



Teaching Awareness of Ethical Governance in Sport

Topic:

Law in Sport: an introduction to legal principles and their place in sports governance

Overview:

- The importance of ‘rules’ in sport.
- The difference between ‘Sporting rules’, ‘Ethical and cultural rules’ and ‘legal rules’.
- The concept of autonomy of sport: is sport truly free to determine its own rules in the interest of sport or is it subject to general legal norms?
- The role of arbitration in resolving disputes between athletes and governing bodies.

- Key legal principles
 - Law and Justice – Notions of Individual fairness/substantive justice and their place in
 - Legal decisions. The importance of certainty and coherence.
 - Legal Reasoning – Interpretation and decision making in a framework of rules and precedents

Aim:

Rules are integral to sport and every sport represents a kind of specific, private system of rules and principles, which are accepted by those that participate in the sport. When sport was primarily amateur, it was possible to suggest that these private systems of rules (and the governance of them) were beyond the reach and sight of the general law. However, the increasing social significance of sport, the increasing commercialism and ever growing financial rewards on offer at the elite level means external legal rules and principles are increasingly penetrating the ‘private’ sphere of sports governance. Decisions made by sports governing bodies and those who resolve disputes are increasingly subject to scrutiny by lawyers and measured against legal norms and principles in decision making. This topic aims to provide an introduction to how rules and principles from the general law (state based and internationally recognised legal principles) impact on the rules and governance of sport.



Objectives:

By the end of the lecture, seminar and independent study tasks, students will be able to:

- ❖ Demonstrate an outline understanding of what law is and how legal rules differ from other normative rules such as social, ethical or moral rules.
- ❖ Recognise how sport operates in a normative rule framework and the basis of the obligation to comply with those rules
- ❖ Explain what arbitration is and its role in resolving sporting disputes
- ❖ Explain the differences and relationship between internal rules of sport and external rules of law
- ❖ Outline some of the reasons why external legal rules and norms increasingly impact on the governance of sport
- ❖ Identify some of the particularly important external legal rules and principles that are applicable in the context of sports governance such as:
 - ❖ notions of substantive/individual justice, procedural fairness and justice in the eyes of the law
 - ❖ The importance of certainty and coherence in rule systems
 - ❖ Objective interpretation of rules
 - ❖ Proportionality
 - ❖ Equality and non-discrimination
 - ❖ Freedom to work

Case Study Compendium:

- ❖ **Case 4 – UKAD v Athlete B** (subjective reason for refusing test accepted, but violation still found, proportionality in sanction – example of preference for certainty over individual/substantive justice in finding violation, but substantive justice in penalty. Question the consequential effect)
- ❖ **Case 28 – GB Rhythmic Gymnastics Group v British Amateur Gymnastics Association** (standard in creating selection policy – example general legal principles imposing on SGB)
- ❖ **Case 30 - Athlete R v British Swimming** (selection, gap in selection policy, no detriment others, decision not to select upheld – example of preference for certainty over substantive/individual justice. Also principles of due process and transparency in decision making)
- ❖ **Case 41 – Coach B v ITF** (sexual harassment, racism etc – example of internal sports regulation internalising external legal rules on harassment and racism)
- ❖ **Case 42 – BEF Independent Review** (state intervention in governing sport through funding, bullying/harassment, employment law)



- ❖ **Case 23 – UKAD v Athlete GW and Athlete RW** (substantive justice - ‘minimal fault’ not a defence. Proportionality in sanction.)
- ❖ **Case 26 – Athlete B v British Shooting** (Transparency of decision making, procedural fairness/ bias)
- ❖ **Case 24 – Athlete B v LTA & ITF** – (eligibility for competing, rules to protect ideal of the competition, general legal principles override (freedom of movement etc

Additional Civil Cases:

The FA v David Moyes [2017] – Bias

Modahl v BAF [2001] – Procedural fairness / Bias. Role of Arbitration

Materials Attached:

Lecture Overview [this page]
Lecture slides (suggested)
Additional teaching notes (suggested)
Student Instructions for teaching session

Additional Reading & Resources

Articles

Foster, K, ‘Lex Sportiva and Lex Ludica: The Court of Arbitration for Sports Disputes’
https://www.researchgate.net/publication/305308468_Lex_Sportiva_and_Lex_Ludica_the_Court_Of_Arbitration_for_Sport's_Jurisprudence

Foster, K., 2012. Is There a Global Sports Law?, in: Siekmann, R.C.R., Soek, J. (Eds.), *Lex Sportiva: What Is Sports Law?* T. M. C. Asser Press, The Hague, The Netherlands, pp. 35–52. https://doi.org/10.1007/978-90-6704-829-3_2

Rigozzi & Mcauliffe, Sports Arbitration
https://www.researchgate.net/publication/283896214_Sports_Arbitration

Cooper, J. *Testosterone: ‘the Best Discriminating Factor’*. *Philosophies*, 4 (3). p. 36.
<https://www.mdpi.com/2409-9287/4/3/36>

Boyes, S, Sports law: its history and growth and the development of key sources, *Legal Information Management*, 12 (2012), pp. 86–91

CAS Cases

Yang v Hamm CAS 2004/A/704, 37, award dated 21 October 2004.



Additional Legal Background

URLs

Guardian Article – Re Bath’s challenge to have Toulouse game re-played

https://www.theguardian.com/sport/2018/oct/19/bath-request-toulouse-replay?CMP=Share_AndroidApp_Gmail

Brown, A. Questions remain over IAAF Differences of Sex Development Regulations
Sports Integrity Initiative.

<https://www.sportsintegrityinitiative.com/questions-remain-iaaf-differences-sex-development-regulations/>