

# Law School Tutors Lecture Series



## **Sport and the Law**

### **LECTURE THREE : SPORTING AGREEMENTS AND THE LAW**

For

**THE FOUNDATION DEGREE  
at the University of Glamorgan**

by

**Corbett Haselgrove-Spurin**

**An NMA Approved  
Continuing Professional  
Development Training Program**

FIRST EDITION 2003

Published by **N**ationwide **M**ediation **A**cademy UK Ltd

## **SPORTING AGREEMENTS AND THE LAW**

### **CONTRACTS OF EMPLOYMENT**

The professional game raises a number of contractual issues which are considered below :

- i) Formation of contracts of employment
- ii) Terms of the contract
- iii) Freedom to contract

#### **Formation of contracts of employment**

Contracts of employment / management are usually in writing to ensure there is little scope for dispute regarding the sports person's employment status thus "XYZ signs for ...". All employees are entitled to their terms and conditions in writing within 13 weeks of employment.

#### **Minors contracts**

People under 18 are often employed under contract, particularly in football, as apprentices or trainees. Usually, under contract law, a contract made by a minor is void for incapacity unless made for the benefit of the minor

**Roberts v Grey** [1913] 1 KB 520. A minor was engaged to accompany a professional snooker player on a world tour but breached his contract. HELD damages were awarded against him.

Minors are actually in a very strong position. As an apprentice they can be dismissed but it must not be unfair. They are entitled to damages for loss of future prospects as well as immediate financial loss.

Those youngsters engaged under statutory youth training schemes do not enjoy statutory employment protection but they can still avail themselves of the rights afforded by health and safety regulations and sexual/racial discrimination.

#### **Union representation**

The results of collective bargaining must be formally incorporated into a contract in order to be legally binding. Examples of collective bargaining in sports are the Professional Footballers Association and the Professional Cricketers Association. They not only push forward collective grievances but also represent individual players who are in dispute with their club or facing disciplinary hearings.

#### **Terms of the Employment Contract**

##### **Express terms**

These will cover issues such as

##### **Employer's duties**

- pay, insurance & national insurance, sponsorship rights,
- holiday entitlement,
- termination of the contract and transfer rights,
- union membership rights,
- medical treatment, and provision in case of injury.

Employees will agree to behave in a professional manner and to abide by the rules of the club. Terms will be included in which the player agrees to train, to keep match fit and to promote the club's interests. Should they break these rules they can be charged with bringing the game / club into disrepute and breach of contract.

##### **Implied Terms**

Employers are obliged to:

1. **PROVIDE WORK.** Sports men need to have the opportunity to use their talent and to improve.
2. **TAKE REASONABLE CARE OF THE HEALTH, SAFETY AND WELFARE OF THE EMPLOYEE.** Both a common law duty and a statutory one. e.g.. safe methods of training.
3. **TO TREAT THE EMPLOYEE WITH RESPECT.** **Woods v w/m Car Services** [1981] 1 ICR 666 (EAT) "...It is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee"

### **Statutory implied duties (UK and EC LAW)**

- Minimum wage
- Maximum hours
- Health and safety
- Right to union representation

The employee also has duties:

#### **1. DUTY OF OBEDIENCE**

They must obey the lawful and reasonable instructions of the employer. E.g. training, eating healthily, behaving properly in public. Drug taking and criminal activity are grounds for dismissal.

#### **2. DUTY TO TAKE REASONABLE CARE**

If a player injures himself through his own carelessness, then theoretically (under **Lister v Romford Ice and Cold Storage Co Ltd** [1957] ALL ER 125) the employee could be liable to indemnify his employer/ insurance company.

#### **3. EXCLUSIVITY**

e.g. obligation not to engage in other sporting activity without the consent of their employers.

#### **4. FIDELTY**

Not to disclose confidential information. Betting is particularly a problem in this regard.

### **Contracts of employment and other relationships with Sporting Bodies.**

Before we can establish if an individual employee is covered by employment legislation, we need to establish that they are in fact an employee. The usual tests which we explored in vicarious liability can be used here e.g. control test, whether they pay Schedule D or E taxes. The modern day approach is to ask a variety of questions such as emphasised in the case of: **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497.

It is important to distinguish between the relationship between player and club and between player as professional member of a sporting body.

Note that clubs may be members of a league whilst the sports men may be members of an association, leading to a very interesting quasi-legal relationship between league and association. The association may be further distinguished between national associations and international organisations.

#### **Performance related clauses in employment contracts**

Some contracts include clauses which allow for bonuses to be paid if the player scores X number of goals. But what if he is not given the opportunity to get onto the field?

**Bournemouth and Boscombe Athletic Football Club Co Ltd** 1980) The Times 21 May. Ted MacDougal had been transferred from Bournemouth to Manchester. His transfer agreement stated that if he scored a specified number of goals then Bournemouth would receive an increased transfer fee. Bournemouth claimed that he was not given the opportunity to play for his new club. Held – it was an implied term of the transfer contract that he would be given an opportunity to play for the new club.

#### **Termination of contracts of employment**

- Lawful Dismissal for breach of contract and retirement – end of fixed term (renewal options)
- Wrongful Dismissal – discrimination – race and sexual orientation
- Unlawful Dismissal – in breach of contract
- Constructive Dismissal – poor treatment entitling an employee to consider he is dismissed.
- Redundancy – surplus to business requirements
  - Alternative Employment – offers and right of refusal.

#### **REMEDIES**

- **Civil Action for Breach of Contract.**
- **Industrial Tribunal**
- **Arbitration, Conciliation Advisory Service (ACAS)** – Employment Act 1998 Arbitration service.

### Contract terms in restraint of trade

Clubs cannot restrict the re-employment of their former players. Such clauses are prima facie in restraint of trade. However, employers can restrain a player's future activities if it is legitimate to protect the employer's interest.

Problems can particularly surface in relation to professional footballers who want to move clubs. At the end of his contract the player is not free to unconditionally negotiate a new contract with a different club unless he is given a free transfer. The club can keep him as a registered player by offering a fresh contract on terms just as good as his old contract. The player can still negotiate a move to a different club BUT the clubs must agree to a transfer fee. This has been a subject of much frustration to players as the following case law reveals:

**Kingaby v Aston Villa** (1913) The Times 29 March : Henry Kingaby wanted to be released from his contract but Aston Villa insisted on a transfer fee. HELD the club was permitted by law to do this.

A change of view came about with:

**Eastham v Newcastle United FC** [1964] Ch 413. The contract stated that even when the player came to the end of his contract Newcastle could still retain him. Thus, unless another club would pay the transfer fee, he could not obtain employment elsewhere. HELD this system was invalid. They were designed to affect the player's freedom of contract.

**Greig v Insole** [1978] 1 WLR 302 : A player had taken part in a match organized by Kerry Packer. The Test and Country Cricket Board resolved to disqualify the plaintiff from playing Test cricket. HELD this was void.

This position has been taken a stage further by football clubs in Wales.

**Newport Association Football Club Ltd and others v Football Association of Wales Ltd** [1995] 2 ALL ER 87 : The Welsh Football Association resolved that 3 Welsh football clubs could not play on their home grounds when they took part in English domestic league competition. The plaintiffs claimed that this had affected their gate receipts and sponsorship. HELD : they were granted an injunction on the grounds that the defendant's resolution was an unreasonable restraint of trade. (This is a particularly interesting result given that there was not actually a contract between the parties).

The land-mark European Community Law case in this area is:

**Union Royale Belge des Societies de Football Association ASBL v Bosman** (1996) ALL ER (EC) 97 (otherwise known as the Bosman Ruling) : Jean-Marc Bosman was not a great player. He was employed by Standard Liege on a salary of £2,000 a month. At the end of his contract he was offered another at half this salary. He refused to accept this and was placed on the transfer list. No other Belgium Club expressed an interest so he contacted a French Club and reached an agreement over his salary. A transfer fee of £300,000 had been set out by Standard Liege in advance. However, Liege had doubts that the French club could actually pay this so they refused to issue the required transfer certificate. The deal fell through.

Bosman sued Liege in the Belgium courts claiming damages for breach of contract and challenged the legality of the transfer system.

HELD this was a direct restriction the employee's access to the employment market. Clubs were not entitled to demand payment for players who had come to the end of their employment and wished to move clubs.

### Workshop activity

1. Assess the implications of the **Bosman** ruling on football throughout Europe.
2. Consider the following "Professional football players should expect close public scrutiny once they step into the public spotlight. They are paid huge amounts of money in order to perform for their clubs. Footballers should take the rough with the smooth". Is it right that the private lives of professional football players can be the subject of public scrutiny? Are the professional bodies consistent in the way in which they approach the 'slip ups' of their sportsmen and women?
3. What powers can a ruling sporting body exercise over clubs that have become public trading companies ? Can such a body make new arrangements that have direct implications for the share holders of clubs as in Wales where it is proposed to merge 8 rugby clubs into 4 ?