

RULE 44.1 — TAKING A PENALTY

A boat may take a Two-Turns Penalty when she may have broken one or more rules of Part 2 in an incident while *racing*. She may take a One-Turn Penalty when she may have broken rule 31. Alternatively, the notice of race or sailing instructions may specify the use of the Scoring Penalty or some other penalty, in which case the specified penalty shall replace the One-Turn and the Two-Turns Penalty. However,

- (a) when a boat may have broken a rule of Part 2 and rule 31 in the same incident she need not take the penalty for breaking rule 31;
- (b) if the boat caused injury or serious damage or, despite taking a penalty, gained a significant advantage in the race or series by her breach her penalty shall be to retire.

Rule 44.1 states that if you think you may have broken one or more rules of Part 2 or rule 31 (Touching a Mark) in an incident while *racing*, you can **always** take a voluntary penalty at the time of the incident. This is sensible. Mistakes happen, and there should be a consequence for breaking a rule; but forcing sailors to retire and sail in for a minor infraction is not in balance with the great effort, time and expense that goes into participating in a race.

Rule 44.1 states that the penalty is the One or Two-Turns Penalty (see the discussion of rule 44.2) unless the notice of race or sailing instructions specify the use of some other penalty. Another common penalty is the Scoring Penalty, often known as the “percentage penalty.” When the Scoring Penalty is in effect, it replaces the One- or Two-Turns Penalty as the penalty. This is clearly described in rule 44.3 (Scoring Penalty) and won’t be discussed in this book.

Note that even a right-of-way boat can need to take a penalty. If a right-of-way boat fails to avoid contact with another boat when it was reasonably possible for her to do so, she breaks rule 14(a) (Avoiding Contact). If damage results from the contact, she is liable to being penalized and can do a Two-Turns Penalty to absolve herself.



“Can I ever take a penalty on shore?”

Check the sailing instructions for your race or event to see if Appendix T (Arbitration) or US Sailing Appendix V (Alternative Penalties) is in effect. The rules in these appendices are intended to improve compliance with the Basic Principles: Sportsmanship and the Rules, and to encourage boats to enforce the rules by protesting. Appendix V provides for a lesser alternative penalty on the water, and both appendices provide an alternative penalty (30%) that encourages competitors to take a penalty on shore when they realize after the race they may have broken a rule of Part 2 or rule 31.



“Is there a situation where the only penalty a boat can take is to retire from the race?”

Yes. If a boat has broken a rule of Part 2 (including rule 14) and has caused “injury” or “serious damage” or has gained a “significant advantage” in the race or series by her breach despite taking a penalty, **she must retire**; i.e., she cannot take a turns or scoring penalty on the water (rule 44.1(b)). This is a clear reminder to all competitors, whether holding the right of way or not, to be careful and sportsmanlike.



“Before going on, could you discuss the terms ‘injury’ and ‘serious damage’?”

Sure. Understand, however, that these terms are difficult to define precisely. I will discuss what, in my opinion, are the important considerations based on the rule, the appeals and cases, the dictionary and my interpretation. In a *protest*, protest committees will need to exercise their best judgment in these situations. Notice that the judgment that “injury” or “serious damage” occurred is not a “fact found;” it is a conclusion based on the “facts found” and therefore subject to appeal.

An “injury” is something that physically hurts a **person**, and more than just briefly, and in a way that ordinarily affects the person’s ability to function normally and/or requires the person to be attended to at some point. The reason the rule does not refer to “serious” injury is that “injury” implies that the hurt is “serious.” “Damage” refers to physical damage to a **boat or its equipment**. (See Cases 19 and 110.)

Case 141 discusses “serious damage.” **Question:** Is there a special meaning in the racing rules of the term ‘serious’ when it is used in the phrase ‘serious damage’? **Answer:** No. The term ‘serious’ is not defined in *The Racing Rules of Sailing* (RRS). The Terminology section of the Introduction states that ‘other words and terms are used in the sense ordinarily understood in nautical or general use.’ As understood in general use, when ‘serious’ is used in the phrase ‘serious damage’, the term means: important because of possible danger or risk; having potentially undesired consequences; giving cause for concern; or of significant degree or amount.

This suggests that when a protest committee has concluded from the facts found that damage occurred in an incident, it must then consider whether any of the four criteria implied by the definition above apply, and if so it should conclude that the damage is ‘serious.’ Questions to consider may include:

- (1) Did the damage reduce the safety of the crew?
- (2) Did the damage adversely impact the boat’s sailing performance in a significant way?
- (3) Will the cost of repairing the damage be a significant amount relative to the market value of the boat?
- (4) Will the value of the boat after repairing the damage be significantly diminished?”

Certainly, if the damage causes the boat to discontinue the race, it is “serious.” If the boat can safely continue in the race and loses no finishing places as a direct result of the damage, and the nature and cost of any necessary repair isn’t too high, the damage is not “serious.” (Note that it is impossible to put a price tag on “serious;” that will have to be decided by the protest committee after considering all the relevant factors.)

If the damage is a deep scratch that penetrates the fiberglass, thereby requiring immediate repair after the race so that further damage doesn’t result or so that the future speed, performance or maneuverability of the boat isn’t affected, that damage would begin to fall into the “serious” category. And if the repair required more professional work and became a more costly and time-consuming affair, I would be more inclined to rule it “serious.” But if the extent of the repair were such that it could be handled that evening by the sailors involved with a minimum of hassle and expense, and the damage does not affect the overall speed, performance or maneuverability of the boat, I would be inclined to rule it not “serious.”

If the damage is a broken boom near the finish and the boat loses no places but cannot repair or replace the boom before the second race of that day, I’d consider the damage to be “serious;” but if the damage was to something that could normally be repaired or replaced on the water, such as a bent guy hook, the damage would not be “serious.” (See Case 19.)



“Thanks! Now how do I take a One- or Two-Turns Penalty?”