

REVIEW ESSAYS

SPORT AND THE LAW

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Sports law is a serious academic study in North America. There are, to my knowledge, at least thirty courses offered at university level in the United States of America, and it is also taught at many universities in Canada. It is rather surprising that the topic has not achieved a similar academic status in Australia, a country which is notorious for its high interest in sport. Nor is it particularly prominent as an academic discipline in England. Yet there is a rapidly growing literature available, and a great deal of untapped source material, especially in newspapers.

Most law courses are taught in Australia on the English model, that is by a formal lecture, supplemented by tutorial instruction to small groups. The subject-matter for this instruction consists almost exclusively of the, atypical, cases which are the subject-matter of litigation at a comparatively high level (e.g. Supreme Court), and especially of appellate cases. Accordingly, the grass root issues which concern most sports people and their lawyers rarely are reported, and thus are rarely taught. But sports law is unique in providing a welter of material in national and suburban newspapers which could furnish rich material for analysis and study and give a far more balanced and realistic picture of the law in action than is usually provided to students. In North America, on the other hand, law tends to be taught by a careful study and of actual cases. It requires intense pre-class preparation, and sometimes results in traumatic exposure of a student's deficiencies to his class-mates. "The Paper Chase" is a slightly exaggerated, but largely accurate, portrayal of the Vase Method" of legal instruction that is common in North America. It calls for the production of edited collection of cases and other materials which must be studied before class. The teacher of the class will seek to educe the principles of law inductively, by quizzing students.

Hence, it is that American law books tend to be gargantuan tomes. L.S. Sobel, *Professional Sports and the Law*, (Law Arts Publishers,

New York, 1977), is a typical example. Although a text-book, it is a monumentally long work. This book is aimed principally at the adviser to the sportsman or sports administrator. Its orientation is largely contractual. A special feature of American business law is its Federal 'anti-trust' legislation. For historical reasons, some sports are covered by this, others are not. The book examines the anomalous position of baseball, which has caused much friction in recent years. Is sport a 'trade'? And, if so, is it practised 'inter-state'? These constitutional issues are dealt with intensively. Of course, the issue is by no means foreign to Australia, as recent cases involving the footballer, Adamson, demonstrate.

A more all-embracing American book on Sport and the Law is J.A. Weisart & C.H. Lowell, *The Law of Sports*, (Bobbs-Merrill, Indianapolis 1979) which deals with all aspects of sport, including regulation of amateur athletics, public regulation of sports activities, the enforcement of sports contracts, taxation matters and liability for injuries in sports. Again, however, anti-trust aspects of professional sport occupy a large chapter of the book. The authors apologise for the size of the book (1154 pp.), stating that they had in mind a volume of modest length, but that the vast activity in the courts caught them by surprise. 'The cases of the mid-70s served to finally strip away the myth that sports activities were recreational in nature and, thus, not subject to close legal scrutiny' is a statement from the preface which (if the split infinitive were rectified) would be an admirable text for the sermon that I and a few other Australian lawyers have been preaching for some time. This *magnum opus*, with its copious illustrations and citations, must be regarded as the most comprehensive text on Sport and the Law in the world, and sets a standard of scholarship which will be hard to follow.

The foremost scholar of Sports Law in Canada is John Barnes, whose work, *Sports and the Law in Canada* (Butterworths, Canada 1983) is a fine compilation, which has gained immediate currency in that country's law schools. Barnes is also the editor of a set of excellent conference papers (in English and French) on the topic, *Sports Violence and Law Reform* (Institute for Studies in Policy, Ethics and Law, Carleton University, Canada 1984).

The first English legal work which dealt exclusively with sports issues appears to be G.W. Keeton, *The Football Revolution* (David and Charles, Devon 1972). Professor Keeton was a most distinguished jurist and equity scholar. Among his many contributions to legal scholarship is an erudite work on Shakespeare and the law. He also had a great interest in Association Football. He was one of the first English legal scholars to perceive the legal issues involved in professional sport. Soccer provided as early example of collective bargaining in the well-known case, *Eastham v. Newcastle United Football Club* [1964] Chancery 413, in which Mr. Justice Wilberforce declared invalid 'the maximum wage and restrictive transfer rules of the Football League. There is no doubt that this landmark case opened the eyes of footballers and other sportsmen to the conditions of near slavery under which they had been employed, and paved the way for further litigious attacks on governing bodies. Keeton's seminal work is characterized by a delightful, if perhaps quaint, literary style.

J.N. Turner & C. Jenkins (eds.), *Sport and the Law* (Department of Physical Education, University of Birmingham 1978) is a collection of papers from the first conference on Sport and the Law that was held in the United Kingdom. It would be inappropriate for me, as one of the editors, to comment extensively on this work, but among other fine essays, it does contain a most perceptive piece on administrative law, as it affects sportsmen, by Michael Elliott. Administrative Law? I dare say most sportsmen have little idea of its content. In fact, it is an eclectic branch of law which threatens to become a monster, swallowing up traditional branches of common law. In short, it consists of law which affects governments, governing bodies and indeed all non-curial organisations which purport to make decisions. In particular, it embraces tribunals, such as the Victorian Football League Tribunal, which have great power to deprive a player of his livelihood. It also covers Town and Country Planning Tribunals, before which a club seeking permission to extend its club-house, erect floodlights or encroach on some open area of land may well appear. And, most importantly, it is a branch of law which governs selection committees, committees deciding to expel a member or refuse entry to a member, and committees exercising disciplinary measures against members or

players. Essentially, all these bodies must act in accordance with 'natural justice'. What is 'natural justice'? Elliott deals with this protean concept in his exceptionally wise and perceptive essay. This collection also contains papers on charitable trusts (as affecting sportsclubs), criminal and civil responsibility of sports clubs and players, sex discrimination in sport, safety of sports grounds, liability for injuries in sport and industrial issues.

A recent publication breaks new ground, by being the first English legal work specifically to address the legal problems of sponsorship. S. Townley & E. Grayson, *Sponsorship of Sport, Arts and Leisure* (Sweet and Maxwell, London 1984) deals with a large variety of issues concerning this tenuous and rather vague concept. In fact, it virtually amounts to a compendium of every branch of law which might conceivably affect a sponsor or 'sponsee' (the ugly neologism coined to define the object of a contract of sponsorship). The work is addressed both to sport and the arts, and contains a useful, if parochial, expose of the various types of sponsor, governing body and international control mechanisms affecting English sponsorship. There is, naturally, much discussion of intellectual property and copyright laws. The English law of copyright is so confusing, however, that even the legal reader is apt to emerge from a reading of this work more confused than wherein he went. And the non-legal reader has no hope of negotiating the technical language of this book which (save for the few chapters written by Grayson) is written in a forbidding, legalistic style. It is a book not just for lawyers, but for specialist lawyers at that.

Grayson himself is a delightful English barrister who writes on legal issues for the *Sunday Telegraph*. He has written the history of the Corinthian Casuals Soccer Club, and is co-author of a spicy work on the Baccarat scandal involving Edward VII. He has published a much slighter, but very readable, work entitled, *Sport and the Law* (Daily Telegraph, London 1978), which comprises the following Chapters: the Spectator and the Law, Players and the Law and Sporting Administration and the Law. The non-legal reader is recommended to start with this work, if he requires any further convincing that sport and the law are inextricably entwined.

A recent work, Valerie Collins, *Recreation and the Law* (E. & F.N. Spon, London 1984) deals in a refreshingly clear manner with many of the legal problems of the administration of sport, including an excellent chapter on the employment of staff. My admiration for this book, is, however, considerably qualified by the discovery that it contains a direct quotation, without acknowledgement, from an essay of my own (in J.N. Turner and C. Jenkins, *op.cit.*).

The Australian material on sports law consists largely of the proceedings of conferences. Monash University has hosted two conferences in the past few years, and a comparison of the papers reveals just how many developments there have been.

Sports and The Law (Transcript of a Two-Day National Conference held at Monash University in April 1980) consists of a series of essays on the following topics: The Public Interest and Sporting Association (R. Baxt), Sports, Mass Media and the Law (S. Raftasath) Sports and Taxation (K. Burges), Compensation for Injuries Due to Sport (H. Luntz), Disciplinary Measures and Eligibility Requirements (A.W. McDonald), Liability of Suppliers of Sporting goods (H. Nathan).

In 1980 many lawyers were sceptical as to the criminal liability of sportsmen for assault on the field. The *Leigh Matthews* case once and for all has killed the notion that sport is above, below or outside the law. Despite the indignation of his club and the thunderings of some sports editors and journalists, the Leigh Matthews conviction was inevitable. Indeed, Matthews wisely pleaded guilty. Speculation is now justified into how far liability extends. It certainly covers intentional assaults. Does it cover recklessness as well as intention? Does it indeed extend to negligence? These are the issues appropriate to 1986. And they are covered in a compendium of papers delivered at a Conference organized by the Centre for Commercial Law and Applied Research of Monash University, held at Launceston, Tasmania, in June 1985. This conference had the privilege of being addressed by Professor John Morris, of Arizona University, who drew attention to the many courses in Sports Law being offered in the United States. The

orientation of this conference also tended to be towards the problems of economic regulation of professional sports, fair industrial conditions and restraints of trade.

The papers of a conference held in Perth on 11 October 1981 have been published, and are available from the Department for Youth, Sport and Recreation (W.A.). The topics of Insurance (R.J. Trigg) and the drafting of Constitutions for sporting bodies (Ian Temby) make this collection of particular interest to the administrators of sporting clubs. This collection would, however, have benefited by more careful editing. It is replete with offensive colloquialisms.

Finally, there exists an intriguing specialist work by a Melbourne Barrister, C. Pannam, entitled, *The Horse and the Law* (Law Book Company, Sydney 1979). Dr. Pannam seems to feature prominently in cases before Racing and Trotting Boards, and the like. For aficionados of the Sport of Kings, this work may have an esoteric appeal.

Literature on the Law is, of course, not limited to books. Those with access to a professional legal library will find several law review articles and case notes dealing with aspects of sport. Sports Law is a very rapidly growing discipline, and the time is ripe for much more intensive research and writing in the area by scholars in Australia, which has rather lagged behind the rest of the English-speaking world.