

Law School Tutors Lecture Series



Sport and the Law

LECTURE TWO : INTERACTION OF SPORT AND THE LAW

For

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by

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INTERACTION OF LAW AND SPORT.**Introduction.**

“I have always opposed people who seek to bring too much law into sport. I believe very much that sport should govern itself on the field of play”. - Ted Croker, The Times, 1992.

Sport is no more immune from the rule of law than it has been to the effects of politics and market economics. Can you think of any examples of the effects of; a) politics.? and b) economics?

When we suggest that the rule of law is applicable to the sports field it is important to establish what is meant by the rule of law. The rule of law could be said to be that *“all people, irrespective of activity, social standing, ethnicity etc., are to conduct themselves in accordance with the requirements of the law and where they do not, they are subject to the remedies and sanctions of the due process of law.”*

What would be the effects if certain persons regarded themselves as immune from the law and were not subject not subject to the due process of law?

The important point of this is that there are no arbitrary distinctions to be drawn in relation to the law’s applicability. Accordingly, we can assert that theft is subject to the same law and sanctions whether it is committed in a supermarket, a bank or the boardroom. Similarly, those who would be subject to the applicable law would not be excluded from its effects whether they were a shopper, a banker or a director.

1. What are the beneficial effects of this approach?
2. With this in mind, the quote that we began the lecture with seems remarkable. What do you think Ted Croker is suggesting?

In our discussion of the rule of law we drew no arbitrary distinctions between different types of activity. There were no immunities for people playing or administering sport, so it appears odd that it should be suggested that law and the sports field are mutually exclusive in some respects. The philosophical basis of the rule of law is, at least in western democracies, a bastion of society. You may have read or seen contemporary reports of societies where the rule of law as we would understand it does not exist. This is not to say that those societies do not have a legal system or law. Without making any value judgements, indeed law may facilitate the objectives of a particular society. In the former Soviet Union, the judiciary undoubtedly believed they were furthering the general good of the state and the people when persons were convicted and sentenced for crimes that involved what we would recognize as an exercise of free speech. Indeed it may be that the judiciary would find it odd that a different conclusion in relation to that persons guilt could be contemplated because this would undermine the fabric of the society. I suppose this tells us that the rule of law is a reflection of the context - in many western democracies it is as we envisaged above.

The rule of law to us, denies arbitrary distinctions in its application and effect - thus in general terms, for example, religion is irrelevant to its application, effects and process.

We may recognize immunities, but the basis for them are arguably beneficial for the furtherance of the rule of law. Judges have an immunity from litigation in relation to their hearing of a trial or appeal. What is, arguably, the beneficial effect?

However, we would not suggest that the judge is immune from every law. If he or she assaulted someone, they would be subject to sanctions - not simply from the rules concerning their appointment and conduct in office, but also from the law itself. **Can you think of any immunities from a law or laws?**

Perhaps some of the difficulties that sportsmen and women have in appreciating that the law applies to their conduct in regulated sport as much as other areas of their lives lies in two aspects.

First, that they may be involved in a contact sport where their opponent agrees to the physical side of the game. In a sense, this is correct, but each player does not agree contact that could be said to be outside the acceptable limits for the sport - so a boxer does not agree to be clubbed with a stool by his/her opponent. Additionally, the law places a value on constraining behaviour that may affect others. So a brawl on the hockey pitch may affect those spectating - it may incite them and/or it may instill fear in them. Of course where there is no physical contact required to facilitate the game, though ‘minor’ contact may be acceptable (such as bumping into an opponent), such arguments do not apply - snooker players fighting would seem an obvious example.

Second, there is a view that sport is regulated by governing bodies who have rules relating to acceptable/unacceptable conduct and sanctions for breach and each participant is bound by these rules and procedures as a condition. Accordingly, the rules and sanctions of the sport are the most appropriate way of regulating conduct. This is perhaps a more formidable argument but it misses an important point. Conduct on the field of play can have wider effects than the sport itself. Such regulations and rules are also aimed at constraining the conduct on the field to accord with the objectives of the game and preserving the general good standing of the particular sport and governing body. They do not, for example, provide for a means of compensating participants when the rules are transgressed and injury is suffered and do not necessarily consider general public order issues. They do not provide for the resolution of disputes - contractual, tortious or criminal. This of course is the preserve of the courts administering the rule of law.

Of course there is balance to be maintained and, for example, to require the police to intervene when two participants in a rugby game hit each other would seem ordinarily impractical and, perhaps, undesirable. Compare this conduct though with a rugby player who hits an opponent with such force that it causes considerable injury and financial loss to the other. It may be desirable that the criminal and civil law are invoked, whereas a ban for a number of games or a season does not. There is no obvious line to draw but this is not the same as consigning the 'offending' action to the rules of the game to the exclusion or ignorance of the general law.

Sport has metamorphosed into a sophisticated machine which many would argue now has money at its heart. Sport has taken on an international perspective. Even at local club level for example Chelsea Football Club could field a first eleven composed of entirely foreign footballers. At the recent world cup, club colleagues found themselves playing each other on opposing national teams.

Money has changed the face of some sports dramatically. Some would argue that sport has lost its innocence and that sportsmanship is a thing of the past: money is now what matters. Sport, it is argued, has become a commodity. For instance, football clubs no longer depend on their fans for income; many are floated on the stock market. Some have sold off land for development. Football benefits greatly from income from television deals. Advertising involves millions of pounds. This in turn allows them to bring in international players. However, it is arguable that sport still remains a central part of our popular culture. Look at the delight and misery (especially to Beckham) brought by the World Cup last June, the joy when Tim Henman progressed so far in Wimbledon, the shock when England actually won a Test match. We still care. Sport is a major part of our popular culture.

It would be over simplistic to argue that just commercialisation has affected the development of sport. Other factors are at work too such as politics.

Question: what factors do you think have affected the development of sport? Can you give some examples?

The role of law in sport

The role of law in sport has only recently come in to sharper focus. The complicated nature of the sporting role has generated a need for regulation, both on and off the field. The huge sums of money involved obviously have a commercial element to it. Rough conduct on the field (or in the ring) has brought about consideration of the interaction of the criminal law and sport. How free should footballers be to determine their own future? What civil law liability should referees, schools, clubs, professional organizations hold for injuries to players on the field? How closely should Government regulate safety in sport for spectators?

Two public law concepts will be considered throughout this module:

The Rule of Law states that all people are subject to the law of the land. All people, irrespective of activity, social standing, ethnicity etc should conduct themselves in accordance with the requirements of the law and where they do not, they are subject to the remedies and sanctions of the due process of law. Rules of natural justice start that no man is to be condemned unheard: he must have notice of what he is accused of and be given ample opportunity to defend himself.

Does sport need legal regulation?

Edward Grayson (Sport and the Law 1994) argued that the law should be strongly involved in the operation of sport, citing a number of reasons. Take the example of violence on the field. Some would argue that the most effective mechanism for controlling violence on the field of play should be the national governing body's own internal regulations, that sports administrators are the best arbiters for disputes rather than lawyers.

Gardiner and Felix 'A Juridification of the Football Field: strategies for Giving Law the Elbow' (1995) 5(2) *Margquette Sports Law Journal* 189 : "I have always opposed people who seek to bring too much law into sport. I believe very much that sport should govern itself on the field of play".

Berlins 'Law: the New Ball in Your court' *The Guardian* 2 April 1996 : "...Should the law of the land lend itself to being used by sportsmen to resolve issues that should be better handled within their sport? Are we nannyng rough sports with toomuch legal attention? If you choose to play a bodily contact sport in which you know lots of people get injured, should you be entitled to come running to the courts when you get a bloody nose? There is a famous legal maxim *volenti non fit injuria* – no [legal] wrong is done to one who consents. But where does consent stop? The easy answer is to say that a player consents to be a victim of conduct within the rules of the game. But that would be unrealistic. The strict rules of any sport involving any physical contact are never rigidly adhered to. To the test has to be wider, perhaps this: a player consents to be the victim of behaviour within the usual conduct parameters of that sport- and that includes not just the rules of the game but also behaviour which is illegal by the rules but happens often enough to be a normal part of the game. This argument applies to criminal prosecutions as well?... There is a world of difference between a head butt on an innocent person in the street and a head butt on a sportsman who has chosen to participate in a sport known for its violent tendencies. The law should step back and leave the lads to beat each other up."

Ted Croker *The Times* 1992 : "I have always opposed people who seek to bring too much law into sport. I believe very much that sport should govern itself on the field of play". But Grayson disagrees.

Grayson "Making Foul Play a Crime" (1993) *Solicitors Journal* 693, 16 July "...The concept that sporting supervisory bodies should usurp the power of the courts and the system of British justice cannot be supported by any cogent argument. Why should offenders who commit a crime within their game not be punished for their villainy ... the law of the land never stops at the touch line..."

Question: What would be the effects if certain categories of persons i.e. sports men and women regarded themselves as immune from the law and were not subject to the due process of law?

Question: should a person who engages in physical contact sport be able to complain if they are injured? Do they have the right to limit the type of activity in which they wish to engage e.g. rugby players not to have their ear bitten?

How do we define sport in law?

There is no definition of sport in English law.

The European Sports Charter in 1993 defined sport to include:

"... all forms of physical activity which through casual or organized participation aim at expressing and improving physical fitness and mental well-being, forming social relationships or obtaining results in competition levels."

Question – is church bell ringing a sport?

The Law Commission (The Law Commission Consultation paper No 139) suggested that the most likely criteria to be used are those which concern safety and risk of injury. They proposed that criminal liability for sporting injuries be constructed as:

"...a person should not be guilty of an offence of causing injury if he or she caused the relevant injury in the course of playing or practising a recognized sport in accordance with the rules".

It would therefore be necessary to define what is meant by a lawful sport in order that the internal rules or regulations of that sport can be defined.

The Sports Council defined a lawful sporting activity to be:

"...with a reasonably responsible attitude to minimizing risks of harm ... unless Parliament takes the view that it is so dangerous that it should be outlawed".

The Sports Council has gone a large way to defining what they mean by a sport and employs the following criteria:

- Physical skills – does the activity involve a physical skill?
- Physical effort – does the activity involve physical effort?
- Accessibility – is the sport accessible to all parts of the community or does e.g. cost restrict access?
- Rules and Organizations – is there an established structure which organizes the sport?
- Strategy and tactics – do these exist within the framework?
- Essential purpose – what is the purpose of the activity?
- Physical challenge – does the activity represent a physical challenge?
- Risk – is risk involved? Is it acceptable?
- Uniqueness – is it more or less the same as an existing sport?

Other considerations – are there any political, moral or other ethical considerations which might prohibit the Sports Council from recognising the sport?

Once National Lottery funding came into the picture, the Sports Council had to look again at sports and decided that camping and caravanning were no longer sports. Darts also suffered the same fate.

This straightforward approach to categorisation misses a central point, it assumes that regulations need only concern themselves with conduct on the field, which affects the sport, itself. However, it has far wider implications than this.

TASK – give examples of the consequences of bad/careless behaviour on the field of play, which could require the intervention of the law.

Internal regulation

Should the law become involved in internal regulation of the sport itself? Consider the **Diana Modahl** case which represents an interesting use of the general law by a participant, when the ‘rules of the game’ were believed by her to be at fault and on the basis that they were at fault, could not provide for compensation for financial loss - hence an action in the courts - came in the case of the athlete **Diane Modahl**. Modhal was cleared of guilt relating to a sample of urine that contained a banned substance (in fact the allegation was that the ratio of testosterone to epitestosterone was higher than permitted). It took two ‘internal’ hearings to decide such issues. However, what the hearings could not provide was compensation for loss of earnings during the period that she was suspended from competition. Accordingly, she commenced a civil law action for damages (compensation) against the British Athletic Federation for breach of contract. This resulted in 3 court hearings, culminating in an appeal to the House of Lords. The first 2 court decisions are available in the short loan collection (the HL decision is also available on the HL website).

Jones and another v Welsh Rugby Football Union (1997) The times 6 March : Mark Jones, a Welsh international Rugby player was granted an injunction lifting a suspension imposed on him by the Welsh Rugby Union during a match until his appeal was ready to be heard by the court. Jones had been involved in a fight and was sent off. He was given a four-week suspension, which he argued was unfair. Ebsworth J pointed out that many sporting decisions were made from “wet and windy” touchlines, but now that so many people earn their living from sports they were entitled to a more considered approach. He said it was naïve to argue that the decisions of disciplinary bodies could not be challenged in court because the sanctions imposed now could have significant economic consequences.

It would seem clear that the law sees no reason why it should not become involved. Certainly, sporting bodies themselves have taken on the task of ensuring acceptable standards of play on the field/ring/track and watch over the behaviour of the participants who may suffer certain sanctions if they do not keep to the rules. They will set their own standards of behaviour through rules and regulations and enforce their own sanctions e.g. bookings, suspension. In terms of public law this causes problems since they act as both law maker and enforcer (see last lecture of the course). But in some situations, the player may feel that the sporting body can not really help them. What of the footballer who believes that a negligent tackle has prematurely ended his career? They are likely to look to the courts for redress and would not be terribly impressed by the arguments set out above that the law should not be involved in sport.

The clear message to sporting bodies would appear to be that they should ensure that the structures they have in place regarding discipline etc should stand up to legal scrutiny.

Conclusion-

The world of Sport is far more complex than at first glance. It is arguable that the intervention of the law is required in certain circumstances, which builds on the internal regulations of the sporting body concerned. Internal regulation, on its own, cannot provide all the answers.

SELF ASSESSMENT No3



‘Sports activities should be governed by the rules of the game - the very rules that participants subscribe to when taking part’. Discuss.

See SPORT & THE LAW. (pp 34 – 75), and the Diane Modahl decisions

