

Is there a sports law



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Are we right to use the term 'sports law'? What does it mean and why should we consider it to be important.

The existence of the subject 'Sports Law' has been debated for a number of years now and there are two different schools of thought with regards to the term 'Sports Law'. Some commentators refer to 'Sport and the Law' arguing that there is currently no topic than can be referred to as 'Sports Law'.

Grayson, who many consider the father of 'sport and the law' states that 'No subject exists which jurisprudentially can be called sports law. As a soundbite headline, shorthand description, it has no juridical foundation; for common law and equity creates no concept of law exclusively relating to sport'. His view is that there is no separate legal discipline with regards to sport and sporting activity, and that it is only a subject area where normal legal principles are to be applied.

However, there are others, mostly academics, who see Sports Law as having developed into a new legal area in its own right; 'the answer to the argument that sports law is merely law in which the parties happen to be involved in sport, is that the law is now beginning to treat sporting activity, sporting bodies and the resolution of disputes in sport, differently from other activities or bodies.

Discrete doctrines are gradually taking shape in the sporting field ... here are now clear signs that the English courts are beginning to treat decisions of sporting bodies as subject to particular principles.' This quote from Beloff sums up the attitude of courts towards sport and is an indication of the origins of Sports law as its own discipline.

Law is applied in many aspects of public and private life, but not every aspect of life has a set of legal rules. However, this development is not unique to sport, and is a process that has happened to many legal areas.

Labour or employment law is a subject area that has only achieved relatively recent recognition. It has its origins in contract law in the employment context, but no one would doubt that it has become a subject area in its own right. Some authors, most notably Beloff, Kerr and Demetriou, believe that the subject of sports law is now sufficiently developed to merit recognition as a discrete field of law, and as a consequence it is legitimate to use the term ‘sports law’; Sports law has certainly adopted the clothing of a recognised discipline.

There are many books on sports law.

Their titles prove conclusively there are many ways to skin a cat—Sports Law, The Law of Sport, Sport and the Law –and jeux being notoriously sans frontieres –European Sports Law and even International Sports Law . As discussed earlier, the law intrudes in many aspect of life, but not all of them end up having their own set of legal rules and doctrines. We must now look at the reasons why law has taken such an important role in sports which has led to the field expanding and becoming a discipline itself.

Previously in English Law, sport was considered to be a contractual matter subject to private law principles.

However, the development of sport meant that there was occasional need for some form of intervention at the level of government to guarantee the

health of society. The underlying point however, is that intervention should be limited to only such extent as is required to preserve the sporting nature and value. It was held in *Meca-Medina and Majcen v Commission of the European Communities* that sport is subject to European Community law only to the extent that it constitutes an economic activity.

There has indeed been some level of intervention under English law, but it has been no more than supervisory with the aim of protecting the public interest (including fans and spectators) as well as the legally guaranteed rights of sportspersons. The intrusion into the sphere of sports governing bodies has seen the legislature in England enact laws governing sport. This basically has been to regulate the behaviour of fans, specifically with legislations such as the Football Offences Act 1991 and the Football Disorder Act 2000.

Despite the existence this legislation, none has really penetrated the regulatory sphere of sports governing bodies as they relate basically to the conduct of fans and spectators. The social aspect of sport cannot be overestimated, and as such government and the law have been under pressure to get involved with sport at differing levels; however it is from the situation within sport itself that has led to a rise in legalism. Professionalism, and the resulting increase in the stakes involved in sport have increased the potential for conflict between sports people and governing organisations.

The growth of legalism in sport is borne out a desire for higher standards of justice, demanded by the sporting community as a consequence of the rise

of professionalism and the increase in earnings potential within sport . Sport, for all intents and purposes, is a self regulating industry.

Sports governing bodies are private associations that create the rules of the sport, as well as deliver judgment in disputes that arise. They are powerful organisations that have rules which affect sports people on and off the field of play.

These private, self-regulating associations generally grew up during the late nineteenth century as sport developed out of disparate and localised games in to the codified and uniform packages that exist today. While government may have been generally supportive of regulation of sports, because of the increased orderliness and control it brought to them, it took no significant part in the regulatory process . As sport has grown, and the power it has socially and economically has increased, so too have the effects which these bodies have on sports people on and off the field of play.

There are many reasons why the courts are happy for sport to be self regulated, not the least being the cost implications of government taking over the regulation.

Also, the courts recognise that certain regulatory function may require the exercise and efficiency of expert judgement where a decision maker has to consider competing options or values and come to a balanced judgement. Questions are often raised as to the extent governing bodies are accountable for their actions, and the ability of individuals to obtain redress against them, and the court is usually quick to state its supervisory role.

In the case of *Bradley v Jockey Club*, where a former jockey who currently carried on business as a bloodstock agent, challenged the penalty imposed by the defendant, following a finding that he had breached the Rules of Racing. He had admitted passing confidential information to a betting syndicate and the Clubs Disciplinary Committee imposed a penalty of eight years' disqualification. On appeal the disqualification period was reduced to five years. The penalty of disqualification would, in reality, have debarred Bradley from dealing as a bloodstock agent.

He contended that he had a contractual relationship with the club and that they was in breach of the implied term that it would only impose a sanction that was proportionate or, alternatively, if there were no contractual relationship the club had nonetheless imposed a disqualification that would operate in unreasonable restraint of trade. The court found for the defendant, deciding that its function was to ensure that the primary decision maker, the board, had not imposed a period of disqualification that fell outside its discretionary rea of judgment and that principle applied to both the non contractual and the contractual claim. This is an example of where the court is happy to let the governing body complete its activities as long as it is within the scope of its powers. Sportsmen enter into contracts, since few are the sports which remain faithful to their origins as a source of fun, not fees, although their contracts will naturally reflect the distinctive features of their occupation.

They are subject to the law of tort, as well as the criminal law both on and off the pitch, pool, rink, track or court, although both laws have to adjust to the fact that many sports are contact sports, and in most there is at least a risk

of contact, and fashion the boundaries of what is or is not acceptable behaviour in its light.

This quote, and has been discussed emphasise the fact that sports is part of the law, but the fact that courts all around the world still see it fit to give it a separate status adds to its appeal as a separate discipline.