker punched from behind and he or she did not see the attack coming, the relevant civil claim may fall within the context of battery, discussed below.

## 2. Battery

Battery is an independent cause of action, separate from assault, defined as “an intentional infliction of harmful or offensive bodily contact.”<sup>90</sup> Battery can include serious physical injury, such as being punched or hit with a bat, but it can also consist of simply knocking the hat off someone’s head.<sup>91</sup> Bodily contact is considered “offensive if it would offend the

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<sup>84</sup> RICHARD A. MANN & BARRY S. ROBERTS, *ESSENTIALS OF BUSINESS LAW AND THE LEGAL ENVIRONMENT* 119 (12th ed. 2016).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Marcantonio v. Dudinski*, 155 F. Supp. 3d 619, 627-28 (W.D. Va. 2015).

<sup>89</sup> *Id.* at 627 (quoting *Koffman v. Garnett*, 574 S.E.2d 258, 261 (Va. 2003)).

<sup>90</sup> MANN & ROBERTS, *supra* note 84, at 119.

<sup>91</sup> *Id.*

reasonable person's sense of dignity."<sup>92</sup> Battery can also occur if someone is hit with a thrown object, such as a ball, and the battery remains even if the intended target was not hit but another person was instead.<sup>93</sup>

At least one court has found that a player injuring another player during a handshake line fight can constitute a civil battery. In *Overall v. Kadella*, the defendant went to shake hands with the opposing team when an unknown player struck him from behind, resulting in a fight between the two teams, during which the plaintiff allegedly poked the defendant from behind with a hockey stick.<sup>94</sup> However, the plaintiff was sitting on his team's bench at the time the fight broke out.<sup>95</sup> The defendant then turned around and threw a punch at the plaintiff.<sup>96</sup> After a bench trial, the court found in favor of the plaintiff and awarded him "\$21,000 for out-of-pocket expenses, pain and suffering, and permanent injury, and awarded an additional \$25,000 as exemplary damages because defendant's act had been 'intentional and malicious.'"<sup>97</sup>

On appeal, the ruling was affirmed, as the appellate court found that even though the plaintiff may have consented to some contact by playing a sport that involves "bodily contacts which are permitted by the rules of the game," intentional acts that go "beyond what is ordinarily permissible" is a "battery for which recovery may be had."<sup>98</sup> Since the plaintiff's actions here violated the rule against fighting in hockey, which "is designed to stop violence," the defendant's "intentional battery certainly violated this rule."<sup>99</sup> Further, the court found that since the battery did not even occur during the hockey game, it is "doubtful whether consent to a battery during a game would constitute consent to a battery after the game."<sup>100</sup>

In another case, *Griggas v. Clauson*, a player who "maliciously, wantonly and willfully and without provocation assaulted plaintiff and with his fist repeatedly struck plaintiff violently in the head and knocked plaintiff unconscious to the floor," was found liable for battery, despite the fact that the attack occurred in the middle of a game.<sup>101</sup> Additionally, in *Hogenson v. Williams*, the court found that a middle school football coach was liable for causing injury when he struck a player's helmet with enough force to cause the player to fall to the ground, and then grabbed his

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<sup>92</sup> MANN & ROBERTS, *supra* note 84, at 119.

<sup>93</sup> *Id.*

<sup>94</sup> *Overall v. Kadella*, 361 N.W.2d 352, 353 (Mich. Ct. App. 1984).

<sup>95</sup> *Id.* The plaintiff disputed this version of the facts, claiming that his placement on the bench was far removed from the action and that the defendant "skated over to the bench and struck plaintiff who had done nothing to provoke the attack." *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 354.

<sup>98</sup> *Id.* at 355.

<sup>99</sup> *Id.* at 356.

<sup>100</sup> *Overall*, 361 N.W.2d at 356.

<sup>101</sup> 128 N.E.2d 363, 364 (Ill. App. Ct. 1955).

facemask.<sup>102</sup> The court found sufficient evidence that the coach “intentionally or knowingly cause[d] physical contact with another” that he either knew or reasonably believed would be “offensive or provocative” to the injured party.<sup>103</sup> The court referenced the size difference between the two actors – the coach was twenty-eight years old, 5’11, and weighed 195 pounds, while the player was twelve years old and weighed 115 pounds – when instructing the jury.<sup>104</sup>

In a physical altercation during a handshake line, any player, coach, or team personnel who experienced unwanted bodily contact could likely maintain a successful battery claim. Depending on the severity of the battery, it may be deemed “harmful” or “offensive” bodily contact against the plaintiff.<sup>105</sup>

### 3. Vicarious Liability—*Respondeat Superior*

A professional team or school, as the employer, may also be civilly liable for the actions of its employees (coaches, players,<sup>106</sup> or other team personnel) who commit an intentional tort during a handshake line. The employees’ actions would impute liability to the employer by way of *respondeat superior*, which means “let the superior make answer.”<sup>107</sup> This concept is also known as “vicarious liability.”<sup>108</sup> The professional team or school, as the employer, is the superior, and the coach, player, or other team personnel, as the employees, are the servants. Under vicarious liability, the employer is held accountable when their employees commit torts against third parties.<sup>109</sup> This encompasses both intentional torts and negligence actions.<sup>110</sup> The limitation to this doctrine is that the employee who

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<sup>102</sup> 542 S.W.2d 456, 457 (Tex. App. 1976). Texas law conflates the traditional torts of assault and battery into one “assault” tort with three separate potential offenses: “(1) intentionally, knowingly, or recklessly caus[ing] bodily injury to another; or (2) intentionally or knowingly threaten[ing] another with imminent bodily injury; or (3) intentionally or knowingly caus[ing] physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.” *Id.* at 458.

<sup>103</sup> *Id.* at 458-59.

<sup>104</sup> *Id.* at 457, 459. The key issue in this case was whether the conduct was offensive touching, or, as the coach testified, merely disciplinary and used “for the purpose of instruction and encouragement.” *Id.* at 459. The court disagreed with the lower court’s finding of the latter, and held that the lower court erred by “requiring that an intent to injure be present in order for the physical contact to constitute an assault” in its instructions to the jury. *Id.*

<sup>105</sup> MANN & ROBERTS, *supra* note 84, at 119.

<sup>106</sup> For the purposes of this section, “players” refer to professional athletes.

<sup>107</sup> *Respondeat Superior*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>108</sup> *Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>109</sup> *Id.*

<sup>110</sup> See 27 AM. JUR. 2D *Employment Relationship* §§ 360, 362, 363 (2015).



committed the tort must have been acting within the “scope of his [or her] employment.”<sup>111</sup>

Generally, the issue of whether an employee’s intentional tort was conducted within the scope of his or her employment turns on whether the employee’s actions were so inconsistent with his or her job requirements that the act would sever the employment relationship.<sup>112</sup> Courts typically look at a combination of factors to determine how strongly connected an employee’s conduct is to his or her job duties. Those factors can include whether the action was done in furtherance, and in connection to, the employer’s business while serving the employer during the time and space limits of the employment.<sup>113</sup>

If a coach, player, or member of the team personnel commits an assault or battery during a handshake-line melee, their employers could potentially be held vicariously liable. The team employees would likely be acting within the scope of their employment at the time of the incident. The team employees would be engaged in the altercation during the time and space of their employment, while representing their employer in their official capacities.<sup>114</sup> Their actions would be done while representing the team name on their jerseys.

Courts have found that teams may be held vicariously liable for in-game injuries caused by their employees, so long as the injuries resulted from a risk that is not inherent to the sport in question.<sup>115</sup> For example, in 1979 the Los Angeles Lakers were held vicariously liable for the damages caused when the Lakers’ power forward, Kermit Washington, punched Rudy Tomjanovich of the Houston Rockets during an on-court fight.<sup>116</sup> In

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<sup>111</sup> 27 AM. JUR. 2D *Employment Relationship* § 362 (2015).

<sup>112</sup> *Id.* But see *Estate of Anderson v. Denny’s Inc.*, 987 F. Supp. 2d 1113, 1144-45 (D.N.M. 2013) (applying New Mexico law and finding the employer was not vicariously liable simply because employee committed an intentional tort).

<sup>113</sup> 27 AM. JUR. 2D *Employment Relationship* § 360 (2015).

<sup>114</sup> See generally Steven I. Rubin, *The Vicarious Liability of Professional Sports Teams for On-The-Field Assaults Committed by Their Players*, 1 VA. J. SPORTS & L. 266 (1999) (exploring the applicability of the vicarious liability doctrine on professional sports teams for on-the-field assaults committed by their players).

<sup>115</sup> See, e.g., *Chrismon v. Brown*, 246 S.W.3d 102, 112, 115 (Tex. App. 2007) (holding that the team could not be held vicariously liable because the plaintiff failed to produce evidence that the risk of harm was not inherent to the sport.); see also *infra* note 142 and accompanying text; *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383, 392 (Cal. 2006) (“Schools and universities are already vicariously liable for breaches by the coaches they employ, who owe a duty to their own athletes not to increase the risks of sports participation.” (citing *Kahn v. East Side Union High Sch. Dist.*, 31 Cal. 4th 990, 1005-06 (Cal. 2003))).

<sup>116</sup> See *Tomjanovich v. California Sports, Inc.*, No. H-78-243, 1979 WL 210977, at \*1-2 (S.D. Tex. Oct. 10, 1979); see also Rubin, *supra* note 114, at 282. The punch caused Tomjanovich life threatening injuries. See Liz Robbins, *Three Decades Later, Washington Still Feels Effects of His Punch*, N.Y. TIMES (Jan. 30, 2005), <http://query.nytimes.com/gst/abstract.html?res=9900E3DC153BF933A05752C0A9639C8B63&legacy=true>.

another case, a court held that a team could be liable for a professional-baseball player who charged the mound with his bat in hand and injured the opposing catcher, finding that, in professional baseball, “it is not unexpected for a batter to charge the mound after being hit by a pitch” and that the player’s “alleged digression from duty was not so clear-cut that the disposition of the case becomes a matter of law.”<sup>117</sup>

Therefore, based on the above, it appears likely that any team employee who commits an intentional tort during a handshake-line altercation, which is certainly not something inherent to any sport, would impute civil liability to his or her employer.

### B. Negligence

A party who is injured from a handshake-line dispute may also maintain negligence actions against the sports facility owner or operator, as well as the school, if the sport was being played at the collegiate or high-school level. A negligence claim consists of injury caused by unintended actions due to a lack of reasonable care on the part of the defendant.<sup>118</sup>

#### 1. Premises Liability

For sports facility owners or operators involved in a handshake-line fight, they could be found liable for negligence under “premises liability” theory. Premises liability occurs when one is harmed on the property, or “premises,” that is owned or maintained by another.<sup>119</sup> Under this theory, property owners or residents can be found liable for injuries that take place on their property.<sup>120</sup> This liability creates a reasonable expectation for land entrants that they will not get injured on the premises, as well as a duty of care to the landowner or resident to maintain this expectation.<sup>121</sup> The duty of care differs, though, depending on the designation of the party entering the property.<sup>122</sup> “The duty owed by owners and possessors of land depends on the status of the person injured on the land—that is, whether he or she is an invitee, licensee, or trespasser.”<sup>123</sup>

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<sup>117</sup> *Nathans v. Offerman*, 922 F. Supp. 2d 271, 277 (D. Conn. 2013) (“[T]he Court will allow the trier of fact to determine whether a wilful tort of the servant has occurred within the scope of the servant’s employment and was done to further his master’s business.”).

<sup>118</sup> A negligence claim requires that the plaintiff prove the following elements: (1) duty of care owed to the plaintiff by the defendant; (2) a breach of that duty of care occurred; (3) legal causation; and (4) damages. *See, e.g., Turner v. Mandalay Sports Entm’t, LLC*, 180 P.3d 1172, 1175 (Nev. 2008).

<sup>119</sup> *Premises Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>120</sup> *See Ryan v. Rademacher*, 142 S.W.3d 846, 849 (Mo. Ct. App. 2004).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 377 (Idaho 2013) (citing *Ball v. City of Blackfoot*, 273 P.3d 1266, 1270 (Idaho 2012)). Many states, including New York and

First, a trespasser is someone who enters onto the land of another without permission.<sup>124</sup> In this situation, the property owner or resident does not owe a duty of care to the trespasser.<sup>125</sup> Second, a licensee has permission from the property owner or resident to enter the land, and enters the land for his or her own “convenience, curiosity, or entertainment.”<sup>126</sup> For licensees, a property owner or resident must “refrain from willfully or wantonly injuring him or her or acting in a manner to increase his or her peril.”<sup>127</sup> Third, an invitee is someone invited onto the land by the owner or resident.<sup>128</sup> Invitees are comprised of three categories: a business visitor, a public invitee, and a social guest.<sup>129</sup> Coaches, athletes and other team personnel injured in a handshake-line altercation could fall under the first two: a business visitor or a public invitee.

A business-visitor invitee “is one who enters upon the premises of another for a purpose connected with the business conducted on the land.”<sup>130</sup> A public invitee is “one who goes upon lands for purposes for which those lands are held open to the public, regardless of whether the land owner derives any benefit from the presence of the invitee.”<sup>131</sup> The landowner or resident’s duty to a business or public invitee is essentially the same. They both owe the duty to inspect and discover the presence of dangerous conditions and warn the invitee of the danger or make the condition safe.<sup>132</sup>

Sports-facility owners or operators can be liable for a wide range of injuries to coaches, players, and other team personnel. For example, in *Ludman v. Davenport Assumption High School*, the court found that a high school owed a duty of care to a visiting baseball player who was hit by a foul ball while standing in an unprotected part of the visitor’s dugout.<sup>133</sup>

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California, have moved towards one standard for all landholders: the duty to act reasonably given the circumstances. *See* *Basso v. Miller*, 352 N.E.2d 868, 872 (N.Y. 1976) (“While we have demonstrated our inclination to correlate the duty of care owed . . . we have not, until today, abandoned the classifications entirely and announced our adherence to the single standard of reasonable care under the circumstances whereby foreseeability shall be a measure of liability.” (citing *Martinez v. Kaufman-Kane Realty Co.*, 316 N.E.2d 336 (N.Y. 1974))); *Rowland v. Christian*, 443 P.2d 561, 565 (Cal. 1968) (taking away the various classifications for landholder liability in favor of a “general rule limiting liability”); *see generally Landowners Held to Single Duty of Reasonable Care Towards All Entrants*, 50 ST. JOHN’S L. REV. 816-22 (1976) (further discussing New York’s movement to one standard for all landholders).

<sup>124</sup> *Trespasser*, BLACK’S LAW DICTIONARY (10th ed. 2014)

<sup>125</sup> *Rademacher*, 142 S.W.3d at 849.

<sup>126</sup> *Yates v. Johnson Cty. Bd. of Comm’rs.*, 888 N.E.2d 842, 849 (Ind. Ct. App. 2008).

<sup>127</sup> *Id.* at 848.

<sup>128</sup> *Id.* at 849.

<sup>129</sup> *Id.*

<sup>130</sup> *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 377 (Idaho 2013) (quoting *Ball v. City of Blackfoot*, 273 P.3d 1266, 1270 (Idaho 2012)).

<sup>131</sup> *Treps v. City of Racine*, 243 N.W.2d 520, 523 (Wis. 1976).

<sup>132</sup> *Invitee*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>133</sup> 895 N.W.2d 902, 905-06 (Iowa 2017).

The court found that the contact-sports exemption—a doctrine that allows for dismissals of actions based on injuries suffered by participants of contact sports—did not apply since the player’s action was against the possessor of the premises for a risk that the possessor was responsible for, rather than against a fellow participant.<sup>134</sup>

However, premises-liability claims are generally limited by the fact that, in most jurisdictions, the landowner or resident must have actual and constructive notice of the risks alleged by a plaintiff to be dangerous before the injury occurs.<sup>135</sup> In *DiPietro v. Farmington Sports Arena*, the court ruled against the mother of a minor injured playing soccer on an allegedly dangerous surface because the defendants “produced uncontroverted evidence that they were not on notice of the carpet’s alleged dangerousness, and indeed, could not have foreseen that it was inherently defective . . . .”<sup>136</sup> Thus, for a handshake injury case against a sports-facility owner or operator to be successful, a plaintiff must show that the owner or operator knew there was a risk of harm from allowing handshakes to occur unsupervised. Unlike an unforeseen tear in a carpet, however, a plaintiff could possibly succeed on this element simply by presenting evidence of the vast amount of handshake incidents that have occurred over the past few years.

Indeed, given the rise of violence and physical altercations stemming from handshake lines, and the national attention they garner when they do occur, an owner or operator hosting sporting events and allowing this custom to happen after a game without providing proper security and supervision over the actions, could face significant civil liability. While increasing security or providing safety guidelines may help mitigate the liability, the safer course of action is to do away with handshake lines completely. As noted earlier, they are not needed to play the sport, and by the landowner allowing them to occur knowing their propensity for violence, they are inviting a potential civil liability.

## 2. School Liability

Beyond premises liability, which could also be applicable to a school that hosts a sporting event, it is also well established that schools are under a duty to provide adequate supervision to ensure the safety of the students in their charge and will be held liable for foreseeable injuries that are

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<sup>134</sup> *Ludman*, 895 N.W.2d at 911. The court also found that assumption of the risk did not apply, since the player alleged that the dugout was defective and dangerous. *Id.* at 915. While the jury verdict in favor of the player was reversed and remanded, the remand centered on the trial court’s failure to allow evidence by the high school of how high-school dugouts are customarily designed. *Id.* at 920-21. The court still found that the high school owed a duty of care to the player based on his premises liability allegations. *Id.* at 920.

<sup>135</sup> See *DiPietro v. Farmington Sports Arena, LLC*, 49 A.3d 951, 953 (Conn. 2012).

<sup>136</sup> *Id.* at 961.

proximately caused by the absence of adequate supervision.<sup>137</sup> Almost all of the above-mentioned handshake-line incidents occurred during amateur-sporting events, which should place schools on high alert of their potential negligence. If a school does not provide adequate security or protection to the students they are legally required to protect, and a fight breaks out during a handshake line, they could be liable as well.

Many jurisdictions have required public schools, education boards, and their “subordinate employees and interscholastic athletic organizations” to “exercise ordinary reasonable care to protect student athletes voluntarily involved in extracurricular sports from unassumed, concealed, or unreasonably-increased risks.”<sup>138</sup> For example, in New York, schools and school districts have a duty to supervise, and plaintiffs can recover for inadequate supervision by establishing “that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated.”<sup>139</sup> Similarly, California law “establishes that public schools and universities owe certain nonproperty-based duties to their students,”

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<sup>137</sup> See, e.g., *Baker v. Trinity-Pawling Sch.*, 800 N.Y.S.2d 10, 11-12 (N.Y. App. Div. 2005).

<sup>138</sup> *Benitez v. N.Y.C. Bd. of Educ.*, 73 N.Y.2d 650, 658 (N.Y. 1989). See also *Carr v. Sch. Bd. of Pasco Cty.*, 921 So. 2d 825, 829 (Fla. Dist. Ct. App. 2006) (holding that a track athlete was not required to prove that a dangerous condition existed long enough for teachers to discover it because there was ample evidence that teachers supervising the race knew that it could be a dangerous condition); *Rupp v. Bryant*, 417 So. 2d 658, 665 (Fla. 1982) (holding that the duty to supervise students is “generally ministerial in nature” and thus school officials involved may not “raise the shield of official immunity”); *Dailey v. L.A. Unified Sch. Dist.*, 470 P.2d 360, 363 (Cal. 1970) (holding that school authorities have duty to supervise conduct of children); *Eastman v. Williams*, 207 A.2d 146, 148 (Vt. 1965) (holding that schools have duty to supervise pupils in place of parent); *Larson v. Indep. Sch. Dist.*, 289 N.W.2d 112, 120 (Minn. 1979) (holding that a teacher, who failed to spot a student attempting a dangerous gymnastics move, was negligent and was not protected by governmental immunity). Jurisdictions are split as to whether private schools can be held to the same standard. See, e.g., *Gomez v. Our Lady of Fatima Church*, 986 N.Y.S.2d 550 (N.Y. App. Div. 2014); *Thomas v. City Lights Sch., Inc.*, 124 F. Supp. 2d 707, 709-10 (D.D.C. 2000) (holding a private school to the same duty to supervise as public schools). But see, e.g., *Fowler v. Seaton*, 394 P.2d 697, 704-05 (Cal. 1964) (“[T]he express declaration of Education Code . . . that ‘Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess’ has been held inapplicable to a private school.” (citing *Martin v. Roman Catholic Archbishop*, 322 P.2d 31, 32 (Cal. 1958))). Outside of the organized school context, courts have been wary to hold private athletic team coaches to the same duty to supervise. See, e.g., *Griffin v. Simpson*, 948 N.E.2d 354, 359-60 (Ind. Ct. App. 2014) (finding that a coach of a privately-owned volleyball team did not have the duty to supervise team members during a team social event held at a team member’s grandparents’ house during a break between tournament sessions).

<sup>139</sup> *Mirand v. City of N.Y.*, 637 N.E.2d 263, 266 (N.Y. 1994) (affirming a jury award against a school district for not supervising students at dismissal time, even though the conduct that led to one student’s injury was an intentional act by another student).

including the duty of public schools to supervise students, which “extends to athletic practice and play.”<sup>140</sup>

Fights that take place during handshake lines may fall within these standards. The duty to supervise includes a duty for school employees to prevent students from physically attacking other students.<sup>141</sup> While negligence lawsuits against schools and school districts for injuries that occur during sport events are often barred due to the assumption of the risk doctrine, for most states there is no question that handshake-line fights are not an “inherent risk of the sport”<sup>142</sup>—especially given the fact that the injuries occur *after* the sporting event has concluded.<sup>143</sup>

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<sup>140</sup> *Avila v. Citrus Cmty. Coll. Dist.*, 131 P.3d 383, 398 (Cal. 2006).

<sup>141</sup> See *Mirand*, 637 N.E.2d at 266-67.

<sup>142</sup> See *Avila*, 131 P.3d at 384 (“Being *intentionally* hit is likewise an inherent risk of the sport, so accepted by custom that a pitch intentionally thrown at a batter has its own terminology: ‘brushback,’ ‘beanball,’ ‘chin music.’”). Under the primary assumption of the risk doctrine, school districts and event managers have a duty “not to increase the risks inherent in the sport, not a duty to decrease the risks.” See *id.* at 395 (quoting *Balthazor v. Little League Baseball, Inc.*, 62 Cal. App. 4th 47, 52 (Cal. Ct. App. 1998)); see generally Timothy B. Fitzgerald, *The “Inherent Risk” Doctrine, Amateur Coaching Negligence, and the Goal of Loss Avoidance*, 99 NW. U. L. REV. 889 (2005) (arguing that careless amateur coaching decisions should never constitute an inherent risk). In most states, this doctrine does not reach reckless or intentional conduct. See *Nathans v. Offerman*, 922 F. Supp. 2d 271, 277 (D. Conn. 2013) (“[A]s a matter of policy, it is appropriate to adopt a standard of care imposing on the defendant, a participant in a team contact sport, a legal duty to refrain from reckless or intentional conduct. Proof of mere negligence is insufficient to create liability.” (quoting *Jaworski v. Kiernan*, 241 Conn. 399, 412 (Conn. 1997))); *Knight v. Jewett*, 834 P.2d 696, 711 (Cal. 1992) (“[A] participant in an active sport breaches a legal duty of care to other participants . . . only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport.”); *Marchetti v. Kalish*, 559 N.E.2d 699, 703-04 (Ohio 1990) (holding that sports participants assume the ordinary risks of those activities and cannot recover for any injury unless it can be shown that the other participant’s actions were either reckless or intentional); *Crawn v. Campo*, 643 A.2d 600, 601, 603 (N.J. 1994) (requiring a showing of recklessness or intentional conduct for plaintiffs to recover for sports injuries that are normally inherent to the sport). Showing that conduct is or is not inherent to the sport is a matter of fact and is heavily dependent on the sport being played; for example, getting punched in the face would be inherent to boxing but not other sports. Similarly, getting hit by a baseball—even intentionally—would be an inherent risk to the sport of baseball. *E.g.*, *Avila*, 131 P.3d at 384. However, the Supreme Court of New Hampshire held that when a game escalates out of control and, for example, a fight occurs, those responsible for keeping order—including coaches, referees, and the event organizers and schools involved—may be held liable. *Hacking v. Town of Belmont*, 736 A.2d 1229, 1235 (N.H. 1999) (“The plaintiffs have alleged in this case that the referees lost control of the game. Assuming the truth of this allegation, and drawing all reasonable inferences in their favor, we cannot say as a matter of law that this was an ordinary risk inherent within the game of basketball . . .”). Handshake lines themselves may be held to be inherent to certain sports, especially hockey where they are common practice and a major tradition. See *Klein*, *supra* note 1. However, the risk of harm comes from handshake line *fights*, not the handshakes themselves; it is difficult to imagine that any judge could find that these fights are “so accepted by custom” that they are a normal and established part of the game. *Avila*, 131 P.3d at 384. Indeed, handshake line fights are much more analogous to the conduct in

## IV. CONCLUSION

Handshake lines pose a significant legal liability for a number of constituents involved including the players, coaches, team personnel, employers, sport facility owner or operators, and schools. It is not surprising that a lot of media, coaches, and even some leagues are discussing the possibility of ending the unnecessary custom. While there is some pushback against abolishing the sportsmanship tradition, the more likely scenario is that the handshake line will eventually result in evidence in multiple lawsuits. Handshake lines are not inherent in any sport, and the time is now to simply let this ritual fade away before significant liability occurs.

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*Hacking* that occurs when those in charge “los[e] control of the game” and thus cannot be an “ordinary risk inherent within” the sport. 736 A.2d at 1235.

<sup>143</sup> While *Overall* was not a negligence case and thus did not concern the inherent risk doctrine, the court noted that even if they were to find that the plaintiff consented to the battery against him by virtue of his playing in the sport, “it is arguable that the battery did not even occur during the hockey game” and therefore “doubtful whether consent to a battery during a game would constitute consent to a battery after the game.” *Overall v. Kadella*, 361 N.W.2d 352, 356 (Mich. Ct. App. 1984). See *supra* note 100 and accompanying text; see also *Esshaki v. Millman*, No. 283297, 2009 WL 692451, at \*3 (Mich. Ct. App. Mar. 17, 2009) (holding that a player who punched another player in the jaw during a soccer match “went beyond ‘what is ordinarily permissible’ in soccer” and thus cannot argue that the injured player consented to the battery (quoting *Overall*, 361 N.W.2d at 352)). But see *McManus v. Anahuac Indep. Sch. Dist.*, 667 S.W.2d 275, 278 (Tex. Crim. App. 1984) (holding that a school-sponsored and sanctioned bonfire and pep rally was “so interrelated with the school’s football program as to constitute a governmental function of the . . . school district,” thus barring recovery under the state’s governmental immunity laws).





