

GIVING LAWYERS A SPORTING CHANCE
J. Neville Turner

ASSH Member, Neville Turner, wrote this article for the Monash Review, October, 1986. It is reproduced with permission.

Mr. Neville Turner, Senior Lecturer in Law, has always been a sports fan, but it was only when he had to review a book ten years ago that it occurred to him that sports law was a subject worthy of serious study. In 1978 while on overseas study leave, he organised the first conference on sports law to be held in Britain. Here he argues that, with the growing professional-ism of sport, Australian law schools should follow the North American example and begin to teach sports law.

Australians seem to treat sport as an escapist pursuit, divorced from serious study.

But sport is an expression of society, worthy of study by historians and sociologists as a very important and significant indicator of social trends. There's also been a lot of fine work done in the areas of sports medicine and economics.

Many respectable disciplines include sport in their curricula. It's now opportune for law to do the same.

Sport is becoming big business with tax and anti-trust implications. It's a very important subject in human terms, very important for the condition of society because of its enormous impact on children and the mental and physical health of the nation.

There is a big literature on sports law in North America. It's an academically respectable subject. A recent case to do with baseball league exemptions, for instance, went to the US Supreme Court and was very much a national issue.

But there is still prejudice against the subject amongst Australian legal academics. Many think it's a Mickey Mouse topic.

In the past five years, Monash has held two very successful seminars on sports law. To my knowledge, there is little else being done at any other law school in Australia.

I would like to see sports law developed at Monash as a subject in the LL.M. program, or as an optional subject in the undergraduate program.

I have always naturally gravitated towards the sports pages of any newspaper. But these days there's more law there than in any other part of the paper.

It's a fallacy to think that law doesn't have anything to do with sport. The law always has. From my preliminary research there were just as many legal issues in the 1930s as there are now - zoning restrictions. Don Bradman writing for the Press, assault charges.

But only in the last few years have lawyers been consulted. Before this, these problems were solved without recourse to the legal process.

I think the participation of lawyers is a healthy trend. It is not to be feared or deplored. Disciplinary committees, for instance, are taking much more care nowadays.

The Leigh Matthews case (where a respected former captain of a league football team was convicted on assault charges for an incident that happened behind the play) produced a salutary decision. It's very good for the community, and a good example to kids, to know that you can't do this sort of this with impunity.

Under the legal principle of *voluntati non fit injuria*, sportsmen do consent to a certain use of force in keeping with the rules, but they don't consent to a flagrant breach of the rules. A sportsman may have a wife and children to support, and is entitled to be protected from illegal actions which might incapacitate him.

Being a professional sportsperson demands a great deal of skill, talent, and dedication, and they should be rewarded for it. It's their livelihood and legal contracts are essential to protect their interests. But they should always contact a lawyer in advance of signing a contract - if they go in without legal advice, they're going in naked.

Another area of legal interest is the question of planning appeals. You've got to have somebody to adjudicate over questions like whether the local tennis club should be allowed to erect floodlights or not.

Then there are the clubs themselves where people are handling money, and in positions of trust. Questions of incorporation and insurance cover are most important here.

And there are also questions of the safety of grounds and sports stadia. In England, since the Bradford fire, they have passed very stringent legislation.

The issue of crowd violence and protection of citizens also is important. I can't see any argument that the law should be taken out of these areas.

Another growing legal area is that of libel and slander, what can and can't be said against fellow sportspeople. I think that area is very, very tricky, but I don't think sportspeople should be squeamish about criticism whenever they perform at less than their best.

Eligibility is a source of great difficulty unique to sport. It's a problem of administrative law to a point. Administrative law becomes relevant whenever some non-court body sets itself up as an arbiter of someone's rights. For instance, in the case of the Olympic Games, you have an international body purporting to decide whether athletes are women or men, amateur or professional, drugged or not.

There are legal issues in the draftsmanship of the rules of the games and the competitions. Commenting on a recent transfer case involving the Victorian Football League the presiding judge said that considering the amount of money generated by the league, its rules of administration were so badly drafted as to be incomprehensible.

I don't think you could teach sports law unless you had some feeling and attraction for sport itself. It can't be seen as a traditional business, because of the peculiar nature of the sporting contest. YOU cannot hold it to the same degree of regulation as you can say, driving a motor car.

There is a very great advantage in sports law as a discipline of law. In Australia most areas of law are taught very artificially. The cases which are used as examples are contained in the law reports, and are the exceptional cases which reach the Supreme Court. Hence students get a completely false idea of what is involved in day to day law.

But with sports law, a fantastic amount of material is reported in the daily newspapers. It would make excellent teaching material about how the law works at the grass roots level.