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THE DEVELOPMENT OF MIXED MARTIAL ARTS: From Fighting Spectacles to State-Sanctioned Sporting Events

By Peter Hess

INTRODUCTION

On November 11, 1993, pay-per-view television broadcast a fighting tournament, live from the McNichols Arena in Denver, Colorado.¹ “Promoters built an octagonal chain-link cage, invited eight top martial artists, and set them loose in no-holds-barred, bare-knuckles fights.”² Dubbed the Ultimate Fighting Championship (UFC), the tournament (UFC-1) was promoted as having “no rules.”³ In reality, there were four: no biting, no eye gouging, no fishhooking and no strikes to the groin.⁴ There were no weight classes or weight limits, and matches consisted of an unlimited number of five-minute rounds.⁵ A match could be won in any one of three ways: (1) knockout; (2) referee’s stoppage; and (3) submission, signaled by the competitor by tapping his hand on the mat three times, commonly called “tapping out.”⁶

UFC-1 was the first mixed martial art (MMA)⁷ fighting event to reach a mass audience in the United States. The largest competitor was a sumo wrestler who weighed in at 415 pounds.⁸ However, the smallest competitor, Royce Gracie, a Brazilian Jiu-Jitsu specialist who weighed a

¹ Ultimate Fighting Championship, *UFC 1: The Beginning*, <http://www.ufc.com/index.cfm?fa=EventDetail.fightCard&eid=2&mode=poll> (last visited Nov. 14, 2006).

² David Polz, *Fight Clubbed: Ultimate Fighting Ought to be a Great American Sport. Instead, Cable Companies, Sen. John McCain, and a Squeamish Public are Killing it*, SLATE, (1999), <http://www.slate.com/id/46344>.

³ CLYDE GENTRY, *No Holds Barred: Ultimate Fighting and the Martial Arts Revolution*, 52, MILO BOOKS (2d ed. 2005).

⁴ Greg Downey, *Producing Pain: Techniques and Technologies in No-Holds-Barred Fighting*, 37 SOCIAL STUDIES OF SCIENCE, 201, 202-212 (2007) available at <http://sss.sagepub.com/cgi/reprint/37/2/201.pdf>.

⁵ *Id.*

⁶ Donald F. Walter, *Mixed Martial Arts: Ultimate Sport or Ultimately Illegal?*, GRAPPLE ARTS, Dec. 8, 2003, <http://www.grapplearts.com/Mixed-Martial-Arts-1.htm>.

⁷ Mixed martial arts events are bouts between two trained athletes who compete using a hybrid style combining boxing, wrestling, chops, kicks, and various styles of martial arts. See HAW. OFF. AUDIT., *SUNRISE ANALYSIS: MIXED MARTIAL ARTS, A REPORT TO THE GOVERNOR AND THE LEGISLATURE 1* (Feb. 2007) [hereinafter HAWAII MMA REPORT].

⁸ Walter, *supra* note 6.

mere 176 pounds, won the tournament.⁹ Gracie received \$50,000 in prize money and changed the public's understanding of fighting.¹⁰

In the second tournament, UFC-2, the "rules" were pared down to just two: no biting and no eye gouging,¹¹ meaning groin strikes were now legal. In UFC-4, Keith Hackney landed a series of six absolutely brutal groin punches on Joe Son.¹² Though it had become increasingly apparent that the UFC was not for the faint of heart, the worst was still to come. Abbott vs. Matua, the horrifying UFC-6 bout, has been dubbed "UFC's most shocking fight."¹³ David Polz, a reporter for *Slate*, an Internet-based newsmagazine, described the controversial incident: "Tank Abbott, an ill-tempered, 270-pound street fighter, knocks out hapless opponent John Matua in 15 seconds ... Abbott belts the unconscious Matua in the head, sending him into a fit, limbs quivering uncontrollably, blood spurting from his mouth."¹⁴ Although Matua walked away from the fight,¹⁵ this incident confirmed that the UFC was too brutal for the general public and that the MMA had a long way to go before it transitioned from spectacle to sport.

Today, professional MMA bouts are legal in the vast majority of states.¹⁶ All UFC fights are fought under the *Unified Rules of Mixed Martial Arts Combat*, as enacted in by Nevada Athletic Commission on July 23, 2001.¹⁷ There are a total of thirty-one fouls and eight different

⁹ Downey, *supra* note 4, at 202.

¹⁰ *Id.* ("[Gracie] defeated heavier and apparently stronger opponents handily... sometimes without throwing a single punch or kick. Instead, he used grappling techniques, such as chokes and joint locks.... [and] led many martial artists to reassess their knowledge of fighting techniques and tactics and how the human body might function in unarmed conflict...[assuming] that big, fierce, muscular competitors would simply batter senseless smaller.... Producers, fans and commentators alike expected photogenic pandemonium to prevail – and it did in matches between the least experienced fighters – but the best fighters were more technically sophisticated than instinctually savage, and fight-ending techniques were sometimes quite subtle").

¹¹ GENTRY, *supra* note 3, at 61 (The official press release for UFC-2 stated, "The competition has no rules – only two suggestions – no eye gouging or biting).

¹² Scott Newmann, *MMA Review*, ORATORY.COM (2005), <http://oratory.rajah.com/index.php?%20archive=2569> (Joe Son had Hackney in a headlock at the time of the groin shots. Although Son was wearing a cup, he was visibly hurt from the punches and released the headlock. Hackney was then able to grab Son's throat and Son tapped out. It is not clear whether Son submitted due the pain of the groin strikes or due to the choke).

¹³ Polz, *supra* note 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ International Kickboxing Federation, *In What USA States are Kickboxing and or MMA Legal?*, <http://www.ikf.kickboxing.com/USASates.htm> (last visited May 29, 2007) (listing the legal status of amateur MMA competitions, professional MMA competitions, amateur Kickboxing, and professional Kickboxing in all fifty states, the District of Columbia, Tribal Commissions, and Canada).

¹⁷ Walter, *supra* note 6 (originally drafted by the New Jersey Athletic Commission, "[t]he Unified Rules of Mixed Martial Arts Combat have become the standard [of the UFC and] of most major mixed martial arts promotions in the United States, and have been adopted by many states, including New Jersey, Nevada, Florida, California and

ways to end a fight under the Unified Rules.¹⁸ The bout-duration in UFC fights requires five rounds for a title fight and three rounds for a non-championship fight. A single round lasts five minutes with a one-minute rest period between each round. If a fight is not determined by knockout or submission, a panel of ringside judges determines the winner.¹⁹

Although MMA is still developing, it is on the verge of becoming a mainstream sport.²⁰ Today, MMA is the fastest growing spectator sport in the United States.²¹ “Its rising popularity has led to significant changes in regulation over the past ten years. States have rushed to sanction mixed martial arts to capitalize on revenues generated by the sport.”²² Promoters have successfully achieved regulatory approval in twenty-four states.²³ Though MMA competitions are completely unregulated in approximately twenty states, there remain only a few states, including New York, Maine, South Carolina, and Utah, who continue to officially ban the sport.²⁴

The purpose of this article is to examine the development of MMA, from its ancient origins to its current state-sanctioned competitions. The article begins with an historical discussion of MMA, including its origin and the events that led to state regulation. Next, the article looks into some of the legal issues surrounding the MMA world, such as the implications of tort law, contractual disputes, and the adoption of the Unified Rules. Finally, the article discusses whether MMA should be considered a sport or whether it is simply too dangerous.

HISTORY

“Pankration” means “all strength” or “all power.”²⁵ While its exact origin is unknown,²⁶ the Ancient Greeks added pankration as a sport to the 33rd Olympics Games in 648 BC.

Louisiana”); Ultimate Fighting Championship, *UFC RULES*, <http://www.ufc.com/index.cfm?fa=LearnUFC.Rules> (last visited May 23, 2007).

¹⁸ NEV. ADMIN. CODE § 467.7962 (2005).

¹⁹ UFC RULES, *supra* note 17.

²⁰ See HAW. OFF. AUDITOR, SUNRISE ANALYSIS: MIXED MARTIAL ARTS, A REPORT TO THE GOVERNOR AND THE LEGISLATURE 2 (Feb. 2007) (In Spring 2006, the final episode of UFC’s “Ultimate Fighter” on Spike TV “drew 2.8 million viewers and had higher cable ratings among men 18 to 34 years old than baseball, the National Basketball Association playoffs, and the National Hockey League playoffs”).

²¹ HAWAII MMA REPORT, *supra* note 7, at 2.

²² *Id.* at 3.

²³ *Id.* at 3-4.

²⁴ *Id.* at 4.

²⁵ GENTRY, *supra* note 3, at 17.

Preceded by wrestling and pugilism, pankration became the Olympics' third combative sport.²⁷ Competitors could punch, kick, or strike with any body part, and fighting continued even when the competitors were on the ground.²⁸

Eye gouging and biting were the only two illegal maneuvers in pankration, and fighters would be flogged for violation by umpires stationed close by. Combatants fought in the nude and, unlike boxing, didn't wear gloves or *himantes*.²⁹ The object of pankration was to submit your opponent by any means necessary. Fights continued until submission, death, or sunset; in the latter case, a *klimax* was executed to decide the victor. In *klimax*, each fighter drew lots, with the winner positioning his opponent any way he chose. With the loser remaining still, the other fighter was allowed to strike in any fashion without his opponent dodging the blow. Then, if that fighter still remained, he would do the same thing to his opponent. Seldom did *klimax* last more than a few turns.³⁰

Pankration is the first recorded form of MMA and served as a foundation for the various Asian martial arts. Most Asian martial arts trace their origins to India around the time it was invaded by the Greek Army in 326 BC.³¹ Recognizing their formidable unarmed combat skills, Alexander the Great heavily recruited pankratiasts as soldiers for his army.³² Many pankratiasts were among the ranks when he invaded India.³³ It is believed that some pankration-trained soldiers settled in the conquered countries and merged their combat skills with the various fighting forms in India.³⁴ This marked the start of Asia's various and highly structured martial arts disciplines.³⁵

Civil unrest in Japan between the eighth and sixteenth centuries induced the development of several different martial arts styles. These styles included various battle-proven techniques for

²⁶ See The Olympic Movement, *Ancient Olympic Games*, http://www.olympic.org/uk/games/ancient/events_uk.asp (Pankration is a "primitive form of martial art combining wrestling and boxing, and was considered to be one of the toughest sports. Greeks believed that it was founded by Theseus when he defeated the fierce Minotaur in the labyrinth") (last visited May 23, 2007).

²⁷ *Id.* (pugilism is the precursor to modern boxing).

²⁸ *Id.*

²⁹ *Himantes* are a soft thong or strap of ox hide, Fighters in the Ancient Olympics wrapped their hands to strengthen their fingers and wrists. See Classics Technology Center, *The Ancient Olympics*, <http://ablemedia.com/ctcweb/co nsortium/ancientolympics10.html> (last visited, May 29, 2007).

³⁰ GENTRY, *supra* note 3, at 17.

³¹ HAWAII MMA REPORT, *supra* note 7, at 1; Walter, *supra* note 6.

³² Walter, *supra* note 6.

³³ *Id.*

³⁴ GENTRY, *supra* note 3, at 24.

³⁵ Walter, *supra* note 6.

armed and unarmed combat.³⁶ “In 1532, Tenenuchi Hisamori created what is believed to be the first formal ‘jijutsu’ school.”³⁷ More than 750 different jijutsu systems existed by 1868, when the power of the Shogun was given to the Japanese Emperor.³⁸ Imperial law made practicing armed martial arts in the name of the samurai illegal.³⁹ From that point, jijutsu schools focused only on unarmed combat techniques.⁴⁰ Some schools focused on punching and kicking, while others taught ground fighting.⁴¹

A “sickly, lean pacifist”⁴² named Jigoro Kano began practicing jijutsu in 1878. Kano studied a variety of jijutsu styles under numerous masters.⁴³ He believed “every one of the jijutsu schools had its merits and demerits.”⁴⁴ Kano eventually concluded that most jijutsu techniques were not applicable in real life and began integrating the most useful techniques from the various schools.⁴⁵ Ultimately, Kano created a more practical martial art that he called “Kudokan Judo.”⁴⁶

Kudokan Judo means a “place to study the gentle way” and focuses on throwing, groundwork, and striking.⁴⁷ Students of Kudokan Judo found instant success in competition and routinely defeated opponents from the jijutsu schools. Soon, Kudokan Judo’s popularity surpassed the once predominant jijutsu style. The jijutsu schools began to disappear and Judo schools emerged in their place.⁴⁸ Judo’s success prompted Kano to spread his teachings throughout the world. On a goodwill mission, Kano sent one of his best students, Mitsuyo Maeda, to the United States to perform a demonstration for President Theodore Roosevelt.⁴⁹ To prove Judo’s superiority, Maeda fought in over 1,000 challenge matches throughout North and

³⁶ GENTRY, *supra* note 3, at 24.

³⁷ *Id.* at 25.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 26.

South America. Only five feet, five inches tall and weighing a mere 154 pounds, Maeda never lost a fight.⁵⁰

Maeda eventually settled in Manaus, Brazil,⁵¹ where he met a Brazilian politician and scholar named Gastão Gracie who helped Maeda secure a consulate post. In return, Maeda taught Judo to Gastão's son Carlos.⁵² Carlos then taught Judo to his younger brothers Helio, Jorge, Gastão Jr. and Osvaldo.⁵³ Helio had the most trouble with Judo because he was too small and weak to perform most of the fundamental throwing techniques.⁵⁴ Recognizing that he lacked the physique to become a successful Judoka, Helio began to develop his own style, concentrating on leverage, groundwork, and submission techniques.⁵⁵ The new martial art became known as Brazilian Jiu-Jitsu.⁵⁶

Carlos and Helio moved to Rio de Janeiro in 1925 and opened a Jiu-Jitsu academy.⁵⁷ To draw attention to the fledgling academy, Carlos issued the first "Gracie Challenge." He took out advertisements in several newspapers, challenging any person to a no-holds-barred fight.⁵⁸ The advertisement pictured the modestly built Carlos Gracie and stated "If you want a broken arm or rib, contact Carlos Gracie at this number."⁵⁹ Experts from other martial art disciplines accepted the challenge.⁶⁰ The contests drew large crowds and the Gracie name quickly spread as the brothers easily subdued their opponents.⁶¹ As more and more challengers attempted to discredit the Gracie style, the sport of "Vale Tudo" (meaning "anything goes") exploded throughout Brazil.⁶² Vale Tudo closely resembles the Ancient Olympic sport of pankration.⁶³

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Rickson Gracie Official Website, *History of Jiu Jitsu*, <http://rickson.com/history.htm> (last visited Nov. 14, 2006).

⁵³ Walter, *supra* note 6.

⁵⁴ Gracie Jiu-Jitsu Academy, *Helio Gracie*, http://www.gracieacademy.com/helio_gracie.html (last visited Nov. 13, 2006).

⁵⁵ *Id.*

⁵⁶ GENTRY, *supra* note 3, at 27 (also known as Gracie Jiu-Jitsu).

⁵⁷ Walter, *supra* note 6.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² GENTRY, *supra* note 3, at 27.

⁶³ Walter, *supra* note 6.

Helio, weighing only 140 pounds, quickly became the defender of the Gracie name and Brazil's premier martial art fighter.⁶⁴ In Brazil's first professional Vale Tudo fight in 1931, Helio fought a Brazilian boxing champion and beat him in thirty seconds.⁶⁵ Throughout his life, against opponents twice his size, Helio fought in numerous Vale Tudo contests and remained undefeated for 20 years.⁶⁶ At age thirty-nine, Helio suffered his first defeat to Japan's greatest judo practitioner. The 1951 match, held in Rio de Janeiro and dubbed "The World Championship of Jiu-Jitsu," drew a crowd of 120,000.⁶⁷ Helio's sons, Rolls, Rickson and Rorian took over the role of defending the Gracie name and issuing the Gracie Challenge.⁶⁸

Brazil's immensely popular sport eventually made its way to the United States.⁶⁹ In 1978, Rorian Gracie moved to southern California and opened a small Jiu-Jitsu school in his garage.⁷⁰ Following the Gracie legacy, Rorian issued the first Gracie Challenge in the United States.⁷¹ Unlike Carlos's original Gracie Challenge, Rorian's challenge failed to immediately captivate the country.⁷² In 1989, Rorian finally got his break when a writer from *Playboy Magazine* discovered the Brazilian Jiu-Jitsu master.⁷³ An ensuing article deemed Rorian "the toughest man in the United States" and promoted another Gracie Challenge. Rorian declared he would fight any man in the United States for \$100,000—winner takes all.⁷⁴ Rorian's brother, Rickson, publicly issued a challenge to the notorious heavyweight-boxing champion, Mike Tyson.⁷⁵ *Playboy's* article gave the Gracie Challenge the publicity that it needed and deserved. As a result, the size of Rorian's Jiu-Jitsu school exploded.⁷⁶

Playboy's article intrigued advertising executive Arthur Davie. He began stopping by Rorian's school, and the two soon became friends. Rorian showed Davie footage of the old

⁶⁴ GENTRY, *supra* note 3, at 27.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Walter, *supra* note 6.

⁶⁹ HAWAII MMA REPORT, *supra* note 7, at 2.

⁷⁰ Gracie Jiu-Jitsu Academy, *Rorian Gracie*, http://www.gracieacademy.com/rorion_gracie.html (last visited, Nov. 11, 2006).

⁷¹ Walter, *supra* note 6.

⁷² GENTRY, *supra* note 3, at 36.

⁷³ *Id.* at 37.

⁷⁴ Pat Jordan, *BAD*, PLAYBOY, Sept. 1989, at 58, available at <http://stickgrappler.tripod.com/bjj/bad.html>.

⁷⁵ *Id.*

⁷⁶ GENTRY, *supra* note 3, at 37.

Brazilian Vale Tudo matches and the huge crowds.⁷⁷ Davie began to share Rorian's vision to build a Vale Tudo empire in the United States.⁷⁸ The two men formed WOW Productions, L.L.C. and successfully pitched a Vale Tudo-style tournament to Semaphore Entertainment Group (SEG).⁷⁹ Together, SEG and WOW organized the first Ultimate Fighting Championship.⁸⁰

THE DEVELOPMENT OF MMA RULES AND STATE REGULATION

The UFC's Infamous Incidents and Financial Problems

Initially, WOW and SEG had no intention to claim the UFC as a sport. "The show was built on a simple premise: how various martial arts disciplines would fare against one another in a realistic contest with virtually no regulation."⁸¹ In 1993, UFC-1 was broadcast live on pay-per-view television from the McNichols Sports Arena in Denver, Colorado.⁸² Royce Gracie successfully defended the Gracie name in UFC-1 and easily won the tournament.⁸³

Colorado was purposely selected as the event's venue because it lacked a boxing commission and had no legal way to regulate the event. WOW and SEG wanted to avoid any licensing and safety issues that could frustrate the tournament.⁸⁴ Rorian was an experienced fighter and had his own ideas on how to keep the fighters safe. For example, he pointed out that a traditional boxing ring was inadequate for MMA competition. The design of a traditional boxing ring is predisposed to fighters falling through the ropes and suffering injuries from the fall.⁸⁵ Accordingly, SEG contracted with a set designer who created "an eight-sided enclosure of 6-foot-tall chain-link fence" that was strong enough to contain the action inside. This fighting ring was given the name "The Octagon."⁸⁶

⁷⁷ *Id.* at 38.

⁷⁸ *Id.*

⁷⁹ *Id.* at 40.

⁸⁰ *Id.* at 39.

⁸¹ GENTRY, *supra* note 3, at 43.

⁸² Ultimate Fighting Championship, *UFC-1: The Beginning*, *supra* note 1.

⁸³ Downey, *supra* note 4, at 202.

⁸⁴ GENTRY, *supra* note 3, at 39, 43.

⁸⁵ *Id.* at 41.

⁸⁶ Downey, *supra* note 4, at 212 (Organizers considered many different configurations but selected the Octagon, designed by John Milius, director of the film Conan the Barbarian).

“The UFC promoted itself as a blood sport with few rules or safety protections for fighters.... This emphasis on violent, brutal contests eventually backfired.”⁸⁷ In UFC-2, fought in March, 1994, both the rules and the temporal structure of the match were modified. The round system was eliminated and groin strikes became permissible.⁸⁸ According to the official rulebook for UFC-2, referee interference would be kept to a minimum and only a fighter or his corner could stop a fight.⁸⁹ The official press release for the tournament stated: “The competition has no rules – only two suggestions – no eye gouging or biting... these attacks do not disqualify a fighter, but it will earn him a \$1,000 fine.”⁹⁰ Considering that the championship prize was \$60,000,⁹¹ a fighter could win \$56,000 even if he engaged in eye gouging through all four rounds. Fortunately, the fighters in UFC-2 did not take advantage of this loophole. Royce Gracie, once again, moved through the bracket with ease, proving to the world that Brazilian Jiu-Jitsu was the most effective martial art in real-world fights.⁹²

Another statement in the press release caught the eye of UFC critics: “Each match will run until there is a designated winner by means of knockout, surrender, doctor’s intervention or *death*.”⁹³ This statement was a serious misjudgment and caused the UFC’s credibility to suffer for years. It served as a catalyst for the forthcoming political and public backlash.⁹⁴ Wally Paige of *The Denver Post* said, “The [UFC is the] most disgusting, horrifying thing I’ve ever seen. It’s basically taking cockfighting and putting it in human form.”⁹⁵ Throughout the 1990’s, politicians and various members of the media regularly used the phrase “human cockfighting” to discredit the UFC.⁹⁶

⁸⁷ HAWAII MMA REPORT, *supra* note 7, at 2.

⁸⁸ GENTRY, *supra* note 3, at 56.

⁸⁹ *Id.* at 61.

⁹⁰ *Id.*

⁹¹ Dick Kreck, *Don’t Underrate the Power of ‘Deadly Assault as Entertainment’*, DENVER POST, Mar. 11, 1994, at B-01.

⁹² Ultimate Fighting Championship, *Royce Gracie UFC Fight History*, <http://www.ufc.com/index.cfm?fa=fighter.detail&PID=24> (last visited May 30, 2007).

⁹³ GENTRY, *supra* note 3, at 64.

⁹⁴ *Id.*

⁹⁵ Curtis Rist, *TV’s Hit-Com; Pay-Per-View Mega-Brawl has Socko Ratings*, NEWSDAY, Aug. 31, 1994 at A08.

⁹⁶ Peter Sennhauser, *Resistance is Futile: Extreme Fighting is in Your Backyard*, STRANGER, Dec. 17, 2003, available at <http://www.thestranger.com/seattle/Content?oid=16515>.

UFC organizers took steps towards legitimizing the tournament in UFC-3 by giving the referee discretion to stop the fight.⁹⁷ However, this did not stop the momentum of the criticism against the sport. The next three tournaments were especially devastating to the UFC's public image. UFC-4, which took place in Tulsa, Oklahoma on December 16, 1994, had trouble from the outset.⁹⁸ The state of Oklahoma tried to ban the tournament before it even began.⁹⁹ The event's most memorable moment occurred when Keith Hackney threw a series of punches to Jo Son's groin. This sordid attack gave the anti-UFC movement even more ammunition to expose the tournaments' brutality.¹⁰⁰ UFC-4 was also a financial disaster, and is best described as the "Heidi Bowl" of the UFC.¹⁰¹ Cable companies did not view the tournament as a legitimate sporting event and only assigned it a two-hour pay-per-view block.¹⁰² With four minutes left in the final match between Royce Gracie and Dan "The Beast" Severn, the broadcast was suddenly cut off.¹⁰³ The furious pay-per-view fans were unable to see Gracie raise the championship belt.¹⁰⁴ WOW and SEG refunded the pay-per-view customers and lost virtually all profits from the event.¹⁰⁵

Another incident that fuelled the anti-UFC movement occurred in UFC-5.¹⁰⁶ Fighter John Hess took advantage of the rule-loophole¹⁰⁷ in his bout with Andy Anderson.¹⁰⁸ After getting Anderson on the ground, Hess bit a chunk out of Anderson's hand and then shoved his thumb into Anderson's eye, popping it out of the socket.¹⁰⁹ The referee stopped the fight and

⁹⁷ GENTRY, *supra* note 3, at 74.

⁹⁸ *Id.* at 83.

⁹⁹ *Id.*

¹⁰⁰ Newmann, *supra* note 12.

¹⁰¹ Phil Barber, *No. 10: The Heidi Game*, NFL.COM, Nov. 24, 1999, <http://www.nfl.com/news/mostmemorable10.html> ("Heidi Bowl" nickname given to a November 17, 1968 NFL football game between the Oakland Raiders and the New York Jets. With 1:05 left in the game, the Jets leading 32-29, NBC cut the game off and in order to run the movie "Heidi" about a young Swiss girl. In a thrilling ending, the Raiders ended up scoring 2 touchdowns in the final minute and ended up winning 43 to 32).

¹⁰² GENTRY, *supra* note 3, at 85.

¹⁰³ *Id.*

¹⁰⁴ *See Id.*; *see also* Cliff Montgomery, *UFC 3: A Look Back At The Early Styles Of Martial Arts In The UFC* EXTREMEPROSPORTS.COM (Royce Gracie was forced to withdraw due to fatigue and threw in the towel just as the fight was about to start).

¹⁰⁵ GENTRY, *supra* note 3, at 85.

¹⁰⁶ UFC-5 held April 7, 1995.

¹⁰⁷ Kreck, *supra* note 91, at B-01.

¹⁰⁸ GENTRY, *supra* note 3, at 88.

¹⁰⁹ *Id.*

declared Hess the winner.¹¹⁰ The brutality discouraged new promotional support and caused some current UFC sponsors to withdraw.¹¹¹

After UFC-5, it became apparent to SEG executives that if the UFC was going to survive, it had to become less of a spectacle.¹¹² SEG wanted to implement new rules, including a panel of judges.¹¹³ Rorian Gracie disagreed with the change, which provoked SEG to buy out WOW's interest in April of 1995.¹¹⁴ A year later, at UFC-6, matches were limited to three rounds, each lasting ten minutes.¹¹⁵ The UFC also instituted a panel of three judges to determine the outcome of a fight if it went the distance.¹¹⁶ UFC-9 marked the beginning of the slow process of reinventing MMA as a sport.

Political Backlash

Political pressure was the principal driving force behind the UFC's evolution into a sport. With its myriad of insalubrious incidents, the UFC became easy prey for politicians in the mid-1990s. The negative publicity enlarged the UFC's financial troubles, leaving it ill-equipped to fight the political attack. Early UFC events operated underneath the political radar. They were held in states without boxing commissions and the fan base was small.¹¹⁷ However, this all changed in 1995 when Arizona Senator John McCain was shown a UFC video.¹¹⁸ He sent a letter to the governors of all fifty states, calling it "a brutal and repugnant blood sport . . . that should not be allowed to take place anywhere in the U.S."¹¹⁹ Subsequently, many states banned

¹¹⁰ *Id.* at 89.

¹¹¹ *Id.* at 65 (representatives from Gold's Gym dropped sponsorship after one of the fighter's molars flew into their front row seats).

¹¹² *Id.* at 91.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Walter, *supra* note 6.

¹¹⁶ Cliff Montgomery, *The History of the UFC - Part 1*, EXTREMEPROSPORTS.COM, http://www.extremeprosports.com/full_contact_fighting/history_of_ufc.html (In UFC-5, March 7, 1995, rules changed to included time limits for the bout duration, a scoring system, and a panel of judges to determine the winner if a fight went the duration).

¹¹⁷ GENTRY, *supra* note 3, at 106.

¹¹⁸ *Id.*

¹¹⁹ Jack Encarnacao, *A Fighting Chance: College-educated Combatants Aim to Strike Blow for Mixed Martial Arts on New Reality TV Show*, BOSTON GLOBE, Jan. 15, 2005, http://www.boston.com/news/globe/living/articles/2005/01/15/a_fighting_chance/?page=1.

MMA fighting events, including California, where Rorian Gracie first introduced MMA to the United States.¹²⁰

This political pressure hastened the UFC's spectacle-to-sport transition and significant rule changes had to be made. Some of these rule changes enhanced the sport's safety. For example: headbutts, groin strikes, strikes to the back of the neck and head, kicks to a downed opponent, small joint manipulation, pressure point strikes, and hair pulling were all made officially illegal by UFC-15.¹²¹ On the other hand, political pressure also induced some rules that made the sport more dangerous. With UFC-14, it became mandatory for fighters to wear four-to-six ounce open fingered gloves.¹²² John McCarthy, the UFC's primary referee, opposed the glove rule: "The whole reason we didn't use gloves was because the fighter couldn't hit the person as much because it hurt [his] hand."¹²³ Gloves increased the fighter's striking power:

As a fighting tool, the bare fist is both ineffective and dangerous to the wielder. In the late 19th and early 20th centuries, bare-knuckle boxing matches could last for hours, with participants eventually succumbing to exhaustion and dehydration. When the hand is damaged, it usually swells, making it progressively harder to deliver decisive force, so as bare-knuckle bouts dragged on, the weapons at fighters' disposal grew increasingly inefficient. In contrast, matches with gloves saw far more punishment delivered to fighters' heads and thus quicker knockouts (and more pounding on the head when fighters were not knocked out).¹²⁴

Bare-knuckled fighting was a natural limitation on the fighters. Fighters that repeatedly strike an opponent's skull, without gloves, are at risk of breaking the small, fragile bones in the hands.¹²⁵ Making gloves mandatory gloves increases the risk of serious brain trauma. Thus, it is not surprising that the ill-tempered Tank Abbott was the first to wear optional lightweight gloves in the Octagon in 1995.¹²⁶ In the UFC's most shocking fight to date, Abbott's gloved fists sent John Matua into a quivering fit.¹²⁷ Since the glove rule came into force, the percentage of fights

¹²⁰ HAWAII MMA REPORT, *supra* note 7, at 2.

¹²¹ Wikipedia.com, *UFC-15*, http://en.wikipedia.org/wiki/UFC_15 (last visited Nov. 15, 2006).

¹²² Downey, *supra* note 4, at 214-215.

¹²³ See GENTRY, *supra* note 3, at 171.

¹²⁴ Downey, *supra* note 4, at 214-215.

¹²⁵ *Id.* (quoting former UFC star Ken Shamrock: "In bare-knuckle fights, one of the most frequent injuries is a broken hand...fighting bare-knuckle, if you slam your fist again and again into the head or face of your opponent, all you will do is to fracture your hand")

¹²⁶ *Id.* 215.

¹²⁷ Polz, *supra* note 2.

ending in knockouts has increased.¹²⁸ “Gloves did not just make punching more effective; they changed the way the body could be employed so that fighters could freely punch.”¹²⁹

By the time Senator John McCain appeared on *Larry King Live* in December 1995 to bash the UFC, thirty-six states had already banned MMA events.¹³⁰ Senator McCain claimed that the UFC placed its contestants at great risk for serious injury or death.¹³¹ However, at the time, no MMA bout had ever resulted in a competitor’s death.¹³² Ironically, Senator McCain is an avid boxing fan and, just five months before the interview, sat ringside at the “Ruelas vs. Garcia” Super Featherweight title bout.¹³³ Jimmy Garcia died from injuries sustained in that bout.¹³⁴ Luke O’Brien, a San Francisco based reporter, described one perspective of the Senator’s anti-UFC position: “MMA supporters accused McCain, who once watched a boxer die in the ring but remained a loyal fan of the sweet science, of hypocrisy.”¹³⁵

Senator McCain capitalized politically on the anti-UFC movement, but he undoubtedly had an ulterior motive. “McCain's family owns millions of dollars in Anheuser-Busch stock. McCain's father-in-law runs a major Anheuser-Busch distributorship in Arizona, and his company contributed generously to the [S]enator's early campaigns.”¹³⁶ Budweiser is professional boxing’s primary advertiser and the UFC was threatening to take fans from boxing.¹³⁷ Thus, Senator McCain had a pecuniary interest in discrediting the emerging sport.

“McCain further crippled the UFC when, in 1997, he became chair of the Senate Commerce Committee, which oversees the cable television industry. The [S]enator pressured

¹²⁸ Downey, *supra* note 4, at 215.

¹²⁹ *Id.*

¹³⁰ See GENTRY, *supra* note 3, at 122-123.

¹³¹ *Id.*

¹³² Kevin Porter, *Chiple Man Dies From Injuries Suffered in 'Ultimate Fighting' Match*, PANAMA CITY FLORIDA NEWS HERALD, Mar. 19, 1998 (there has never been a death from a sanctioned MMA bout in the United States. The only reported death from MMA event occurred in Kiev, Ukraine in 1998, when Douglas Dredge died after a bout); GENTRY, *supra* note 3, at 161 (several reports from Dredge’s friends said that he had a pre-existing condition and should not have been fighting in the first place).

¹³³ Walter, *supra* note 6.

¹³⁴ Thomas Gerbasi, *For Those Who Died*, MAXBOXING.COM, Jan. 10, 2003, <http://www.maxboxing.com/Gerbasi/gerbasi011003.asp>.

¹³⁵ Luke O’Brien, *Knockout/Tapout: Why Mixed Martial Arts – A Bloody Blend of Disciplines Often Called Ultimate Fighting – May Replace Boxing as America’s Mayhem of Choice*, SF WEEKLY, June 15, 2005, available at <http://www.sfweekly.com/2005-06-15/news/knockout-tapout/2>.

¹³⁶ *Id.*

¹³⁷ *Id.*

pay-per-view carriers to drop MMA events.”¹³⁸ Time Warner, TCI, Request, Cablevision Systems, Viewer's Choice, and other major cable television operators stopped airing UFC events, claiming it was too violent for children.¹³⁹ Senator McCain successfully pushed the UFC into its “Dark Ages” and the multi-million dollar revenue stream instantly dried up.¹⁴⁰

Adding to the UFC financial strains, during the UFC Dark Ages, MMA was flourishing in Japan.¹⁴¹ On October 11, 1997, PRIDE Fighting Championships (PRIDE), a Japanese MMA organization, held its inaugural event at the Tokyo Dome in Tokyo, Japan.¹⁴² The event featured many of the “big name” UFC fighters and the organization quickly became the UFC's strongest competitor.¹⁴³

State Regulation and the “Unified Rules”

With the UFC floundering, it was time for a new direction. In early 2001, casino tycoons Lorenzo and Frank Fertitta, of Fertitta Enterprises, formed Zuffa Entertainment (Zuffa) and acquired the UFC.¹⁴⁴ Lorenzo was a member of the Nevada State Athletic Commission in 1999 and saw the potential to make MMA a legitimate sport.¹⁴⁵

On April 3, 2001, Larry Hazard of the New Jersey State Athletic Commission called a meeting with Marc Ratner of the Nevada State Athletic Commission to discuss the sanctioning of MMA events.¹⁴⁶ This meeting is credited as the pivotal moment in MMA’s transition from spectacle to sport.¹⁴⁷ Lorenzo Fertitta argued at that meeting for uniformity in MMA competitions. He asserted that without uniform rules, MMA could never be taken seriously as a sport.¹⁴⁸ The lack of uniformity created safety concerns and no reliable ranking system could be developed. Constant changing of the rules increased the risk to, and confusion for, the fighters.

¹³⁸ *Id.*

¹³⁹ Polz, *supra* note 2.

¹⁴⁰ O’Brien, *supra* note 135.

¹⁴¹ Robert Rousseau, *Introduction To 'Pride Fighting' And It's Top Champions*, EXTREMEPROSPORTS.COM, http://www.extremeproports.com/full_contact_fighting/pride.html (last visited May 29, 2007).

¹⁴² *Id.*

¹⁴³ R.M. Schneiderman, *Ultimate Fighting's Next Battle*, Forbes.com, Oct. 5, 2006, http://www.forbes.com/business/2006/10/05/sports-martial-arts_tech_media_cx_rs_1005fight.html.

¹⁴⁴ GENTRY, *supra* note 3, at 208-09 (Lorenzo and Frank Fertitta also run Fertitta Enterprises, which is the fifth largest publicly traded gaming company).

¹⁴⁵ O’Brien, *supra* note 135.

¹⁴⁶ GENTRY, *supra* note 3, at 243.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 208.

Safety depended on both fighters knowing and competing under the same rules.¹⁴⁹ Lorenzo also pointed out that boxing rings were inadequate for MMA competitions and that only a UFC-style cage could safely contain the fighters.¹⁵⁰ Lorenzo's logic eventually persuaded Nevada and many other states to sanction MMA events.

The meeting laid the foundation for the *Unified Rules for Mixed Martial Arts* (Unified Rules).¹⁵¹ Under the Unified Rules there are thirty-one types of fouls and eight ways to stop a fight.¹⁵² In 2001, both New Jersey and Nevada adopted the Unified Rules.¹⁵³ The UFC has since achieved regulatory approval for the Unified Rules in many states, including Florida and Louisiana.¹⁵⁴ Professional MMA bouts are now legal in most of the states. The Unified Rules, however, are not all that unified, given the myriad of sanctioning bodies throughout the country.¹⁵⁵ A major step toward uniform MMA competitions was made in December, 2005. California lifted its ban on MMA and the California State Athletic Commission (CSAC) began

¹⁴⁹ *Id.* at 243.

¹⁵⁰ *Id.* at 208.

¹⁵¹ New Jersey State Athletic Control Board, Mixed Martial Arts Unified Rules of Conduct (purposed Apr. 2001) (to be codified at 13 N.J. Admin. Code, §§ 46-4.25) *available at* <http://www.state.nj.us/lps/sacb/docs/martial.html>.

¹⁵² The 31 fouls included: butting with the head; eye gouging of any kind; biting, hair pulling; fishhooking (any attempt by a fighter to use their fingers in a manner that attacks their opponents mouth, nose or ears, stretching the skin to that area will be considered "fishhooking"; fishhooking generally is placing of fingers into the mouth of your opponent and pulling your hands in opposing directions while holding onto the skin of your opponent); groin attacks of any kind; putting finger into any orifice or into any cut or laceration of an opponent; small joint manipulation (fingers and toes are small joints); striking to the spine or back of the head; striking downward using the point of the elbow; throat strikes of any kind, including, without limitation, grabbing the trachea; clawing, pinching or twisting the flesh; grabbing the clavicle, kicking the head of grounded opponent; kneeing the head of a grounded opponent; stomping a grounded opponent; kicking to the kidney with the heel; spiking an opponent to the canvas on his head or neck; throwing an opponent out of the ring or fenced area; holding the shorts of gloves of an opponent; spitting at an opponent; engaging in an unsportsmanlike conduct that causes an injury to an opponent; holding the ropes or fence; using abusive language in the ring or fenced area; attacking an opponent on or during the break; attacking an opponent who is under the care of the referee; attacking an opponent after the bell has sounded the end of the period of unarmed combat; flagrantly disregarding the instructions of the referee; timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking injury; interference by the corner; and throwing in the towel during competition. The 8 ways to end the fight are: submission by physical tap out or verbal tap out, technical knockout by the referee stopping the contest, decision via the scorecards (including: unanimous decision, split decision, majority decision, and draw), technical decision, technical draw, disqualification, forfeit, and no contest.

¹⁵³ N.J. Admin. Code §§ 13:46-24A, 24B (2005); Nev. Admin. Code § 467.7962 (2005).

¹⁵⁴ Walter, *supra* note 6.

¹⁵⁵ See HAWAII MMA REPORT, *supra* note 7, at 3 ("No single set of rules or unifying body governs the sport today. Each organization has its own rules. Those associated with the UFC use UFC rules. Others use modified Greek pankration rules, Japanese Shooto rules, or Pride rules. Pride rules differ from those of the UFC by requiring the fight to be held in a ring with an opening round of ten minutes and two subsequent rounds of five minutes each").

regulating MMA events under the Unified Rules, but then went further.¹⁵⁶ UFC-59 and UFC-60 both took place in California and received record-setting ticket sales.¹⁵⁷

Acceptance of MMA as a sport will ultimately be determined if and when the remaining states adopt the Unified Rules. Considering the Unified Rules have been adopted by the three largest event-holding states (New Jersey, Nevada and California), it appears the balance has shifted and MMA is now more sport than spectacle.

LEGAL ISSUES FACED BY THE MMA WORLD

Conflicts over the Rules

As the UFC's popularity grew, other investors began to see the opportunity to profit from MMA competition.¹⁵⁸ The number of MMA leagues has rapidly increased, though with new leagues forming all the time under a variety of names and governing bodies, it is impossible to know exactly how many currently exist.¹⁵⁹ The most notable organizations competing for a piece of the market include PRIDE Fighting Championships, the International Fight League, the World Fighting Alliance and Strikeforce Fighting Championship.¹⁶⁰ Japan's PRIDE Fighting Championships, however, remains the UFC's most formidable competitor.¹⁶¹

The distinctions between the UFC's Unified Rules and traditional PRIDE rules illustrate the lack of uniformity among the MMA leagues.¹⁶² PRIDE events take place in boxing rings, as

¹⁵⁶ *Id.*

¹⁵⁷ Carlos Arias, *Mixed Martial Arts Column*, ORANGE COUNTY REGISTER, June 8, 2006.

¹⁵⁸ HAWAII MMA REPORT, *supra* note 7, at 3.

¹⁵⁹ See Wikipedia.com, *Professional Mixed Martial Arts Organizations*, http://en.wikipedia.org/wiki/List_of_MMA_organizations (listing various professional MMA organizations, the most notable include PRIDE Fighting Championships, Extreme Fighting, International Fighting Championships, International Fight League, World Extreme Cagefighting, and K-1) (last visited May 23, 2007).

¹⁶⁰ Schneiderman, *supra* note 143.

¹⁶¹ *Id.* ("Pride Fighting Championships may be the UFC's strongest competitor... sells out 35,000 seat stadiums in Japan ... has arguably more talent than ... the UFC. In September, Fox Sports Net began airing bimonthly replays of Pride bouts").

¹⁶² Cf. Josh Gross, *Path Towards California MMA Regulation Continues*, SHERDOG.COM, Nov. 10, 2004, http://www.sherdog.com/news/articles.asp?n_id=2470 ("[PRIDE] provided a handout to the [CSAC] listing injury statistics ... separating injuries specific to PRIDE rules from those incurred by maneuvers allowed in the Unified Rules. Of the 114 injuries outlined ... only 12 were directly attributed to [PRIDE specific rules]...spiking/pile driving, kicks to the head of a grounded fighter, knees to the head of a grounded fighter, and usage of the ring); Kevin Iole, *UFC Acquires Pride*, LAS VEGAS REV. J., Mar. 27, 2007, http://www.reviewjournal.com/lvrj_home/2007/Mar-27-Tue-2007/sports/13414338.html ("UFC president Dana White said he and partners Lorenzo and Frank Fertitta formed a new company, Pride Worldwide, that purchased the assets of the Pride FC.... Pride would

opposed to the UFC's octagonal cage. Kicking and kneeing to the head of a downed opponent are allowed in PRIDE, but not UFC matches. Similarly, stomping a downed opponent is allowed in PRIDE but not in UFC, as is spiking or pile-driving an opponent. On the other hand, elbows to the head and face of a standing opponent are allowed in UFC but not in PRIDE.¹⁶³

In 2005, California decided to lift its ban on MMA competitions and the CSAC held a hearing to decide whether it should adopt the Unified Rules.¹⁶⁴ Representatives from PRIDE opposed the Unified Rules and asserted that they would not promote MMA events in California unless the rules were modified. PRIDE requested the following modifications: to incorporate the PRIDE round and scoring structure; permit certain equipment use, such as the fighters' option to wear a gi and shoes; allow knees and kicks to the head of a downed opponent; and the option to hold MMA competitions in a boxing ring as opposed to a cage.¹⁶⁵

Representatives from Zuffa, including UFC referee John McCarthy, asserted that California should maintain the Unified Rules as an MMA standard.¹⁶⁶ McCarthy argued, "Having a fighter understand that the rules... they're fighting under [will not] change...protects the fighters...because they [will] know what they can do and what they can't.... And it helps the officials who are a part of that sport [do their] job correctly..."¹⁶⁷ In the end, the CSAC sided with the UFC and adopted the Unified Rules.¹⁶⁸ The UFC also persuaded the CSAC to expressly endorse a UFC-style cage for all MMA competitions and to prohibit boxing rings for MMA events.¹⁶⁹ Until recently, California had a strict cage requirement for all MMA competitions, though, as discussed *infra*, this requirement has been retracted to allow for the use of other types of rings.¹⁷⁰

adopt...unified rules [in events] around the world[, however,] any fight held with the Pride banner would continue to be in a ring").

¹⁶³ *Id.*

¹⁶⁴ Josh Gross, *CSAC Says "Yes" to MMA, Hurdle Cleared for Sport in Golden State*, SHERDOG.COM, Feb. 23, 2005, http://www.sherdog.com/news/articles.asp?n_id=2470

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Press Release, California State Athletic Commission, Ring regulations for mixed martial arts events approved (January 19, 2007) [hereinafter CSAC Ring Release].

Nevertheless, PRIDE has become a contender in capturing a share of the United States MMA market.¹⁷¹ On October 21, 2006, PRIDE held its first United States MMA competition in Las Vegas, Nevada.¹⁷² True to PRIDE form, the athletes fought in a boxing style ring.¹⁷³ However, because Nevada enforces the Unified Rules, PRIDE had to modify its rulebook to prohibit spiking, kicking, kneeing, and downward stomping of a fallen opponent for the event.¹⁷⁴

It remains uncertain if Nevada and other states will continue to allow PRIDE to have competitions in a traditional boxing ring, however, it is doubtful that the UFC cage will ever become a MMA standard. As PRIDE has succeeded in capturing a share of the United States MMA market, they have correspondingly become more influential with state athletic commissions. In January, 2007, PRIDE successfully persuaded the CSAC to amend its cage regulation.¹⁷⁵ California retracted their cage-only requirement and now permits MMA athletes to also compete in a “mixed martial arts ring” (MMA ring).¹⁷⁶ While the MMA ring bears a close resemblance to the traditional boxing ring, it has some additional safety features. The principal difference the MMA ring has multiple vertical ropes equally spaced on all sides of the ring and has one additional horizontal rope.¹⁷⁷ The MMA ring is essentially a modified boxing ring with interlocking ropes, creating a net-like barrier to contain the competitors.¹⁷⁸ It is now apparent that the UFC’s octagonal cage will not be a universal MMA standard.

Contractual Disputes

In 1997, when the Tokyo Dome unveiled the PRIDE Fighting Championship, the new fighting league became an instant success.¹⁷⁹ The event lured several star UFC fighters to compete in the event. One such star was Mark Kerr.¹⁸⁰ Politically injured and in its Dark Ages, the UFC sought to enjoin Kerr from fighting in the event. Kerr’s UFC contract contained an

¹⁷¹ Schneiderman, *supra* note 143.

¹⁷² Sherdog.com, *PRIDE, Pride 32: The Real Deal*, <http://www.sherdog.com/fightfinder/fightfinder.asp?EventID=4088> (last visited Nov. 16, 2006).

¹⁷³ Josh Gross, *Fedor is “Real Deal” in Triumph Over Coleman*, Sherdog.com, Oct. 22 2006, http://www.sherdog.com/news/articles.asp?n_id=5948.

¹⁷⁴ *Id.*

¹⁷⁵ CSAC Ring Release, *supra* note 170.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Photos at International Fight League on Friday, Jan. 19, 2007, SF WEEKLY, <http://promotions.sfweekly.com/promos/streetteam/?gallery=435492> (last visited May 21, 2007).

¹⁷⁹ GENTRY, *supra* note 3, at 196.

¹⁸⁰ *Id.*

Exclusive Participation Clause, prohibiting him from fighting in other leagues.¹⁸¹ A court battle ensued and for a large but undisclosed price, Kerr was released from his UFC contract.¹⁸²

Another contractual dispute emerged in relation to UFC-65's main event. Chuck Liddell, the UFC Light Heavyweight Champion, was slated to defend his title against Wanderlei Silva, PRIDE's Middleweight Champion. Dana White, UFC President, announced the matchup at UFC 61 on July 8, 2006. Shortly thereafter, in several interviews, White stated that the matchup was cancelled because of contractual disagreements between the UFC and PRIDE.¹⁸³

In UFC-46's Welterweight title bout, B.J. Penn defeated Matt Hughes.¹⁸⁴ Penn then signed on to compete in the K-1 fighting league. The UFC claimed that Penn breached his contract by signing with another organization and stripped him of his UFC title.¹⁸⁵ Penn argued that the contract had expired and sought to enjoin the UFC from crowning a new champion.¹⁸⁶ The injunction was denied and Penn left the UFC.¹⁸⁷ In 2006, Penn and Zuffa settled the dispute and B.J. Penn was once again a UFC fighter.¹⁸⁸

It is inevitable that the various MMA organizations will continue to encroach on the UFC's market in the United States. It is also inevitable that state athletic commissions will continue to adopt and stand by the Unified Rules. As this occurs, a few questions arise, namely whether fighters will be able to fight in multiple leagues and whether all of the leagues will eventually merge into one unified league. It is now apparent, however, that the sport is destined to have "a 'Super Bowl' of MMA that will match the best [PRIDE] fighters ... against the best in the UFC as [the sports] biggest annual event."¹⁸⁹

¹⁸¹ *Id.*

¹⁸² *Id.* at 197.

¹⁸³ Neil Davidson, *UFC Backs Off Liddell vs. Silva Claims*, Aug. 11, 2006, CANADIAN PRESS, available at <http://mmaweekly.com/absolutenm/templates/dailynews.asp?articleid=2480>.

¹⁸⁴ Loretta Hunt, *Penn vs. Zuffa: Temporary Fate of UFC Welterweight Title is of First Concern*, FULL CONTACT FIGHTER, July 29, 2004, <http://www.fcfighter.com/news0407.htm> (last visited May 29, 2007).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *B.J. Penn v. Zuffa LLC*, No. 04-A-488461 (Nev. 8th Dist. Ct. Jan. 10 2006).

¹⁸⁹ Iole, *supra* note 162.

*Torts in the MMA Sport*¹⁹⁰

Due to the extremely violent nature of MMA, it is hard to imagine conduct that falls outside the parameters of the sport itself. In *Hackbart v. Cincinnati Bengals, Inc.*, a leading torts and sports law case, the Tenth Circuit Court of Appeals ruled that a standard of recklessness is applied to tortious conduct in athletic competitions. In that case, during a football game, an angry player intentionally struck another player in the back of the head.¹⁹¹ “[R]ecklessness exists where a person knows that the act is harmful but fails to realize that it will produce the extreme harm which it did produce.”¹⁹²

The court went on to say “intentional or reckless contributory fault could theoretically at least apply to infliction of injuries in reckless disregard of the rights of others. This has some similarity to contributory negligence and undoubtedly it would apply if the evidence would justify it.”¹⁹³ Therefore, even a reckless or intentional act is not actionable in tort law if it is an inherent risk of the sport, which the competitor is deemed to have assumed.¹⁹⁴ The court concluded that the hit was not an inherent risk of the sport because “intentional striking of a player in the head from the rear is not an accepted part of either the playing rules or the general customs of the game of professional football.”¹⁹⁵

Although there are certain prohibited actions in MMA competitions, the sport is still very much in its formative years. It is nearly impossible to establish the general customs of the sport. Under the *Hackbart* standard, however, John Hess probably could have been found liable for the injuries he inflicted on Andy Anderson.¹⁹⁶ Anderson lost twenty percent of his peripheral vision as a result of Hess’s intentional act of shoving his thumb into Anderson’s eye.¹⁹⁷ From the times of its ancient origins, eye gouging has been prohibited in MMA competition.¹⁹⁸ Given the

¹⁹⁰ The author of this article is not aware of any tort actions taken by MMA participants.

¹⁹¹ *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 524 (1979) (“acting out of anger and frustration, but without a specific intent to injure...[Charles Clark] stepped forward and struck a blow with his right forearm to the back of the kneeling plaintiff’s head and neck with sufficient force to cause both players to fall forward to the ground.... Clark testified at trial that his frustration was brought about by the fact that his team was losing the game”).

¹⁹² *Id.*

¹⁹³ *Id.* at 520.

¹⁹⁴ *See id.*

¹⁹⁵ *Id.* at 520-521.

¹⁹⁶ GENTRY, *supra* note 3, at 88.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 17 (eye gouging was illegal in the ancient Olympic sport of Pankration).

current rule and its historic origin in the sport, eye gouging is undoubtedly not an inherent risk when competing in MMA. The athletes assume their eyes won't be the target of a purposeful attack.

On the other hand, kicking the head of a grounded opponent is unlikely to give rise to tort liability. Kicking a downed opponent was authorized in early UFC events and is still permitted in most international MMA events. In May 2006, the CSAC indefinitely suspended MMA competitor Mike Kyle for kicking a downed opponent in the head.¹⁹⁹ Kyle's strikes were in violation of the Unified Rules as adopted by California. It is unlikely, however, that they would be deemed contrary to the sport's general customs.

The vagueness of the law and the extreme nature of the sport give rise to two unanswerable legal issues. First, is a state-imposed suspension sufficient to deter dangerous conduct in MMA competitions? Second, as a matter of public policy, should the courts permit an injured fighter to seek damages in tort law?

TOO DANGEROUS TO BE A SPORT?

Critics claim that MMA is nothing more than a "brutal and repugnant blood sport" that "places its contestants at great risk for serious injury or death."²⁰⁰ MMA supporters have always countered by asserting that the sport "is actually safer than boxing."²⁰¹ This argument is gaining credibility as MMA develops into a sport and reliable information becomes increasingly available. Medical studies show that MMA competitors suffer fewer knockouts and less severe injuries from competition than boxers.²⁰²

The Johns Hopkins University recently conducted a comprehensive medical study of United States combative sports injuries sustained in competition.²⁰³ The purpose of the study

¹⁹⁹ Press Releases, California State Athletic Comm'n, *Commission Suspends MMA Athlete Mike Kyle Indefinitely*, (March 25, 2006) available at http://www.dca.ca.gov/csac/press_releases/20060525_mma_suspension.htm.

²⁰⁰ See Encarnacao, *supra* note 119; GENTRY, *supra* note 3, at 122 (statements made by Senator John McCain leading the anti-UFC movement).

²⁰¹ O'Brien, *supra* note 135.

²⁰² See Gregory H. Bledsoe, et al., *Incidence of Injury in Professional Mixed Martial Arts Competitions*, 5 J. SPORTS SCI. & MED. (COMBAT SPORTS SPECIAL ISSUE) 132, 132-137 (July 2006) available at <http://www.jssm.org/combat/1/18/v5combat-18.pdf>; see also, O'Brien, *supra* note 135.

²⁰³ Bledsoe, *supra* note 202, at 132-137.

was to “determine the incidence of injury in professional MMA fighters.”²⁰⁴ In general, the injury rate in MMA competitions was found to be comparable to boxing and other sports involving striking.²⁰⁵ When comparing the knockout rates, however, MMA fighters suffer half as many knockouts as boxers.²⁰⁶ “MMA competitions have a mechanism that enables the participant to stop the competition at any time. The ‘tap out’...combined with more options of attack...[explains the] knockout proportion.”²⁰⁷ The study ultimately concluded that MMA competitors suffer fewer brain injuries than boxers.²⁰⁸

Ending a fight with submission, while painful, does not cause lasting damage.²⁰⁹ Boxers, on the other hand, absorb hundreds of punches to the head during a 12-round fight and have a much higher risk of accumulated brain trauma.²¹⁰ The Johns Hopkins study commented:

With the growing concern over repetitive head injuries and the risk of *dementia pugilistica* among career boxers, decreasing the number of head blows a fighter receives during a match has been promoted as an important intervention.... With MMA competitions, the opportunity to attack the extremities with arm bars and leg locks and the possibility of extended periods of grappling could serve to lessen the risk of traumatic brain injury.²¹¹

It is the rules that actually make the boxing more dangerous. MMA fighters have the ability to grapple, which allows them to avoid the chronic concussive damage that leads to Parkinson's disease.²¹² In boxing, a referee's job is to break the fighters apart when they clinch, thus forcing an injured boxer to absorb more punches to the head. Clinching is fundamental in MMA competition and the risk of substantial injury is minimal.²¹³

²⁰⁴ *Id.* at 136.

²⁰⁵ *Id.* at 136-137 (“Injuries were divided into seventeen broad classifications: eye injuries, facial lacerations, ear injuries, nose injuries, mouth injuries, jaw injuries, hand injuries, shoulder injuries, elbow injuries, ankle injuries, foot injuries, chest injuries, abdominal injuries, knee injuries, back injuries, neck injuries, and arm injuries. Lacerations to the eyelid and nose were counted as facial lacerations”).

²⁰⁶ *Id.* at 140.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 136.

²⁰⁹ O'Brien, *supra* note 135.

²¹⁰ *Id.*

²¹¹ Bledsoe, *supra* note 202, at 140.

²¹² O'Brien, *supra* note 135.

²¹³ *Id.*

Boxing averages eleven deaths per year.²¹⁴ There has never been a death reported in a domestic MMA event.²¹⁵ In the history of MMA competition, only one death has ever been recorded, in an international unsanctioned fight held in Kiev, Ukraine.²¹⁶ It is now apparent that, when comparing MMA and boxing, critics have little support for their argument. If MMA is too dangerous to be considered a sport, so is boxing.

CONCLUSION

MMA deserves to be called a sport. The majority of states have approved MMA competitions. Reputable studies show that MMA is far safer than the well-established sport of boxing. Essentially, MMA is no longer a fighting spectacle. The sport of Pankration has come full circle, in time, it will find its way back home to the Olympics.

²¹⁴ Joseph R. Svinth, *Death Under the Spotlight: The Manuel Valazquez Boxing Fatality Collection*, J. COMBATIVE SPORT (May 2006).

²¹⁵ Porter, *supra* note 132.

²¹⁶ Stephen Shultz, *Is Ultimate Fighting Safer Than Boxing?*, ASSOCIATED CONTENT (2006).