

Run out: restraint of players in twenty20 cricket



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Run Out: Restraint of Players in Twenty20 Cricket Introduction Twenty20

cricket has been viewed as the saviour at all levels of cricket. First conceived by the England and Wales Cricket Board (ECB) in 2003 to address falling spectator interest, the increased excitement and speed of this form of cricket soon boosted attendances.[i] The commercial success of the English Twenty20 competition did not go unnoticed, and was first replicated by other national bodies who enjoyed similar success in attracting greater fans and sponsors, and then by private entrepreneurs looking to cash in on the global phenomenon. In the West Indies, Allen Stanford established a competition under the auspices of the West Indies Cricket Board (WICB) for the various countries in the region, and a lucrative match between a West Indian and English team for a \$20million prize.[ii] In India, the Indian Cricket League (ICL) was established, and gained traction after the national fervour with their win in the inaugural Twenty20 World Championship in 2007. Given the unsanctioned nature of this competition, it was seen to be a real threat to the Board of Control for Cricket in India's (BCCI) monopoly. It had the financial and playing resources to take a large share of the Indian market, capitalising on the perception amongst the Indian public and domestic competition of the mismanagement by the BCCI and their inability to compensate its second-tier players.[iii] However, the great success has also meant greater demands on the services of players, invariably leading to disputes such as the witch-hunt of the ICL by the BCCI. The origins of the ICL were unnervingly similar to that of the World Series Cricket (WSC) concept, started by the late Kerry Packer in 1977. In both instances, the financial backers of the competitions were affiliated with television networks. They had both repeatedly made superior monetary bids than their competitors to

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their respective national boards for the broadcasting rights of international cricket within that country,[iv] but were rejected. Naturally, both competitions were viewed as a cancer that would disrupt the fabric of the game. In the case of WSC, this was because WSC was so successful in recruiting 66 of the best players in the world;[v] forcing Australia to field a second-string side for their official Tests because the ACB refused to select WSC players for their official Tests, unlike the WICB.[vi] Similarly, the BCCI were concerned that their domestic cricketers would be recruited away; and in response they decided first to double their average daily rates[vii] and then to stage their own Twenty20 tournament with the support of all the other national governing bodies. However this did not stop the ICL from recruiting several prominent Indian and ex-international cricketers.[viii]

Restrictions on World Series Cricket: Greig v Insole The repercussions faced by ICL players was also akin to that faced by the WSC cricketers, who were banned from first-class cricket (including Test matches) for daring to side with Packer. The International Cricket Council (ICC) and the Test and County Cricket Board (the predecessor to the ECB) administered international and English first-class cricket respectively. In July 1977, the ICC changed their rules so that players involved in a match not sanctioned by the ICC, after September 1977, would be retrospectively disqualified from taking part in Test cricket unless the express consent of the ICC was provided.[ix] The ICC then issued a resolution specifically referring to WSC as an unsanctioned competition, and also recommended that national governing bodies also prevent these cricketers from playing in their domestic competitions.[x] The TCCB followed this, and resolved to change its rules so that any player who was subject to the ICC ban would also be prevented from taking part in first-

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class county cricket.[xi] Three players, Tony Greig, John Snow and Mike Procter, all of whom had contracted with WSC to take part in unofficial tests, sought a declaration from the English High Court[xii] that the change of rules by ICC and those proposed by the TCCB were ultra vires and an unlawful restraint of trade.[xiii] Following the principles of Lord McNaughton in Nordenfeldt[xiv] regarding reasonable restraints of trade,[xv] Slade J found that both the TCCB and ICC had legitimate interests worthy of protection. The ICC argued that it acted reasonably in introducing rules that would protect it from the competitive threat posed by WSC. As international cricket provided the largest portion of the money through which lower levels of the game were financed, the ICC argued that the ban was reasonably necessary to prevent players from being involved in a competition which could threaten the existence of Test match cricket and be of detriment to cricket at all levels. Though Slade J did accept that WSC posed at least a short-term threat, this was not particularly serious, and it was possible that WSC could actually contribute to the publicity of the sport. He found that the long term threat could be reasonably (though not necessarily validly) dealt with through a prospective ban on those playing in unsanctioned matches.[xvi] Slade J found that retrospective bans would deprive a professional cricketer of the opportunity to be employed in an important part of his professional field, and thus were unjust.[xvii] The ICC was also found to have failed to satisfactorily show the financial impact on lower levels of cricket of WSC, and thus the ICC failed to justify its action.[xviii] Therefore the new rules were held to be ultra vires and void as being an unreasonable restraint of trade. The consequences of the ban at the domestic level by the TCCB were regarded as being much more severe. Whereas Test cricket were regarded

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as opportunities for players to supplement their incomes; first class[xix] cricket was the only avenue to make a living (in the true occupation sense) by playing cricket.[xx] This issue was particularly salient as two of the claimants were out of contention for Test matches because of their advanced age and South African nationality. Slade J accepted that combined effect of the length of their WSC contracts and their age meant that a ban would have effectively been imposed as they would never be able to play first-class cricket again. [xxi] Slade J also believed that the public interest of the spectators demanded that top-tier players such as the claimants be allowed to play the first class game, and that the ban would prove injurious to the sport through a loss in admission receipts.[xxii] He also considered that as WSC was more likely to be damaging to Australian domestic cricket, and that the constitution of the TCCB defined their exclusive concern to be cricket in the UK, the TCCB was also found to be acting ultra vires and in unreasonable restraint of trade.[xxiii] This finding in *Greig v Insole* was supported in the Federal Court decision of *Hughes v Western Australia Cricket Association (WACA)*,[xxiv] where the court had found that the ban placed on Kim Hughes by the WACA in the aftermath of his ‘rebel’ tour to apartheid South Africa was an unreasonable restraint of trade as it went unnecessary to protect the legitimate interests of the association and was against the public interest, which again was construed as the opportunity for the cricketing public to view the best available players, despite playing for a morally and politically unsanctioned competition.[xxv] However, in contrast with the *Greig v Insole* considerations, other potential sources of income were considered to be irrelevant.[xxvi] The Indian Cricket League The league was created as a joint venture between Essel Group’s Zee TV and Infrastructure Leasing and

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Financial Services, after being overlooked for the Indian broadcasting rights for the 2003 World Cup and 2006 Champions Trophy despite submitting superior bids than those ultimately accepted by the BCCI. As they had reasoned that the other broadcasters were more experienced, Zee TV concluded that they would never be able to obtain broadcast rights, and to that end, sought to create their own content. Despite their unanimity to the BCCI, they sought to validate their unofficial league by claiming that it would serve as ‘ a reserve pipeline of players,’ with the BCCI being free to select those players for sanctioned matches.[xxvii] However, the BCCI prevented all ICL players from participating in any BCCI or ICC sanctioned events.[xxviii] In response, the ICL filed a petition in August 2007 in the Delhi High Court, accusing the BCCI of using threatening and intimidating behaviour towards them and other state organisations in preventing them from signing players, and anti-competitive behaviour in trying to outbid and prevent the ICL from playing matches in suitable stadiums.[xxix] Relying on the precedent from Greig v Insole, they succeeded with the court finding that the ‘ players should not suffer in the battle between corporate giants.’[xxx] The court then issued notices to the BCCI, its regional governing associations and its sponsors against terminating valid contracts of players joining the ICL.[xxxi] The actions of the BCCI also attracted the attention of the Monopolies and Restrictive Trade Practices Commission of India, which also conducted an initial investigation into potential restrictive practices, which were banned under the Monopolies and Restrictive Trade Practices Act. The investigation was based on media reports concerning a BCCI open statement that it will ban players who join the ICL.[xxxii] The animosity between the parties is best seen in the tug-of-war over the newly-appointed Pakistan

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captain, Mohammad Yousuf. In August 2007, he entered into a contract to play in the ICL, which contained a provision that prevented him from playing in any other competitive league in India. Thereafter, he attempted to enter into a contract with the newly-conceived IPL. A dispute then arose between the ICL and Yousuf, and arbitration was initiated, from which an interim order was issued that restrained him from playing in any competitive league in India.[xxxiii] However, as his board has selected him as national captain since then, it would be presumed that he is no longer bound by these restrictions. The witch-hunt of the ICL continued to competitions outside of the Indian jurisdiction. They insisted that players who have participated in the ICL be prevented from taking part in any Champions League, though the English Professional Cricketers Association countered by arguing that European employment laws would prevent such retrospective restrictions. [xxxiv] However, the attitude of the BCCI has since thawed, offering amnesty to ICL players in April 2009 to those who would terminate those contracts and return to BCCI-administered cricket.[xxxv] ICC Regulation 32 and 32A In response to the unsanctioned ICL, the ICC introduced Regulation 32 and 32A, which came into force in June 2009. It deems a match to be 'Disapproved Cricket' if 'it has not been approved by the Member in whose territory it is played.' [xxxvi] For Members to determine whether approval should be granted, it should consider the impact of the event on the calendar of existing domestic and international events; its likely developmental or charitable purpose and the welfare of players.[xxxvii] The ICC also retains veto power by being able to issue a Disapproval Notice through the ICC Executive.[xxxviii] The regulation bans ICC Members from allowing ' players, match officials, coaching or management staff contracted to the Member to

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participate in any way in any form of Disapproved Cricket' on penalty of disciplinary sanctions,[xxxix] with the explanatory note considering that a minimum 12 months would be a suitable sanction.[xl] Fortunately for most of the ICL cricketers, the regulation would not be applied retrospectively.[xli] The first application of these regulations came in the form of the proposal of the American Premier League (APL) to recruit players contracted to English counties. As the APL had not been approved by the US cricket association or the ICC, then ICC Members would be 'precluded from releasing their players until such time as ICC confirms that the event has been approved.'[xlii] However, it is important to note that all actions specified within the regulations are expressly subject 'to the greatest extent by applicable law.'[xliii] Therefore, in light of the Greig v Insole and Hughes v WACA decisions, it is unlikely that any bans could legally be enforced. Many of the cricketers who participated in the ICL have since been pardoned and returned to international cricket, with some even 'defecting' to the IPL in the most recent player auction in January 2010.[xliv] These developments have undoubtedly delighted the BCCI and ICC, but it should be remembered that the ICL contracts were primarily terminated because of the millions in unpaid wages owed to players and staff.[xlv] While there may be a slight possibility of the ICL returning if its action against the BCCI for discrimination of its players is successful;[xlvi] the BCCI has already scored a knockout blow during the hiatus of the ICL by offering their recruits the best of both worlds (that is, a lucrative Twenty20 contract, and the opportunity to play international cricket on the condition that the player obtain a No Objection Certificates from his national board).[xlvii] Methods of Restraint i.

Prospective Bans Whereas Greig v Insole found that retrospective denial of

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registration amounted to a restraint of trade, prospective denial of contracted players may be potentially justifiable. However, any such action would seem to be highly impractical given that most players would opt for lucrative contracts over representation,^[xlvi] so players could easily retire from international cricket to earn a six-figure sum playing for a few weeks. Furthermore, following from the ratio of *Greig v Insole*, the denial of English cricket registrations on the basis of signing for unsanctioned competitions would fail given that the English cricket competition is the only professional northern hemisphere competition, and thus be their only means of earning a living. Therefore, the failure to register these players on account of protecting the commercial interests of an overseas authority would amount to a severe restraint of trade.^[xlvii] This conclusion could be rationalised by the New Zealand decision of *Blackler v NZRL*,^[i] where the governing body was disallowed from using an international clearance certificate to stop a player from working in Australia, despite the more legitimate interest of protecting the standard of the entire New Zealand competition. For the denial to be legally valid, there must be at least some justification for impeding free movement of players. If players' registrations were cancelled as they missed domestic cricket to play for the official leagues as well, then such action could be justified, potentially on the *Greig v Insole* grounds of depriving the cricketing public. However, this argument may hold much less sway given the current state of domestic cricket. Furthermore, if there was already precedent for allowing players to bypass domestic cricket for sanctioned Twenty20 leagues,^[ii] then de-registration of any 'rebel' player may run afoul of employment and discrimination laws.^[iii] As such, without any few legal avenues to prevent 'rebel' players from being registered by <https://assignbuster.com/run-out-restraint-of-players-in-twenty20-cricket/>

governing bodies, they may be forced to adopt more costly approaches. The central governing body could reduce distributions to domestic sides which employ these players, though this would be proverbially shooting themselves in the foot, as those teams require the distributions to support their sides, and would cripple their domestic competition. ii. Central Contracts Generally most national governing bodies and its selectors award around 20 central contracts to players they believe will be involved in international cricket in the following year. The players are paid by the national board and only permitted to play in the domestic competition with their consent. This system was implemented to ensure that top-tier players were always available for the national cause, allowing coaches to monitor their fitness and fatigue levels.[liii] However the effectiveness of central contracting is dependent on the ratio of revenue earned between international and domestic or inter-club competition.[liv] In cricket, unlike most professional sports, international cricket has historically been the pot of gold, due to the absence of a franchise or club competition similar with most other professional sports in the world. Interest in domestic cricket has been gradually been eroded as the ever-increasing international schedule forces the top-tier players to focus on international cricket at the expense of lower levels.[lv] Ultimately, the ever-expanding international schedule has forced national boards to increase the use of their centrally-contracted players. This would be proverbially killing the golden goose, as it would result in lower commercial values for these games; and greater exhaustion amongst the top tier players, making it more likely that they would retire to play in Twenty20 competitions. As such, the national bodies face a delicate balancing act in ensuring that their players maximise their revenue, whilst still ensuring the

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lure of international cricket is still prestigious enough to ensure their loyalty. Freelancing Another topical issue are the recent surveys indicating that the majority of current domestic and international players would forego international cricket for lucrative Twenty20 contracts.[lvi] This raises the issue of ‘freelancing’, allowing players to be involved in the lucrative Twenty20 games without the restriction of central or domestic contracts. Though Cricket Australia (CA) has sought to prevent this by adding a two-year restriction from such competitions for players who have ‘retire’ from international cricket, the validity of this restriction would likely be successfully challenged on the grounds of being an unreasonable restraint of trade,[lvii] and on the precedent that Adam Gilchrist was given an immediate exemption from these provisions supposedly because of his decade-long service to the national cause.[lviii] There could also be allegations of hypocrisy brought against CA as they have also sought to promote ‘freelancing’ by encouraging domestic sides to recruit expensive international players for the Twenty20 competition in recent seasons. This level of intensity is in marked contrast to the nonchalance it was treated with in earlier seasons, with publicity stunts such as the recruitment by NSW of a rugby league star as a guest player.[lix] However CA’s recent moves have been vindicated as attendance rates have almost doubled over one season. [lx] While there may be tremendous enthusiasm and willingness amongst players to become ‘mercenaries’, there remains a demand-side issue. Besides England, all Test-playing countries conduct their seasons in the southern summer. Furthermore, many of the most in-demand players may also have international cricket commitments at that time, and if not, would need to be available for their home domestic competitions. The tyranny of <https://assignbuster.com/run-out-restraint-of-players-in-twenty20-cricket/>

distance would also come limit cricketers to travelling only within their regions,[Ixi] though the lure of lucrative involvement in the Champions League may yet be decisive.[Ixii] Conclusion Article 23 of the Universal Declaration of Human Rights states that " everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." It is against this background that the monopolistic behaviour of the BCCI and ICC should be considered. Much like in the World Series Cricket era, players have realised their true worth, and should therefore not be restrained from playing in ' Disapproved Cricket' by avaricious boards hiding behind their status as guardians of the game.

Unfortunately, the reality is that the only competitions currently in existence are run by those parties, and it will stay that way into the future. If the results of World Series Cricket are followed, then it should be obvious that a Twenty20 window for players should be carved out in the future to ensure the feasibility of international cricket.[Ixiii] ----- Endnotes [i] In

2005, the average attendance for an English domestic Twenty20 game was 6, 896 whereas the corresponding figure for first-class fixtures was 3, 215.

The Twenty20 figures had risen by over 30% in the 2 years since its 2003

inception. 02/08/05 Twenty20 Cup crowds increase [http://www.ecb.co.](http://www.ecb.co.uk/news/domestic/twenty20-cup/twenty20-cup-crowds-increase)

[uk/news/domestic/twenty20-cup/twenty20-cup-crowds-increase](http://www.ecb.co.uk/news/domestic/twenty20-cup/twenty20-cup-crowds-increase), 5414, EN.

html [ii] Low V, Stanford Super Series: England cricketers will go into bat for

\$1m apiece 10/09/08 [http://www.timesonline.co.](http://www.timesonline.co.uk/tol/sport/cricket/article4720041)

[uk/tol/sport/cricket/article4720041](http://www.timesonline.co.uk/tol/sport/cricket/article4720041). ece [iii] [http://www.cricreporter.](http://www.cricreporter.com/ICL/ICLCreation.asp)

[com/ICL/ICLCreation.asp](http://www.cricreporter.com/ICL/ICLCreation.asp) [iv] In the case of Packer, it was 6 times more than

ABC's offer; in the case of Zee Sports, it was US\$100million more than

ESPN's offer [v] <http://www.cricinfo.com/worldseries/content/story/323763>.

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html The Dummy's Guide to World Series Cricket Williamson M [vi] The West Indies cricket authority still permitted their WSC cricketers to play in the officially sanctioned Test matches [vii] (from Rs16, 000 per match day in 2005-06 to Rs35, 000 per match day in 2007-08) <http://www.rediff.com/cms/print.jsp?docpath=/cricket/2007/aug/21hike.htm> [viii] Cricinfo staff Everything you wanted to know about the ICL <http://www.cricinfo.com/england/content/story/310677.html> [ix] Healey Sport and the Law 4th ed, pg 19 of contracts chapter [x] Gardiner sport and the law 6th ed [xi] See above [xii] Greig v Insole [1978] 3 All E. R. 449 [xiii] Pg 101, The Cricket War: The Inside Story of Kerry Packer's World Series Cricket -Haigh G Melbourne University Press 2007 [xiv] Nordenfeldt v Maxim Nordenfeldt Guns and Ammunition Co Ltd (1894) AC 535 [xv] A Buti and S Fridman, 'Drug Testing in Sport: Legal Challenges and Issues', University of Queensland Law Journal 20 (2) 1999 153-185 at 165 [xvi] See Gardiner pg 305 [xvii] <http://www.cricinfo.com/wisdenalmanack/content/story/153291.html> Court on the boundary Colbey R [xviii] Gardiner S Sports law 6th ed 2006 pg 305 [xix] By definition, 'first-class cricket' comprises 'Test cricket,' but as no term yet exists to describe the domestic-level first class cricket that was the subject of the TCCB, the expression 'first-class cricket' refers only to the cricket played under the administration of the TCCB [xx] See Gardiner pg 306 [xxi] See Gardiner pg 306 [xxii] <http://www.cricinfo.com/wisdenalmanack/content/story/153291.html> Court on the boundary Colbey R [xxiii] <http://www.cricinfo.com/wisdenalmanack/content/story/153291.html> Court on the boundary Colbey R [xxiv] Hughes v Western Australia Cricket Association Inc (1986) 69 ALR 660 [xxv] Healey Sport and the Law 4th ed, pg 20 of contracts chapter <https://assignbuster.com/run-out-restraint-of-players-in-twenty20-cricket/>

[xxvi] Healey Sport and the Law 4th ed, pg 20 of contracts chapter [xxvii] Cricinfo staff Everything you wanted to know about the ICL <http://www.cricinfo.com/england/content/story/310677.html> [xxviii] Even commentators involved in ICL were restricted <http://cricketnext.in.com/print/30261-696.html> Legal challenges loom over ICL bans Chesterfield T [xxix] Delhi HC orders companies to let players join ICL 27/08/2007 <http://in.reuters.com/article/topNews/idINIndia-29170020070827> [xxx] See above [xxxi] See above [xxxii] Cricket Row under the MRTPC scanner 06/09/2007 <http://www.thehindubusinessline.com/2007/09/07/stories/2007090752610100.htm> [xxxiii] http://www.e-comlaw.com/wslr/details_results.asp?ID=1066&Search=Yes Cricket: Indian cricket leagues: restrictions on players World Sports Law Report 6 (10) 2008 [xxxiv] http://www.e-comlaw.com/wslr/details_results.asp?ID=1035&Search=Yes ECB and BCCI clash over ICL cricket players World Sports Law Report 6 (7) 2008 [xxxv] <http://www.indianexpress.com/news/bcci-lifts-ban-on-icl-players-support-staff/452596/0> BCCI lifts ban on players, support staff 29/04/09 [xxxvi] ICC Regulations 32 and 32. 1 [xxxvii] Explanatory note to ICC Regulation 32. 3 [xxxviii] ICC Regulation 32. 2 [xxxix] Cricket warned on APL contracts [xl] Explanatory note to ICC Regulation 32. 4 [xli] Q&A in relation to the new ICC regulations http://icc-cricket.yahoo.net/rules_and_regulations.php [xlii] http://www.e-comlaw.com/wslr/details_results.asp?ID=1121&Search=Yes Cricket warned on American Premier League contracts World Sports Law Report 7 (5) 2009 [xliii] ICC Regulation 32 [xliv] Damien Martyn, who attracted a bid of \$100, 000 and Shane Bond, who was the subject of a secret tie-breaker bid after reaching the ceiling of \$750, 000 [xlv] <http://www.smh.com>. <https://assignbuster.com/run-out-restraint-of-players-in-twenty20-cricket/>

<http://www.foxsports.com.au/sport/cricket/icl-players-owed-millions-20091201-k3s4.html> Saltau C 02/12/09 [xlvi] See above [xlvii] <http://www.iplt20.com/announcements/2009/dec/1612-ftp-announce.htm> IPL reinforces player commitment and integrity to the Future Tours Program (FTP) [xlviii] Find Cricinfo ACA survey showing this [xlix] <http://www.davenportlyons.com/legal-services/articles/745/> Cricket's fine new mess: What can the governing bodies learn from the debacle? 18/03/08 [l] (Blackler v New Zealand Rugby Football League (Inc) (1968) NZLR 547) [li] As was the case for Dmitri Mascarenhas, who was permitted to miss the first few weeks of the 2008 county season to play in the IPL [lii] See cricket's fine new mess [liii] http://www.e-comlaw.com/wslr/details_results.asp?ID=1092&Search=Yes Players Contracts: New cricket leagues: contract challenges Mehdevy E World Sport Law Report 7 (1) 2009 [liv] See Mehdevy [lv] See Mehdevy [lvi] The Players View: The Health of Our Game 2010 and Beyond June 2008 by the English Professional Cricketers Association [lvii] Pierik J, "Cricket Australia warns players will opt for IPL fixtures" 13/02/2008 <http://www.heraldsun.com.au/sport/cricket/beware-the-ipl-australia-warned/story-e6frfg8o-1111115538609> [lviii] See above [lix] <http://www.smh.com.au/news/cricket/joey-surprise-new-balls-please/2006/06/28/1151174246304.html> Joey's surprise code switch 28/06/06 [lx] There was an average attendance of 18,153 per Australian domestic Twenty20 match in the 2009-10 season, compared with a corresponding figure of 10,172 in the 2008-09 season. The Name Says it All: The KFC Big Bash by Numbers <http://www.foxsports.com.au/story/0,8659,26612084-23210,00.html> [lxi] As can be seen by the recent examples of New Zealand's best players, Daniel Vettori and Ross Taylor, playing in both their home and Australia's Twenty20 <https://assignbuster.com/run-out-restraint-of-players-in-twenty20-cricket/>

competitions in the 2009-10 season [Ixii] PCA survey about money being the most crucial factor [Ixiii] According to the recent Australian Cricketer's Association survey,