



Teaching Awareness of Ethical Governance in Sport

Legal Concepts and Principles –Teaching Notes

The overall aim of the session is to get students to recognise the relevance of law and legal principles to the issue of sport governance and to explain the significance of cases and the case compendium for

SLIDE 3

The purpose of this slide is to get students thinking about what law is and the relevance to sport. You may want to precede the discussion with a recent sporting incident that is in the news to see if students think any legal issues are involved.

TASK 1

Get students to consider and discuss what they think law is. The purpose is to get students to articulate a common understanding of what law is but to consider the fact that it is difficult to identify concrete limits.

The slide is animated – the bullet points being common suggestions about key aspects/themes that give a simple conception of what law is.

Follow up questions might be to ask how they think international law, EU law and sports rules fit in – for example to try and articulate why they think sporting rules are not ‘law’.

Examples of particular sporting disputes can be used to get students to think about whether they are ‘legal issues’.

Sport, like law is heavily reliant on a framework of normative rules.

There is a common perception that sporting rules, and the governance of sport, are in some way different from law and separate or outside of external legal rules or principles - and, perhaps, that sport does not really involve ‘law’. Whilst sport may have some autonomy to create its own rules and from the full effect of some external laws, that does not make sport free from law and the influence of external legal rules and principles. Sport (like law) is reliant on rules and interpretations of them - increasing



commercialisation and professionalism means that sporting disputes and the governance of sport are subjected to external legal rules and norms.

Key Support Reading:

Gardiner et al, *Sports Law* (4th edn, 2012), Chapter 2 > the normative rule structure of Sport & the Juridification of Sport

SLIDE 4

Autonomy of sport – It is useful for students to appreciate how and why sport is sometimes viewed as operating outside of traditional conceptions of law (or ‘law’ not being relevant to sport)

Ask students what utilitarian ideals sport promotes.

- Ask students to consider what other reasons might justify sport being beyond the law. Boxing can be used as an extreme example to prompt discussion. It clearly breaches normal legal rules about harming each other (for example)

The slide is animated so reveal suggested answer only after discussion

It is important that students appreciate that groups of individuals wanting to participate in sport (such as boxing), despite the dangers, are able to participate in those activities if they wish to do so. This reflects a very important principle that underlies western democratic nations – freedom of association and freedom of contract.

Slide 5

Freedom of association and ‘freedom of contract’. Western legal societies generally seek to protect liberty and the freedom for people to make choices. This forms an important justification for sports being left to self-regulate. Athletes voluntarily participate, if they want to compete in a league/competition then they have to agree to the rules of entry/eligibility etc. This forms the basis of the typical ‘pyramid structure’ of sports regulation.

The diagram shows an athlete agreeing to the rules of the NGB if they want to compete in a national competition, the NGB in turn, must agree to abide by the rules of the IF, otherwise its athletes will not be able to compete at an international level. Agreement up the chain results in obligations down the chain. This means that the International Federation is able to control the sport and its regulations and ensure there is consistency across different countries. This creates benefits for governing the sport but leaves power and governance in the hands of international bodies that don’t account directly to athletes or to national governments of those athletes.

There are also questions about how voluntary the acceptance of these laws actually are – Caster Semanya might be a good example, but the regulations around doping and whereabouts might also be used as an example.



Slide 6

Individuals are subject to sporting rules of NGBs and IFs because they, in theory, voluntarily agree to the rules of that sport. These might be described as the 'internal rules' of a particular sport. As discussed in slide 3, **is it possible to describe those, loosely, in terms of a system of law?**

This slide is to prompt consideration of the distinction between internal rules which could be subject to some kind of legal challenge and those which cannot.

This distinction is important. If there is no means/mechanism of resolving a dispute relating to a rule (for example, the interpretation of an in game rule by a referee is usually off limits,) - then arguably one of the 'ingredients' for being a rule that we could describe as a law is missing. Accordingly in game rules that are unchallengeable are probably not really describable as 'laws'. However, where mechanisms to challenge decisions of a sporting body do exist (e.g. sanction for a drugs offence), then they do fit with our definition of 'law' and raise genuine 'legal issues' even if they are not state based laws.

TASK 3

The example from Rugby union is a useful one for getting students to consider where the limits between 'rules of the game', which are definitively determined by a referee/umpire and slightly wider administrative' rules of a sport.

Bath wished to replay the game because they thought the game was ended early and that Toulon should have been reduced to 13 men.

The 'appeal' did not get very far. These were decisions in the remit of the referee alone and could not be challenged. Why not? Given the consequences why shouldn't blatantly incorrect decisions be challenged?

Slide 7

However, that is not the only way that law is relevant to sport, as well as 'internal rules' of a sport, external legal rules DO infiltrate and influence sport.

The purpose of the slide is to get students to think about how external legal rules (such as national or even international legal rules/norms) are very relevant to sport.

TASK 4

Introduce a topical sporting issue (national or international) that raises questions about how sporting rules and the general law interact.

The two pictures contain hyperlinks **to UK examples** of this point, but any example that is relevant to a particular country can be used.



1. Duncan Ferguson head-butts an opposing player. Get students to consider what 'in game/internal' rules were broken and the consequences. What other football specific consequences? What about wider legal rules that were broken?

Ferguson was prosecuted by the police and was convicted. But this sort of violent conduct **does not normally** end up in a criminal offence – why not? The answer is partly do with voluntary assumption of risk by players, but also to do with a perception that it is for the sport to deal with (rather than, say, the criminal law).

Use of drugs could also be used as an example of wider legal rules that are rarely applied and contrasted with internal rules that are. Often in these sort of situations, criminal sanctions (the external law) are not enforced. Should they be?

2. Dean Saunders – story raises the issue of suing sports players for negligence and the damage caused as a result. Again not the norm for this external legal rule to be used to take a private action. Why not?

The points about voluntary acceptance of risk and the separation of sport from the general law underpin the approach that normally prevails in sport, but these examples show that the external law can be relevant in a direct way. External rules and principles and law will also have an **indirect** influence as well (as will be seen later)

Slide 8

This slide and the Caster Semenya 'debate' is designed to get students thinking about the difference between moral and legal norms and the relevance of general legal rules/norms to sport.

TASK 5

Ask students to answer the question in groups.

In terms of the legal issues that are raised, primarily it is one of 'discrimination' and the generally accepted right (e.g. European Convention on Human Rights and the UN Declaration on Human Rights) for individuals not to be discriminated against on grounds of sex, gender, birth etc. This is both enshrined in several international legal instruments and at national levels.

However, it also raises subtler 'issues' about the relevance of legal principles (e.g. the concept of **proportionality** in decision making).

The final question is aimed at getting students thinking about the accountability of International and National Sporting bodies. Sporting bodies are monopolistic and as such have significant power and control over stakeholders in the sport



(including athletes). Those wanting to ‘play’ have little choice in reality but to adhere to the rules. Accordingly, there are, arguably, limited ways of checking their power. Asserting and defending individual ‘legal’ rights being one of the methods that sporting bodies can be made to be accountable. Democratic accountability is also important, but will not necessarily protect specific individuals. Unlike nation states who create laws, there is no direct democracy between athletes and the law makers.

The key point is that it is the legal rights of Caster Semenya that allowed her to challenge the introduction of the DSD regulations.

It is also useful to consider students own moral views on the issue and how these compare with the CAS decisions (as it currently stands) that the Testosterone Regulations are legally valid. The decision is particularly interesting given the clear reservation that the CAS panel had in upholding the regulations.

Key Support Reading:

See ‘Testosterone the Best Discriminating Factor’ for more detail of Human Rights, governance and scientific issues raised in the Semenya case.

<https://www.mdpi.com/2409-9287/4/3/36>

Slide 9

This diagram is designed to provide a visual summary of how sporting regulations fits in the wider normative context. The ‘rules of the game’ are visualised as the bullseye and are largely insulated from any legal challenge or application of external rules and principles.

The ‘administrative’ rules of the game are still sport specific but there are some fundamental legal principles which must be adhered to (e.g. no discrimination, right to be heard etc.) – if they are not then legal redress is likely to be available.

External legal rules and principles will become relevant in some situations even in a sporting context (e.g. Ferguson head-butt) – negligence of other players (or referees), Freedom of movement (e.g. The Bosman Case)

Slide 10

With the overview in mind, the next slide seeks to visually explain how those decisions that are legally challengeable can be challenged.

The key point to emphasise is that when athletes and teams agree to be ‘members’ or part of a league they are required to sign up to the rules **which also require that any**



disputes are dealt with internally, with, usually a final appeal to an independent arbitrary body (one that is usually chosen by the sporting organisation). Arbitration is therefore extremely important in resolving sporting disputes and in settling the rights and obligations of those involved in sport.

Key Support reading:

A Rigozzi & W McAuliffe, Sports Arbitration
https://www.researchgate.net/publication/283896214_Sports_Arbitration

SLIDE 11

This is to explain a bit about arbitration and the make up of arbitration panels. Key here is that they are largely a creation of the law and staffed by lawyers. Accordingly, it is not that dissimilar from a national court and similar principles and concepts are applied.

SLIDE 12

The rights and obligations of athletes and others interested in the sport will, often, be determined by arbitral panels and therefore lawyers.

Any of the Cases in the Compendium can be referred to here.

Some appreciation of how legal decisions are reached is therefore important in recognising rights and obligations of governing bodies and athletes.

Slide 13

Introduces **Task 6**, which is really to get students to familiarise themselves with the case compendium and some of the central approaches and key principles in reaching legal decisions in a sporting context.

Slide 14

TASK 6

SUGGESTED EXERCISE – ask students to get into groups to review the cases from the case compendium. Allocate individual cases to the groups. Get them to do/answers to the following:

- Review the actual decision carefully and try to identify:
- What happened (the facts) and the rules that were relevant to the dispute
- Whether you think those rules were internal sporting rules or were external (rules that have a wider influence beyond the particular sport)
- Whether there were any moral issues that appear to have been raised in the dispute



- What the final decision was
- Whether, morally, you agreed with the decision.
- Do you think any lessons could be learnt from the decision?

The idea is to get students to articulate some of the key legal reasons for the decisions and therefore, the principles that SGBs and athletes should be aware of when the decisions of SGBs are scrutinised in a legal context. Some key reasons are set out on slides 14 & 15.

SLIDES 14 & 15

This slide is to quickly summarise some of the key points from the session

SLIDE 16

Suggested Additional Reading