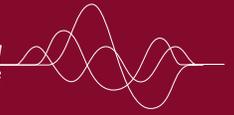


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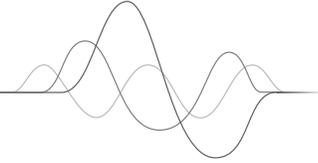


Sport and the Law Journal



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Introduction

BY SIMON GARDINER, EDITOR

This issue will focus on the founding President of BASL, Edward Grayson. Edward needs to be acknowledged as the 'founding father' of British sports law. He died in September 2008 and this is a timely opportunity to provide an insight to some of his rarely - available published work and an evaluation of his contribution to the discipline. This collection of work is divided into three parts.

Firstly, this introduction provides a brief evaluation by Ken Foster and myself. As two academics working in the area, we both acknowledge the contribution to the subject made by Edward, but also the limitations in his analysis. This partly reflects how quickly the subject has developed both on a national, European and international level. Additionally, Edward's obituary from the Daily Telegraph is reproduced.

Secondly, a number of publications by Edward, some of them no longer available, are reproduced. His publishing career was varied and during the 1990s capacious. His first publications appeared during the 1950s in *The Cricketer*, which led to his first book, *Corinthians and Cricketers: and Towards a New Sporting Era* in 1955 (republished in 1996). His introduction to this latter edition is published here.

His focus during the 1960s moved towards his increasing love with legal issues involving sport with early articles in journals such as the *Police Review* and the *New Law Journal*. We are very fortunate to be able to publish in its entirety, the booklet *Sport and the Law*, published by the *Sunday Telegraph* in 1978, which would of course become the name of his book published over three editions, the last in 1999.

During this period of movement into the new millennium he was particularly productive. The 3rd edition of *Sport and the Law* was published in 1999, with two books following on quickly afterwards, *Ethics, Injuries and the Law in Sports*

Medicine (1999) and *School Sports and the Law* (2000).

Edward's Inaugural Professorial Lecture from 1998 is published, when he was Visiting Professor at Anglia Polytechnic University. His chapter entitled, 'Historical Development of Sport and Law' from Greenfield and Osborn's collection, *Law and Sport in Contemporary Society* (2000) is also reproduced.

Thirdly and finally, for the first time together in hard copy, we have three of the four Grayson Memorial Lectures, which have been held by BASL as a commemoration since 2009. An eminent quartet of speakers, Colin Moynihan, Kate Hoey, Sue Cambell (not included as she did not speak to a formal written script) and Michael Beloff have spoken on a range of subjects that can generally fall within the scope of the interests and legacy of Edward.

My initial contact with Edward occurred in 1993 when I had the fortune to almost stumble on an emerging area of 'Sports Law'. It might be tempting to claim that I identified the developing presence of law in the normative regulation of sport, but in reality as is often the case for new areas of personal inquiry, my involvement came about due to a chance meeting with the phenomenon during the writing of a minor article in a weekly professional law journal on criminal liability for assaults during football matches. My argument essentially was that intervention of the criminal law into the sporting arena was problematic in a number of regards.

Two weeks later a response by Edward in the same journal, challenged this argument and suggested that the criminal law (and by implication the law generally) was required to intervene on to the football field (and into sport generally) to provide order and return sport to a state of equilibrium of an earlier halcyon era. I know was aware of the existence of the indefatigable Edward Grayson.

As we all know, Edward strongly supported the involvement of law in the operation of sport. With such a powerful advocacy for the role of the law in sport, this may be one of Edward's most important contributions. To understand this more fully, a few quotes are advisable. He argues:

"... the law can and should come to the help of sport; and indeed, how sport with its high profile and image can come to the help of the law. For sport without rules and their control creates chaos. Society without laws and their enforcement means anarchy." (Grayson, 1994).

This supposition was the basis for reifying both the rule and role of law in sport.

"Wither sport and the law: what direction should sport take today? Whatever route is taken, the rule of law, on and off the field, alone can and must guide it within a rapidly revolving social setting whose pace can hardly match the kaleidoscopic changes daily imposed upon the public mind and eye."(Grayson, 1994)

His focus during the 1960s moved towards his increasing love with legal issues involving sport with early articles in journals such as the *Police Review* and the *New Law Journal*.

For Edward, the epitome of sportsmanship and an increasingly dissipating ethos in modern professional sport are Corinthian values. He argues that:

"... if sport and its rulers cannot or will not try to preserve that Corinthian tradition, which the citations throughout ... and the inspiration for this book demonstrate is an ideal realistically and recognised and capable of attainment to aim for, if not always achieved, then the courts can and will do it for them, through the law of the land at both criminal and civil levels and certainly if adequate compensation is required." (Grayson, 1994).

Corinthianism as a specific form and version of ethical behaviour is key to Grayson's ideas. He uses pre-Second World War cricketers such as GO Smith and CB Fry and the Corinthian cricket and football teams to support the view that sport was played with absolute adherence to the letter and spirit of the rules (Grayson, 1996). The one fact that these sportsmen and teams shared in the early 1900s was their upper-class background of public school education and privilege. Edward believes it was their background and professional lives as 'doctors, lawyers and schoolmasters' that provide them with this outlook on sport. He presents a view of the past where sport was purely played for the love of participation. His support for the values of Corinthianism has clear resonance with the discourse concerning ethics and sportsmanship within contemporary sport.

However it is important to put his work into perspective. What is presented is a somewhat dogmatic, steadfast and largely *atheoretical* view of the role of law in sport. I have challenged Edward's theoretical inadequacy and his historical revisionism. There are theoretical positions in both legal theory (notably legal positivism with its emphasis on the primacy of rules being equated with law) and the sociology of sport (specifically Nöbert Elias's figurational theory and the civilising process, 1939), which could be implied as underlying Edward's work and used to support his position, but this is explicitly missing from his work. What is almost completely missing is any socio-economic and political context. What shines through is a misty-eyed nostalgia for a bygone era, proselytising

the intervention of law in sport and an eye for the appropriation of sport as a new area of legal practice.

Edward's view is predicated on a distrust of self-regulation: sport cannot be trusted to engage with issues such as excessive violence. He believed that it was axiomatic for the formality of the law to intervene. The world of professional and commercialized sport and the discipline of Sports Law (a term he failed to embrace, preferring his favoured 'Sport and the Law'), have rapidly moved on over the last twenty years and Edward, unable to appreciate the complexities and developments that materialized in the mid-1990s onwards, was sidelined in terms of the theoretical and conceptual analysis of the discipline.

Edward Grayson's contribution to the development of the discipline of Sports Law and his legacy has been significant in two important ways. He has left a substantial body of publications, which largely put Sports Law on the map. In addition, together with colleagues such as Maurice Watkins, Charles Woodhouse and Ray Farrell, he contributed to the important creation of BASL. I supported his appointment in 1996 as a Visiting Professor at Anglia Polytechnic University. It reflected the application and commitment he had given to the development of the discipline. Within the study of law, those individuals who trail blaze into a new area can often too easily be viewed as dallying with light-weight and peripheral issues. Edward took this difficult path and in the years of the 1960s and 1970s, essentially shaped the discipline of Sports Law that we are now all so lucky to work within. **BASL**



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Edward Grayson

BY KEN FOSTER, CENTRE FOR THE STUDY OF LAW, SOCIETY AND POPULAR CULTURE, UNIVERSITY OF WESTMINSTER

I first met Edward Grayson in 1978 at an academic conference organized by Birmingham University. Widely recognized as the first conference on sport and the law it had been sparked by the decision in the Packer case the previous year. There was very little written on sport and the law at the time and nearly was by Edward. Most of the papers at the conference were measured academic papers but Edward's was given with his typical flamboyant speedy delivery. The media were present and interested and afterwards I was invited to join a thirty-minute live discussion on local radio with Derek Dougan, then the PFA chair, and Edward. Neither Derek nor I are silent types but of the thirty minutes allocated Edward occupied at least twenty five! I can still see the desperate face of the radio interviewer trying, unsuccessfully of course, to stop Edward in full flow.

The conference was well attended and had three main constituencies; academics, representatives of governing bodies and practitioners. In many ways, it foreshadowed the difficulties in developing a new academic discipline as the tension between theory and practice was clear. Despite the interest generated by the conference very little academic writing followed in England during the next decade.

In 1985, my Warwick colleague, Lincoln Allison, encouraged me to contribute to a volume of edited papers on sport. For the first time I seriously thought about the theoretical issues surrounding the role of legal intervention in sporting matters. There appeared to be much that could inform general socio-legal theory, which at that time was my main teaching subject. Sport was a social field still marked then by a high degree of self-regulation with claims of autonomy and even

immunity being made by the administrators. The abuse of power that was inherent in the unaccountable governance of most governing bodies of sport was important and interesting. The idea of sport as a legal pluralist example of a micro regulatory system was fascinating.

This led in 1988 to my introducing the first ever option on Sport and the Law at Warwick University. An initial decision was of course what text to recommend to the students. Grayson's first edition had been just been published and I recommended it. The mutiny occurred three weeks into term. The students found it unreadable and unusable. I went for an Australian alternative, which was better structured, properly referenced, and covered a wider range of issues.

I admired Edward for his boundless enthusiasm for the subject and he was a great publicist for sport and the law. However, his limited vision and his emphasis on special interests, such as sporting injuries on the field, were factors that seriously inhibited the development of sports law as an integrated academic subject.

A further limit on Grayson's approach is that wider contextual issues of sport and its links with other disciplines, such as history, politics, economics and sociology, are largely absent in his writings beyond vague exhortations about the rule of law in sport

EDWARD GRAYSON

It is fair to describe Grayson's text as the work of an empiricist rather than a theoretician. A hallmark of his published work is listing. He was over fond of listing cases without making any serious effort to synthesize an underlying principle and then analyze the cases in relation to it. A prime example in the introduction to the third edition of his textbook is to list the 113 pastimes treated as sports by the VAT regulations. He then dismisses the list simply as 'arbitrary'. Other authors have at least attempted to define their subject matter of sport by using criteria such as physical activity, competitive and with rules from a central governing body. The consequence is that sport and the law was slow to develop theoretical perspectives.

A linked weakness to Grayson's empiricism was that sports law is still a minority interest in English universities. Any emerging subject has this tension between the immediate practical element and the wider contextual framework that allows a broader input so that it becomes part of a wider academic discourse and recognized as a freestanding subject that allows for teaching and research possibilities. A practitioner-led development concentrates inevitably on the cases that come through the courts, which are never a true reflection of the concerns of broader regulatory bodies or of commercial issues.

A further limit on Grayson's approach is that wider contextual issues of sport and its links with other disciplines, such as history, politics, economics and sociology, are largely absent in his writings beyond vague exhortations about the rule of law in sport. A good example is the case of *Condon v Basi*, which was a case arising out of the Leamington & District Sunday League and in which the defendant played for Khalsa, a Sikh sports organisation. In his discussions of the case nothing is made of the racial dimension but as someone who was still playing football in that league I can remember that the treatment of Khalsa and its players by the league administrators was suspect to say the least.

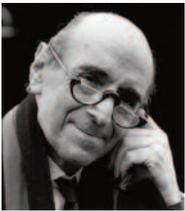
Grayson's central interest in sporting injuries led to a blindness about the range of the discipline. In particular he, like many English practitioners of his generation, was untrained in European law. So in his third edition of 2000, *Bosman*, arguably the most well known and important sports law case, gets but half a paragraph of explanation and European law, still described as Common Market law in places, receives only one short inadequate chapter.

In addition the increasing commercialization of sport, with issues such as intellectual property rights in sport and the lawfulness of major broadcasting deals in sport, did not receive sufficient attention in Grayson's text. Increasingly new textbooks and a wider academic literature came to dominate the field leaving Grayson looking more the Corinthian amateur than the professional expert.

So although Edward could always be relied upon to bend the ears of those within earshot as to the possibilities of sport and the law, the development of a new academic discipline, sports law, was in many ways hindered by his empiricism and narrowness of approach. **BASL**

Daily Telegraph Obituary

30TH SEPTEMBER 2008. REPRODUCED WITH THANKS



Edward Grayson, who died on September 23 aged 83, was a sports mad barrister responsible for developing a legal framework for sport in an increasingly violent society.

When he began to specialise in the late 1950s his main concerns were with the different tax rules for cricketers' and footballers' benefits, restraint of trade and the charitable status of clubs. But he recognised that an injury the great Pele received in the 1966 World Cup could have invited prosecution outside the arena, and saw that a £4,500 award for a broken leg was going to lead to much more expensive compensation.

In 1973 he became the founder president of the British Society for Sport and the Law, and five years later published a 76-page *Sunday Telegraph* pamphlet, written with the sports editor Trevor Bond, which proposed remedies for mishaps in all contact sports in a society that was growing steadily more brutal.

Such publicity was unwelcome to many sports administrators, who considered themselves quite capable of dealing with any problems. Ted Croker, chief executive of the Football Association, even suggested that the fault for present troubles lay with Grayson for inventing the concept of "Sport and the Law".

In court Grayson extended the legal boundaries in a wide variety of sports. *Currie v Barton and Rippon* (1987) dealt with a breach of natural justice in a tennis match; *Rayner v Center Parcs* (1994) concerned a swimming pool injury; *O'Neil v Fashanu* and *Wimbledon FC and Elliott v Saunders* and *Liverpool FC* were two important injury cases involving professional footballers. *Casson v Ministry of Defence* (1999)

highlighted the Army's responsibility at matches; and *Stream v Cameron and Bentley* (2000) involved an allegation of negligence in judo coaching.

He also published three greatly expanded editions of *Sport and the Law* as well as such related volumes as *Ethics, Injuries and the Law in Sports Medicine* and *Sponsorship of Sport, Arts and Leisure*. Yet Grayson declined to restrict himself to a narrow specialism, with the possibility of increased earnings, preferring to continue writing and pursuing his many other interests.

The son of a businessman, Edward Grayson was born on March 1 1925 and educated at Taunton's School, Southampton, where a master bet him that he could not obtain the signature of the centre-forward G.O. Smith, who had played for England and the great amateur team, Corinthians. Young Edward bicycled 20 miles through the New Forest to Smith's home at Lymington, and was given the signature. When the boy then asked for a photograph Smith regretted that he had none that were not stuck in albums. But some time later he sent a photograph of himself with C.B. Fry, hailed by some as the greatest of all amateurs. As a result, Grayson recorded that his "schoolboy's interest in his hero became a devotion".

The experience led him to embark on his journalistic career with two articles in *The Cricketer*, and the star and the shaver began a correspondence which was to provide the substance of Grayson's charming book *Corinthians and Cricketers* (1955) and to instill in him the high ideals he never abandoned.

After leaving school Grayson joined the RAF for National Service but was invalided out. He then read Law at Exeter College, Oxford, where the possibility of a football career was ended by a broken leg. Following his call to the Bar by Middle

DAILY TELEGRAPH OBITUARY

Temple he first entered chancery chambers in Lincoln's Inn, then switched to Lewis Hawser's common law set at 1 Garden Court before moving on to 4 Paper Buildings.

Following marriage to Wendy Shockett, who worked for the All England Law Reports, he settled at a flat in the Temple. Grayson found himself conveniently placed for both the courts and Fleet Street, where he encountered at the King and Keys pub The Daily Telegraph's blind sage TE Utley. Grayson was already contributing to several parts of the paper when Hugh Massingberd needed specialist legal help with his new obituaries section.

Grayson initially provided a few short obits, but proved more useful as an invaluable source of sporting wisdom and legal anecdotes, which would be recounted in a torrent of words as writers strove to meet a deadline. While maintaining his busy common law practice, he would come straight from court to the office when summoned, and after attending to the matter in hand, would settle down to dictate an opinion over the phone to his clerk in chambers.

When the Telegraph moved to Docklands he often took the last staff minibus from Fleet Street to South Quay, where the reception desk had a full set of the next day's papers waiting for him. He would then spend the night studying them, talking to the night editor and the sports desk, consulting the library and taking catnaps over a typewriter. When the first members of the staff arrived in the morning, he would still be at the obits desk in his stockinged feet, ready to set off for chambers or court.

But although he could manage on a couple of hours' sleep a night, after a few days the toll would tell. One morning he greeted Massingberd with commiserations on the death of his half-brother, having misunderstood a remark by a member of the sports staff. Eventually the paper's management discovered his all-night vigils and suggested that he would be better off at home.

By then, however, Grayson had a new interest. In the early 1970s he and Michael Havers, who was to become Mrs Thatcher's Lord Chancellor, had written *The Royal Baccarat Scandal*, about a court case over a card game in which the future King Edward VII appeared in the witness box. Some 15 years later the book was dramatised by Royce Ryton, much to the derision of at least one London critic, who said it would never receive an outing. But it had a successful première at Chichester, and then went to the West End, with Keith Michell and Fiona Fullerton in the leading roles.

Grayson became such an enthusiastic presence late in the evening that he had once again to be encouraged to spend the night at home. Although the play never became a hit in London, it enjoyed frequent revivals in the provinces, where Grayson could usually be found in the stalls.

In addition he sat on an arbitration panel, produced drafts for parliamentary legislation on the safety of young persons and became a visiting professor at the Anglia Law School. Inevitably, with his enthusiasms, he had a short fuse, and would become particularly incensed with sports administrators, government ministers, and Dr Beeching, the closer of railway branch lines. According to legend, Grayson became so exasperated with one witness in a cross-examination that he accused him of being "a f***ing liar". When the judge interposed to insist that this description be rephrased, Grayson offered instead: "a lying f***er".

He retired from chambers in 2001 to become in-house counsel to a firm of solicitors in east London, but five years later returned to criminal practice, taking on the same kinds of case with which he had started his career, sometimes being briefed by his son Harry, a solicitor. As prosecuting counsel in a magistrate's court Edward Grayson once worked his way through a morning's list of cases without the use of his hearing aid. ■ **BASL**

Grayson's Work



Corinthians and Cricketers

(Kindly reproduced with permission from Grayson, E, (1996). *Corinthians and Cricketers – and Towards a New Sporting Era*, Yore Publications)

BY EDWARD GRAYSON

Introduction

A triple purpose exists for this up-dated version of the background to a Second World War schoolboy's correspondence with a retired headmaster, G.O. Smith, who also had been Association football's greatest centre-forward during the last decade of Queen Victoria's England, and a more than useful cricketer, too. First, to fill the 40 years time span which now exists since its earliest publication in 1955; a period during which (he nature of sport and games at the public as distinct from the overwhelmingly greater numerical private level has shifted from a form of physical recreation and healthy competition to a global satellite village. It was crystallised in the 40th anniversary issue, 1954-1994, of America's *Sports Illustrated* with the realisation:

“Sometime in the second half of the century, sports became an axis on which the world turns. There have been comparable times in history when sports have been at the centre of a culture and seemed to dominate the landscape. Whether in Greek society or in what used to be called the Golden Ages of Sports. But everything is magnified by television.”

Second, to preserve for posterity, through the original text of this hook, the traditional Corinthian values of fair play, self-discipline and sheer fun of sport, within an unfolding enveloping commercial environment in the 1990's where no **effective** sanctions for misconduct appear to exist from many sporting governing bodies and their discipline committees: and thus the only protection for oppressed or physically injured victims is in the courts of law. Third, to explain how it led directly to to-day's involvement of the law with sport, and to the creation, concurrently with the modern development of Sports Medicine, of Sport and the Law as an expanding professional discipline dedicated to the world of sport.

This ranges from The Football Association's creation in 1863 to harmonise the then different school and club playing rules to such ever diverse increasing areas such as Matthew Simmons igniting Monsieur Cantona's touchline reaction at Selhurst Park during early 1995; fighting for freedom of contract in football with Ralph Banks and George Eastham and for cricket via the Packer Revolution and its London High Court landmark ruling in *Greig v. Insole* in 1978; or Jean-Mac Bosman's Belgian litigation at the European Court of Justice ending in 1995, and the consequent abolition of transfer fees within the European Union, where a player moves at the end of contract, from one member state to another; tax-free charitable status for sporting educational trusts, and above all else, the general failure of domestic and international sporting governing bodies to create realistic and fair and just penal policies on and off the field of play, to meet the Gilbert and Sullivan criteria: of “let the punishment fit the crime”. Here a greater use of “sin-bins” comes readily to mind.

G.O. Smith has always been regarded as one of the greatest centre-forwards in the game's history. During a time when only three international matches were played each season between England, Scotland, Wales and Northern Ireland before football circled the globe, he played 21 times for England, often as the Corinthian Football Club's amateur captain alongside, and in competition with, the leading professional players of his era. He bridged the 19th and 20th centuries with his last appearance for England against Germany at Tottenham Hotspur's ground in 1901. He also merited an accolade from one of cricket's most eminent chroniclers, Sir Pelham Warner, who wrote of a memorable fourth-innings century during 1896 in the Oxford-Cambridge Varsity match, in his *Lord's 1787-1945*, explained in detail at Chapter IV, Varsity Cricket in the Nineties.

“As long as there is a history of Oxford and Cambridge cricket the name of G.O. Smith will be emblazoned on its roll”.

That century was scored three months to the day after he had led the full England pro-am as centre-forward again: Scotland at Ibrox Park, Glasgow, alongside such talented professionals as John Goodall, then of Derby County and William Isiah (Billy) Bassett of the club for which he became a distinguished chairman before the Second World War, West Bromwich Albion. Fourteen years earlier in 1882, the Mark McCormack of his day, N. Lane "Pa" Jackson, had created the Corinthian Football Club out of the leading public school and university amateur players of the period before professionalism was authorised in 1885, and the Football League formed in 1888, in order to challenge the more scientifically structured Scottish international victories over England.

I had enjoyed a Second World War schoolboy correspondence with him after responding to a schoolmaster's challenge by cycling 20 miles to obtain his autograph when he was living in retirement on the South Coast for the joint headmastership of Arthur Dunn's foundation, Ludgrove School, then and to-day, one of the main Preparatory Schools to Eton College. There he had succeeded that earlier England international and Old Etonian F.A. Cup winning finalist centre-forward, Arthur Dunn, in whose memory the long-standing Public Schools 01, Boys Cup competition was inaugurated. After having suffered a badly treated broken leg following my own ill judged tackle during the Oxford University soccer trials, which prevented further playing activity, I was able, with; G.O. Smith's earlier encouragement, and in such moments as I could spare from commencing practice at the Ba in Lincoln's Inn before moving to the Temple, to frame the letters I had preserved against a background to his life and times.

This decision was stimulated and sustained by a post-Second World War phenomenon: the creation in 1948 of a joint Oxbridge soccer team, Pegasus, coached by their professional Tottenham Hotspur tutors under the magnetic management of Arthur Rowe, with Alf Ramsey, Billy Nicholson and Vic Buckingham, all inspiring in the Pegasus play their memorable message, "Make it simple, make it quick" for the "push and run" technique. It also sustained the G.O. Smith

footballing-cricket tradition of predominantly talented schoolmasters alongside other worthy citizens.

That pattern of duality, unintentionally, imperceptibly and almost unknowingly stirred original interest in a legal googly thrown up by various Court decisions which subjected footballers' benefits to income tax, whereas cricketers were tax-free. It began a never ending legal innings which is now identified as the combination of Sport and the Law.

Pegasus, with Test Match cricket captains Donald Carr (England) and Gerry Alexander (West Indies) (on the second occasion) drew two 100,000 crowds to Wembley Stadium for F.A. **AMATEUR** Cup Final victories against Bishop Auckland, 2-1, in 1951, and Harwich and Parkestone, 6-0, in 1953. Three years later in 1956 some of the Pegasus finalists appeared again at Wembley Stadium in an F.A. Amateur Cup Final against Bishop Auckland, on this occasion before an 80,000 crowd for the amalgamated Corinthian-Casuals. The merger of the two clubs, Corinthians, and Casuals, in 1939, had been too close to the outbreak of the Second World War to make any high profile public impact before Pegasus followed a path prepared by the Corinthians of the 1880's and 1920's for flying the genuine amateur flag in a professionally dominated game at the public level. Shortly after the second of those two Pegasus triumphs in 1953, yet another 100,000 crowd at Wembley Stadium witnessed the last minute dramatic F.A. Cup Final defeat of Bolton Wanderers by Blackpool, for whom the (Sir Stanley: Matthews' magic at outside-right mesmerised the Bolton Wanderers left-back, Ralph Banks. This in turn set in motion a sequence of events two years later in 1955 which became the first step on the road which has led ultimately to Jean-Marc Bosman's arrival at the European Court of Justice in 1995, and its resultant need to consider how to replace the transfer system with its associated funding now outlawed by the Court's judgment an issue considered in the final Chapter X: Towards a New Sporting Era.

During that second half of this 20th century football moved into public perception as the world's most popular team game, and away from its incorrect but usually mythologised

CORINTHIANS AND CRICKETERS

image as the opiate of the cloth-capped artisan classes. Cricket expanded its horizons – from its earliest expatriate old colonial British Empire and Dominion base to an International Cricket Council which now absorbs forty-one cricket playing nations, comprising nine full members, twenty-one associate members and eleven affiliate members. Each game is now part of the worldwide entertainment and leisure industry. Yet each game still retains its natural roots in the schools, clubs and village greens of the United Kingdom, from where the pioneers carried this great slice of British culture, with its concepts of fair play and law and order, to their multi-racial converts in the four corners of the globe; and during the euphoria experienced in England for the Euro '96 competition, soccer became a cult concept transcending areas of interest which earlier had dismissed it as an artisan indulgence.

Before television's global village in the 1970's and 1980's dissolved nature's traditional sports divisions into winters for football and summer for cricket, they had allowed the two dimensional talents of footballing-cricketers eighty years over an eighty years period to straddle both games, many of whom played for the amateur Corinthian Football Club, and in the years after the Second World War following the 1939 amalgamation with Casuals, for Corinthian-Casuals too. A round dozen Double Internationals who represented England at both national games emerged as widely based pyramid which covered F.A. Cup finalists, Test Match cricket captains, professional players of both games, as well as scores of double Oxbridge Blues.

C.B. Fry is best known for having illuminated this trend. He followed on an FA. Cup Final appearance, on leave from his schoolmaster duties and the Corinthians, for Southampton at the old Crystal Palace against Sheffield United on Saturday, by scoring runs for Dr. W.G. Grace's London Counties XI at Kennington Oval two days later on Monday in 1902. Additionally he was capped for England at both games. A more modern example was the umpire Chris Balderstone during 1975 in his playing days motoring up the M1 after helping Leicestershire clinch the county championship to aid Doncaster Rovers to a 1-1 draw against Brentford in the Football League; and the same post-war period recalls Denis Compton's Football League and F.A. Cup Final honours at outside-left with Arsenal during 1948 and 1950 after war-time soccer international appearances alongside his Middlesex and test Match centuries. One of his successors on

Arsenal's other wing at outside-right, Arthur Milton, became the last of a rare breed when selected to open England's batting from Gloucestershire against New Zealand, in 1958, alongside his soccer cap against Austria in 1952.

From a decade before G.O. Smith's the first two of this rare breed, however, symbolise, conveniently, the then social structure of both games and the now obsolete divisions into Gentlemen and Players, and also contrast the role of lawyers and doctors in sport, then and now. During the 1880's William Gunn not only opened the batting for Nottinghamshire and England (with Dr. W.G. Grace); he also played for Notts County, Nottingham Forest –once -and became a director of the County, and founder of the sports goods firm of Gunn and Moore. The uncle of Jazz trumpeter Humphrey Lyttelton, the Honourable Alfred Lyttelton, played for England and Old Etonians in the winning and losing F.A. Cup Finals, of the 1870's; with Middlesex and for England with Dr. W.G. Grace, all before he was called to Bar, took silk and died prematurely as a Cabinet Minister in Asquith's Liberal Government before 1914. Yet his services were never required for sport, comparable to the way in which Dr. W.G. Grace never became associated with any Sports Medicine development – something which is now epitomised by the National Sports Medicine Institute at St. Bartholomew's Hospital in London, and its developing satellite services throughout the country.

Cricket expanded its horizons – from its earliest expatriate old colonial British Empire and Dominion base to an International Cricket Council which now absorbs forty-one cricket playing nations

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Nevertheless, a year after Lyttelton's England -v- Scotland soccer appearance in 1877, the first-ever recorded prosecution for a soccer injury, a fatality, took place at Leicester Assizes in 1878; and a second occurred, coincidentally at the same location, in 1898. Even earlier, the first-ever traceable and reported case for personal injuries associated with a sporting activity had taken place in 1870 after a grandstand collapse at Cheltenham Races in 1866; and when one of Lyttelton's successors in an Old Etonian F.A. Cup winning team during 1882, J.P.F. Rawlinson, the goalkeeper, was briefed thirty years later as a O.C. in 1912 to plead the case for professional football and freedom of contract from restrictive practices, he took his eye off the ball, and was ruled offside by the trial judge, for having chosen the wrong legal remedies to tackle what was then an easily identifiable restrictive retain system on players' contracts. It did not surface again for another forty years, when I proposed in two articles a solution to a legal googly, whereby footballers' benefits or testimonials were subject to tax, but cricketers were not. This brought to my Lincoln's Inn Chambers the then Chairman of the Professional Footballers' and Trainers' Union now the Professional Footballers' Association: the PFA, James Guthrie, who had captained Portsmouth's 1939 F.A. Cup winning team against Major Frank Buckley's "monkey glands" Wolverhampton Wanderers side captained by Stanley Cullis.

Supported by Guthrie and his Union, the opportunity to redeem that restrictive contract position came when after that 1953 F.A. Cup defeat by Blackpool and Stanley Matthews, Ralph Banks was released by Bolton Wanderers. He joined Aldershot in 1954 for a transfer fee which Aldershot wished to recoup when Banks was invited to move on a year later in 1955 to another club Weymouth. Under the then contractual conditions existing for professional Football League players Aldershot had a retention control over Banks' services, even if he did not re-sign. When he refused so to do because of a proposed reduction in his wages, Aldershot sued for possession of his house owned by the Club.

Banks counterclaimed that the Aldershot plea was tainted with illegality, inherent in the restraint of trade legal penalty area. In due course, after a County Court Judge's suspended possession order but before a threatened appeal could be mounted, he was released to join Weymouth. It was the beginning of a road for freedom of contract for players which wound its way to the High Court – through George Eastham

for football eight years later in 1963, in cricket with the Packer revolution in 1978, and ultimately at the European Court of Justice with Jean-Marc Bosman, in 1995.

Concurrently with these issues, that taxation googly bounced into action while preparing this book. A House of Lords ruling in 1927 had pronounced the publicly subscribed cricketers benefits to be tax-free. A clutch of High Court cases during 1928 and 1941 excluded professional footballers from comparable relief, because of contractual conditions. The action proposed in the two articles was adopted by the then Professional Footballers' and Trainers' Union, activated with success against the revenue in 1957 at Peterborough United, which was then outside the Football League, and has lasted until this day to create tax-free arrangements for professional footballers as well as cricketers, by deleting the contractual conditions within the regulations.

At the same time, Pegasus' exclusive Oxbridge F.A. Amateur Cup triumphs with its schoolmaster, academic and general educational backgrounds, attracted profits which also appeared to qualify for tax-relief as an educational sporting charity. The revenue would not agree, and over quarter of a century had to pass before a House of Lord ruling endorsed this opinion, based upon an earlier High Court decision concerning a gift for a fives Court at Aldenham School.

Throughout all the time, while preparing the book over a seven year period, and after, and even within the G.O. Smith letters which inspired it, the current diseases of violence and drugs, V.D., in sport, did not enter any assessment. During 1966, however, the World Cup in England witnessed the brutal ejection of Brazil's Pele by violent foul play bordering on criminality by Bulgarian and Portuguese players identified in his book '*MY LIFE AND THE BEAUTIFUL GAME*'; without any effective retribution or compensation by either F.I.F.A. or the courts. Three or four years later, however, Lewes Assizes in 1969 and London's High Court in 1970 recorded a £4,000 damages award for a broken leg from a foul play soccer tackle in a minor Sussex County League game. In 1971 the crowd disaster at Glasgow's Ibrox gave rise to the safety of Sports Grounds Act 1975, and by 1977 an invitation to contribute a series of *Sunday Telegraph* articles on Sport and the Law which was followed up a year later with a 76-paged booklet under the same title. In due course, Butterworths law publishers expanded the title to 376 pages in 1988, and 536 in 1994.

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Concurrent with these individual productions were responses to invitations for co-authorship and Co-editing of *Medicine, Sport and the Law*, *Medico-Legal Hazards of Rugby Union*, and *Sponsorship of Sport, Arts and Leisure*, to reflect respectively the developing involvement of sporting injuries and commercial sponsorship within the sporting arena. The world had thus moved on since that Second World War schoolboy's correspondence with the retired headmaster concerned only with the personalities and play of the Victorian era, when none of the modern horrors of hooliganism, violence and drugs had entered the chronicles or consciousness of sporting lore. Nevertheless, it formed the genesis and inspiration for all of those legally based publications, which led ultimately to the formation of the for Sport and Law, in 1993, forty years after the British Association for Sport and Medicine.

Furthermore, the traditional sporting values of "fair play, self-discipline or sheer fan of sport", shared by the professional and amateur players alongside G.O. Smith at public levels have always remained as ideals and practised at school and club levels down to our own day.

After the Easter holidays, 1996, on the eve of Euro '96, the Headmaster of C.B. Fry's old school, Repton, G.E. Jones, preached a sermon on the Corinthians spirit. For the competition itself the organising body, UEFA, produced a Code of Ethics dealing with football, Lord [Denis] Howell, Britain's longest serving Minister with responsibility for sport, explained in a House of Lords debate on "Society's Moral and Spiritual Well-being", [5 July 1966] how nobody knew about it because it was not mentioned by the Press.

Accordingly, for the 2nd Butterworth's 1994 edition of *Sport and the Law*, the first two of 15 Appendices dealt designedly with concepts of the Corinthian Spirit in Sport and Sportsmanship from two modern Corinthians and Cricketers, Hubert Dogart, now another retired headmaster in the G.O. Smith and general Corinthian tradition, and Douglas Insole (the nominal Defendant in the *Greig v. Insole* Packer cricket litigation). Each had played for Pegasus and in due course for the amalgamated Corinthian-Casuals in the F.A. Amateur Cup Competition.

The world had thus moved on since that Second World War schoolboy's correspondence with the retired headmaster concerned only with the personalities and play of the Victorian era

One reviewer, however, while generously commending the legal qualities of the text, expressed a reservation about:

"the values of fair play, self-discipline and the sheer fan of sport. These are laudable values but, in an era when much of professional sport is money-dominated and played in a 'win at all costs' spirit, they are arguably naive and inappropriate in a modern treatise devoted to the legal environment of sport".

How far that impression is shared can never be gauged with certainty. If it means that:

'when much of professional sport is money-dominated and played in a 'win at all costs' spirit'

the

"the values of fair play, self-discipline and the sheer fan of sport"

are really "inappropriate", the question must arise, where is sport, what are its true values?

This book **may** help to find some answers, as well how and why "sports became an axis on which the world turns". It **will** certainly explain why *The Times* leading article commented on the Football Association's abdication of responsibility when it failed to penalise adequately the collective hooligan mis-conduct of its England representative players on the eve of the Euro '96 competition, before their opening game.

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“Nobody expects the gladiators who play it at the highest level to be statesmen or saints, or even mythical Corinthians of the legendary old school, for whom playing up and playing the game was more important than winning. That is not what they are paid millions for. But the latest bad behaviour by the supposedly grown men of the England squad confirms a depressing image of English football after its age of innocence.”

That “age of innocence” emerges from the pages which follow. Furthermore, while these pages were being prepared during the EURO ‘96 competition, it was more than appropriate that Colin Malam, the *Sunday Telegraph* Football Correspondent, whose late father, Albert Malam, had graced Huddersfield Town in the days of Roy Goodall, Ken Willingham and Alf Young, among others, in the years between the Two World Wars, should draw my attention to a crucial contribution by his colleague, Patrick Barclay, in the columns which allowed me the privilege to argue that the RULE OF LAW on the playing fields for SPORT is as crucial for the RULE OF LAW in SOCIETY, to preserve civilised behaviour and avoid anarchy. Barclay wrote after the Croatia v. Turkey game:

“No matter how many treats Euro ‘96 has in store, the Croatian substitute Goran Vlaovic’s late winner against Turkey will go down among the goals of the tournament. It ought also to be hailed as a vindication of strict refereeing. The liberal use of yellow and red cards may be hurting, but this was a spectacular piece of evidence that it’s working.

When Vlaovic burst over the halfway line, hurdling a rash challenge to earn a clear run at the Turkish goalkeeper, the only way he could have been stopped was for the pursuing Alpay Ozalan to stick out a leg, pull his shirt, or otherwise foul him. The thought must have crossed Alpay’s mind like every other in a Nottingham stadium dominated by Turks. But the defender desisted, knowing he would be sure – not just likely – to incur dismissal and suspension from the next match.

Cynics argued afterwards that Alpay should have sacrificed himself nonetheless, that Turkey would probably have survived the consequent free-kick and cling on for a point with 10 men. How tiresome. How old-fashioned. The game’s rulers should be congratulated on their

campaign against such debilitating negativity, even if it seems to be taking an age for some observers to recognise the link between the hard line established in the 1994 World Cup and a perceptible tilting of the balance towards entertainment.

The complaining classes tend to forget how morally tantalisated top-level football had become before FIFA, alarmed by the dull, fear-filled World Cup of 1990 and the distressing submission of a great player, Marco Van Hasten, to the violent tackle from behind, at last resolved to act. So the odd case of excessively zealous refereeing is a price worth paying for what we have now. The tactical foul is almost an anachronism; when Victor Onopko committed one on Italy’s Roberto Mussi at Anfield, the Scottish referee Les Mottram raised his yellow card less in anger than sorrow at the accomplished libero’s carelessness. The offence stood out like a sore thigh amid the ebb and flow of a match whose constant creative endeavour would have been a pleasant surprise in the early stages of any tournament. Again, I’d say, cause and effect.

Not that enlightened refereeing will ever produce good football. It simply gives encouragement to players and their coaches who respond in different ways, the more adventurous providing heroes for the neutral to adopt.”

Space alone, no doubt, prevented Patrick Barclay from referring to the classic abdication of refereeing and governing body control from the 1966 World Cup when the great Brazilian, Pele, as explained previously, was brutally and criminally assaulted out of the competition. The law of the land does not slop at the touchline or boundary. It did on that occasion, and demolishes those who claim the Corinthian ideal to be...

*“arguably naive and inappropriate in a modern treatise denoted to the legal environment of sport”. **BASL***

SPORT AND THE LAW

by

EDWARD GRAYSON

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Without them all, this attempt to fill a vital gap in the world of British sport could never have been contemplated or completed.

Author's Note

The law as stated here was that known at July 31st 1978. Between completion of the manuscript and final printing the Courts and Parliament could easily have extended the law by adjudication or statute too late for inclusion in the text. Against such contingencies there is no safeguard for legal writers.

By contrast, one overriding permanent feature requires special mention and attention. Whatever legal issue may be involved, the result must always depend upon the facts of any particular case. Whether the problem or issue is criminal or civil, contractual or wrongful conduct, the ultimate assessment must depend upon the facts.

That is why I have tried to summarise the relevant facts in certain groups of cases, such as those where claims for negligence or nuisance have been made, or prosecutions instituted for violent sporting conduct, in a manner which can try to make the different distinguishing applications of fact understandable to the non-specialist and non-professional reader.

It has not been possible this time to include the legal aspects of such complex individual sports as hunting, shooting, fishing and any marine activities. Nevertheless these pages will show how sport is involved with law, whether one likes it or not. For here as elsewhere, the lawyer does not, indeed cannot, initiate action. That begins only upon a client's proper instructions. Any future editions, however, will readily clarify the legal aspects of any area of interest where guidance is needed and for which suggestions will be welcomed in the context of what follows.

For the specialist or professional practitioner of the law and its borders, i.e. the barrister, solicitor, surveyor, accountant, architect and their fellow practitioners, much of what follows should be accessible, although not comprehensively and conveniently grouped or arranged as in the form presented here.

For the layman and general public much of what follows may be revelatory, but it is not intended as a substitute for legal advice. Every city, town, village, hamlet or district in Britain or, indeed, wherever Anglo-Saxon sporting and legal institutions are practised, must be affected by the categories covered by these pages. Each case depends essentially on its own facts. Rather it is intended as a fingerpost, a guideline and a warning to the public, players and administrators.

It is to alert those concerned with watching, playing and administering the sporting world in Great Britain and wherever its laws apply to the manner in which the law of the land transcends and supplements the laws of the game that this has been written.

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**Foreword By Rt. Hon. Sir Michael Havers,
Q.C., M.P., former Solicitor-General**

The issue of law and order which really means the effective enforcement of the rules by which any society lives is beginning to cause anxiety in the world of sport. It is not only hooliganism on the terraces but foul play on the field which seems to be on the increase. Even the use of prohibited drugs, which is another form of calculated cheating, too often makes the headlines on the sporting page.

Anyone who engages in competitive sport accepts that there must be rules and referees and umpires to enforce them. If the rule book is torn up or vicious fouls go unpunished then the sporting element is destroyed and the fun for both the player and the spectator is lost.

The laws of sport and the laws of the land stem from the same basic principle and in Britain, until recently, both were un-questioned. Unhappily, it is now almost commonplace (but, I believe, still not acceptable to most people) for mob violence to seek to overthrow authority to enforce their own will and even for Ministers of the Crown to insult Her Majesty's Judges or to join controversial picket lines.

If national respect for our system is eroded then, inevitably, there must be a spill-over into other areas and it is very appropriate that Edward Grayson should demonstrate in his excellent book how violence in sport may be in breach of both our civil and criminal law.

A complex society like ours creates complex laws and this book also will be of great value to those organising sporting events when they have to thread their way through the maze of rules and regulations.

The publication of this book is well-timed and comprehensively fills a gap which has, for too long, existed in this field.

Michael Havers.

**Foreword By Dick Jeeps, C.B.E.
Chairman of the Sports Council**

Sport and the law may seem a world apart to casual sportsmen and women playing their weekend game of tennis, squash or golf. But there are, in fact, many key areas of overlap which directly affect both participants and administrators.

As sport becomes more and more a part of everyday life for millions of people and the staging of major, international events takes governing bodies into the realms of big business and financial management, there must be a greater understanding among all concerned of the requirements and constraints of the law.

In an increasingly complex world, sport can no longer exist in a vacuum, sustained by its own rules and administrative regulations. Sport belongs to the real world and its rapid development in recent years has made ignorance of the law among decision makers unacceptable. The implications of the judgement in the World Series Cricket case made headlines throughout the world but the law can have a direct bearing on the way sport is run at all levels.

Governing bodies themselves, are now complex organisations employing many administrative and technical staff involved in large scale projects, sponsorships and international competitions. Football and other major spectator sports must contend with Government regulations on safety at sports grounds and local authority sports centres have legal responsibilities with regard to safety and negligence. And what of the legal implications for new sports like hang gliding and skateboarding?

From drug abuse, to violence on the field of play and the dilemma of amateur v professional, the law has immense and far reaching repercussions for sport as a whole. That is why I unreservedly welcome and support this book. Even allowing for the ever-changing and complex nature of the subject, the book serves as an excellent practical guide to interpretation and clarification of the law as it affects sport.

Edward Grayson and the Sunday Telegraph are to be congratulated on taking the lead in this important field.

Dick Jeeps.

Introduction

Theme - general survey - rule of law essential for sport

Any connection between skateboards, Kerry Packer and fouling footballers may appear remote. The following pages show how they are connected through the law.

When Kerry Packer's contracted cricketers, Tony Greig, Alan Knott and Mike Procter joined their employer to go to law, they merely followed the legal precedent created by George Eastham and Florence Nagle in their battles with the footballing and racing worlds. For, in the immediate post-Second World War years, Portsmouth's F.A. Cup winning captain of 1939, Jimmy Guthrie, wearing his hat as chairman of the then Players' Union, claimed not only that professional footballers were the last bonded men in Britain; he also sparked the train of thought which led to cutting the players' contractual ties, as set out fully in his book *Soccer Rebel*, and the judgement of Mr Justice (now Lord) Wilberforce in the Eastham case.

What neither he nor any of his supporters at the time anticipated was that, robust as his own playing days for Portsmouth sometimes demonstrated, the contractual freedom he inspired would be offset by a decline in playing discipline on the field which would breach not only the game's laws but also the civil and criminal law of the land.

Two High Court awards in the 1970s in England of respectively £5,400 and almost £4,000 damages for broken legs to the victims of foul tackles by amateur footballers confirmed what the criminal courts in England had established a century ago, in 1878; namely that a foul tackle could be a civil as well as a criminal assault.

They contradicted the idea that the great God sport transcends the country's laws: one of the great myths in which at least Britain's sports-crazed nation fondly believes in an increasing age of sporting leisure time. Nothing could be further from the truth as the following pages hope to show.

What has happened is that more and more people are becoming involved and concerned with the vast sporting complex of the nation which gave sport and its concept of fair play to the world. This creates an overriding entanglement with the country's legal system spanning the internal administration of any particular game or pastime.



Thus the problem of containing skateboards within the law that affects other mobile travellers becomes apparent; for skateboarding on the highway is as dangerous as playing football on the highway. So the national law has to step in to protect the public and a cluster of miscellaneous statutes* gives sufficient power to any police authority sufficiently impelled to prosecute after sufficiently severe injuries caused by offenders.

How the law operates to control sporting affairs has occupied much of my leisure time and thought since a broken leg during the Varsity soccer trials on Oxford's Iffley Road ground ended my hopes of indulging actively a life-long love of sport and games. Many years of contributing to legal and sporting journals on these twin themes culminated in a series under the title of *Sport and Law* for the *Sunday Telegraph* in the summer of 1977 when the Packer Affair was shaping for a legal battle.

Initially I considered the problems of field and crowd violence, yet with each succeeding week, the concept of a wider range emerged. First there had been the F.A.'s legal loss against the Inland Revenue over an important charitable trust in the High Court. In that same week its national team manager, Don Revie, terminated his contract, the Rugby Football League jostled in the High Court with one of its member clubs over registration of a player, and, earlier in that

* *Highways Act 1835; Town Police Clauses Act 1847; Offences against the Person Act 1861; Public Health Act 1925; and for London, the Metropolitan Police Act, 1839.*

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year, a Court of Appeal had reversed a judgement in *Co. Durham* which granted an injunction to a householder to prevent cricket balls from an adjoining club interfering with his family's enjoyment of their premises.

Tennis balls hit tempestuously into the crowd at Wimbledon and other tournaments raised questions left undecided by two High Court actions; one in 1951 which exonerated a London ice hockey stadium from injuries caused to a spectator by a puck ricocheting into the crowd, and another by a later 1962 Court of Appeal verdict refusing damages to a photographer lawfully present at an international horse show for an accident caused when struck by a competitor's horse.

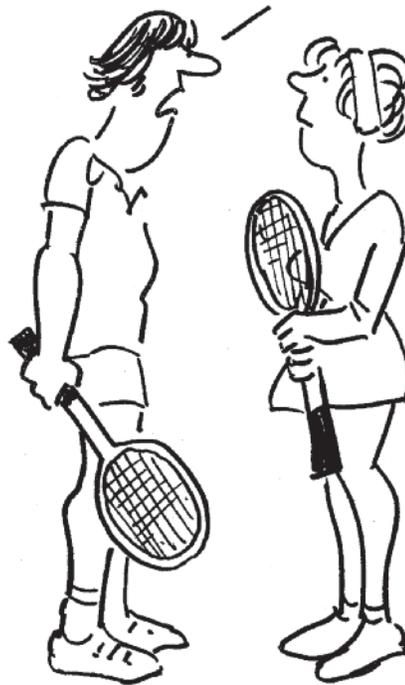
These and other illustrations during the year were in mind when preparing my series for *The Sunday Telegraph*, not least the centenary anniversary during this year of 1978 for the first ever High Court prosecution against a fouling footballer at the then Leicester Assizes. Indeed, a 1976 High Court decision confirmed what many had known professionally but few had suspected privately, viz. that wherever the public is admitted (irrespective of the privacy of the premises' ownership) will be *public places* for application of the law in Britain at least. What follows is a direct consequence of that.

One problem in attempting to set down the law relating to sport in Britain is how to mark its boundaries. Dictionary definitions of historic categories found in Strutt's *Sports and Pastimes of the People of England* hardly help in a Britain approaching the 1980s and the three sporting levels of commercial entertainment, club competition and individual fun often are worlds apart yet rarely separated in the public mind.

The amateur astronaut who aspires to achievement in outer space or simply success as a hang-glider is as much entitled to be recognised for sporting ambitions as an underwater snorkel diver groping for hidden treasure. Earth-based operators, however, have created the circumstances which have shaped the existing law in Britain today.

Its two acknowledged sources are statutory enactments and the decisions of the Judges. These have created and fashioned the principles of Anglo-Saxon Common Law and Equity taken round the world through the greater Commonwealth and the United States. Their principal contrasts are with the other great civilised and civilising codes of legal principles

DO YOU REALLY WANT TO
SEE YOUR NAME DRAGGED
THROUGH THE COURTS?



based on Roman law applicable to much of Scottish law, Europe and the South American continent (Scotland has a separate native basis for its legal system from England, Wales and Ireland, although many similarities in substance exist with a House of Lords judicial appeal structure common to both).

So, what has emerged here is a twin-based expedient which adds up almost to an experiment. To extract from statute and judge-made law those appropriate principles and provisions relevant to the ever-growing complex sporting scene needs an exercise in selectivity, both of sporting categories and legal illustrations. It can never be exhaustive nor is it intended to be.

What it sets out to do for the first time so far as I am aware in Britain is to collect within covers a picture of how the most popular participant and spectator sports are regulated by the law of the land.

Participation and spectatorship. I choose these twin aspects deliberately because they embrace the widest possible range and thus affect the widest area of public activity and interest. The pattern is designed to equate the largest numbers potentially concerned with the greatest interest. There is no sanctity in the arrangement. The structure appears the most appropriate for the extent of the possible range.

As more and more leisure time is created, more and more people become seduced by the joys of a sporting life; playing, watching or administering. Thus a need develops to know the rights and privileges which sport provides economically and socially, and the duties and obligations which also exist, not only under the laws of each particular game but, additionally, under *the laws of the land which are supreme*.

What has been persistently overlooked, especially by superficial sporting sociologists in a traditionally law-abiding Britain, is that its inherent respect for law and order exists from the cradle to the grave. This is because all the games that people play, in Britain at least, are geared to the laws applicable to their appropriate pastime. They are enforced by referees, umpires and administrators, and yet even more unrecognised is an awareness that they reflect at all levels the laws of the land, which, is, as I have stressed, supreme.

At a time when the forces of law and order are under fire from those who deride them outside and from insidious tendencies inside, I hope that this unfashionable but illuminating approach also may make people conscious of their needs as citizens to recognise, uphold and apply the rule of law. It is not emphasised enough that, on and off the field, society remains basically decent, even if it is subject to materialistic strains which tempt many who would never think of breaking any rules but just might consider bending them a little. How far the bend can become a break may appear from what follows.

Chapter 1 Spectator And The Law

A. Public Protection

This chapter concerns sports-loving public. It illustrates the manner in which the law develops through judicial precedents becoming codified by Acts of Parliament after practitioners and judges have formulated the principles later enshrined by statute.

Today in Britain the Safety of Sports Grounds Act has created headaches for clubs, power to the town hall bureaucrat, and, at present, an untested and untried controversial enactment. It developed from a combination of tragedy and journalistic crusades. In 1969 a hand-crush barrier broke at an F.A. Cup-tie between Watford and Manchester United at the Vicarage Road ground. The late J.L. Manning, himself son of a distinguished sporting journalist Lionel Manning, forecast greater disaster and that the public were unprotected. His forebodings were unheeded until the Ibrox disaster in 1971.

The Government of the day set up a Working Party. In due course came the 1975 Act, more than 50 years after an exhaustive inquiry in 1924 by a K.C. into the first Wembley Cup Final of 1923 had made detailed recommendations even more precise than those which followed a later K.C.'s report after the 1946 Bolton Wanderers-Stoke City tragedy.

The consequences of the Safety of Sports Grounds Act 1975 are that licensing provisions now exist which regulate ingress and egress from and comfort in sporting stadia, at present limited to premises which hold more than 10,000 people. Thus, if anyone is injured by defects in the premises there are statutory provisions, breaches of which give rise to prosecutions. Not all grounds are affected, hence it is necessary to look back at the earlier law.

In the 1860s a grandstand at Cheltenham races collapsed and in the 1870s the Race Committee were held liable for injuries suffered from the defects.¹ In the 1890s the Blackburn Rovers Football Club grandstand collapsed and the committee here, too, were held liable.² The legal consequences had developed as examples of the common law based upon precedents which in due course were codified in the Occupiers' Liability Act of 1957 (as now amended by the Defective Premises Act, 1972).

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Basically, with various refinements, this involves a duty owed by occupiers of premises, whether a committee, promoter or company, for the safety of visitors in all the circumstances who come on to their premises. Certain exclusion clauses used to limit any liability, but the occupiers' problem today is that they cannot contract out of statutory liability (see Unfair Contract Terms Act 1977).

The 1957 Occupiers' Liability Act codified a stream of judicial precedent which laid down the common law in England for occupiers of premises. Later judgements overflowed on to the equally contentious obligations of players themselves to spectators.

In a 1962 Court of Appeal decision of great importance arising out of the White City National Horse Show of the Year, Lord Justice (now Lord) Diplock said:

*"It is a remarkable thing that in a nation where during the present century so many have spent so much of their leisure in watching other people take part in sports and pastimes there is an almost complete dearth of judicial authority as to the duty of care owed by the actual participants to the spectator."*³

In one respect, however, such absence was perhaps identifiable, and sixteen years later is more clearly definable for three interlocking reasons :

- (1) The absence of any legal aid to assist litigants of slender means until 1950.
- (2) The general reluctance in more leisurely days before professional sport entered the big money leagues to bring the law courts into the playing fields.
- (3) A reluctance generally to recognise that sport cannot be above the national law.

Yet that stream of precedent prior to the 1957 Act was at least a direction finder for those who wished to stake a claim before Parliament intervened.

The Cheltenham race committee and Blackburn Rovers cases were examples of a wider principle illustrating the narrow sporting scene which arose because the paying customer got something he could not have been expected to bargain for; unsafe premises.

On the other hand, in a 1930s claim from the hey-day of Britain's supremacy in land-speed records by Sir Malcolm Campbell, Captain George Eyston and John Cobb, the Court of Appeal overruled a jury's verdict which had awarded damages to a spectator injured by a flying racing car. It hurtled off the famous Brooklands race track near Weybridge in Surrey, and hit a spectator who claimed compensation.⁴

The tests laid down here were basically those applied thirty years later in the White City case of 1962 (five years after Parliament's codification under the 1957 Act) and also before another case in 1951 when a six-year-old boy failed through his father's attempt on his behalf to claim damages for injury to his eye at Harringay arena. These are that certain normal risks for sporting spectatorship are recognisable and acceptable. Exceptional risks are not; and this applies equally to the activities of others, organisers and promoters for premises, as well as to the conduct of players within premises.

The legal principles applied were consistent and clear. In the course of formulating and reformulating them the judges cited other instances. At the same time they gave built-in guidance to the countless misconceptions which frequently confuse exoneration of promoters and occupiers of sporting contests premises with the liability of competitors or players who step out of line.

The examples which follow are all upon which judicial pronouncements were consistent and almost predictable because of the similarity in patterns of circumstances or facts. Nearly all were identified by the judges in the 1932 Brooklands and 1962 White City cases.

1870-1896

Collapsed grandstands as above.

Decision

Judgement for victims.

Principle

Failed to exercise proper care.

Polo player on pony ran through a hedge at Ranelagh injuring a spectator.⁶

Decision

Judgement for owners of premises.

Principle

No failure by *premises owners* to use reasonable care.

1932

Motor race track. Contact of wheels at 100 mph between two Talbot racing cars caused one apparently to leave the track and go over rails at side of track.⁷

Decision

Judgement for owners of premises and competitors.

Principle

No evidence that owners or competitors had failed to take reasonable care

1951

Ice hockey puck hit six-year-old rink-side spectator.⁸

Decision

Judgement for owners.

Principle

No lack of safety.

1962

Photographer at horse show injured by winning horse.⁹

Decision

Judgement for organisers and competitor.

Principle

No lack of safety.

1974

Spectators at 1971 Ibrox disaster.¹⁰

Decision

Judgement for representatives of deceased victims. Glasgow Rangers liable.

Principle

Failed to exercise sufficient care to spectators in egress and handrails prior to 1975 Act.

1976

Discus hurled from practice net on athletics ground ricocheted from guy-rope and hit spectator standing well behind the net.¹¹

Decision

Judgement for owners.

Principle

Duty fulfilled by keeping spectators out of the area of foreseeable deflection.

These judicial pronouncements emphasise the vital and crucial difference between consenting to the normal risks of sporting events, and where no such consent occurs or can be inferred.

In the Brooklands case Lord Justice Scrutton laid down in 1932 a test which is equally applicable today.

“The question of the liability of the Brooklands Company raises questions which are of general application to any cases where landowners admit for payment to their land persons who desire to witness sports or competitions carried on thereon, if these sports may involve risk of danger to persons witnessing them. A spectator at Lord’s or the Oval runs the risk of being hit by a cricket ball, or coming into collision with a fielder running hard to stop a ball from going over the boundary, and himself tumbling over the boundary in doing so. Spectators at football or hockey or polo matches run similar risks both from the ball and from collisions with players or polo ponies. Spectators who pay for admission to golf courses to witness important matches, though they keep beyond the boundaries required by the stewards, run the risk of the players slicing or pulling balls which may hit them with considerable velocity and damage. Those who pay for admission or seats in stands at a flying meeting run a risk of the performing aeroplanes falling on their heads. What is the liability of the person taking payment for permission to view these various sports?”¹²

Here the liability of the person taking payment (my own italics) was the sole issue on appeal. In a later passage Lord Justice Scrutton in effect answers his own question after extracting the principle involved from earlier precedents, as: “...a promise to use reasonable care to ensure safety. What is reasonable care would depend on the perils which might be reasonably expected to occur, and the extent to which the ordinary spectator might be expected to appreciate and take the risk of such perils. Illustrations are the risk of being hit by a cricket ball at Lord’s or the Oval, where any ordinary spectator in my view expects and takes the risk of a ball being hit with considerable force amongst the spectators and does not expect any structure which will prevent any ball from reaching the spectators. An even more common case is one which may be seen all over the country every Saturday afternoon, spectators admitted for payment to a field to witness a football or hockey match, and standing along a line near the touchline. No one expects the persons receiving payment to erect such structures or nets that no spectator can be hit by a ball kicked or hit* violently from the field of play towards the spectators. The field is safe to stand on, and the spectators take the risk of the game.”¹³

* i.e. in those far off 1930s the learned judge had in mind “violently” within the playing laws of the game, e.g. of the cannon ball shooting epitomised by Ted Drake or Eric Houghton or hitting of the Jim Smith/Arthur Wellard style; NOT today’s ill tempered, dissenting, lawless, physical mobile body contact violence.

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Lord Justice Greer in words which also are still applicable gave another approach to the same test with examples which are equally of value, referring to the spectators and the promoter and/or occupier of premises.

"...both parties must have intended that the person paying for his licence to see a cricket match, or a race, takes upon himself the risk of unlikely and improbable accidents, provided that there has not been on the part of the occupier a failure to take usual precautions. I do not think it can be said that the content of the contract made with every person who takes a ticket is different. I think it must be the same, and it must be judged by what any reasonable member of the public must have intended should be the term of the contract. The person concerned is sometimes described as 'the man in the street' or 'the man in the Clapham omnibus', or, as I recently read in an American author, 'the man who takes the magazines home, and in the evening pushes the lawn mower in his shirt sleeves'. Such a man taking a ticket to see a cricket match at Lord's would know quite well that he was not going to be encased in a steel frame which would protect him from the one in a million chance of a cricket ball dropping on his head. In the same way, the same man taking a ticket to see the Derby would know quite well that there would be no provision to prevent** a horse which got out of hand from getting amongst the spectators, and would quite understand that he was himself bearing the risk of any such possible but improbable accident happening to himself."¹⁴

Accordingly, when these general principles were applied to the facts of the Brooklands circumstances, Lord Justice Greer said:

"In the same way, such a man taking a ticket to see motor races would know quite well that no barrier would be provided which would be sufficient to protect him in the possible but highly improbable event of a car charging the barrier and getting through to the spectators. The risk of such an event would be so remote that he would quite understand that no provision would be made to prevent it happening, and that he would take the risk of any such accident."¹⁵

Here the risk and consent element is vividly and ideally illustrated by the facts of the Brooklands case, where the evidence was:

For the previous 23 years since racing had begun there in 1907;

1. No car had reached a spectator;
2. No spectators had been injured by a car leaving the track;
3. No car had broken through the railings;
4. No barrier would have prevented the car in question getting to the crowd.

Thus Lord Justice Slesser stated (in relation to 1930 speeds) "The danger of a car leaping into the air over the railings was not one which the defendants ought to have anticipated. ...The obligation [legally] is to guard against dangers which might reasonably be anticipated-not against all and every danger."¹⁶

This is how the law can still be understood under the 1957 Occupiers Liability Act. Where different considerations would apply on different facts is if either:

1. The promoter and/or occupier, or
2. The player or competitor, did something which would be outside a norm: outside the rules of a competition.

Consequently, an organiser willing spectators onto the track through lack of supervision, with drivers taking avoiding action and hurtling into a crowd: or motorists unlawfully cutting each other up with injurious crowd consequences: or any pre-match Wembley F.A. Cup Final model aircraft operator using defective equipment; all these are acts of neglect and even unlawfulness which are dangers which respectively the organiser or the driver can anticipate would be disastrous and for which actionable liability would lie, as explained in the White City case.

There the Judges exempted the organiser and the competitor who won his event. In their judgements they gave or heralded the following illustrations of the principle that consent exists only to a norm or recognised risk which generally follows complying with the laws or rules of the sport or game.

** *The very point considered and applied by the then Lord Chief Justice Lord Hewart three months earlier re Ranelagh and the Court of Appeal 30 years later in the White City case in 1962.*



1927
Golfer not in course of play swings club during demonstration and injures person standing by.¹⁷

Decision
Player liable
Principle
Not in course of play. Defence rejected of consent to negligent act not unfair or vicious in recreation. Negligent misconduct actionable in recreation as in any other activity.

1949
Ice hockey players stepped out of or broke off from hockey game to fight, injuring spectator with stick?¹⁸

Decision
Players liable.
Principle
No consent to breach of rules.

1951
Widow of deceased motor car race marshal sued organisers of race in Jersey and executors of the crashed car driver who also died.¹⁹

Decision
No liability.
Principle
Organisers had taken all reasonable precautions. No negligence by driver for brake failure.

Pre-1962
Motor car driver on changing Jaguar car gear at about 75 mph on French road in Monte Carlo Rally, skidded on "black" ice injuring crew members.²⁰

Decision
No liability.
Principle
No knowledge of icy state. Rotation of crew with identical conduct at high speed of driving by Plaintiff as competition requires, who also encouraged change into top gear. Consent inferred.



Pre-1962
Golfer in four-ball hit into rough, losing the ball. Said: "Out of it" and encouraged better players to proceed. Resumed after finding ball, causing injury as victim turned round at defendant's cry of "Fore".²¹

Decision
Player liable.
Principle
Conduct outside the game; un-necessary for it; showed complete disregard for safety of those he knew were in line of danger from being hit from an unskilled instead of lofted shot over their heads.

1969
Rugby League player claimed broken leg in collision with concrete wall following a tackle.²²

Decision
No liability of ground owner.
Principle
Evidence insufficient. Accident within rules of game and thereby misfortune; no claim against anyone; e.g. opponent.

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1971

Spectators injured at motor-cycle scramble meeting.²³

Decision

No liability.

Principle

Almost inexplicable accident. Competitors and organisers exonerated from negligence. Competitor entitled to strain to win if not foolhardy.

1922

Golf ball played from 13th tee parallel with Sandwich Road, Kent, much frequented by motor cars and taxi cabs, into which road golf ball was hit. Windscreen of passing taxi cab hit by ball and splintered glass, causing loss of driver's eye.²⁵

Decision

Golf Club and player jointly liable for £45 damages and costs.

Principle

Tee and hole were public nuisance from the conditions and in the place where they were situated. No precedent for different facts; but slicing of ball into roadway not only a public danger but was the probable consequence from time to time of people driving from the tee.

The clue appears in Lord Justice Sellers' White City judgement: "...provided the competition or game is being performed within the rules and the requirement of the sport by a person of adequate skill and competence the spectator does not expect his safety to be regarded by the participant."²⁴

Thus the spectator has no protection against a promoter, who regulates his affairs safely; or the player who performs within the rules of a particular game. On the other hand, the promoter or organiser who arranges negligently or the player who performs recklessly is on risk for a claim in negligence; and when the protection of the spectator *outside* sporting premises is concerned, the position here is covered by the law of nuisance as well as negligence. Nuisance involves acts which affect adversely the public at large, and negligence a duty of care to one's neighbours which is breached with consequential and for seeable damage.

B. Public Protection Outside Premises

Here the law is embedded exclusively in judicial precedents applied to the differing facts of differing games. In rural communities space problems create fewer difficulties than urban areas demonstrate. There the need to sustain a balance between public recreational and private proprietary interest has created regular judicial headaches in applying the common law of public and private nuisance. Understandably the cases fluctuate around the most popular ball games of cricket, football, golf and tennis. Golf first entered the law reports in the early 1920s, cricket in the 1950s, football in the 1960s and cricket again in the 1970s. Tennis emerges too, in the next sub-section a few pages on.

1950

Speedway track noise from track surrounding football ground (of which activities no complaints made) disturbed occupiers of local residential properties surrounding stadium.²⁶ N.B. See also Chapter 3C.6. (Page 51).

Decision

Injunction against speedway noise obtained.

Principle

Nuisance to private interests over-rode public interest in speedway competition. N.B. Contrast 27 years later in 1977 with cricketer below.

1951

Cricket ball hit from Cheetham C.C. Manchester to roadway on rare occasion.²⁷

Decision

No liability.

Principle

No negligence or nuisance. Remote risk of injury not reasonably to be anticipated.

1961

Footballs kicked out of field by young children from green used frequently for recreational purposes on which football played regularly on to adjoining roadway. Motor-cyclist thereby caused to swerve fatally.²⁸

Decision

Field owners liable for negligence.

Principle

Failure to take reasonable care in all circumstances from reasonably anticipated danger to road users.

1967

Golfer hooked drive off tee and ball hit other player 20 yards away?

Decision

No liability.

Principle

Risk of such an accident happening held to be either unforeseeable or so slight that it could be ignored.

1968

Pedestrian walking along narrow public lane injured on head by goif

Decision

Liability established for negligence.

Principle

Although no previous history of any accident, 6,000 shots a year played over fence should have created forecast of foreseeable happening.

1977

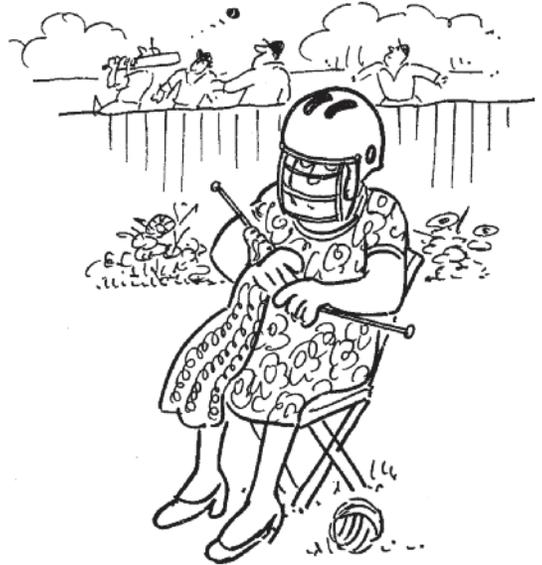
Cricket balls hit out of 70-year-old cricket club ground into adjoining gardens prevented occupants who had recently purchased house from using garden in summer.³¹

Decision

Injunction discharged on appeal by Club; but £400 agreed damages for nuisance.

Principle

On appeal Club guilty of nuisance and negligence; but Appeal Court's discretion discharged injunction because public loss of cricket prevails over hardship from individual non-use of garden (see also under Town and Country Planning for building development consent creating problem, Page 51).



C. Club's Protection Inside and Outside Club's Premises

The schedules and summaries of these above cases illustrate how the common law has been invoked to protect the neighbouring public against occupiers and promoters of sporting arenas. Two recent court decisions, however, one applying to the circumstances an Act of Parliament and the other applying to the circumstances the common law, demonstrate how the weapon of the law can be used against the public if required to be done to curtail the new and pernicious development of vandalism. One concerned the Shay Football Ground of Halifax Town; the other the Bristol City Club and its Ashton Gate Ground.

The Halifax Town Case: 1976³²

After an evening match between Halifax Town and Preston North End about 200 supporters of each club were prevented by police intervention from clashing on the speedway track between the stands and pitch. Among the arrests was one for using threatening words or behaviour in a public place whereby a breach of the peace was likely to be occasioned, contrary to Section 5 of the 1956 Public Order Act (as amended).

The point was taken and upheld at a lower court that part of the playing area or speedway track was sufficiently distinguishable to lose the character of a *public place*. The

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High Court rejected this and three Judges led by the Lord Chief Justice of England in the Divisional Court of the Queen's Bench Division, laid the law down thus: (per Lord Widgery, L.C.J.)

*"Where you have an establishment which is set up to provide for the public, such as the Halifax Town Football club or Wembley Stadium, one ought to approach it on the basis that it is a public place in its entirety."*³³

(per Mr. Justice Caulfield)

*"To support the decision of the Crown Court in this case means that those who are disposed to be hooligans in Halifax during a football match can delight themselves by insulting each other to the annoyance of the public provided they restrict their arguments and their insulting words to the speedway that surrounds the football pitch. I am, of course, in relating the facts in this way showing, or trying to show the absurdity of such a situation from the point of view of common sense, but I approach my decision on the interpretation of 'public places' as contained in the relevant Act... The words to which I pay particular attention are the words 'premises or place'. In any particular case, whether it be the Ascot acec course, Old Trafford Football Ground or Cricket Ground, or the Shay at Halifax, I think the proper approach is to identify the premises to which the public have access and then to decide whether or not there has been an offence committed in those premises. It is plain in my judgement from the facts here that the speedway track surrounding the football pitch was part of the premises."*³⁴

(per Mr. Justice Melford Stevenson)

*"The Shay ground including all its appurtenances together formed a public place for the purposes of this statute, and that the present respondent in running onto it in the circumstances I have described on the findings of the Court below did commit the offence with which he was originally charged before the Halifax justices."*³⁶

Surprising as this decision and these pronouncements may be to the non-lawyer, they were recognised within the legal profession at least three years earlier when anti-apartheid disrupters of a men's doubles match on No. 2 court at Wimbledon between Davidson and Bowrey v Pilic and Drysdale had to obtain a House of Lords ruling that the local Wimbledon justices had rightly dismissed the charge against them for lack of sufficient evidence that they had been guilty

of insulting behaviour (a High Court ruling having disagreed with the bench), and for the purposes of the House of Lords appeal it was conceded that No. 2 Court at Wimbledon was a public place.³⁶

The Bristol City Case: 1978

Yet as if to emphasise the uniqueness in the nation's legal life of its sporting institutions, the Bristol City Football Club company demonstrated the private control of these public places by seeking and obtaining an injunction in its local Bristol County Court restraining a 17 year-old supporter from entering or attempting to enter its Ashton Gate ground.³⁷

He had created a "substantial" disturbance and bother involving fighting during at least two City home games in 1977. After the first he was convicted in the magistrates court of a Public Order Act offence. The Club sent his father a letter stating that he was banned from the ground for the rest of the current season. He later defied the ban by attending and being ejected from another match. Hence the injunction order.

To balance this position, however, the law is also capable of assisting the public against premises' owners who fail to shepherd their flocks of crowds in an orderly manner outside grounds and other places of entertainment. During the growth of crowd hooliganism, threats have been made from time to time by neighbours to such sources of lack of crowd control.

No modern examples have been reported of such action having been implemented. Yet the existing precedents for more than a century in Britain and the Commonwealth are clear to the effect that there is at least an arguable case that such circumstances may create and be regarded as a sufficient legal nuisance for which the courts will interfere to grant an injunction restraining the activities which cause the complaint.

Facts and evidence always are the only practical yardstick by which a situation can be assessed and judged legally; but the following examples illustrate the crowd circumstances which have given rise to injunctions and damages: a regatta,³⁸ fairs,³⁹ fireworks,⁴⁰ circus,⁴¹ and noise from Earl's Court sideshows.⁴²

This weapon in the legal armoury has yet to be invoked in the struggle which is developing between a public suffering from uncontrolled crowd violence and promoters, clubs and

other organisers of sporting events who *in the past* have given an impression of failing to recognise their responsibilities beyond the narrow confines of their own backyards. Only planned co-ordination between them and local police can prevent this ultimate incursion into sporting affairs in the near future.

In the hope of avoiding such possible developments I have placed in the second Appendix here a draft Act of Parliament for discussion and, I hope, in due course, action.

Crowd violence and hooliganism are the fall-out or pay-off from a permissive society of which football is a mere victim of exploitation. As a basis for realistic and constructive thinking and action to try at least to contain and even perhaps eradicate what is a social as well as a sporting evil, I offer this practical solution. Its direct relevance to playing as well as spectating appears from the next chapter.

Chapter 2

Players And The Law

A. Responsibilities

The playing area creates the greatest scope for errors, ignorance and misunderstanding relating sport to law and law to sport. When I first pointed out the criminality of deliberate and reckless violence in a *Police Review*¹, article nearly ten years ago a respected and experienced sporting journalist was sufficiently moved to libel me to an extent which caused his national newspaper to publish an apology. The intervening years, however, have seen a sufficient increase in violence socially and internationally for two developments to occur during this publication and centenary year of 1978, with varying degrees of comment and attention.

In Wales, criminal prosecution proceedings were launched to conviction by the appropriate police authority against a rugby player subsequently found guilty of assault by punching during a rugby union amateur match²; and the champion of the home international countries tournament, France, through its national rugby union, successfully has prosecuted one of its international players in the French courts also for assault, although at the time of writing this is subject to appeal.

So far as England, Wales, Northern Ireland, and in this regard, Scotland, too, is concerned, there is no doubt where the law stands, and has stood for a century. From 1878 to 1978 the Britishand, in particular, English and Welsh Courts have sustained the same principles of reckless and deliberate violent action for players as they have applied to protecting spectators in deciding what are the consequences of rough and illegal play. Tackle fairly and there is no problem. Tackle foully but accidentally e.g. slipping in the mud or on canvas, and there would be no legal liability; but tackle foully or hit below the belt with deliberation and/or recklessness and there is no doubt what the consequences would and should be; a criminal prosecution and a claim for damages. If these thoughts are regarded as fanciful, consider the following examples:

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1878

Leicester Assizes

Prosecution for unlawful soccer tackle; manslaughter charge.³

Decision

Acquittal.

Principle

Deliberate and/or reckless tackle not proved to jury. Rider by jury to tighten up tackling rules.

1882

Berkshire Quarter Sessions

Bare-knuckle prize fight.⁴ Prosecution of spectators for aiding and abetting in such fight.

Decision

Conviction quashed for defective summing up.

Principle

Blow struck in prize fight clearly an assault, but playing with single sticks or wrestling does not involve an assault, nor does boxing with gloves in the ordinary way. Consent of illegal prize-fighters to interchange of blows no defence.

1898

Leicester Assizes

Prosecution for unlawful soccer tackle: murder.⁵

Decision

Guilty. Manslaughter.

Principle

Deliberate and/or reckless tackle proved outside laws of game proved.

1901

Central Criminal Court: Old Bailey

Test case prosecution against National Sporting Club for illegality or legality of Queensberry rules boxing competition.⁶

Decision

Acquittal.

Principle

Boxing within rules as *distinct from boxing until exhausted* lawful.

1969

Maidstone Assizes

(transferred from Chelmsford) Prosecution for murder after death from niggling blow in Essex amateur soccer match.⁷

Decision

Guilty. Manslaughter.

Principle

Deliberate and/or reckless blow outside laws of game proved.

1970

Lewes Assizes

Civil action for damages for assault for broken leg in Sussex soccer match.⁸

Decision

£5,400 damages and costs.

Principle

Deliberate and/or reckless foul play outside laws of game.

1977

Bodmin Crown Court

Civil action for damages for assault for broken leg in Cornwall soccer match.⁹

Decision

Almost £4,000 damages and costs.

Principle

Deliberate and/or reckless foul play outside laws of game.

1977

Lyons, France

Prosecution of rugby international for field assault.¹⁰

Decision

Conviction (subject to appeal).

Principle

Deliberate and/or reckless foul play on field equals criminal conduct.

1978

Newport Crown Court

Prosecution for broken jaw in rugby tackle.¹¹

Decision

Conviction (not to be appealed).

Principle

As above – deliberate and/or reckless foul play on field equals criminal conduct.

The French connection deliberately inserted here has no binding authority on the English Courts. Because the prosecution was supported by the French Rugby Union against one of its international players later selected to play against England in the International Rugby Tournament, I have inserted the citation deliberately and non-recklessly to remind all aggressive-minded players and their belligerently minded friends in the Press Box, as well as all other home sporting national bodies, of the potential and *ultimate* consequence of violent and *unlawful* conduct on sporting fields.

B. Advantages And Disadvantages

A. Contractual

If the law has been vigilant to punish offending players, it has also intervened to protect them contractually. George Eastham¹² and the Packer players¹³, all point the same way for having vindicated in English Courts of Law the right to work.

This long established principle was re-stated clearly by Lord Denning when Florence Nagle sued the Stewards of the Jockey Club for refusing to grant her a licence to train horses, although granting one to her head lad. The action was compromised, but during a procedural appeal in which Mrs. Nagle's right at least to argue her point was established, Lord Denning said:

*"The common law of England has for centuries recognised that a man has a right to work at his trade or profession without being unjustly excluded from it. He is not to be shut out from it at the whim of those having the governance of it."*¹⁴

Thus, the football authorities were unable to justify the retain and transfer system, which was held to be in restraint of trade. Likewise, the Test and County Cricket Board and International Cricket Council in the Packer Case were unable on the evidence placed before the Court to discharge the onus of proving that the ban it had sought to impose on Packer's contracted players was reasonable and thereby, justifiable.

On the other hand, during the week in July 1977 when interim High Court orders were obtained in the Packer Case, a mail order company obtained an injunction against a former employee breaching confidences by restraining him from working for a competitive group for a year, i.e. a justified restriction. Perhaps the best assessment of the modern *professional* player's contractual position appeared in *The Economist* after the final Packer judgement, thus:

*"The sports which are going bust (e.g. most forms of football outside America, cricket before Packer) are always those where paternalist or punitive central authorities think they can maintain an aged monopoly by persuading players to sign away, in some form of perpetual self-denying ordinance, sportsmen's inalienable rights to make money how they and their customers please. Many of the actions taken to enforce such restrictive contracts in many sports would be ruled un-reasonable if the sporting sheep who accept them ever challenged them in the courts."*¹⁵

For general contractual affairs, sporting situations stand no differently from those affecting members of the public. Football managers sacked summarily inevitably seek solicitors' and counsels' opinions. In 1977 Queen's Park Rangers unsuccessfully sued Sheffield Wednesday in the High Court for the alleged unfitness of a transferred player¹⁶; and Fulham in 1978 announced that it had filed a suit in Los Angeles Supreme Court claiming £10,000 as payable and due from its former contracted player, George Best.

The club alleged liability under a Note signed by him establishing the indebtedness if he left the team before the expiry of his contract on June 30, 1981, on the basis he had terminated his contract in December, 1977. If the claim is pursued the ultimate result would depend upon general contract law and the applicable evidence, both in writing and oral.¹⁷

B. Infants Contracts

Until 1969 English law regarded anyone under the age of 21 as an infant, despite eligibility for military service from 1918. Since sporting professionalism can begin at varying ages the most *general* yardstick is to recognise that in 1969 the age of infancy was reduced to 18. From 18 everyone in England and Wales is regarded legally as adult. This is important because:

- (a) anyone contracting with an infant, now under 18, and
- (b) any infant entering into contracts,

can be bound by them only if made for their benefit. What is benefit must be a question of fact. The best sporting illustration was provided in the Law Courts as in so many other places by the colourful Irish heavyweight, Jack Doyle.

In 1933 Doyle was disqualified in the second of a 15-round contest for the heavyweight championship of Great Britain against the Welshman, Jack Peterson. As an under 21-year-old infant at that time his purse contract was £3,000 win, draw or lose, subject to the rules of the British Boxing Board of Control. Under these rules, a boxer who was disqualified forfeited his "purse" but Doyle claimed the money on the basis that the contract, being with an infant was not for his benefit and was not enforceable.

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On appeal the Court held that the contract and the rules of the Board to which it was subject were for his benefit. As the then Master of the Rolls said with words which emphasise the thread running throughout all these cases in this book on linking British sport with British law:

*"It is as much in the interests of the plaintiff himself as of any other contestant that there should be rules for clean fighting, and that he should be protected against his adversary's misconduct in hitting below the belt or doing anything of the sort."*¹⁸

C. Financial Benefits

Apart from the specific financial terms in any contract the very financial structure of professional sportsmen's income sources, from employers and the public, has placed them in a unique tax position from their funds entitled "benefits". The parson's Easter offering has long been subject to income tax by a House of Lords decision.¹⁹ Another ruling from that source decided in 1927 that county cricketers' benefits from the *public* subscriptions should be tax-free²⁰; a later High Court ruling on a league cricketer whose benefit was provided for in his contract decided that it was taxable.²¹

When professional footballers outside the Football League and the then Players' Union under the leadership of its then chairman Jimmy Guthrie, recognised and understood these principles and their distinctions, they paved the way for the present tax free benefits and testimonials arranged outside the players' contracts of service, which have somersaulted the status rating of the professional footballer from his pre-war £ per week in season and £ per week summer wages level as one of the lower orders, to today's super pop star status in Napoleon's nation of shopkeepers and Bernard Shaw's nation of snobs.

D. Breaches of Contract

The considerable contractual, financial and social benefits achieved by sports players, amateur or professional, do not mean that counterbalancing responsibilities also can be ignored. The player who seduces his team manager's wife or daughter may perhaps enjoy his masculinity while forgetting the implied term in his contract – of acting in a manner not disruptive of the basic contractual position. Similarly, when Jack Doyle fouled Jack Peterson he invoked a British Boxing Board of Control regulation which penalised foul fighting.



Finally, not all the breaches stem from the employee. To protect victimised employees, Parliament has created Industrial Tribunals. During the year ended July 1977 this jurisdiction dealt with 17,000 cases of alleged unfair dismissal.

Sacked professional football managers have been among the claimants and the most publicised sporting applicant has been the former Northants and Indian Test captain, Bishen Bedi. His claim was dismissed and the reasons which were to follow, but had not been pronounced at the time of writing, must rank second only to Mr. Justice Slade's Packer judgement for analysis of county cricket's employment conditions.

Furthermore, another area less publicised but no less significant than Industrial Tribunals, is that concerned with, *inter alia*, industrial injury benefits, National Insurance Commissioners.

E. Compensation

National Insurance (Industrial Injuries) legislation has existed since the 1946 Act implemented the 1942 war-time Beveridge Report, replacing ultimately the late nineteenth century Worker's Compensation enactments. National Insurance Commissioners adjudicate under a complex network of appellate procedures, but, in the industrial injury areas, they cover a pattern of precedents illustrating the fine legal distinctions essential for awarding state benefits to victims of industrial accidents.

Initial claims are dealt with by insurance officers working out of local offices of The Department of Health and Social Security. Their decisions against a claimant are appealable to local National Insurance Tribunals covering the country and, thereafter, to the National Insurance Commissioners sitting in London, Edinburgh, Cardiff and Belfast.

Their decisions (which, for England, Scotland and Wales, are reported at the discretion of the Chief Commissioner) include cases where claims have been allowed and disallowed, and the Clerk to each local tribunal has a set of these reports, which may be consulted by claimants and their representatives. (The style of citation appears below).

The legal test for entitlement to benefit is that an employed earner should have suffered "personal injury ...by accident arising out of and in the course of his ...employed earner's employment". Sport arises thus :

National Insurance

(Industrial injury) Claims Circumstances

ALLOWED

Football

R (1) 13/51

Male nurse at mental hospital performing duty as employee in charge of patients able to play football. Injured during course of duty and, therefore, employment.

Cricket

R (1) 3/57

Male nurse at mental hospital injured while duty working as member of cricket team for pleasure of patients and assisting recoveries. Employed as such.

Volleyball

R (1) 68/51

London Fire Brigade fireman injured at volleyball during compulsory fitness training period; refusing to play creating liability for disciplinary action. Held employed to play.

R (1) 13/66

Fireman employed at Royal Radar Establishment injured when playing volleyball during recreational period including long period of waiting, and for which required to be and remain physically fit. Held part of employment.

DISALLOWED

Football

R (1) 57/51

Policeman injured in representative match played during duty hours. No compulsion to play. Not part of employment.

R (1) 2/69

Laboratory technician injured during game in employed hospital grounds in lunch hour. Temporary cessation of employment; thereby precluded claim.

R (1) 5/75

Police officer held by Court of Appeal not employed when injured in representative match.

The legal refinements and distinctions which create these different decisions belong to a legal text book and journal rather than these more generally intended guidelines here. They indicate an area where the public are likely to become more involved with a legal claim than not. Within this context the Italian doctors' death certificate issued for the Italian professional boxing champion Angelo Jacopucci after his knock-out by Britain's Alan Minter becomes recognisable with its tragic description : "an accident at work".

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A schoolteacher out of class hours injured during school activities playing games would be eligible for an award; a member of a works' team for fun probably not.

Finally, yet a third tribunal is available for the victims of sporting violence: The Criminal Injuries Compensation Board has administered a compensation scheme for victims of violent crime since 1964. The scope is complex, but its jurisdiction certainly can cover both field and crowd violence from sporting activities in appropriate circumstances; and even the traditional legal age limitations for young offenders and victims can be modified too. Regional Centres exist and enquiries are best made first to:
Criminal Injuries Compensation Board,
10-12 Russell Square, London
WC1B 5EN. Tel :01-636 2812/636 4201.²²

With the entry of sporting issues into the jurisdiction of Industrial Tribunals and the sphere of the National Insurance Commissioners the extent to which sport is identified with the industrial as well as commercial, social and legal life of the nation is confirmed for any who doubt the extent of its modern ramifications; and that is a convenient point at which to look at the most complex and sophisticated manner in which the law and sport converge: administration.

Chapter 3

Sporting Administration and The Law

General and Introductory

The final stage in any outline such as this for alerting the public to the law's involvement in sport is what happens if people get together in a group. For this has important consequences legally.

Thus, one-parent families, however caused, create different legal situations from those concerning two. Two or more persons committing crime from an agreed arrangement may be conspirators; and three or more persons causing violence can also be causing a riot.

Yet, what happens if like-minded men and women want to organise their affairs peaceably for fun and profit? Husbands and wives can still be treated legally as well as socially as partners. Old boys from school form clubs, and those who enjoy each other's company for pursuing a cause or course involving potential commercial risks can form a legal limited liability company.

So, from the advent in mid-nineteenth century Britain of modern organised games and sport, the pioneer amateur administrators established clubs whose status is regarded by the law as unincorporated associations; with legal responsibilities spread *personally* among members or a representative committee or trustees.

The 1870 Cheltenham Races and 1896 Blackburn Rovers collapsed grandstand cases^{1,2} exposed the vulnerability of such personal situations and gradually, the awareness of corporate liability through limited liability companies understandably developed.

For a layman as distinct from a lawyer, the idea of an im-personal legal identity which is the essence of company law and thereby corporate liability may be as elusive to grasp as the concept for some that sport is as much an art form as physical recreation. Nevertheless, in 1978, 91 out of 92 Football League Clubs are limited liability companies; the 92nd, the current champions Nottingham Forest, have remained a Club, administered by a *Committee* as distinct from a Board of Directors.

THIS IS HARDLY THE WAY TO HELP RUGBY QUALIFY FOR CHARITABLE STATUS



Whatever the organising set-up, whatever the level, whether Wimbledon or Wembley or Lord's to the local village club, legal issues are entwined with every structure. The spectators are essential to the players, not only at public level. Ask any schoolboy performing before his chums, masters, parents or relations; the players are vital for the spectators, organisers and administrators.

What is forgotten is that the unit served by administrators be it club, company or national institution, is a collection of people with thoughts, feelings and human problems. It is right to treat the club as greater than the individual but without those individuals – whether chairman, president or tea-boy, there would be no unit; no club or institution.

So complex is legislation at times that most clubs at some period need recourse to legal advice or even the courts to solve an issue. The larger clubs or companies have access to professional services; lawyers, accountants, surveyors, even surgeons and doctors. The smaller units must frequently rely on having on their boards or committees, one or more members of those key professions ready to act in an honorary capacity or able to recommend direct access to full time professional services.

The sporting world has traditionally been well served at national levels from the legal profession, in a manner which undoubtedly reflects a pattern throughout the administration of all games. Cricket's first knight, Sir Francis Lacey, was a non-practising barrister-secretary of M.C.C. at a crucial period of cricket's post First World War expansion. The F.A. Council and Football League Management Committee have frequently been chaired by practising solicitors (whose office work away from courts allows them more time for administrative appointments than the numerically fewer advocate-barristers).

One of them Sir Charles Clegg coined the memorable phrase, "No-one ever got lost on a straight road", and his precept has been followed by a manner which has caused other countries to look to Lancaster Gate for guidance off as well as on the field, and especially from British referees.

The British Boxing Board of control has frequently been squired by successive generations of practising King's and Queen's Counsel who have seen that Queensberry Rules are regularly maintained; the Lawn Tennis Association has been presided over in recent years by Sir Carl Aarvold, a former rugby international and former presiding judge at the Old Bailey, and a Chancery Queen's Counsel, Allan Heyman, is the current president of the International Lawn Tennis Federation.

POSSESSION IS NINE POINTS OF THE LAW...



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Another Queen's Counsel, Brian Appleby, was chairman of the Nottingham Forest Football Club Committee from 1975 to 1978 and the present chairman of the Henley Royal Regatta's Management Committee, Peter Coni is a practising barrister, too.

Repeat all this at lesser levels and the acceptability and desirability of the lawyer at the heart of sporting organisations becomes not only apparent but almost inevitable and self-evident. In the lower echelons of the F.A.'s 37,000 member clubs, and 2,200 which comprise the Club Cricket Conference, or all those within the ambit of the Sports Council, this section on *Sporting Administration and the Law* may at least create an awareness of the problems which come within any sporting unit.

It is impossible here to deal with the vast number of legal problems which confront a club, but this chapter is designed at least to give some help and guidance. In no way is it presented as a substitute for skilled professional advice. If the need to consult a barrister or solicitor arises, it is safest to spend what is required at the outset on the principle of better safe now than sorry later.

There is one additional caveat. Each organisation creates its own rules or regulations for convenient and beneficial administration. For convenience I have summarised this section under the following categories which in a way arrange themselves, under appropriate sub-divisions.

A. The Committee or Board Room

A. Status: Unincorporated or Incorporated Clubs

The structure of sporting organisations in Britain is confined primarily to unincorporated members' clubs, such as Nottingham Forest in soccer, or to limited liability companies incorporated under the Companies' Acts. These have Memoranda and Articles of Association, which in soccer for example, must conform with the F.A.'s Rules; and there are other identifiable legal club categories, e.g. proprietary clubs controlled to a greater or lesser degree by a proprietor.

B. Formation

A members' club through its domestic rules and a limited liability company through its Articles of Association each creates a contract with each individual member; the club through subscriptions, the company club through share-holdings. Only the shareholders are legally members of a company.

If a Golf Club company for instance issues shares to employees then a legally recognised membership situation can arise; and, in certain club/company formations, the organisation's assets can be vested in a holding company for convenience purposes for which the issued share capital is held by only a few or even non-members in the traditional club membership sense.

On the other hand, each members' club is, in effect, left to draw up and try to operate its domestic rules subject only to the courts and general law of the land, and also compliance with any special requirements of any particular sport's governing body (e.g. football *company* Memoranda and Articles have to comply with F.A. requirements: football *club* Rules do not). Without adequately drawn rules and the spirit to operate them effectively and efficiently club administration would never function.

C. Operation

For any company club the Memorandum and Articles of Association respectively define the objects and general administrative means of achieving them; the Rules must contain each purpose and function of a members' club.

Whereas a company club will be administered by its appointed and elected directors delegating the day-to-day running of its affairs to either themselves or salaried and voluntary staff, the members' club will operate similarly, through its committee, and for the purpose of holding property, and in particular real estate, through trustees.

Company Articles of Association or the statutory Table A under the Companies Acts will usually regulate procedure for amendment and alteration. So, too, *should* the Rules of members' clubs. Reported cases show that not all make such provision.

In one example where no express provision for any amendment to or alteration of the rules existed, a member successfully persuaded the court that he was immune from paying an increased subscription which was resolved upon in general meeting.³

On the other hand, when a takeover bid was planned for the Tottenham Hotspur Football and Athletic Company Limited in the mid-1930s, the club construed its Articles of Association for successful litigation in the High Court to block its company share transfer.⁴

Conversely, after the Second World War, when a minority shareholding in the Bristol Rovers Football Club Limited became dissatisfied with the affairs of the company, it instituted one of the first recorded inquisitions into any company's affairs under the then new provisions of Section 164 of the Companies Act, 1948⁵; and as more and more shareholder supporters have become dissatisfied with directors' administration of club affairs, so have their legal tussles with their boards taken on the image of a mini Power Game. Indeed, the other Bristol club, City, was the cause of a 16-day High Court action in July, 1978. Its former chairman failed to upset a resolution to increase the Club's increased share capital; but one of his supporters was awarded damages for improper voting use of 500 shares at a rate of £2.50 per share?

D. Termination; Expulsion and Dissolution

If the desirability for careful wording of these requirements is self-evident, their absence can be devastating. An imprecise expulsion notice has ended in libel damages (see Page 54) and the war time non-activity of club members ended with the club's assets ultimately going to the Crown.

To summarise: Company Memoranda and Articles of Association are professionally prepared documents which regulate the internal affairs of companies under the statutory requirements of the Companies Acts. Members clubs do not need registration except under special Acts of Parliament such as liquor and gaming statutes but must comply with the Rules of the national body responsible for their sport in this country. They require no less professional attention; the least that is required is some legal assistance.

B. General Duties And Responsibilities

1. Secretary

- (i) The running of any company or members' club depends basically upon the integrity, efficiency and good sense of the office and staff. In any event, whether emanating from the board of directors of any company or the committee and/or trustees of the members' club, the main administrative burdens will revolve around the secretary.
- (ii) At common law the position of the company or secretary was re-stated by Lord Denning, in a Court of Appeal judgement. "A company secretary is ...an officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Acts but also by the role which he plays in the day-to-day business of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day-to-day running of the company's business".⁷
- (iii) This last point of entering into contracts raises the crucial question concerning legal relations created between members' clubs or companies and third parties: who is liable, how and when?

The complete pattern has developed during centuries of judgements of the courts and in Acts of Parliament, and complex issues of fact and by law frequently arise for the present purpose and merely as a general guide to assist in formulating the right lines of thought, if live problems are likely to arise, the following basic points should be borne in mind:

- (a) Company or club officers and/or trustees have only such authority to contract respectively on behalf of the company or club members as the company's Articles of Association or the Club Rules provide expressly or by necessary implication.

Hence, in the case from which Lord Denning's words are cited, a company secretary on company notepaper hired cars and gave references which he used for himself and never for company purposes. After the secretary had been prosecuted, convicted and imprisoned the company was sued successfully by the hiring firm; because it was entitled to treat the company secretary as having what the law describes as "ostensible authority to enter into contracts for the hire of these cars, and therefore, the company must pay for them".⁸

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The same result would have occurred if the secretary had served a members' club; although a rule of law recognised throughout this century is that members generally will not be held liable *personally* for contracts made on behalf of an unincorporated club. The exception is if members agree to be personally liable and give authority to a club committee on that basis.

- (b) Personal liability will arise only by anyone purporting to act on behalf of a Club or company who exceeds his or her authority by incurring unauthorised obligations not permitted expressly or implied by the Articles of Association or Rules, so long as he makes it clear that he is dealing for the Club.

Thus, extravagant or unnecessary orders for stationery, kit or travel arrangements or any other similar expenditure with which a company or club could be concerned could create circumstances for this principle to operate; if any third party contractor would be sufficiently unwise to contract with a representative as an agent who would obviously be unauthorised by the principal club or company.

Common sense and fair play go hand in hand with common law and equity in deciding these as well as many other complex legal relationships. Here as in every other area for potential dissension or dispute, knowledge of the full relevant facts is vital for seeking proper guidance and advice.

- (iv) Finally, if recourse is taken to the courts, then it is important to note that, whereas a company is a legal entity and must sue and be sued in its registered name, a club has no legal identity of its own and usually cannot sue or be sued in its name.

2. Trustees and Committee

Trustees must litigate in respect of club property vested in them as representing the beneficial interests of the members concerned, and, in any other circumstances, committee members or officers as well as trustees can be selected on a representative basis as parties to any suit.

Before the present Blackburn Rovers organisation was registered as a company, the then committee of the club in its zenith at the end of the last century had employed an incompetent contractor to repair the stand which collapsed

causing injury to spectators. The local Blackburn County Court Judge awarded damages, but not against the club.⁹

The action was originally brought against the members of the committee as representing the whole club, but the trial Judge, after amending the claim, held that the members of the committee were personally liable, and gave judgement against them.

This verdict was upheld on appeal, when it was confirmed that "the committee were the persons primarily liable. They had the power and duty of providing a stand for the accommodation of the visitors to the football ground. They employed an incompetent man to repair the stand, and an accident resulted. The persons to blame were the committee."¹⁰

Whether the committee members were able to obtain any indemnity from the club members at the time would have depended on the club rules, or any subsequent resolution internally among club members. Nevertheless, if the facts were repeated today and the same circumstances arose the same result would occur notwithstanding certain subtle changes for proving liability (i.e. the Occupiers' Liability Act 1957, as amended by the Defective Premises Act, 1972).

C. The Ground, Spectator and Public

The law affecting grounds is as manifold as the activities which affect the ground itself.

1. Ownership of Title

All evidence of a company's or club's right to play on its ground, whether a freehold, leasehold, peppercorn rental title or merely a licence, must be recorded in documents. In the beginning the services of a solicitor are essential and they would be no less necessary if points of dispute were to arise. Even freehold title today does not provide absolute right for owners to treat it indiscriminately. Sports clubs have no privileges when buying, selling or owning property.

2. Easements and Restrictive Covenants

Easements such as rights of way or rights to light or other equivalent legal privileges and restrictive covenants (which are in effect a form of negative easement) can be troublesome and frequently expensive irritants if not understood with clarity and handled expertly.

Restrictive covenants involving limitations and restrictions on land and building development are found more frequently in urban as distinct from rural areas. Parliament has laid down a procedural and substantive code for applying to various jurisdictions, and for this purpose the services of an architect and surveyor familiar with the local requirements might prove invaluable.

3. Landlord and Tenant and Licences

Parliament has imposed on ancient common law and equitable provisions complex legislation and formulae for which expert professional advice may be needed at some stage. The Football Association in the early 1950s after a number of court decisions clarified the position whereby agreements for occupiers and the hirers of property satisfied the requirements of a lease to invoke the protection of the Rent Acts, whilst others failed to do so and thereby qualified for the lesser category of a licence with loss of Rent Act protection.

Company and Club premises can produce special headaches, and for business, by way of contrast with domestic accommodation, recent legislation has produced considerable commercial and professional legal problems. When Newcastle United applied for consideration as a potential World Cup venue in 1966 it found itself involved with the local corporation over the terms of renewal of the lease on which St. James Park has been always held. A lawn tennis club registered as a society under the Industrial and Provident Societies Act, 1893, has been able to claim status as a business for protection under the Landlord and Tenant Act, 1954.¹¹

4. Rating

Sports administrators should take special care of their rating assessments and be ready to obtain the services of an experienced local valuer. Arsenal Football Club Ltd. found itself in the House of Lords on this issue, with the wrong result!¹² Any form of non-profit making club, whether proprietary or not, may, however, qualify for relief from rates discretionary or mandatory, under the General Rate Act, 1967.

5. Town and Country Planning

Limitations can be imposed on property user and development. Here, too, complex legislation exists, and local advice is essential.

At Littlehampton in 1964 the local football club applied to the appropriate planning authority, the West Sussex County

Council, for permission to build a new dressing room and gymnasium accommodation in a corner of a sports field which it shared with the local archery, cricket, croquet, hockey and tennis clubs under a gift from a former Duke of Norfolk.

The trustees who administer the ground found opposition from a local solicitor whose house and garden adjoined that part of the sports field on which the football club's new accommodation was to be erected.

At that point the application could have been abandoned; but the trustees pursued it to a public hearing adjudicated over by an Inspector appointed by the then Government Minister concerned with planning applications and appeals. Evidence was called and the result was initially a draw.¹³

The objector established his complaint but the Inspector's report dismissing the appeal made it clear that a fresh application % for a different site of the ground less objectionable to neighbours would be favourably received.

In due course a fresh application was made successfully V and today a magnificent two storied structure built by local private enterprise on a part of the ground authorised by the trustee-owners of it and also the local planning authority justified the original application which, in effect, succeeded on the replay.

It cannot be emphasized too strongly, that the applicant must take the greatest care in obtaining the correct expert evidence. The exact nature of the issue should determine the choice of expert. Thus for example if access from the proposed development to the highway is involved an expert in highway engineering is required. The choice of an expert witness is often more important than the choice of the person to present a case at many tribunal inquiries.

Finally, the converse to Littlehampton's example appears from the Linz, Co. Durham cricket ball ruling in 1977. (See Page 27) The problems caused by hits into a resident's garden arose primarily because planning consent had been granted for building development.¹⁴ Clubs should, therefore, be equally alerted to opposing as well as initiating applications.

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6. Comfort and Convenience of Neighbours

- (a) Two cases illustrate the care with which a club ground must be handled. During the post Second World war boom a company which leased a sports ground surrounded by residential properties from the local authority operated both speedway and professional football in Hastings. Adjoining occupiers objected not to the football but to the noise from the speedway and obtained an injunction.¹⁵ Likewise, in the summer of 1971, Romford found itself at the receiving end of a similar result for similar reasons.¹⁶
- (b) Basically these decisions of the court are consistent with the common law of nuisance. This has reflected the courts' readiness to tolerate ball games in a sporting land: since, shortly after the First World War when a taxi driver, hit by a golf ball sliced from a tee onto the highway, recovered damages for nuisance in 1922¹⁷ (see Page) until fifty-five years later in 1977 when a Court of Appeal majority held that the public interest in saving the local ground for cricket should prevail over the hardship to individual householders prevented from use of their adjoining garden?

Here, as for the protection of spectators inside and even outside club premises, the ultimate safeguard must be from insurance.

7. Insurance

Normally there should be no difference from the normal everyday type of policy required for normal domestic or household needs. For the essence of good club administration demands good housekeeping; and in its absence there could well be a recurring relevance in the view expressed by the 1951 Board of Trade Report into the *Inspection of Bristol Rovers Football Club Limited* under the 1948 Companies Act.

"in the Inspector's view too many members of the Board gave absorbed attention to the Team Manager's sphere of interest, to the exclusion of the legal, financial and administrative affairs".¹⁹

The usual type of household policy, tailored to the specialist sporting requirements, will cover property, theft and liability for personal injury; and the governing body of the appropriate sport will be the best source for such enquiry.

No limit need exist, subject to the amount of premium, for which cover can be obtained. Thus, *pluvius* policies for cricket benefit matches will demand attention not needed for indoor boxing tournaments where the risks of cancellation from training or other circumstances create liability to spectators and contestants involving different insurance elements from what happens in the ring itself. No limits exist to the potential permutations, but the nature and wording of the insurance required must be equally precisely thought out and formulated; and the following points merely illustrate the needs of sporting policy holders.

(a) Property Insurance

To re-build a grandstand or building after destruction by fire almost inevitably demands the expenditure for architects', surveyors' and similar consultants' fees; and a suitable clause to cover these expenses can be added. Also a further example or experience occurred at Littlehampton. Although the ground and buildings were comprehensively covered by policies, a fire which burned down an old pavilion housing all the club's kit and equipment disclosed that this vital piece of the club's property was not covered.

(b) Theft

Apart from conventional cover against chattels, a fidelity policy to protect club or company property against defaulting employees would also provide an additional safeguard via the insurers' inquiries about the *bona fides* of staff likely to handle valuables and cash.

(c) Legal Liability

This provides the widest scope for cover and costs. While the courts decide the law and quantum of damages for assessment of injury, whether to life, limb or reputation, the insurance companies track the decisions for evaluating the ultimate costs for assessing risks.

Hence, the majority if not all the cases listed under **Chapter 1, Spectator and the Law**, would have been contested under the umbrella of an insurance policy; and further areas of legal liability into which sport and recreation may stray for attracting insurance move outside the self-imposed restraints in these pages of participation and spectatorship, where individuals or groups participate in activities away from spectator involvement: namely, such outdoor or supervisory worlds as playgrounds, potholing, rock-climbing and skateboarding.

Here, the disparate facts which are the key-note to litigation plot a zig-zag course of liability and non-liability; and skateboarding which has created such ambivalent reactions about whether it is a sport, a form of transport or a social and public menace has formed its own Skateboard Association under the aegis of the Sports Council but has been forced to Holland for adequate insurance facilities.

Essentially, what the contested cases have decided over four decades is that where supervision appears appropriate, as when parental or tutorial roles have been accepted by strangers for, respectively, children of relatively tender years or for inexperienced athletes looking for expert guidance, then any lack of reasonable or foreseeable care breaches the duty which is at the heart of common law negligence.

Court decisions on playground gymnasias,²⁰ play-time,²¹ playgrounds,²² and swimming bath activities²³ create this conclusion; and these are additional to the need to maintain premises in a safe condition and failure to make adequate arrangements for the general safety of spectators. Finally, five other separate points need stressing:

1. All clubs should have a "Public Liability" insurance in force, and it ought to include liability when the ground is loaned or hired for any purpose other than normal use, such as a religious crusade or a boxing tournament. Club activities outside the ground and overseas tours should also be covered.
2. To insure a club's liability to its employees, a separate policy is usually required. The premium is calculated at a rate per cent on the total wages and salaries, and this cover is additional to any benefits that can be obtained under the National Insurance Scheme (see Employers' Liability Compulsory Insurance Act, 1969).
3. As so many clubs take part in overseas tours, secretaries should ensure, that, before they travel abroad, some sort of cover for medical expenses has been arranged. The cost of having a comparatively minor operation in some foreign countries is enormous, and there is no equivalent of our National Health Service in many areas.
4. Two complementary situations which can appeal to clubs and members collectively or individually are (a) group insurance schemes and (b) personal insurance which

many participants obtain in particularly violent or physical pursuits supplementary to any other cover.

5. Finally, a club committee and officers may find it prudent either by insurance or provision in their club rules to provide for general or specific indemnities. One example, and there could be countless others, where claims for damages arise, is in the field of defamation. The libel arising out of a wrongful expulsion by a secretary (see Page 46) resulted in judgement against officers and committee members responsible for the secretary's errors²⁴; and a recent announcement in the High Court of settlement of a libel claim between two famous football figures²⁵ is a reminder that programme criticisms, record announcements and every form of communication can create risk situations; libel for the written and slander for the spoken word.

In the early 1930s substantial damages were obtained by a famous amateur golf champion when he successfully claimed a commercial advertisement in a national newspaper had impugned his amateur status by a cartoon depicting him with a chocolate bar sticking out of his trousers coupled with the jingle:

*'The caddie to Tolley said, Oh, Sir,
Good shot, Sir That ball, see it go, Sir,
My word how it flies,
Like a cartet of Frys,
They're handy, they're good, and priced low, Sir'.²⁶*

It was published gratuitously, with express knowledge of the risk that payment and thereby professionalism could be inferred. At that period even the general public accepted and recognised gentlemen players by Mr. and/or their initials, with Players gentlemen identified by only surnames first, their initials being absent or following. Such acute social-cum-sporting distinctions which justified a damages award for an injured reputation as an amateur sportsman were then only just becoming blurred by to-day's attempts to perpetuate *at the public level* an artificial difference between amateur and professional players: a doubtful divisiveness in British sport which MCC and the Football Association have abolished administratively and realistically.

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7. Licensing: Liquor and Gaming

These two requirements are conveniently dealt with together; partly because they stem from Parliamentary requirements by statute, and partly because the local requirements and police in the local area concerned condition essentially the outcome of applications.

(a) Liquor

Different types of certificate exist for registration as well as different types of licences; supper, occasional, special or extended hours, together with transfers of licences. Any contemplated application should be prepared with the assistance of a local solicitor versed in that particular procedure and also after prior consultation with the police.

(b) Gaming

Similarly, under the Gaming Act 1968, registration and different types of licences extending from machines to the various types of gaming would likewise require careful policy and procedural preparation.

Furthermore the 1975 Lotteries Act (and as amended) has opened up dynamic scope for "participation in or support of athletic sports or games or cultural activities," in addition to charities and local authorities, by the creation of lawful registered lotteries on which much publicised action has already been taken throughout the country for benefiting sport at all levels.

(c) Music and Records

The Performing Right Society Limited of 29 Berners Street, London, W.I. (Tel: 01-580 5544) and The Phonographic Performance Limited company at 14 Ganton Street, London, W.I. (Tel: 01-437 0311) should be consulted if any musical entertainment, whether from gramophone records or other form of reproduction are intended to be used by sporting company or other organisations. In 1973 an injunction was obtained against Rangers F.C. Supporters Club, Greenock, for copyright infringement under this head²⁷; but if the amount charged is excessive a right of reference to the Performing Right Tribunal exists.²⁸

8. Charities

Licences are not required in the normally accepted sense for charities. Their authenticity is established by registration, however, with the Charity Commissioners under the Charities Act, 1960. Their benefits are tax free or tax-deducted income and if their status is challenged, then the Revenue can appeal.

This occurred with the F.A. Youth Trust in a case which, at the time of publication, is subject to a Court of Appeal reserved judgement on both general charities law and the first case under the Recreational Charities Act, 1958.²⁹ It emphasises an accepted principle. Sport, as such, does not rank for charitable status – at present.

There are strong arguments why it could and should in the current social climate of leisure and recreational encouragement by the Government and other establishment sources. (I shall hope to deal with this in much greater detail in a separate publication at some time).

On the other hand, what is not generally recognised as widely as it could and should be, is that charitable bequests for *educational* sporting objects within an accepted educational framework, are accepted by law as valid charitable and thereby tax-free or tax deductible purposes.

Thus a Fives court at Aldenham School,³⁰ a chess tournament for young people in Portsmouth³¹ and Army fitness purposes³² have all been accepted by the courts as demonstrating the Victorian and much admired concept of *mens sana in corpore sano*. The accepted legal categories for charitable status are poverty, religion, education and general public. Many consider that sport qualifies for them all, both realistically as well as cynically.

Southend United F.C. with its local authority, are engaged on a scheme with these purposes in mind; many county cricket coaching schemes geared for boys in the school holidays are recognised by and registered with the Charity Commissioners for the same reasons.

If the future of British sport and the heart of the nation depends upon the recreational and sporting facilities available for its young people, then a fresh approach to this whole complex but basically simple sporting legal topic is crucial. I will, as I have said, hope to come back to it another time at

length. I recognise it here solely for its intrinsic importance to both sport and the law.

D. Tax

Income, Development Land, Value Added

Save for special exceptions such as cricketers' and footballers' tax free benefits and educational sporting charities, players, clubs and companies concerned with sport are assessable for taxes without any distinctions from the rest of the community.

Thus, green fees from strangers to a Golf Club which benefits that club's finances to boost its profits, have been assessable to Income Tax.³⁴

The Development Land Tax Act of 1976 has caused the local Valuation office under this new statute to claim nearly £200,00 from Ilford Football Club following the sale of its old ground at Lynn Road in 1976 before moving to more spacious accommodation. An issue has arisen on the valuation of the Lynn Road ground and specialist valuers have been engaged to contest the problem—a pointer for other clubs to consider.³⁵

Finally, Value Added Tax applies to sporting organisations with taxable supplies of more than £8,000 as to any other trading unit. The anomaly this creates and its potential disaster for the future of British Bloodstock and Horse Racing is considered separately in the Appendix by *Sunday Telegraph* racing correspondent, John Oaksey.

E. Disciplinary Proceedings

Enforcing the laws of a game *on the field* often needs confirmation in a Council Chamber *offit*. As Lord Denning stated in a recent Court of Appeal hearing from an F.A. Disciplinary ruling:

“In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than a bad lawyer. This is especially so in activities like football and other sports where no points of law are likely to arise, and it is all part of the proper regulation of the game.”

On the other hand, he stressed in the same case: “If the Court sees that a domestic tribunal is proposing to proceed in a manner contrary to natural justice it can intervene.”³⁶

Natural justice is the elementary obligation to hear both sides of a case equally. However, as occurred in that particular F.A. case and others from other sports, legal representation except through recognised officials, may sometimes be excluded by a governing body's rules or regulations. The application of such rules in that F.A. appeal did not result in any breach of natural justice; and other High Court instances during the early part of 1978 justified the British Boxing Board of Control's refusal to grant a licence to a manager³⁷; the Jockey Club's Disciplinary Committee's ban on a bookmaker's licence³⁸ and, some years ago, the Greyhound Racing Association's decision to refuse a trainer's licence.³⁹

On the other hand, in 1957, the Football Association and The Football League jointly went off the rails by banning Sunderland F.C. and its leading officials for under-the-counter payments to star players before the days of the abolition of the maximum wage: for a non-observance of its own procedural rules resulted in a High Court order nullifying the joint F.A.-F.L. tribunal's findings.⁴⁰

F. Drugs

Outside horse racing, the British sporting scene has been relatively unconcerned with drugs or dope before the 1978 World Cup soccer finals. The hysteria surrounding public comment about the circumstances which affected that occasion ignored completely the possible conflict between international P requirements from bodies such as F.I.F.A. and the silence of domestic sources such as the F.A. and the Scottish F.A., as well as the permission under Parliament's Misuse of Drugs Act, 1971, of lawful prescriptions of drugs which sport could prohibit.

An Inquiry requested by the Sports Minister from the Sports Council will have the problem of reconciling sporting law for the protection of equal competition and athletic health with state law unconcerned directly with sport; a situation where sporting penalties and restraints must be more severe than those imposed by Parliament.

SPORT AND THE LAW

G. Common Market, Common Sense And Sex

Two relatively recent enactments which stand traditional British law as it has been known for centuries on its head are perhaps an appropriate note on which to end the exclusively legal aspects of this book (as distinct from those relating to funds and grants and loans from both internal sporting and Parliamentary sources) and there is, perhaps, a thread between them.

The Treaty of Rome which governs European Economic Community Law, i.e. the Common Market, accepts economic equality between the sexes. The British Parliament's European Communities Act of 1972 legislated for Britain's entry; and Parliament's Sex Disqualification Act of 1975 seeks to prohibit sex discrimination generally. Section 44 specifically purports to grant protection for single sex sporting and athletic activities where, ordinarily, for reasons of physique, the average woman would be at a disadvantage to the ordinary man.

The summer of 1978 is important. A *schoolgirl*, aged 12, failed to persuade the Court of Appeal that soccer for that age group should be brought within the Act.⁴¹ Nevertheless, in the approaching 1980s with women competing against men on horseback, in boats round the world and at all athletic and gymnastic levels it is difficult to envisage where, if ever, a line could be drawn.

Equally enigmatic at the time of writing (July, 1978) is how British Judges would interpret any Community Law enactments which could be regarded as conflicting with British Parliamentary legislation. One crucial area for sport appears from John Oaksey's sombre and illuminating warning in his Appendix here about the possible impact of E.E.C. provisions upon British V.A.T. legislation in relation to the unique and priceless British Bloodstock industry.

A lengthy and learned correspondence in *The Times* during the early summer of 1978 between academics and practitioners ended with no more conclusive a view than that certainty on this point must await judicial conclusions. Until then the sporting world has anticipated events by English Football's legislators' readiness to adjust their domestic rules to accommodate larger numbers of foreign players than hitherto had been permitted to enter the English scene.

Yet, whatever the outcome of this alien legal development may be, it is worth observing here that F.I.F.A., with its larger membership than the United Nations, has operated the one system of international law known and understood by all the peoples of the world since its foundation nearly seventy-five years ago. A timely reminder of the universality of sport and the law.

H. Financial Aid

Finally, in a little known but nonetheless significant area of British statute law, government or local authority grants or loans exist for sporting facilities separate and apart from National Playing Fields Association assistance which in turn must be distinguished from that provided by The Football Association and other sporting bodies. The position may be conveniently summarised as follows:

1. Legal Sources

(a) From the Government

The Secretary of State for Education and Science has powers under regulations 27 and 29 of the Further Education Regulations 1969, made under Section 100(1) (b) and (3) of the Education Act 1944, as amended, to make capital grants towards the cost of new or additional facilities to voluntary organisations which provide youth centres, village halls and community centres.

Within the limit of resources made available by Parliament grant allocations are made annually to local education authorities. The authorities are responsible for the selection of local voluntary projects which should receive support, within the limits laid down in paragraph 4 of the Department of Education and Science Circular 13 of 1971.

(ii) In addition, the Secretary of State gives direct support through voluntary organisations to a limited number of projects providing facilities, mainly for young people in the 14-20 age range, which are accepted as being of national or regional importance.

(b) From Local Authorities

Under Section 19 of the Local Government (Miscellaneous provisions) Act 1976, a local authority may contribute by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which the authority has power to

provide by virtue of sub section (1) of the section, and (ii) by way of grant towards the expenses incurred or to be incurred by any other local authority providing such facilities.

(c) From the Sports Council

The Sports Council has power under its Royal Charter to make grants or loans to local voluntary organisations towards the capital cost of providing new and additional facilities for sport. Application is made to the appropriate regional council for sport and recreation. The national headquarters are at 70, Brompton Road, Knightsbridge, SW3 1 EX.

The Sports Council also has power to make grants to national voluntary organisations for sports development, coaching and administration, for training and participation in international sports events, including Olympic Games and Commonwealth Games, and towards the capital costs of national facilities.

2. Domestic and Voluntary sources.

(i) Specialist governing sporting bodies facilities are administered through the appropriate head offices.

(ii) The National Playing Fields Association, likewise operates through its various County Playing Fields Associations, providing financial assistance grants, and, in the form of loans to organisations, provides facilities for recreation within the provisions of the Recreational Charities Act, 1958.

Additionally it has set up at its London headquarters, 25 Ovington Square, SW3 ILQ, an information centre which is open to all who are interested in planning and building for sport or recreation, where copies of relevant publications, unpublished research items, drawings, photographs and literature are available on enquiry through the Information Officer at that address.

3. Access to Funds

As channels of communication between the government and the world of sport these latter bodies smooth the paths for the would-be applicant, and even if their structure is altered under contemplated government policies the ultimate sanction is with the appropriate national or local authority based upon the statutory provisions set out above. Here, too, on the most vital aspect of administering any sporting unit through financial provisions, British Sport and Law merge.

Conclusion

When the Equal Opportunities Commission and the National Council of Civil Liberties failed to invoke the Sex Disqualification Act against El Vino's famous wine bar in Fleet Street *The Times* referred in a leading article to the law poking its nose "where it has no business".

Contrary to what others could have thought, these pages show how, for more than a century, the law has been brought into the sporting arenas by those concerned with sport. Since these pages were begun in late 1977 and early 1978 the courts and tribunals have been asked to consider *inter alia* rugby violence, soccer sex equality, a County cricket club dismissal notice, the Jockey Club's disciplinary powers, a boxing man-ager's licence, a football company's shareholders' dispute, with the F.A. Charity Appeal in the pipeline.

When the young Leicestershire and England batsman David Gower was asked why he gave up his law studies he explained that they interfered with his cricket; but, he added significantly:

"I should have carried on-you need to be a lawyer in sport these days". So speaks the younger sporting generation for sport's future.

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Appendix 1
VAT And Horse Racing

By John Oaksey, Racing Correspondent of The Sunday Telegraph

Value Added Tax is an unmitigated disaster for British racing. I have yet to find anyone involved in the sport with a good word to say for it.

But, although Lord Rothschild's* Royal Commission has unequivocally recommended that bloodstock and racing should be exempted from V.A.T., it now seems far from certain whether even if the Government wished to follow that recommendation, the Common Market's sixth directive** issued last year would let it do so.

V.A.T. charged now at eight percent of a full actual valuation for all sales and transfers of horses inside or into this country damages racing in two different ways.

First of all, it simply makes life harder and more expensive for the owners and breeders on whom the sport depends and for trainers who have to add it to their fees. But, secondly, even more important, is the overwhelming advantage it gives to our main competitors in Ireland and France.

When those countries joined the EEC, their governments sensibly took very different views from ours: the Irish simply exempted bloodstock from V.A.T. altogether. That exemption will be allowed to continue for at least five years under the sixth directive but it is not yet clear whether training fees will remain exempt.

The French going only slightly nearer the original EEC policy, do charge V.A.T. – but only on the “carcase value” of the horse involved – that is to say, what its value would have been if sold for meat.

It would be difficult to exaggerate the advantages these differences give to Irish and French owners, breeders and trainers over their counterparts here. Quite apart from the internal benefits, V.A.T. is an obvious and powerful deterrent to foreigners, who might either buy horses in England or bring them here to be trained.

An American owner-breeder*** like Mr. Paul Mellon, for instance, has to pay eight per cent on the full value of yearlings he has bred himself in the U.S. when they arrive to be trained in this country.

British owner-breeders are slightly better off but only slightly: even they have to pay V.A.T. on a proportion of the production costs of horses which they transfer from their stud to a trainer's stable.

V.A.T., in fact, is discouraging foreigners from buying horses here and, even more from keeping them in England for their racing careers. It is depriving British trainers of income, British stable lads of employment and the British racing public of pleasure.

Constant attempts are being made to persuade the Customs and Excise at least to mitigate these evils and inequalities—particularly with regard to foreign owners. But, although some small concessions have been made, there is really no great hope of a major improvement in the future.**** Indeed, there is an all-too-real danger that some future government might raise the basic rate of V.A.T. from eight per cent to 12, or even higher.

* *Royal Commission on Gambling, Final Report (1978) Cmnd 7200.*

** *77/388/EEC, 17 May, 1977: Sixth Council Directive.*

*** *e.g. Mill Reef: Epsom Derby winner (1971 :pre-V.A.T.); bred U.S.: trained Ian Balding, Kingsclere, Hampshire.*

**** *per Edward Grayson: unless effective British Parliamentary legislation can be implemented.*

Appendix 2 Draft Safety Of Sports Persons Act

Note: The proposals set out below are an attempt to stimulate discussion about and to direct attention to the twin social evils of sporting violence on lines analagous to socially undesirable motoring; i.e. drunken or drugged drivers, and also to fill the gaps for players and spectators alike left by the Safety of Sports Grounds Act, 1975.

The springboard for the proposals has been the contrast between society's approach to cheating at games in the past and today. I became acutely aware of this when preparing for publication in 1977 with my co-authors, Sir Michael Havers Q.C., M.P., a former Solicitor General, and Peter Shankland, a naval historian, *The Royal Baccarat Scandal*.

In 1890, a Scottish nobleman friend of the then Prince of Wales was accused of cheating at cards on unsatisfactory evidence at an East Riding, Yorkshire, house party, Tranby Croft. He failed, wrongly in our view, to clear his name in a High Court slander action and, afterwards, was ostracised from his society permanently. *The Royal Baccarat Scandal* explains fully how and why.

In 1978, the so-called professional foul has become cynically accepted as part of the professional and even the amateur sporting scene, notwithstanding its undoubted criminality (see Chapter 2, Players and the Law); and its physical corollary of violence among spectators has proved insoluble. What follows are suggestions for solving both problems; for offending players, the ice-hockey sin-bin solution; for offending spectators, the drunken and drugged drivers automatic disqualification solution.

An Act To Protect All Persons Engaged In And Concerned With Sporting And Recreational Activities From Injury Caused To Them By Other Persons Concerned With Sporting Occasions

1. Any person deliberately or recklessly causing any harm or injury in any manner whatsoever to any person concerned with, before, during or after any sporting or other recreational activity shall be guilty of an offence.
2. The said offence shall be committed by any participant during the course of any authorised sporting or recreational activity when it occurs in breach of the rules or laws of such sporting or other recreational activity.

3. The penalty for such offence committed by any participant during the course of such authorised lawful sporting or recreational activity shall be automatic suspension from further participation in the activity irrespective of any punishment pursuant to the rules or laws of such sporting or recreational activity and of any other statutory or civil cause of action or complaint.
4. The penalty for conviction of any offence committed by any non-participant before, during or after the course of any such authorised lawful sporting or other recreational activity shall include disqualification from or further attendance at any such sporting activity from the date of such conviction and also compulsory attendance at an appropriate attendance or detention centre to be designated by the Secretary of State on every Saturday afternoon between the hours of 2.00pm. (14.00 hours) and 5.00pm. (17.00 hrs.), and every evening between the hours of 7.00pm. (19.00 hrs.) and 10.00pm. (22.00 hrs.) for a period of 12 months from the date of such conviction; and in default of the availability of such attendance or detention centres, a community service order for the same time within the same period shall be directed.

Abbreviations

A.C.:	Appeal Cases (House of Lords) (Law Reports)
All E.R. :	All England Reports
c. :	chapter number of Act of Parliament
C.A. :	Court of Appeal
C.A.R. :	Criminal Appeal Reports
Ch. :	Chancery (Law Reports)
Cox C.C.:	Cox's Criminal Cases
De G & Sm.:	De Gex and Smale's Reports, Chancery, 4 Vols., 1846-1852
D.L.R. :	Dominion Law Reports (Canada)
K.B. :	King's Bench (Law Reports)
L.G.R. :	Local Government Reports
L.R. :	Law Reports
Lloyd's Rep. :	Lloyd's List Report (1951 onwards)
Q.B. :	Queen's Bench (Law Reports)
T.L.R.:	Times Law Reports (as distinct from <i>The Times</i> Reports)
T.R. :	Tax Reports
W.L.R. :	Weekly Law Reports
W.N. :	Weekly Notes

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Professional law reports which are cited in court have always been selective, rightly and inevitably, in their chronicles of cases, guided by considerations of legal principle instead of originality of facts. Yet the two important unreported cases cited by Lord Justice Sellers in his White City Court of Appeal judgment, *Wooldridge v. Sumner*, listed at Pages 23/24, demonstrate how it is possible for valuable judicial decisions, especially on circuit in provincial courts, to pass unnoticed, and even more importantly unrecorded for the profession and the public.

Accordingly, I have not hesitated here to draw upon the responsible daily, weekly and professional press for sources when the professional reports are completely silent on an illustrative point.

Any well-stocked local reference or law library should be able to assist in tracing most of the professional sources from either the standard legal text-books, tables of cases, or almost certainly through *Halsbury's Laws of England*, 4th Edn.; *Halsbury's Statutes*, 3rd Edn., or the *English and Empire Digest Replacement Volumes* (Blue Band) and *Reissue Volumes* (Green Band). E.G.]

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Sport and the Law: A Return to Corinthian Values?

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Law and Sport in Contemporary Society, Frank Cass)

BY EDWARD GRAYSON

Inugural professorial lecture by Edward Grayson (Visiting Professor at the Anglia Polytechnic University)

**Delivered: 15th January 1998
Lord's Cricket Ground
(with subsequent minor modifications here)**

Introduction

Because this is the first occasion when a United Kingdom lawyer from either branch of the profession has been honoured with this unique appointment of Visiting Professor in Sport and the law, coupled with an invitation to speak of Corinthian values, I am sure that no one will begrudge my expression of personal delight and appreciation to not only yourself, Vice Chancellor, but also to those who have led to tonight's meeting.

A moment's reflection will recognise that this is an historic occasion, at an historic location, dealing with the three interlocking historic subjects. It is also by reason of current events, a very important and serious occasion. For when threaded together, as they are here, they create within an internationally orientated society the most crucial framework for a civilised community. They also counterbalance the pernicious canard perpetrated nearly thirty years ago, regrettably by the present Chancellor of my own home university at Oxford, (the then Roy Jenkins MP), when he perversely advocated the permissive society to be the "civilised society" during his period of office as Chancellor of the Exchequer in a well publicised speech to the Abingdon Labour Party. (The Times, 21 July 1969, p.3). Without the Rule of Law in Society you have anarchy. Without the Rule of law in Sport you have chaos. Linking the two are the obverse sides of the same coin in an ideal world. Justice in the law equals fair play in sport. We all how, however, that realistically the law does not always dispense justice, and sport does not always reflect fair play.

Furthermore, I cannot possibly hope to do justice to this vast ranging subject within the three quarters-of-an-hour, or one half of a football match time-scale, allocated for me for the challenge contained in the title which brings us all here. All that I can attempt is an overview inspired by Lord Denning's favourite quotation from Scotland's most renowned barrister and chronicler Sir Walter Scott:

"A lawyer without history or literature is a mere working mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect"

['Guy Mannering' per Counsellor Pleydell.]

Within that framework, and the time available, I propose to structure what I feel obliged to say into five separate stages, although each is of such depth and interest that it can merit a lecture of this similar length on its own right.

The first will deal with the unique and very happy professional coincidences between yourself, Vice Chancellor, and our Chancellor, Lord Prior of Brampton whose duties sadly prevent his being with us here tonight.

The second will offer my firm opinion of what is meant by each of the three separate concepts which I have been asked to consider tonight; Sport, the Law, and Corinthian Values – about which there are so many different perceptions.

The third will explain how unwittingly and accidentally it all began for me both personally and professionally. It was as a direct result of my Second World War schoolboy hero-worshipping correspondence and friendship with two of British sport's most celebrated footballing-cricketing members of the greatest football club in the history of the game, the Corinthians. They have given their name to a code of conduct and honour throughout the English speaking world; namely, G.O. Smith, the world's greatest centre forward, and the immortal C.B. Fry.

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The fourth will illustrate, inevitably very briefly, how all three separate concepts interact upon each other for the advantage of sport generally and society in particular. In doing so, I will dispel some of the shallow thinking, or lack of it, which surfaces too often when public discussion about sport and the law emerges from the ill-informed members of the community, and those who are technically qualified to understand their interdependence, but through ignorance or arrogance, or both, fail to do so.

The fifth, finally, will point the way ahead with examples of the limitless opportunities for the Anglia Sports Law Research Centre to provide leadership in these vast uncharted territories which are opening up in this exciting slice of international cultural life within the international global village now enveloping the sport and leisure worlds. There is a need to compensate for the inadequacies of those who would purport to administer and comment on it, and now, a few of the lawyers who trespass into sporting legal areas on which they are clearly ill equipped to perform.

Those are the five separate stages which I shall be covering here tonight. As I have already suggested, they can each support a lecture in their own right. Because you will each be receiving a copy of what I have to say, and it will be published in due course, in order to do justice to the vast material which is available for each of them within the time allotted to me, I hope you will allow me the indulgence, for the only frustration which I have ever experienced in life! This was in my younger days to emulate the unforgettable Raymond Glendenfling, the C.B. Fry of all commentators, with his all-round adaptability at a time when this all began and our Chancellor was performing in the way I shall now explain. So fasten your seatbelts for this whirlwind tour of "Sport and the Law: A Return to Corinthian Values" in the record breaking time which is now left to me. If I leave any of you breathlessly behind at any stage you will have the text before you, and I shall offer myself for cross-examination on any part of what I shall say, and if appropriate, even beyond it.

First, Vice Chancellor, you and our Chancellor in the modern idiom within the context of our subject matter tonight, should be called the 'Dream Team'. Many outside the University may not be aware of your arrival from distinguished service in the Lord Chancellor's Department, which constitutionally so far in Old Britain, and at present so far in the so-called New Britain, has been responsible,

alongside the Home Office with government responsibility, for the overall administration of Justice, at least in England, and with regional modifications for the Celtic regions. Even less may be aware, including perhaps some members of this University, until I reminded them that our Chancellor, Lord Prior of Brampton must be the only University Chancellor in history who has not only played in a national football cup final and the second oldest surviving competition after the Football Association Challenge Cup Competition (now, as I realise I must observe in the current commercial cultural climate controlling public entertainment, sponsored by Littlewoods) but also on the winning side. This was in 1951 during the Arthur Dunn Cup Competition, for the Old Carthusians, one of the earliest F.A. Cup winners in the early 1880's and Old Boys of Charterhouse School, whose annual fixture with Westminster School stretches back uninterruptedly to 1863, the year of the F.A.'s foundation. It is the oldest surviving continuous fixture in the history of the world game. As J.M.L. Prior, he played at wing-half in the winning side against the Old Wellingburians. More significantly, he has not only played for the Corinthian Casuals, but he also attended as guest speaker at the 50th anniversary dinner in 1989 to commemorate the amalgamation of the two clubs which had taken place on the eve of the outbreak of the Second World War in 1939.

Thus I can turn naturally and logically to the second stage of what I have to say tonight, namely, what is meant by each of our proscribed subjects: Sport, the Law and Corinthian Values. Substantively, and in reality, they should all be synonymous with each other. Today it is impossible to ignore that inevitably, sport, for its survival commercially at the public-sector level, is part of the megabucks branch of the sprawling entertainment leisure industry. It also has a crucial role as part of a health, education and lawful competition contribution to the culture of any civilised community, and certainly at its grass roots levels in schools, clubs and village greens, where it was born and will always flourish even when the avarice, greed and corruption inherent in the commercial world will turn off those customers whom it will price out of its progressively self-destructive market.

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The late, great Sir Dennis Fellows, a former schoolmaster, succeeded the no less great and earlier former schoolmaster, Sir Stanley Rous, as secretary of the Football Association. In his capacity also as British Olympic Association Chairman, he courageously defied the non-jolly hockey stick Kesteven and Grantham Girls' School and Somerville College, Oxford blue-stockinged Prime Minister, who tried to ban for political reasons Britain's Moscow Olympic Games participation in 1980. He said of the meaning of sport in 1983:

*"after years of trying... sport defies definition. The Sports Council tried it and gave it up as a bad job."
[Phillip Noel-Baker Memorial lecture: Loughborough College: Whither Sport.]*

Two years later, the then Director General of the Sports Council, John Wheately in a written Memorandum to a House of Commons Environment Committee in February 1986 concerning the workings of the Government funded Sports Council, as it was at that time, re-affirmed this, stating:

"A study of the financing of sport produces a problem of definition. There is no single list of activities which would meet with universal agreement. Many years ago sport was felt by some to encompass, hunting, shooting and fishing. A much wider view is now taken by many people."

[30th October 1985 and see Spurt and the Law (2nd edition 1994) P. xviii Introduction.]

And the same paragraph concluded with financial references:

"from a variety of sources which had adopted different definitions."

That understanding from such an authoritative source of the traditional concept of sport from rural Britain before the industrial revolution of the last two Centuries leads into a little known realisation that the law from Parliament had been involved directly in regulating sport throughout Medieval and Tudor times in order to prohibit interference with the military acts of archery and shooting on which the defence of the realm depended. This is consistent with the pre-Second World War Physical Recreation and Training Act 01 1937 for national fitness preparation in anticipation of the war against Hitler's Nazi Germany. Apart from the Public Health legislation in the last quarter of the last century, there

was no specific legislation affecting sport. Since the Second World War, and only in the period since the conception of the so called permissive society, Parliament has been required regularly to control football crowd violence, stadium safety and, because of the commercial significance of sport today, legislation affecting recreational charities and even protecting the intellectual property in the Olympic Games symbol.

Yet each of these legislative entries to the sporting arena has been reactive to the events rather than pro-active. No government or political party of any colouring has had the will or intellectual honesty, or perhaps the intellectual capacity, to overleap all the nauseating hypocritical pretenses of concern for our national sporting heritage and the future by tackling sell-offs of playing fields. As Donald Treford crystallised in this week's Daily Telegraph:

"The truth is that the country has no national strategy for playing fields and recreational facilities."

So much for the law of the land in Parliament affecting sport which is often ignored in the emotional hysteria which excites the ill-informed comments on the court's intervention. Before considering that hot potato, what about the law of sport itself? The key can be found in the little known contribution from the Archbishop of Canterbury, Dr. George Carey, a well publicised Arsenal supporter, in the House of Lords Debate on 'Society's Moral and Spiritual Well-Being' (5 July: 1996 Hansard Lords) when he explained:

"We take it for granted that you can not play a game of football without rules. Rules do not get in the way of the game; they make it possible."

If he had mentioned it in the presence of the great Bill Nicholson, who masterminded with my dear departed friend Danny Blanchflower, the great Tottenham Hotspur winning 'double' team of the early 1960's, he would have been rebuked as I was with the correction:

"Not rules, Edward. Laws, Laws of the Game."

And he was right.

All civilised sporting practices are rooted, or at least should be, in their Laws of Play, of which cricket's are the most ancient. First formulated in 1744, the copyright is now

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vested in this great Club of Marylebone where we stand today and it operates throughout the cricketering world as a House of Lords appellate source at this ground which Thomas Lord created for it in 1814. The Laws of Association football followed from the need to bring cohesion to the multifarious, fragmented and differing forms of violent village games and variations of school football. They were consolidated on the initiative of a practising solicitor in 1863, with the period name, Ebenezer Cobb Morley at 3 King's Bench Walk, in the Temple, for whose identity we are indebted to the FA's latest historian, Bryon Butler. That year also saw the creation of The Football Association, the earliest one of all, thereby never requiring a national prefix to its name. When the Rugby Union broke away from it, with its 1871 formation, the Laws of that Game were formulated under the same style and title. All sports, however, proscribe different Laws for play, administration and sanctions for breaches. They emerged during a period in history when sport and games were played for fun before the prizes and pressures for commercial and corrupt competitive successes poisoned the well of health and happiness at both international and domestic national levels. The amateur, unpaid, volunteer traditions for regulation have failed to keep pace with the need for the strict control of offensive and unlawful misconduct. Consequently, victims of physical and administrative abuse within sport have had to turn to the courts, as they can for any other injuries experienced in an industrial and motorised manic society, if remedial relief and compensation is not available in any other source or form. This will be considered briefly and clearly in my fourth stage of this lecture.

The illegalities and unsporting attitudes from the uncontrolled and inadequately sanctioned commercial entertainment chunk of the leisure industry produced last autumn *The Headmasters' Conference Sports-Sub-Committee Guidelines for conduct in School Sport*. I am indebted for its reproduction here to Mr. Chris Hirst, headmaster of Sedbergh School, where Will Carling learned to develop his early talents in a tradition well known to all in International rugby football inspired by Wavell Wakefield and many others. They are so self-explanatory that it would be insulting your intelligence to read them now if the circumstances which created them had not been necessary. To save time they are attached to the text of this lecture and embody the Corinthian values which are crystallised in what Charles Fountain, the biographer of their American interpreter

Grantland Rice, has called "sports most battered cliché". But since some of you may not be familiar with or have forgotten their actual lines, here they are:

*"For when the One great Scorer comes
To write against your name,
He marks – not how you won or lost –
But how you played the game. "*

If it sounds corny in the current climate of "win at all costs" and "nice guys finish last" philosophy, you may consider that it is not different from what the Anniversary production last year of the BBC "50 Years of Sports Report" programme edited by one of its permanent producers, Audrey Adams, explained in the Chapter headed 1948: The Way it Was (fifty years ago, of course, the year of the London Olympics, Sir Donald Bradman's last tour and Manchester United's first post-war F. A Cup Final victory, under the then Matt Busby's management, over Blackpool and the Matthews/Mortensen magic) when Bryon Butler wrote:

"These were such morally corseted times that the producers of Dick Barton – Special Agent, a cult serial, issued a dozen rules to ensure that their hero's lily-white character was never besmirched. They included 'sex plays no part in his adventures', 'no lies', 'no swearing' and a strict order that violence was restricted to 'clean socks on the jaw'."

You may think that ear biting between rugby players in those days of innocence would hardly have been within contemplation bearing in mind what allegedly happened last Saturday.

In that context, therefore, it is useful to recall what a great Victorian jurist Lord Bryce once wrote:

"There are some conceptions which it is safer to describe than to define".
["Studies in History and Jurisprudence": Vol I 1, p 181]

Thus Corinthian values have been illustrated by so many contemporaneous examples that I can take my pick from almost any week of the present times. Last Saturday, on the BBC Cliff Morgan programme *Sport on Four*, you may have heard Rachel Hayhoe-Flint reminiscing about her days as England's lady cricket captain of how they used to tour for fun, paying their own expenses in the true Corinthian spirit. Last year on the same programme, Sir Peter O'Sullivan

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recalled his Grand National memories. He highlighted not only the memorable triumph of the cancer suffering Bob Champion winning the race on Aldiniti, which had recovered from an injured fetlock, but also emphasised the true Corinthian spirit of the 54 year-old fanner John Thorn who came second on Spartan Missile, genuinely sharing the courageous triumph of the winners as if he had come first himself. Last year, too, two of the best loved footballing-cricketers were called to account by the "One Great Scorer: Denis Compton of Arsenal, Middlesex and England and Wilf Wooller of Cardiff, Cardiff City, Glamorgan and Wales. Neither had played for, nor was eligible for, the immortal Corinthian Football Club; but the memorial and obituary notices for each emphasised their prodigious talents as true Corinthians. When Hubert Duggart, now President of the English Schools Cricket Association, a Corinthian-Casual and son of Graham Duggart, a great Corinthian and cricketing player who had died in office as Chairman of the Football Association, was good enough to add to C.B. Fry's foreword to my last edition of *Corinthians and Cricketers* he wrote:

"Self evidently the Corinthian ideal has to be applied to each new age to match the changing circumstances, but by definition its core and its characteristics are unchanging"

That core can be found in the last year's Guidelines for Conduct in School Sport attached to this lecture test, notwithstanding the unconventional circumstances surrounding the well publicised leisure activities of prominent Premier League directors, which inspired James Cox of the BBC "World This Weekend" programme [Sunday 22 March 1998] to enquire:

"Has the Corinthian spirit been replaced by the used car salesman?"

Happily, however, those guidelines lead into the third stage of how it all began for me personally.

Without needlessly promoting my own publications, but because of time constraints, I hope I can say without risk of criticism, that I have documented what I have called the Genesis of *Sport and the Law* so often in the Butterworths 1988 and 1994 editions and generally that I have a sense inevitably of *deja vu*, having experienced the present situation before. For the present purpose, I hope it suffices here to recall my schoolboy's autograph quest after a 40 mile bicycle

ride to and from the home of a 68 years-old retired gentlemen who in his days at the century's turn had been, and many consider still to be, England's greatest centreforward, G.O. Smith. This led to a correspondence published in *Corinthians and Cricketers*, to which his great contemporary C.B. Fry contributed a Foreword, retained more recently in a fourth, 1996 edition, with additions by Hubert Duggart and Gary Uecker. I did not know then, as I do now, that both were in the great Corinthian and sporting tradition of adornments of the teaching profession, which may have accounted for their sympathetic responses to my youthful enthusiastic quests for information.

When a broken leg from my own playing inadequacies in the Oxford University soccer trials, followed by inadequate hospital treatment, released energies for indulging sporting passions in other directions, I puzzled as a young barrister about Denis Compton paying tax on his Arsenal footballer's benefit but not on his publicly subscribed professional cricketers' Middlesex benefit. A solution was to delete the contractual element from the footballer's entitlement. Articles were written in 1953. The then chairman of the Professional Footballers' and Trainers' Union (now the PFA), James Guthrie, who had captained Portsmouth to victory in the last pre-World War FA Cup Final in 1939, and led the way for Jimmy Hill, now President of the Corinthian-Casuals, to build on emancipating footballers from their restrictive practices, saw the point. A test case was organised in circumstances comparable to the cricket benefit match occasions outside the contract benefit match conditions at Peterborough United in the Midland Counties Football

The globalisation of international sports means that the Corinthian values have to be sustained world-wide if sport is to retain its true integrity and meaning of education, health and lawful competition within an increasingly commercially context

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League beyond the Arsenal Football League area; and harmonisation of tax-free benefit payments was achieved which has lasted to the present day.

[Rigby v KG (1959) Peterborough and Citizen Advertiser (16th June, 24 July).]

This led on to an initial attempt to raise the restraint of trade flag in an Aldershot County Court action, which I was comforted to see has been cited in a monumental three volume American publication from Mr. Aaron N. Wise and Bruce S. Meyer entitled *'International Sports Law and Business'*, volume 2: page 1483 1997] *Aldershot Football Club v Banks: Aldershot News* Nov 4,25 1955. At the same time an abortive attempt was made to obtain charitable sporting educational status for the joint Oxbridge Pegasus Football Club which had won the F.A. Amateur Cup on two occasions before 100,000 crowds at Wembley Stadium in 1951 and 1953. We failed to persuade the Inland Revenue and had to wait until the House of Lords validation in 1980 of the Football Association's Youth Trust Deed.

On that occasion Lord Halsisham of St. Marleybone, then Lord Chancellor, who had created the role of Minister with the Special Responsibility for Sport in the early 1960's, explained with words which are of general application of sport and the law generally as they are to that concept:

"I do not think that the courts have as yet explored the extent to which elements of organisation, instruction, or the disciplined inculcation of information, instruction or skill may limit the whole concept of education. I believe that in some ways it will prove more extensive, in others more restrictive than has been thought hitherto."
IRC v Mullen [1981] AC 1 at p17.

And for education read, law, in relation to sport.

By that time, however, the problems of violence and drugs which dominate the sporting scene internationally today had surfaced. During the period when I had been puzzling and struggling with footballers' benefits, restraint of trade and sporting educational charities, no thoughts existed personally or professionally about these modern horrors.

In 1966, however, Pele was brutally and criminally assaulted out of the World Cup, won by England, with no retributions against the offenders. Articles I wrote advocating remedies in

the courts as the only solutions in the absence of adequate sanctions within sport itself, did not find favour and indeed incurred abuse, hostility, resentment and ridicule. This led ultimately to a series of *Sunday Telegraph* articles emphasising the abdication of adequate remedies for victims of violent foul play in 1977. A year later a 76 page booklet, entitled, *Sport and the Law* was published from that source. It became 376 pages in 1988; and in 1994, 536 pages, each from Butterworths. Yet the hard core throughout has been the perpetuation of the Corinthian ideal, and this led to the fourth stage.

That is how all three separate concepts of Sport, Law and Corinthian Values interact upon each other

Lord Halisham's comment on the scope of the courts involvement with the development of education, and by transference to the law in relation to sport, is wholly consistent with the progression of sport historically from a recreational fun and games playing pastime, which it has preserved, while merging into a giant chunk of the universally exploding commercial entertainment businesses. Yet its amateur and untrained administrators failed to understand the nature of the inheritance from a period when the law and the courts were not required to regulate sport in the way they are today, The Corinthian and England football XIs of G.O. Smith's and C.B. Fry's era were comprised of many *practising* lawyers whose experiences were never required for servicing sport in court. A later contemporary who gained an Olympic Gold medal with Great Britain's Olympic amateur Soccer XI winning team in the 1908 whilst a practising professional solicitor, was Harold Hardman. In due course he became chairman of Manchester United and in 1955 with Sir Matt Busby masterminded Britain's entry into European football competitions against the wishes of the parochial attitudes of the English Football League at Lytham St. Anne's, Yet his professional experiences also were never required for servicing sport in court, a contrast with his solicitor successor Director on the Old Trafford board, Maurice Watkins, whose experiences with Mr. Cantona and the other alleged miscreants you must have read about from time to time recently.

The story of sport in court is nevertheless a long standing one. It can be traced in parallel developments through both the civil and criminal courts, on and off the field, with administrators and players resisting and objecting to intrusions which challenge their autonomy, notwithstanding

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I puzzled as a young barrister about Denis Compton paying tax on his Arsenal footballer's benefit but not on his publicly subscribed professional cricketers' Middlesex benefit

the wrongs done to victims of unlawful misconduct on and off the field.

Civil liability for sports related injuries can be traced from the collapsed grandstand at Cheltenham Races in 1866 through to the Bradford City, Hillsborough and Ben Smolden tragedies in our own time. Criminal liability for football field offences was similarly established in 1878, confirmed in 1898, re-affirmed in 1975, extended to rugby union in 1978, and only queried needlessly because of inadequate research by practitioners who failed to produce the full precedent picture before the judiciary in a high-profile indoor sporting activity of sado-masochism which reached the House of Lords in 1993 by *R.V Brown* [1994] I AC 212. The laymen's uncertainty about the extent to which consent exists to unlawful actions in sporting context was answered by Mike Tyson's butchery in his contest with Evander Holyfield. It was further answered by last Saturday's evidence from the *Bath-v-London* Scottish emulation which caused the referee to describe it as "similar to Tyson v Holyfield". Consent has always been implied to lawful actions within sport; never to criminality which transgresses it. Corroborative evidence for all this appeared in two landmark articles in the *British Medical Journal* during 1978 when J. P. R Williams foreshadowed the Smolden case by explaining how collapsing the scrum can damage the spine, and his Welsh rugby union doctor, [now Professor], John E. Davis and Terry Gibson, identified 30% of their Guy's Hospital Athletic clinic injuries to be directly attributable to foul play.

Finally, two specific examples come to mind for this particular fourth stage of interaction between each discipline. Would Jenny Pittman have been able to train Corbiere in her own name and under her own license for her Welsh Grand National triumph in 1983 if Florence Nagle had not taken

the Jockey Club to the Court of Appeal in her landmark decision of 1966? How many realise that the Bosman European Court of Justice decision was the logical corollary and sequel to the abortive claim by an Aston Villa player in 1912? This early case was noted in the 1963 George Eastham restraint of trade judgment, following upon the *Aldershot v Banks* County Court action of 1955, and the subsequent Packer litigation of 1977 and 1978.

Fifth and lastly, with *Bosman* it is natural to move on to the final stage here and the way ahead. The globalisation of international sports means that the Corinthian values have to be sustained world-wide if sport is to retain its true integrity and meaning of education, health and lawful competition within an increasingly commercially context. During this last decade of the 20th Century, with Maurice Watkins as a practising solicitor and two academic members from Manchester Metropolitan University, including Dr. Ray Farrell who has served throughout as Chief Executive, we formed the British Association for Sport and the Law in 1993. I was privileged to serve as Founder President and was succeeded last year by my very good friend Charles Woodhouse. In addition also last year, a group of practising barristers followed this precedent to form the Bar Sports Law Group, of which I am delighted to have been a founder member. On each occasion, education has been in the forefront of our objectives. This ties in with the Anglia Sports Law Research Centre as Sport and the Law have moved into a different world from that which you would have viewed through the eyes of a Corinthian 90 or 100 years ago.

Ninety years ago, in 1908, Wolverhampton Wanderers won the F. A Cup by 3-1 with one of their scorers a Corinthian amateur trainee clergyman, the Reverend Kenneth Hunt, who ultimately became President of Pegasus while teaching at Highgate School. Mr. Dalglish and his commercial henchmen may be discomfited, further than they ought to be today after their Stevenage Borough fiasco, to know that the losers on that occasion were Newcastle United. One hundred years ago in 1898, the captain of England's full amateur and professional (pro-am) soccer XI against Scotland was a solicitor contemporary of G.O. Smith, another Old Carthusian and Oxford blue, Charles Wreford-Brown. He was yet another solicitor whose experiences were not required to service sport on the field, although he became chairman of the full International F.A. Committee and vice president of the F.A.

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Before then, in 1753, yet another Old Carthusian and Oxford graduate, William Blackstone, (200 years before I uncovered Denis Compton's and other professional footballers' benefit tax imbalance with professional cricketers), was planning some lectures in the University of Oxford of which he wrote in a preface to them:

"notwithstanding the novelty of such an attempt in this age and country, and the prejudices usually conceived against any innovations in the established mode of education, he had the satisfaction to find (and he acknowledges it with a mixture of pride and gratitude) that his endeavours were encouraged and patronised by those, both in the university and out of it, whose good opinion and esteem he was principally desirous to obtain."

In 1953, my desire principally was to obtain the good opinion and esteem of those concerned with preserving Corinthian values and the Rule of Law in Sport and it has remained unchanged throughout the years down to the present day. I take comfort, with humility, that I appear to have endured comparable experiences to *"the prejudices ...against any innovations"* suffered by William Blackstone when he was planning his *Commentaries on the Laws of England* precisely 200 years before my own unplanned innovations.

Some of you may recall how the late Geoffrey Green, in his memorable contributions to football literature in his *Times* newspaper reports, would frequently adapt the line from Shakespeare's *King Lear* to say how history's wheel has come full circle. I hope that some of you at least will now feel that history's wheel has come full circle tonight with *"Sport and the Law: A Return to Corinthian Values"*. **BSL**

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APPENDIX

GUIDELINES FOR CONDUCT INSCHOOL SPORT from the HMC Sports Sub-Committee

These guidelines should be seen in the context of a long tradition of sportsmanship in our schools. They simply restate basic principles in a rapidly changing world of sport. It is assumed that all the off-the-field courtesies which are an essential part of inter-school fixtures are taken as 'read'.

1. Basic Premise: That it is the responsibility of Heads to ensure that high standards of conduct obtain in school sport. To this end, the rapport between Heads and the Director of Sport (or 'individual staff in charge of games) is crucial.
2. There should be no foul or abusive language in any area of school sport.
3. Teams should never seek to claim unfair advantage. By verbal abuse or any other means.
4. Open criticism of, or, dissent from, umpiring or refereeing decisions by those playing or watching, is always unacceptable.
5. The committee would recommend that any pupil who is in the breach of the above guidelines, should be formally warned – with further sanctions to include suspension from matches.
6. All the above is relevant to sport within schools as well as between schools.
7. The school has a responsibility for the conduct of every aspect of its sport – including the behaviour of supporters (pupils/parents/other adults alike).
8. Staff i/c individual teams should assume responsibility for the conduct of their teams and supporters and should be conscious of their role as examples to both.

C H Hirst, Sedbergh School, Cumbria, November 1997.

The Historical Development of Sport and Law

BY EDWARD GRAYSON

The modern history of sport and the law is divisible into three separate stages: 'reality', 'antiquity' and 'contemporaneity and the future'. Reality is traceable to the justifiable public accusation by the former Football Association Chief Executive, the late Ted (E.A.) Croker, that I had invented the subject.¹ Antiquity identifies legislative and structural sources from ancient Greece and Rome via medieval and early modern Europe, comparable to identifiable current circumstances and conditions. Contemporaneity explains the state of play today and its projection into the future.

Reality

'I don't approve of the police and the law's involvement with sport, and football in particular. We can look after our game ourselves, and it's all the fault of Edward Grayson, who invented sport and the law', protested Mr Croker in Birmingham's National Exhibition Centre on that occasion in 1988. He was on his feet declaiming this protest after Charles Woodhouse² had read a paper containing references to the common-law compensation remedies and criminal prosecutions for violent foul play, which had exploded to a degree and extent unknown before the Second World War, and progressively alarmingly during the 1960s and the 1970s.

While Croker was in full cry, I was entering the Conference Hall accompanied by two long-standing and distinguished *Times* newspaper sources: David Miller (now with the *Daily Telegraph*) of association football renown with the Cambridge University Corinthian-Casuals, Pegasus and Britain's Olympic Games squad, and John Goodbody of English Channel swimming triumphs. As we walked in, Woodhouse drew my attention to my arrival and invited me to respond. Accordingly, I pointed out to Mr Croker that, if he

considered sport in general and football in particular, to be above the law he was out of order and that he should take care to be aware of this reality. Until that moment I had never thought of the accusation. On reflection, however, I realize that he was right; but for different reasons that I now recognize that he must have had in mind.

For on 7 February 1969, in the weekly *Police Review* journal under the heading of 'Crimes of soccer violence', I advocated police intervention for football pitch offences³ Ironically, this issue was floated once more while this chapter was in preparation in a news item on 10 March 2000, following a twenty-first-century echo of the events of the 1970s onwards, evidenced by televised fighting between Leeds United and Tottenham Hotspur players, and less public reportage of contemporaneous comparable fighting between Chelsea and Wimbledon in the players' tunnel. Two days after the publication of the *Police Review* piece, there appeared in the *News of the World* for 9 February a headline and text for Frank Butler's column: 'STARS BEHIND BARS, IT'S JUST CRAZY', followed by a text which began:

'I've read some crazy sporting gimmicks, but the silliest suggestion comes from a barrister who wants the police to have power to arrest footballers who commit dirty fouls'. It ended: 'the day the police take over from the referees will be the day the sport dies'.

This development had followed the arrival in court of football's first playing-field fatality since the two Leicester Assizes prosecutions in 1878 and 1898, respectively, of *R. v. Bradshaw*⁴ and *R. v. Moore*.⁵ Later, *R. v. Southby*⁶ was transferred to Maidstone Assizes from Essex, and it was followed shortly afterwards towards the end of 1969 by the first traceable, personal-injury assault judgment for a foul football tackle during a minor local league Sussex match which later led to a £4,500 damages award, of which I wrote in the *New Law Journal*.⁷ The judgment appeared on the eve

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of the notorious Chelsea v. Leeds United FA Cup final replay of 1970. Subsequently John Giles wrote of his club's progress in the 1970s:

*I get a rush of pride when I think of the great years with Leeds United. I also feel shame... now I can see clearly enough that we stretched the rules to breaking point... We went too far, too ruthless, I went too far... We did and we prospered. We never thought there might be a day when we would wonder if the price was too high.*⁸

Giles wrote this while the first Butterworths' edition (1988) of *Sport and the Law* was being prepared for publication to coincide with Croker's accusation of my having invented the subject. Yet as all three Butterworths' editions have explained extensively, it all began much earlier than that, during the last fling of the traditional amateur during the 1950s.

A badly treated broken leg, from the Oxford University soccer trials, released my energies to prepare for the publication of my schoolboy's heroworshipping Second World War correspondence with England's 21-times capped England centre forward, G.O. Smith⁹. C.B. Fry, his great contemporary,

The restraint of trade flag was raised for the first time on behalf of Ralph Banks. When he was transferred from Bolton Wanderers to Aldershot and in due course wished to continue to Weymouth outside the Football League, he was trapped by the old retain-and-transfer system.

contributed a foreword and it appeared as *Corinthians and Cricketers* on the eve of the Corinthian-Casuals FA Amateur Cup final appearance against Bishop Auckland before 80,000 at Wembley Stadium in 1955.¹⁰ Corinthian-Casuals included Douglas Insole, of later *Greig v. Insole* 'Packer'¹¹ litigation fame, and Pegasus included Donald Carr, who had captained an England MCC team on tour in Pakistan.

At that period in sporting history, when winters and summers were clearly divisible into natural and traditional football and winter seasons, many such as Insole and Carr's contemporaries in the professional ranks, epitomized by Denis Compton of Arsenal and Middlesex, were eligible for benefit and testimonial payments. An anomalous distinction existed however; professional footballers' benefits were taxable, professional cricketers' were tax-free. It puzzled me, as it puzzled many others, until I examined the cases. The distinction was easily identifiable. The footballers' case contained a contractual element that the cricketers' did not. The solution was simple. With the players' blessing, eliminate the contractual element and follow the cricketers' House of Lords' precedent of *Reed v. Seymour*.¹²

There then appeared two articles in the then FA *Bulletin* for April 1953 and the then *Rating and Income Tax Journal* for 8 October 1953. Each is reproduced verbatim in Appendix 1 to the third edition of *Sport and the Law*. They brought to my chambers in Lincoln's Inn and later in the Temple, the chairman of the Professional Footballers' and Trainers' Union (now the Professional Footballers' Association), Jimmy Guthrie, who had captained Portsmouth when they beat Wolverhampton Wanderers in the last FA Cup Final before the war. In due course, a test case with elimination of the contractual element, was mounted with players from Peterborough United, who were then outside the Football League, in the Midland Counties Football League. It was heard before the Special Commissioners of Income Tax, and the professional footballers' benefits were equated with those of professional cricketers, where they have remained until today.¹³

At about the same time, the restraint of trade flag was raised for the first time in the Aldershot County Court on behalf of Ralph Banks, who had been mesmerized by Stanley Matthews in the memorable FA Coronation Cup Final of 1953. When he was transferred from Bolton Wanderers to Aldershot and in due course wished to continue to Weymouth outside the Football League, he was trapped by

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the old retain-and-transfer system which was established later in the *Eastham* case, and in its turn a precursor to *Greig*, to be in restraint of trade in line ultimately with the *Bosman* principle. A Rent Restriction Acts possession action was counterclaimed with a declaratory plea for restraint of trade. A six-months' suspended possession was poised for appeal to the Court of Appeal when the restraint was removed before further arguments could be heard and a free transfer was effected to Weymouth.¹⁴

Finally, also during this period of preparation for *Corinthians and Cricketers*, the profits made by the joint Oxbridge Pegasus FA Amateur Cup winning team were clearly eligible for all the fiscal advantages of charitable status. The Inland Revenue would not agree: no funds existed to pursue the claim and, although the Sydney University Rugby Club was being approved by the New South Wales Equity Court in *Kearins v. Kearins*,¹⁵ based upon the Aldenham School First World War decision in *Re Maritte*,¹⁶ another 25 years had to await judicial acceptance of this advice to Pegasus in the FA Youth trust case of *IRC v. Macmullan*,¹⁷ which also applied the Marritte principle of physical education's falling within the educational criteria of *IRC v. Pemsel*.¹⁸

During these days of sporting innocence, free from the current issues of drugs, violence and commercial corruption, the stimulus to activate the 1969 *Police Review* police prosecution concept and the 1970 *New Law Journal's* recording damages for a soccer player's broken leg which had upset Croker in 1988 never entered my consciousness. But the anomaly of the imbalance between the Denis Compton differential benefit tax provisions, the restrictive practice, restraint-of-trade retain-and-transfer system, and educational charitable status were dominating my thoughts while preparing the first edition of *Corinthians and Cricketers* in 1955 (and transferring from Chancery Chambers in Lincoln's Inn to the wider territories of the Temple and the South-Eastern Circuit). These matters commanded my attention in applying easily identifiable, legal principles to sporting situations which had never been considered before in the manner that I developed, once I became aware of the need to remedy the then apparently insoluble problems. To that extent, and from that time, I am ready to plead guilty to having invented the subject of sport and the law, during that innovative gestation period in the early 1950s.

Two decades later the *Sunday Telegraph's* 76-page booklet published in 1978, after a series of three articles in 1977, was the logical corollary for which the seeds had been sown in the 1950s. They were inspired by the breed of footballing-cricketers at both the Corinthians-Pegasus and the Denis Compton at Arsenal and Middlesex levels, which have now gone forever. Ian Botham, with his mixed footballing and cricketing experience, was one of the last to double at both games. His no less talented son Liam, who took five wickets for Hampshire on his county cricketing debut but ultimately switched to Rugby Union, first with West Hartlepool and more recently with Cardiff, illustrates vividly the inevitable choice to be made today. While the options remained for the Comptons, the Carrs and the Insoles at amateur and professional level, the opportunity came my way to link the law to sport - which was available to anyone else who might have been sufficiently motivated to take the action which appeared to me then to be appropriate. Yet even before my own discoveries, the sources and principles for what I uncovered and applied had existed since Greco-Roman times.

Antiquity

Antiquarian research student who may be concerned to trace the roots of modern sport and the law has ample material on which to draw. For the modern practitioner, and indeed the student concerned with active participation today, they have little practical benefit apart from creating an awareness of what Arsenal Football Club's most eminent and prestigious supporter, the Rt. Revd George Carey, Archbishop of Canterbury, said in a House of Lords debate on society's moral and spiritual well-being, on the eve of the Euro '96 competition: 'Rules do not get in the way of the game, they make it possible.'

Greco-Roman recreational activities, no less than those of our own era, had their own indigenous, competitive criteria, but beyond recognizing this basic existence, they would not concern the modern practitioner. More relevant to our own times, however, are the medieval legislative enactments for protecting archery and regulating gaming, hunting and other sporting demands which I have summarized by citing such authoritative sources as Blackstone and Holdsworth. The eighteenth-century commentaries of the English legal system's most traditional jurist and historian Blackstone identified gaming-laws sanctions as (Bk IV, Ch.13, p.174) 'constituted by a variety of acts of Parliament: which are so

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numerous and so confused and the crime itself [killing game even upon their own estates] of so questionable a nature, that I shall not detain the reader with many observations thereof.

Nearer our own time, Sir William Holdsworth's monumental *History of English Law* traced back to Richard II a fragmentation comparable to our own period when he wrote under the head of 'Hunting and Game' (Vol.4, p.505):

The legislation on this subject proceeded on many different principles. Sometimes it proceeded on the principle that assemblies for the purpose of hunting and sporting gave opportunities for riot and disorder; sometimes on the principle that hunting and sporting ought to be the privilege of landowners, and that other classes ought to employ themselves in a manner more suited to their condition in life; and sometimes on the principle that it resulted in the wanton destruction of game. We can see all these principles underlying Richard II's statute on the subject [13 Rich 11, St 1, Ch 131 and they appear clearly enough in the various statutes of this period.

Those different principles' objectives have a common legal denominator which echoes today's legislative examples above and is rooted in realty and intellectual property law: the licence principle. It originated with the royal prerogative recognized by Blackstone from its creation after the Norman conquest and the parcelling out of the Forest Laws, and survives today in the New Forest. It has been perpetuated for centuries by Parliament, with an ebb and flow of restrictions and authorities for defining, preserving and killing different species of game; and it is structured to provide individual property ownership protection through the laws on civil trespass, criminal damage, poaching and the Public Order Act 1986.

Significantly, that fragmentation is replicated in our period with examples stretching from the Physical Recreation and Training Act 1937; introduced in anticipation of the Second World War's requirements for national fitness to fight, to the Olympic Symbol (Protection) Act 1995, with its creation of exclusive property rights in relation to the use of the five-rings symbol, consistent with current commercial requirements. In between, we have witnessed the cascade of safety legislation to fill the gaps created by the Ibrox (1971), Bradford City (1985) and Hillsborough (1989) stadium disasters, and litigation upon the application of known

principles which has followed each of them. Thus one arrives at contemporaneity and the future.

Contemporaneity and the Future

The progression of the *Sunday Telegraph's* 76-page booklet in 1978 to Butterworths' third edition of 631 pages in 2000 over 20 years later clearly identifies the subject's development without need for further comment. However, it is worth noting two fundamental assessments and developments which were not apparent at the time when I first became involved in the early 1950s days of innocence with tax-free benefits for footballers, laying the trail from *Banks* via *Eastham* and *Insole* to *Bosman*, with sporting educational charities awaiting approbation in the House of Lords with the FA Youth Trust deed in 1980.

One is the emergence of the contrasting cultures between show business, sport and recreation and their grass roots. The other is the true meaning of sport, if any meaning can be generally applied to it, and the arcane, arid and artificial argument about whether there is a law of sport or sports law.

So far as the first is concerned it is vividly illuminated by the antithesis between:

*Manchester United Football Club plc
proudly presents at its
Old Trafford Theatre of Dreams,
International All Stars Football Entertainment,
including David Beckham (with Victoria
Adams and Baby Brooklyn in the stands)
under the management of
Sir Alex Ferguson*

alongside

- Clayton playing fields at Oldham
- Foster's Field in Dorset
- New Milton Recreation Ground in Hampshire
- Town Moor, Newcastle-upon-Tyne
- Charterhouse vs Westminster, 1863 to date
- Oxford vs Cambridge, 1874 to date
- Corinthian-Casuals, 1882/183, at Tolworth, Surrey, 1989 to date

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The second has been conveniently considered by the only public figure to demonstrate any realistic comprehension of what sport and the law comprise, who created the role of a government minister for sport, in addition to having been three times Lord Chancellor and also Editor-in-Chief of the fourth edition of *Halsbury's Laws of England*, Lord Hailsham of St. Marylebone. His grandfather, the first Quintin Hogg, is the subject of the only London statue with a football. The statue faces his own landmark foundation of the University of Westminster (originally, the Regent Street Polytechnic), outside the BBC in Portland Place, and he was the goalkeeper for the Old Etonians in the FA Cup Final of 1875/76, as well as initiator, with Lord Kimaird, of the earlier Scotland vs England soccer matches. His father, the first Viscount Hailsham, was President of the MCC during the 1932/33 Jardine-Lamood bodyline bowling imbroglio. Thus his pedigree is at least consistent with an awareness of the subject.

As Minister for Science and Technology and Lord President of the Council in the Macmillan government, Lord Hailsham recalled during 1980 in *The Door Wherein I Went*:

It occurred during a Cabinet Meeting [in 19621 in which government responsibility for sport was being discussed. It was being said that, properly speaking, responsibility for sport was being shared between quite a number of departments and authorities, education, local government, universities, the services, and all the voluntary bodies dealing with athletics, from the Olympic and Commonwealth Games and League and Cup football at the top, to badminton, fives and even chess at the most refined and esoteric end of the spectrum. I pointed out that recreation generally presented a complex of problems out of which modern government was not wholly free to opt, and to which government funds were, in fact, and were likely to continue to be, committed in one way or another in coaching, in the provision of playing fields, in matters of safety at racecourses and football grounds. I waxed eloquent on this subject, talking of the fares for Olympic competitors and many other topics. I suggested that there was need, not for a Ministry but for a focal point under a Minister, for a coherent body of doctrine, perhaps even a philosophy of government encouragement. Paradoxically, I thought there was in fact a kind of analogy in the way in which I had tried to administer government science, making use of independent expertise,

The other is the true meaning of sport, if any meaning can be generally applied to it, and the arcane, arid and artificial argument about whether there is a law of sport or sports law

but not seeking to impose regulation or central administration. My eloquence had its effect on the Prime Minister and, before I knew where I was, I was left to organise the first government unit of this kind under Sir John Lang, who had been Secretary of the Admiralty when I was First Lord. As in most of the other things I have done in public life, except the Party Chairmanship, I always strive to work through other people with the minimum of fuss, as I find that this is the best way to get things done. This particular activity was a minor matter, and I thought comparatively little of it at the time since it occurred at a period when other things were occupying my mind [as a Cabinet Minister].

Nearly 30 years after what he had regarded in the context of the time to be 'a minor matter', he reflected further in *A Sparrow's Flight* published in 1990:

Sport, I believe ... is an essential part of education. Years later, in my judicial capacity as Lord Chancellor, I was part-author of a judgment which authenticated the legal status of a fund for Association Football as a charitable trust [IRC v. McMullan [19801 AC 1]]. Organised sport is undoubtedly part of our national culture. In mountain-climbing, cricket and most kinds of football, in hunting, fishing and game shooting, the British were the pioneers in the field of sport as it burgeoned in the nineteenth century.

From there, it was a logical step in the same work for him to claim, and as corroborated by the most authentic of sources identified hereafter: 'In a sense there is no such thing as sport. There is only a heterogeneous list of pastimes, with different governing bodies, different ethics and constantly varying needs.'

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Four years later in 1994 he was corroborated from an unexpected legal source under a Treasury HM Customs and Excise notice, VAT 701145194. It gives a list of 113 British 'heterogeneous... pastimes with different governing bodies, different ethics and constantly varying needs' which qualify for exemption as non-profit-making activities for VAT purposes (see Appendix 1). The list was an arbitrarily Treasury-inspired document, which did not include chess or pigeon racing, the governing bodies of which are still protesting at their omission. Two years earlier, on 5 December 1992 in Cliff Morgan's never-to-be-forgotten BBC *Sport on Four* radio programme – axed contentiously by an unappreciative directorate in the face of strong public protests - the celebrated Daily Mail columnist and award-winning sports writer Ian Wooldridge illuminated all of this after the ejection of the four United Kingdom national soccer teams from the World Cup competition, when he posed and answered a question:

Does sport still exist?

Well it does, but you have to go out into the suburbs and shires to find it. Village cricket, soccer on Hackney Marshes, old boys' rucker teams getting legless afterwards, point-to-pointing, county golf, darts leagues in Dorset. What we have been watching in the frenetic World Cup soccer action this week was hardly about sport at all. It was all about [a] high performance branch of the entertainment industry.

He thereby crystallized the present public persona of whatever sport may mean; not a game of two halves, but a game of two conflicting and contrasting concepts: showbiz vs grass roots, and exercise for health and education within the

'In a sense there is no such thing as sport. There is only a heterogeneous list of pastimes, with different governing bodies, different ethics and constantly varying needs.'

rule of law on and off the playing field. That rule of law, on and off the playing field, is as essential for the future of sport in society, whatever sport may mean, as it is for society in general. For without the rule of law in society anarchy reigns. Without the rule of law in sport chaos exists.

The developments evidenced currently in the courts and Parliament demonstrate beyond a peradventure that sport cannot regulate itself, particularly as it is administered principally by non-professional, volunteer amateurs. Five years ago in an American journal Gardiner and Pelix queried and, indeed, challenged my belief that 'the law will save sport from the violence of today', an argument they had consistently and perversely put forward in the face of what I would term overwhelming contrary evidence." I am content to let the reader judge for him or herself. As Frank Butler wrote in the *News of the World* after my Police Review feature on crimes of soccer violence: 'The day the police take over from the referees will be the day sport dies.'

At the showbiz entertainment level it is arguable that it has died already as a concept of health and education within the rule of law. If the future for the grass roots is to have any value and benefit for society and those who take part in it, then it will survive only by the application of the rule of law, and at all dimensions in the words of Arsenal's No. 1 supporter as Primate of All England:

'Rules do not get in the way of the game, They make it possible.'

For roles read laws; and at all levels (that is, of play and administration) statutory and judicial decisions, in the courts, are required to fill the gaps that appear daily with a horrendous and nauseating regularity, poisoned by an ill-informed media feeding on vast commercial chunks of the entertainment industry, as far removed from the true meaning of sport as Ian Wooldridge identified in the graphically illuminating image cited above. **BASL**

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APPENDIX 1

List of British sports activities which qualify for exemption as non-profit-making activities for VAT purposes (HM Customs and Excise, VAT 701/45/94).

Aikido	Hockey
American football	Horse racing
Angling	Hovering
Archery	Judo
Ann wrestling	Kabaddi
Association football	Karate
Athletics	Kendo
Badminton	Korfball
Ballooning	Lacrosse
Baseball	Lawn tennis
Basketball	Life saving
Baton twirling	Luge
Biathlon	Modern pentathlon
Bicycle polo	Motor cycling
Billiards	Motor sports
Bobsleigh	Mountaineering
Boccia	Movement and dance
Bowls	sub-aqua
Boxing	Netball
Camogie	Orienteering
Canoeing	Parachuting
Caving	Petanque
Chinese martial arts	Polo
Cricket	Pony trekking
Croquet	Pool
Crossbow	Quoits
Curling	Racketball
Cycling	Rackets
Dragon boat racing	Racquetball
Equestrian	Rambling
Exercise and fitness	Real tennis
Fencing	Roller hockey
Field sports	Rosser skating
Fives	Rounders
Flying	Rugby League
Gaelic football	Snooker
Gliding	Snowboarding
Golf	Softball
Gymnastics	Street hockey
Handball	Sumo wrestling
Hang/para gliding	Table tennis
Highland games	Taekwondo

Tang soo do	Unihoc
Tenpin bowling	Volleyball
Trampolineing	Water skiing
Triathlon	Weightlifting
Tug of war	

NOTES

1. *This was made at the 1988 annual conference of the Central Council of Physical Recreation on the eve of the publication by Butterworths of the first edition of Sport and the Law, London, 1988.*
2. *Charles Woodhouse, CVO, was my successor in 1993 as President of the British Association for Sport and the Law; he was at that time Honorary Legal Adviser to the Central Council of Physical Recreation.*
3. *77 Police Review (1969) 110.3969.*
4. *(1878) 14 Cox CC 83.*
5. *(1898) 14 TLR 229.*
6. *The Times. 21 Nov. 1968.*
7. *120 New Law Journal (1970), 413.*
8. *Daily Express. 25 Aug. 1987. 30-1.*
9. *Smith had also secured a memorable Oxford University fourth innings century at Lord's in 1896 against Cambridge, three months after equipping England's pro-am soccer XI against Scotland from centre-forward at Glasgow as a true Corinthian and cricketer!*
10. *Two and four years, respectively, after UK joint Oxbridge XI Pegasus's two Wembley FA Amateur Cup triumphs before 100,000 crowds in 1953 and 1951, with three subsequent ones in 1957, 1983 and 1996.*
11. *See Greenfield, Ch.8 in this collection, for more detail of the Packer case.*
12. *[1927] AC 554.*
13. *Rigby v. L.R.C., Peterborough Citizen and Advertiser, 16 June, 24 July 1959. See also Grayson, Sport and the Law, 72-3, 148-9, App.1.*
14. *See Aldershot v. Banks, Aldershot News, 25 Nov. 1955; Sport and the Law, 3rd edn, London, 2000.74-5.*
15. *[1957] SR NSW 286.*
16. *[1915] 2 Ch 284.*
17. *[1981] AC.*
18. *[1991] AC 531.*
19. *5 Maquelfe Sports Law Journal (Spring 1995) no.2, 200.*

Grayson Memorial Lectures



First Edward Grayson Memorial Lecture: Fair Play – Is there still room for the Corinthian Spirit in sport?

Inaugural Edward Grayson Memorial Lecture on 13 May 2009 by Lord Moynihan, Chairman of the British Olympic Association, introduced by Charles Woodhouse, founding chairman of BASL.

Introduction with some personal memories of Edward Grayson by Charles Woodhouse.

Our paths first crossed – and our friendship began – in the 1970s. We were very different. Through luck and being in the right place at the right time I started acting for the BOA and CCPR in 1971 without thinking there was such a thing as sports law. But I then noticed frequent articles by Edward on sport and the law and fair play in the Sunday Telegraph. His theme then, as it remained, was that sport was not above the law. His articles and radio interviews echoed his belief in the amateur ethos, first described in 1955 in his “Corinthians and Cricketers”, a eulogy to his childhood hero, G.O. Smith, the Charterhouse and England centre forward. Smith epitomised to the young Grayson a golden era, which his long life straddled – Edward was born in 1925 and interviewed G.O. Smith in the War shortly before he died in 1943.

Edward and I became friends with Edward being something of a mentor.

We had our differences with ups and downs but were constantly in touch and corresponding. The correspondence was rather one way with me receiving at my Farrers’ office for many, many years an almost daily, early morning hand delivered missive from Edward, partly typed and partly hand written with the latest sports politics and law update. Edward had a restless, nocturnal existence between his Middle Temple flat, his Chambers at 4 Paper Buildings and the Fleet Street offices of sports editors and writers, particularly The Telegraph. If Edward was later spotted nodding off in court it was understandable. There is something of Edward in Rumpole and indeed an uncanny likeness in later years between John Mortimer and Edward. I gather John Mortimer liked and approved of Edward. Edward enjoyed his friendships with sports journalists like David Miller and

John Goodbody. Both of their hands and styles could be spotted in the affectionate, generous and deserved obituaries of Edward in last autumn’s Times and Telegraph. I know he cherished his many BASL friendships with Maurice Watkins, Ray Farrell, Simon Gardiner – he loved being a visiting professor at Anglia University – Nick Bitel, Karen Vleck and many others, however much all of us will have unsuccessfully tried to limit Edward to questions only and not policy statements at BASL seminars.

Edward and my practices and approaches were so different. I agreed with him that sport was not above the law but unlike him I hated litigation in sport and tried to help sports governing bodies keep the lawyers out of sport by getting rules right and observing natural justice. But as an aside I pay tribute in the early 1990s to Edward’s encouragement and help in the early days of setting up Sports Dispute Resolution Panel, now Sports Resolution UK. Edward was supportive of SDRP provided it kept out of sports injury claims and crime, two of his career fields, both of which in any case were always outside SDRP’s remit. I still have a six page letter from Edward of 1991 telling me what SDRP should and should not do. The point is he cared passionately about sport and the law. No one paid him to write that letter or the hundreds of other notes and letters he sent me and others over 40 years. In that sense because he loved sport Edward was a true amateur, a Corinthian.

The late Sir Harold Thompson is another interesting link with Edward and that era. Sir Harold whose wife came up with the name Pegasus, the great amateur football club which only lost 2-1 to Arsenal in 1947, was a friend of Edward’s. He later became for years FA Chairman and was responsible for some benchmark FA court cases like the Revie case. In that case his dual role of judge and prosecutor caused the FA to lose a case it should have won had it followed natural justice. He was Professor of Chemistry at Oxford and he prevented Brian Clough from being England team manager, Clough having fatally said that his knowledge of chemistry was equal to Thompson’s on football, i.e. nil. Edward and I together with the CCPR had meetings with Harold Thompson on sports battle to stretch the charity law definition for amateur

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sport under the education banner. In that context Thompson and the FA with Edward's involvement were helpful to sport—this was over thirty years before the breakthrough in the recent Charities Act. But yet another example of where Edward, unpaid, helped sports bodies.

In addition to Edward, from the 70s onwards I arranged that lawyers like David Pannick, Antony Lester, Peter Coni, David Dixon and Robert Reid were invited to CCPR annual conferences to explain to governing bodies how to minimise the risk of litigation by getting their rules and procedures right. Edward's obituary in The Times by John Goodbody described him "as the scourge of conference platforms" and the seeds of this started at these CCPR conferences in the 70s and 80s, later experienced and enjoyed at every BASL seminar and conference since BASL's formation by Edward with others in 1991.

Edward was indeed the father figure of sport and the law, the "fons et origo" or "onlie begetter" as Michael Beloff sensitively and fairly acknowledged in his later book on Sports Law, published in 1999. I say sensitively because Edward was proud that his book was the "original" one. His first sentence in his first edition in 1988 states "This is an original book." He had for years kept a card index system of every sports case in the courts, reported or otherwise with daily updates which he often showed me. In later years he became at times territorial and was somewhat underwhelmed when he felt his life's work was being used by others. May I tell an aside on this which Edward enjoyed. There was a misprint in the third edition of Edward's Sport and the Law" giving the date wrongly of an unreported but to Edward and me important and early FA Court of Appeal case (Machin v FA, CA 1973 The Times). This mistake was followed both in Beloff's Sports Law and later in the major edited textbook on Sports Law by Adam Lewis and others. This proved to Edward if proof were needed how much successor sports law writers relied on his material.

But I am getting ahead of myself. I felt at the time and still believe that Edward's 1978 slim green covered pamphlet titled "Sport and the Law", published by the Sunday Telegraph, was the start of it all and the landmark classic. Edward himself said that sport and the law arrived with the 1988 Butterworths' publication of the first edition of "Sport and the Law". He often wrote and spoke about his famous clash at the CCPR conference in early 1988 with Ted Croker, then FA Chief

Executive, which coincided with the publication. Ted unwisely told Edward during the conference that he did not approve of lawyers coming into sport, that governing bodies like the FA could handle their affairs better without lawyers and it was all Edward's fault for inventing sport and the law. I was chairing the session having just presented an over long and detailed paper with the title "Use and abuse of the law in sport".

I have looked again at the minutes recorded by the CCPR of that memorable, public Grayson-Croker clash, both of whom believed passionately they were right. I quote:

"During discussion (after Mr Woodhouse's paper), Mr Woodhouse stressed the importance for lawyers not to become involved in politics."

Mr E A Croker (Football Association) said he believed that governing bodies should be left to look after their own business, assuming they were doing so adequately. He believed the present system worked well and he deplored the intervention of the law unless it became absolutely necessary.

Mr Croker gave an example of a recent fine of a footballer which was decided on shortly after the offence. (Paul Davis of Arsenal had been fined £1000 by the FA for an on field punch within days of the incident). Mr Croker said if it had been resolved in the courts there would have been great delay and the fine would not have been in all probability, anything like as severe as the FA's fine. He wanted to endorse Mr Woodhouse's comments about the courts not wishing to get involved and said he personally was unhappy with the way that lawyers were getting more and more involved in sporting matters.

I pay tribute in the early 1990s to Edward's encouragement and help in the early days of setting up Sports Dispute Resolution Panel, now Sports Resolution UK.

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Mr E Grayson (*Sunday Telegraph*) dissenting, said the only reason lawyers got involved was because sport and sports people often acted as if they were above the law.”

Dissenting was an understatement. Edward had been provoked. There were raised voices and finger wagging in both directions. Those who knew and loved Edward will understand he went on way beyond the two and a half lines minuted in trying to put right the much respected Ted Croker. I can still picture Edward in full flow explaining that sport should stop regarding itself as above the law.

In my talk, I had unreservedly plugged and commended Edward’s first edition to the large gathering of governing body administrators present. Edward had involved me closely in its genesis.

Let me read extracts from a review I wrote in *Wisden Cricket Monthly* (March 1988):

“Although published by Butterworths this is no ordinary legal textbook. It is a remarkable amalgam of sporting, legal, political and social history, linked by Edward Grayson’s “entrenched belief that justice in the Rule of Law and Fair Play in sport are not only the twin sides of the same coin: alongside Britain’s constitution they are also part of the nation’s unwritten heritage”.

I mildly criticised Edward for not giving adequate emphasis to recent decisions showing the reluctance of the courts to intervene and second guess rulings of sports bodies. I described the book as “readable and humorous” and while it was “too subjective perhaps to be a legal textbook”; I concluded “Grayson is no respecter of person and believes there is no room for compromise when dealing with ethics in sport and the overriding principle of playing within the rules. The book could not have been better timed.”

Colin Moynihan gets off lightly, indeed is treated favourably, in the book. Described by Edward as the seventh and youngest appointee as Sports Minister in 1987, Edward’s complaint was that Colin was only part time sports minister, sharing the brief with another minister David Trippier, responsible for sports grant aid in urban areas. Edward wanted always the sports minister to be in the cabinet, starting with one of his heroes Lord Hailsham. But Colin saw off Mr Trippier and can take heart from Edward telling me he only rated three sports ministers after Hailsham, namely

Denis Howell, Colin Moynihan and Kate Hoey. So Edward would have thoroughly approved of Colin giving this inaugural Grayson lecture.

We were all privileged to know Edward in our different ways. He was a one-off but passionate in his beliefs and helped so many whether injured sportsmen and women – sports medicine was another of his great interests – or aspiring sports lawyers. He took me and doubtless many others to those early BASL meetings at Old Trafford. Without Edward BASL would not have happened when it did and how it did.

It is a different world today. The issues of the 70s and 80s when Edward was at his peak like amateur status and eligibility, the sports boycott of South Africa, where Edward and I were on opposite sides, and whether there is or was such a thing as sports law are now past. Or are they? Hence this evening’s lecture. We should not forget what Denis Howell said in his forward to the first 1988 edition of *“Sport and the Law”*. He described Edward as long being “almost a sole voice drawing our attention” to his belief in justice in the rule of law and fair play in sport. **BASL**

Charles Woodhouse
13 May 2009

This introduction by Charles Woodhouse, remembering Edward Grayson, was given at the start of the inaugural Edward Grayson Memorial Lecture by Lord Colin Moynihan, Chairman of the British Olympic Association, on “Fair Play—is there still room for the Corinthian Spirit in Sport?” to members of The British Association for Sport and Law at Kings College London on 13 May 2009.

FAIR PLAY - IS THERE STILL ROOM FOR THE CORINTHIAN SPIRIT IN SPORT?

**Inaugural Edward Grayson Memorial Lecture
on 13 May 2009 by Lord Moynihan, Chairman
of the British Olympic Association**

Introduction: Derivation of 'Corinthian man'

I am deeply honoured to have been asked to give the inaugural Edward Grayson Memorial Lecture. The topic that I am going to address tonight is a fascinating one, which cuts to the very core of many of the issues faced by sport today and which constantly fascinated Edward.

A precise definition of what we mean by the Corinthian spirit is not easy, arising as it did from the complicated and shifting nexus of interrelationships between sport, class and money in the late 19th century. The Corinthian spirit reflected an outlook on life as much as a sporting code: the Corinthian sportsman was the product of public school influences, a gifted amateur who played sport for the love of it and, in the spirit of comradeship, with a distaste for financial reward or for any kind of commercialization of sport. His emphasis was on participation, collective achievement and teamwork, rather than on personal prowess. Intrinsic to the Corinthian code were the values of fair play, selflessness, courage and loyalty.

Now I am tempted at the outset of this lecture to apologise to the women in the audience but in this context we really are talking about men and men only here. Women's competitive sport lagged far behind men's – reflecting their social position at the time: equal voting rights were not granted to women in the UK until 1928 and Pierre de Coubertin often argued the case that men, and men alone, represented the Olympic ideal. Certainly sport and the Olympics have subsequently played a far reaching role in improving and raising the profile of women's rights.

The question in the title implicitly suggests that there may no longer be room for this spirit in sport and that over time, there has been a decline in the values of fair play in sport. Like so many things in life and in sport, the issue is not a new one. Writing against the grim backdrop of the end of the Second World War in 1945, a war-weary and jaded George Orwell, having studied press accounts of their bruising encounters with British Clubs, was prompted to write 'The Sporting Spirit' following the visit of the Moscow Dynamos in December 1945. You may recall his observation:

'Serious sport has nothing to do with fair play. It is bound up with hatred and jealousy, boastfulness, disregard of all the rules and sadistic pleasure in unnecessary violence. In other words it is war minus the shooting.'

Both sport and society have changed enormously since the founding of the Corinthians, the highly successful amateur football team in the 1880s, which gave its name to this code of sporting behaviour and its inherent values. Yet some things do not change and ironically, the driving force behind the concept of the Corinthian spirit was a concern in some quarters that the values of fair play were being irretrievably lost to sport and to football in particular. Firmly in amateurism's corner, the Corinthians fought a rearguard action against the rise of professional sport, guided by an ethos of fair play and sportsmanship.

In his excellent book, 'On the Corinthian Spirit: The Decline of Amateurism in Sport', DJ Taylor tells how this team of public school educated amateurs, the Corinthians, outraged by what they saw as the debasing of their game by newly-formed northern professional clubs, would decline to take penalties and should the opposition lose a man for any reason, they immediately and voluntarily sent off one of their own men to even up the numbers.

These tactics would be laughable in a modern Premiership team, yet the Corinthians were enormously successful. Within three years the Corinthians had metamorphosed into the pre-eminent amateur side in the land. In the 1884-5 season they beat the FA Cup holders, Blackburn Rovers, twice. In the quarter-century to 1906, the club's historian calculated that a third of all places in England-Scotland fixtures were taken by Corinthians players and they exerted a powerful influence on the development of football.

The great legacy of the Victorian era

Above all, the Corinthian spirit was part of the great Victorian legacy to sport. The size and scope of this legacy cannot be over-estimated. During this period, sport underwent an extraordinary transformation. In the second half of the 19th century, Britain was the cradle for the evolution of much of modern sport. And thanks to the Empire, this had far-reaching global consequences for the development of sport.

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The establishment of many national associations and federations all took place during this period. The model was the Football Association, founded in 1863. The competitive framework for many sports also dates from this period. The FA Cup and the Football League in football; test matches and the County Championship in cricket, the Wimbledon tennis championships, the Open golf championship, Rugby Union internationals – they were all products of the inventive Victorian imagination and their propensity for codification.

The architects of modern sport, by and large, built its organisational structures on virgin ground. And the identity of those architects is important. It has a direct bearing on why the values of the Corinthian spirit and the amateur ethos became so deeply embedded in sport.

Central to the development of organised sport was the English public school. Even before Queen Victoria's ascent to the throne, the influence of schools such as Eton, Rugby and Uppingham could be felt in sport. Boys at Rugby printed their own book standardising the rules of football and the school's influence was so important that FIFA still sends tours there. The public school code of gentlemanly conduct and honour permeated the Corinthian spirit and underlay its values. It was indeed a code which 100 years later had as its lead protagonist, Edward Grayson.

Battle-lines drawn: the ideological split of amateur v. professional

Yet having constructed a whole sporting codification based on an amateur ethos and the superior virtues they ascribed to that ethos, the architects of modern sport were dismayed to find that in just a few decades, they were in danger of losing control over their creation, as the growing popularity of sport spread through all strata of society, causing 'the rule of Gentlemen' to increasingly give way to the 'ascendancy of the Player'.

The debate over sport's place in society raged throughout this era. The ideological battle between amateur or gentlemanly 'virtues' and professional or players' 'vices' is illustrated by a correspondent writing in the *Northern Review* in 1889, who claimed that cups and prize money devalued football and meant that 'the glory of the pastime and the exercise it provides are smothered by a morbid unhealthy desire to win'.

The effect of the social and geographical expansion of sport was to hold a mirror to society. Thus distinctions between amateur and professional could often be ones of class and social status, with 'amateur' a byword for 'gentleman'. However, just to complicate matters, this was not always the case and different sports applied different interpretations, definitions and practices to both amateur and professional status. During this period, to suggest a loss of amateur status was seen as a complex slur on a man's character: in 1931 Cyril Tolley, the former amateur golf champion, was awarded £1000 by the House of Lords against J.S.Fry & Sons because in using a cartoon of him in an advertisement they had allowed the inference to be made that he had accepted money for advertising and was therefore no longer an amateur.

And in one of the early influences of the modern Olympic movement the Amateur Rowing Association at its establishment in the 1880's considered 'an amateur to be a gentleman'. They insisted on 'gentlemanly status' and participation in their events was prohibited to anyone who had ever worked manually. This being the case, the American Olympic sculling champion J H B Kelly was barred from Henley in 1921 because he had worked for his father's construction company. As it happens, he became the father of Princess Grace of Monaco. The Australian Olympic champion, Henry Pearce, was also banned – in his case police work was considered to be manual work. Similarly, the Rugby Union's amateur code prohibited 'material gain' from any sport.

However, in cricket, all players in the first class game were known as either professionals or amateurs and although there were procedural differences between the two, the same distinctions did not apply and amateur cricketers were not prevented from making money. Two of the most famous English cricketers of this period, W G Grace and later CB Fry, were both amateurs and both made large sums of money from the game through books and coaching columns in a way which would have violated the strict codes of both rowing and rugby.

Epitome of Corinthian spirit in the modern Olympic Games

In the pantheon of sporting history, this period, as I have already mentioned, is also notable for the creation of the modern Olympic Games by Baron Pierre de Coubertin.

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There is an important cross-fertilisation of ideas here, for de Coubertin was heavily influenced by the same public school values which inspired the Corinthian spirit. He enormously admired the achievements of Dr. Thomas Arnold, Rugby's famous headmaster, making a pilgrimage to the school in 1883, when legend has it that he reportedly knelt before the statue of the man himself.

Together with the ideals of the Ancient Olympics, these values and ideas found expression within de Coubertin's vision for not just a sporting event, but a whole movement. Through the humanising concepts of modern Olympism, he envisioned the modern Olympic Games as a vehicle to promote higher human ideals and values and to build a pathway to peace and understanding for all peoples. In his vision, Olympic sportsmanship would be underpinned by the values of honour, chivalry and gentlemanly behaviour.

These values espoused by de Coubertin go hand in hand with Corinthian values; and none more so than his wholehearted belief in the importance of participation, for in the often-quoted words which had their origin spoken from the pulpit of St Paul's Cathedral: 'The important thing in the Olympic Games is not winning but taking part. The essential thing in life is not conquering but fighting well.'

However, there is a paradox in this: at the time when the values and virtues implicit in the Corinthian spirit were at their height, sport in Britain was played against a backdrop of empire and sport was a preparation for a life of colonial service, which might well involve conflict and warfare – the antithesis of sport as a means to promote peace. This is most famously expressed in Sir Henry Newbolt's poem, *Vitai Lampada*, written in 1897. Its evocative lines, 'There's a breathless hush in the Close to-night; Ten to make and the

match to win; A bumping pitch and a blinding light; An hour to play and the last man in. But his Captain's hand on his shoulder smote – 'Play up! play up! and play the game!' imagined a cricket match as preparation for the imperial battleground.

Today, Britain no longer has an empire and public schools and their sports matches are no longer a training ground for colonial service. Our perception of the role sport should play in society and the benefits it brings is far closer to the ancient Greek idea of sport as a substitute for warfare, a means of containing aggressive and competitive human instincts within a controlled environment. Ahead of his time, de Coubertin embroidered a version of this theme into his reinvention of the modern Olympics. He hoped the peacekeeping mission of the Games would be an important model for the world, stating: 'Every four years, the restored Olympic Games . . . [will] little by little dissipate the ignorance in which people live with respect to others, an ignorance which breeds hate, compounds misunderstanding and hastens events down the barbarous path to merciless conflict.'

1908 London Games

It is no surprise then, that from their inception, the Olympic Games were open only to amateurs, in line with the prevailing ethos of the day. They continued this tradition long into their history, despite increasingly bitter disagreements over the issue. Even in 1972, when the distinction between amateur and professional was more or less obsolete, the President of the IOC, Avery Brundage, described professional sportsmen as 'performing monkeys'.

Cognisant as I am of the enormous challenge and honour for London to host the 2012 Olympics, in any lecture on the Corinthian Spirit, it is instructive to look back to 1908, when London hosted the Olympics for the first time.

The 1908 Olympics were an extraordinary achievement by any standards. They were product of their age, but equally, an illustration of how the timeless power of sport has endured and how the magic of Olympic gold dust still captivates us.

The Chairman of the British Olympic Association, Lord Desborough, was the very essence of a Corinthian man. Besides rowing for Oxford, and being President both of the Oxford University Boat Club and of the Athletic Club, he

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also swam across the Niagara rapids twice, climbed the Matterhorn three times by different routes, rowed across the English Channel and was Amateur Punting Champion of the Upper Thames.

He was a BOA chairman worthy of emulation! Although the BOA had only been founded in 1905, he took on the task of hosting the games with less than two years to prepare, after the eruption of Mount Vesuvius forced the original host city, Rome, to withdraw.

Highly resourceful, he managed to negotiate a deal to have a stadium built to Olympic specifications at no cost to the Olympic organisers. A Franco-Britannic Exhibition had already been planned for the site in 1908 and in return for a proportion of the gate receipts, the exhibition organisers agreed to build what became the famous White City Stadium, for £44,000 and in double quick time, even donating £2,000 towards its running costs!

The Games may have taken place in a different era, but there were nevertheless contentious elements that would be familiar today. There were allegations of biased judging and the resultant controversy led to the standardisation of track and field rules at future Olympics and other major events.

The 1908 Olympics also set the bar for Team GBs of the future, when we topped the medal table, winning 56 golds, 51 silvers and 39 bronzes! That, I can assure you will never be repeated!

Challenges of amateurism and professionalism and the end of the dominance of the amateur ideal

Yet tensions between amateurism and professionalism existed long into the 20th century. The essayist, Lincoln Allison, has defined the period from the 1860s to the 1960s as the era of ‘amateur hegemony’. This was when the amateur ethos prevailed in sports governance, with the influence of the commercial sector, and the free market being very limited and the state sector excluded altogether.

It was not that professionalism did not exist – in some sports, including both cricket and football, it did and had done so for many years. But the amount of money which could be made was capped and the moral superiority of the amateur

was often assumed. This model was established as the norm for sport as it expanded into the grassroots of British society.

In her book, ‘The Austerity Olympics: When the Games came to London in 1948’ Janie Hampton gives a number of examples of how this model was put into practice in the 1948 Games. Dennis Watts, the AAA champion in long jump was selected for the British team – until it was discovered he had applied for a job as a sports teacher. Although he had yet to be interviewed, he was immediately dropped because he was considered to be a professional. And in true Corinthian spirit, the seven man New Zealand team signed an Olympic Bond in which they agreed to ‘win without swank and lose without grouching’. A further anecdote: the New Zealand wrestling champion, Charlie ‘Croga’ Adams, was caught cycling on a public footpath and fined five shillings. The New Zealand Olympic Committee deemed him to be convicted criminal and he too was dropped.

From a British point of view, the collapse of this ‘amateur hegemony’ began with a highly significant event: the abolition of the maximum wage in football in 1961. Other sports soon followed suit and the process continued until the last mainstay of amateurism capitulated in 1995, when the International Rugby Board finally decided to allow open sport.

Allied to the introduction of televised sport in the same period, which was to increase exponentially the amount of money that could be made out of sport, the door was, for better or for worse, open to the commercialisation of sport. But while the unpaid nature of amateurism might have been dealt a knockout blow, I want to make the case today that the values underlying the amateur ideal have proved considerably more resilient.

Today’s Sporting Map

Today’s sporting map is dramatically different in a number of ways to the one bequeathed to us by our Corinthian predecessors. It is shaped not only by the contours of lucrative professionalism, but also by the profound impact of mass media on sport and the increasing involvement of the state in funding and regulation.

Sport is a huge industry today. It has been estimated variously to be the sixth biggest industry in the European Union, the eleventh in the United States and the twenty-second in the

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world, with both costs and rewards spiralling exponentially. Sixty years ago, the cost of staging the 1948 Olympic Games in London was £732,268 (equivalent to about £20,000,000 today). There was a profit of £29,420 (having deducted the Argentine cheque for £280 which bounced); and the Government of the day, which had played no part in organising the Games, took a tax cut of £9,000 from that profit!

Two related engines of change above all have driven this transformation: mass media and money. Vast television audiences for certain sporting events and the highly competitive global market for TV time and profitable sponsorship opportunities have increased professional pay out of all recognition in some sports. In doing so, they have created the phenomenon of the professional sporting superstar - something deeply at odds with the values of the original Corinthianism.

In today's multi-billion pound, highly competitive, business-driven and professionalised sports industry in which the cult of the individual sporting hero is celebrated, our Corinthian man would seem permanently relegated to a past age. After all, we live in a world where an England footballer is one of the most famous and recognised people on the planet.

Our Corinthian sportsman would be baffled by the fact today's sportsmen are amongst the highest paid and most famous members of society and that sport as an industry is bigger than coal, steel or agriculture. The idea that Governments have any role to play in sport, through funding and through a dedicated Minister, would have been just as unthinkable as a present day Prime Minister announcing, as Disraeli once did, that he had no idea how to throw a ball.

Government threats to the autonomy of sport

The mention of a former Prime Minister, albeit a Conservative Victorian one, leads me to the one of the key markers on today's sporting map. I am referring to the role that the state now plays in sport and the threat that this poses to the autonomy of sport. For brevity's sake, I will limit myself to British and European examples, but this issue is a cause for concern to national and international sport worldwide.

Over the past two decades, governments in Britain have increasingly become involved in all aspects of sport. This is perhaps hardly surprising, given that almost no government department is left untouched by the social, economic and diplomatic power of sport and the tasks in the fields of integration, education and health which it is capable of accomplishing. Sport too is now subject to unprecedented government regulation, for example, on health and safety issues, of a kind which simply did not exist thirty years ago. It is more than this, however. There is a growing recognition of the political and electoral power of sport in the 21st century, which causes governments to identify to a much greater degree with national sporting success.

Governments are ever more aware of the 'feel good' factor arising out of sport and how it might affect their political fortunes. Harold Wilson was probably the first British politician to believe that sporting success was important to him and to his party. He thought that England's victory in the 1966 World Cup benefited his government and, rightly or wrongly, he also thought that their defeat by Germany in the 1970 quarter-final lost him the General Election. Sporting success – and failure – provides a psychological health check on society as a whole. In recent years, British sporting heroes have received rapturous receptions from the public, as victory parades by the Ashes victors in 2005, the Rugby World Cup winners in 2003 and Team GB on their return from the Beijing Olympics have demonstrated. The government has been quick to seek to capitalize on this and to tap into the deep wellspring of national pride with the hope of bathing in the reflected glory.

I have said before that the Olympic Games are regarded as the golden goose, eagerly sought by politicians for its glittering electoral egg. The message of photographs on official websites of the Prime Minister congratulating Team

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GB medallists on their return from Beijing is that by association, sporting success is political success.

Hosting the Olympic Games increases exponentially the desire of government to seek political benefit and undoubtedly, winning the right to host the 2012 Olympic Games in London has placed sport higher up the political agenda than ever before in the UK. This interest has certainly benefited sport, not least through a willingness to provide investment into both Olympic and community sport, particularly through lottery funding, but the risk of this, the poisoned chalice if you like, is the increasing attitude that: 'he who pays the piper plays the tune' and the underlying threat to the independence of sport.

If the temptation felt by politicians to seek to clothe themselves in the aura of Olympic success proves too strong, there is a danger that political intervention and attempts to control policy will affect the autonomy of sport and the strong foundations and principles of the Olympic Charter itself.

My own organisation, the British Olympic Association, is alert to this danger. We recognise that sport does not exist in a vacuum. The boundaries between sport, politics and economics increasingly overlap and form a complex web and there are issues of responsibility and of legal clarification where sport and governments must co-operate. But the essence of the autonomy of sport is independent management in the best interests of the sportsmen and women we represent and for that purpose the British Olympic Association and the governing bodies of sport need to be highly professional, respected and commercial as well as imbued with a sense of service. There is no longer any place for rooms filled with small blazers on large men on the governing bodies of sport as was all too familiar a sight in years past.

For modern day Corinthians, the burning ideological issue is no longer the debate between amateurism and professionalism. Now, it is between the very independence of sport and state involvement in its governance and regulation through funding and policy control. The original Corinthians would have instinctively understood and supported the need today to preserve the autonomy of sport and to prevent it from becoming a platform for political activity.

Solutions for sport must be devised by sport and this is the challenge for sport as a whole, from Olympic down to

grassroots: to design the policies, the framework and the support mechanisms needed to enable us to protect our freedom and autonomy, to resist the growing attempts at interference from politicians of all political complexions at whatever level; and to ensure the best possible outcome for all our athletes.

One area where I believe that there is room for the Corinthian spirit in sport, where it can be redefined for a 21st century lease of life, is the concept that sport is itself a force for good and has the power to promote positive outcomes. By their very nature, sport and physical education are about participation, inclusion and a sense of belonging. Sport, as universal language, can help to promote peace, tolerance, reconciliation and understanding. It cuts across lines of class, nationhood, ethnicity and culture that might otherwise divide and it is an exceptional vehicle for bringing people together, bridging differences, and promoting communication and understanding. Sport has helped re-initiate dialogue when other channels were struggling and there is a long-established tradition of sports diplomacy. North and South Korea promoted reconciliation by merging their athletes into a common team for the Sydney 2000 Olympic Games. Table tennis set the stage for the resumption of diplomatic ties between China and the United States in 1971 – on 6th April 1971 the young American table tennis player, Glenn Cowan, missed his US team bus and was waved by a Chinese table tennis player onto the bus of the Chinese team at the 31st World Table Tennis Championship in Nagoya, Japan. This began the process of rapprochement, nicknamed Ping Pong Diplomacy, which eventually led to Henry Kissinger's visit to China in July 1971 to start the talks, which led to normalisation of relations between the US and China.

In this respect, the true legacy of the 2012 Games is more than broader sporting participation, or better facilities or even moving from tenth to our aspirational target of fourth in the medal table. Critically, it is also about responding effectively to the issues we face in terms of the greater politicisation and commercialisation of sport at national and European level. The best legacy which we can leave our governing bodies to respond in this context is to empower them. In the run-up to 2012, I am acutely conscious of the need for the BOA to be fully equipped with good governance, transparency and in-house expertise to achieve this goal and if that can be achieved in the interests of the

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athletes I will have delivered one of the principal objectives I have set myself. I have been working to ensure that our Governing Bodies of sport are fit for purpose, able to deliver services of the very highest order to their membership.

Politicians increasingly intruding: Direction of European Commission and the Lisbon treaty

Yet regrettably the countervailing trend for political regulation and control is repeated at European level, where politics increasingly encroaches on sport, with consequences which do not always best serve sport. Sport is the biggest social movement in Europe: there are 700,000 sports clubs and associations within the EU; and sport takes place in an increasingly European and indeed global arena. Sport is a policy area that has been developing at EU level over several years and we cannot bury our heads in the sand on this issue. A non-binding Declaration was annexed to the Amsterdam Treaty in 1997 and the December 1999 Nice European Council adopted conclusions giving a mandate for sport to be examined at Community level. The European Commission issued a White Paper on Sport in July 2007.

The international sporting movement led by the IOC under Jacques Rogge has made it clear that European institutions should not intervene in a regulatory capacity and that it is important for both politicians and sports administrators to respect the special nature of sport.

Yet while the Lisbon Treaty, which introduces sport as a new area of EU competence, emphasises its “specificity” and recognises, for the first time, the great contribution and uniqueness made by sport in European society, it does not guarantee or even protect the ability of sporting organisations to choose how to develop their sport for its own good. The Lisbon Treaty introduces sport as a new area of EU competence (Article 165 TFEU). The Treaty emphasises that the Union must take account of the “specificity of sport” and its social and educational function. According to Article 6(e) TFEU, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of Member States in this policy area. Any harmonisation of the laws and regulations of the Member States is excluded by Article 165(4) TFEU.

The devil is still very much in the detail. The Treaty is open to interpretation on the part of both sport and government and we in the sporting community need to understand its potential effects, not least the way in which unintended consequences arising from future European legislation could threaten sport. An early warning system for sport on upcoming European legislation is essential and that is where Pat Hickey as President of the European Olympic Committee has made a landmark impact with the opening of the EOC Office in Brussels. As pointed out by the House of Lords European Union Committee in February 2008, ‘The inclusion of a legal base for sport builds on action already undertaken by the Community, which has recognised the role of sport in forging identity and bringing people together. It is nonetheless significant. The provision of a legal base for sport within the Treaty is intended to permit the special nature or “specificity” of sport to be recognised by the European institutions. The provision of a legal base for sport is also intended to ensure that EU legislation does not impose unintended consequences upon sporting activities and that the ability of sport to play an important role in European society is recognised. Action in this area cannot go further than supporting, coordinating or complementing Member States’ actions and we urge the Government to ensure that the European institutions adhere to this provision.’

To give some examples, there have been a range of ECJ rulings, which on the one hand, accept the autonomy of sports government bodies but on the other, would apply principles of Community law equally to sport as they might be applied to other sectors. Had the Temporary Work at Height Directive been applied to rock climbing instructors as was initially proposed, it would have forced instructors to

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teach according to an industrial ropes method rather than normal climbing procedures, which are considered safer. Likewise, had the Bathing Waters Directive, concerning the cleanliness of bathing water, been applied to sailing, rowing and yachting as intended, it would have meant a ban on rowing on the River Thames.

So, within this sporting environment is there room for the Corinthian Spirit?

So within this 21st century sporting environment, is there still room for the Corinthian spirit or should its epitaph be written?

I would argue that the chasm between modern sportsmen and their Corinthian predecessors is not as yawning as it might first appear. Many of the most obvious differences are rooted in the changes which have taken place in social attitudes rather than in sport. The essential character of sport is unchanged. There can be no monochrome comparison between the higher Corinthian values of yesteryear and the morally bankrupt nature of the behaviour of a minority of professional sportsmen today.

This is not least because some of those Corinthian values were not particularly laudable and reflected that the fact that Victorian society was vastly unequal. Some proponents of the Corinthian spirit were certainly guilty of using it to mask snobbery, discrimination, elitism and a reluctance to accept that sport could and should be open to all and enjoyed by all, rather than a pastime of the privileged.

Yes, what we consider to be socially acceptable has changed dramatically. We accept behaviour in modern sportsmen that would have been beyond the pale to a Corinthian sportsman. Many great sporting heroes of the second half of the 20th century: George Best, Paul Gascoigne, John McEnroe, Muhammad Ali – none of them would have passed the Corinthian test. Their occasional lapses into either drunken exploits, womanising, uncontrolled displays of emotion, extreme rudeness or immodesty would have ruled them out and raw talent, though appreciated, would have been no justification. Today, principally outside the Olympic Movement which remains strongly underpinned by its value system, it is too often the case that we prize sporting ability above social behaviour.

Nevertheless sport still provides a school for the attainment of life skills such as discipline, confidence, leadership, managing victory, overcoming defeat, team work, respect for opponents and the rules; and sport can be an ambassador for core principles that are important in a democracy, such as tolerance, co-operation and respect.

Sport still entertains and diverts us. The enduring, influential pervasive power of sport within all cultures should not be underestimated. The U.N.'s Deputy Secretary-General Louise Fréchette's, opening address at the World Sports Forum in St Moritz on 13th March 2000, included the phrase: 'The truth is that very few boys and girls grow up saying 'I want to be Secretary-General of the United Nations, I want to be chief executive officer' or even 'I want to be President'. But millions do grow up hoping secretly – or not so secretly – that they will be the next Ronaldo, the next Steffi Graf or the next Michael Jordan. Sports are that influential and that pervasive.'

Moreover, sporting metaphors and analogies crowd the modern lexicon. The narrative which sport adds to our lives is an enriching one, whether we are participants or spectators or both. Legends and heroes are created from sport: think Pele, think Babe Ruth, think Roger Bannister; think Tiger Woods, think Michael Jordan. From sport emerge national obsessions, national institutions and national treasures. Sporting events can mobilise the interest and emotions of millions. When Manny Pacquiao boxes, the Philippines come to a halt. When Formula One triple world champion Ayrton Senna died, the Brazilian government declared three days of national mourning and one million fans followed his funeral procession.

If anyone doubted the extraordinary power of sport and its ability to unite us more than it divides us, they would have to look no further than the 2007 Asian Football Cup. In Iraq, riven by sectarian violence and turmoil, football alone provided hope. Putting aside the differences between then, Shi'a, Sunni and Kurdish players came together as one team to win the Asian Football Cup. The uplift to the Iraqi people as a result of the victory of their national team stands as a testament to what sport can do to bring people together.

Yes, we no longer subscribe in the same way to Corinthian beliefs that commerce and sport are incompatible and that the former will debase the latter; or that in some sports, full-

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time paid sportsmen would be unfair competition for amateurs; or that the logical outcome to financial incentives in sport is corruption, although vestiges of these beliefs remain. Yes, attitudes to money in sport and payment have changed enormously. There would not be much support in high level sport today for a return to the Corinthian distaste at the very idea of payment and the accompanying moral distinction between unpaid amateur and paid professional. Early Victorian footballers would have thought it a contradiction in terms to be paid. In 1901 footballers' pay was limited to £4 a week, in 1947, the maximum was raised to £12 and later to £20; a maximum was abolished in 1961. Now the average wage of a Premier League footballer is £100,000 per week. The ratio between what a footballer and the average spectator earned in 1901 was about double; it is now roughly 280 times.

But there is still a debate over the negative influence of money in sport, from financial incentives causing corruption to resolving the moral question of tobacco sponsorship in sport.

Yes, sport is big business today in terms of the turnover and the revenues it generates; and it is certainly commercialised to an extent which would be anathema to the original Corinthians. But sport is not a business just like any other. If you asked any footballer or fan whether they would rather their club made a profit or win the FA Cup, I have no doubt of the answer. The special nature of sport means that it cannot be subject to the rigours of the free market and its fortunes are not determined by pure capitalist instincts.

Yes, the performance-driven nature of professional sport today, with its emphasis on winning and a winning mentality might appear incompatible with the Corinthian spirit. The very idea of an aspirational British Olympic medal target would once have been unimaginable. The American sportswriter Grantland Rice's lines are sometimes quoted to illustrate the intrinsic character of the Corinthian spirit: 'For when the One Great Scorer comes to mark against your name, He marks – not that you won or lost – but how you played the game'

But while it was necessary for a Corinthian to be a good loser, there was nothing in the code that objected to winning in competitive sport, as long as you didn't boast about it! Remember those 1908 New Zealanders who promised to win 'without swank.' Winning at all costs, however, was a different matter.

While the overt desire to win and refusal to accept defeat is accepted and indeed admired today, we do not fully support winning at any cost. Thus Mike Tyson was disqualified and his boxing licence revoked when he bit Evander Holyfield's ear in their 1997 encounter. Cheating - whether by drugs or match fixing or overt fouling, still has no place in sport and pressure to take a 'no compromise approach' to cheating is, if anything, on a welcome increase.

Do we need to redefine Corinthianism for the 21st century?

Consequently, I would suggest that there is room for the Corinthian spirit in sport – indeed, in its purest and best form, it has never really left the field of play and it has both relevance and resonance for sport today.

We need a new version, adapted for the 21st century, which seeks to preserve its timeless and essential values of teamwork, of sportsmanship, of fair play and fair-mindedness; and which is forward-looking, rather than backward-looking, up to date rather than out of touch.

The amateur ethos which shaped British sport for so long, with its ideals of a higher, more meaningful form of sportsmanship can be re-fashioned and applied to contemporary sport. Sports governing bodies have a role to play in promoting and encouraging a modern-day Corinthianism, based on the values of sportsmanship, which can co-exist with the professional nature of sporting careers today.

Why do I believe this? Because we have not lost the idea that sport should be practised for the love of it. Changed attitudes mean that nowadays, playing sport for the love of it and playing it for money are no longer considered to be mutually exclusive. But if Olympic athletes did not above all love their sport, they would not push themselves to their absolute physical and mental limits to reach their personal best. The sacrifice that many make on their quest for Olympic glory is huge and is only marginally influenced by subsequent financial benefit. Sport is primarily about enjoyment. Olympic sport is about passion and obsession. It is about drive. It is about dreams.

What then does contemporary Corinthianism entail and how can it be applied in a society where sport and increasingly the governance of sport, is driven by meritocratic principles.

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I suggest starting first with language. I would like to consider the deletion of the word ‘elite’ in the context of sport. For me it has too many negative connotations which I believe to be out of keeping with the Olympic spirit. It places barriers in the way of sport and suggests a false dichotomy between the elite and the non-elite. We do not apply the term ‘elite’ to the arts and music – there are no ‘elite musicians’, ‘elite actors’ or ‘elite ballet dancers’.

We should not impose an artificial separation between what I would term ‘Olympian’, excellent or outstanding sporting performances and grassroots sport. We should not fracture the chain which connects them. Today’s tennis, swimming, cycling and track and field sporting heroes do not spring fully formed from an ‘elite’ training academy - they come from the grassroots which nurtures them through its network of volunteers, coaches and clubs. And it is at the grassroots where the importance of sport in society is at its most profound and its widest benefits are seen. The links between professional and grassroots sports must be understood, strengthened and have seamless delivery mechanisms.

London 2012 provides a matchless opportunity to do this. It is the opportunity both to inculcate Olympic values at grassroots level, in schools and sports clubs across the country and to deliver real benefit to all young people in terms of sport and recreation. A universal sporting legacy for future generations will be the true fulfilment of both Olympic values - absolutely in the spirit of enduring Corinthianism, which emphasises the importance of participation.

I mentioned earlier that contemporary Corinthians do not tolerate cheating any more than their predecessors would have done. Cheating in whatever form has no place in the new Corinthian spirit. One of the biggest challenges facing

judges, officials and Olympic authorities today is the use of performance-enhancing drugs. It is against the rules precisely because it destroys the spirit of pure competition and can damage an athlete’s health. Cheating is heavily penalised, as a number of enormously talented athletes have found out the hard way: Ben Johnson, Dwayne Chambers and Marion Jones to name a few.

As new disciplines have been introduced and as technology and science have progressed, more in-depth and sophisticated checks have had to be created to ensure that athletes are competing against each other fairly and honestly, which is why the system of testing under the auspices of the World Anti-Doping Administration is a starting point on this journey to the goal of eradicating drug use in sport.

An assessment of what defines Olympic/Corinthian values

So, as exemplified in our approach to doping in sport, when we redefine modern Corinthianism, the synergy between Olympic values and modern Corinthian ones will need to be reinforced. The 21st century Corinthian spirit can be seen in efforts to give sport a central role in society, as envisaged by the Olympic ethos, which promotes unity, inclusion and opportunity and seeks to spread core human values as widely as possible, intellectually, culturally and geographically.

The core mission of the IOC is, after all, to lead the Olympic Movement by upholding the six fundamental principles of Olympism contained within the Olympic Charter and by placing sport at the service of humanity. To quote from the Charter,

‘The goal of Olympism is to place sport at the service of the harmonious development of man, with a view to promoting a peaceful society concerned with the preservation of human dignity... Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement... Belonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.’

In this spirit, the IOC has been much praised – and rightly so – for the innovative work that it has done with the United Nations. As Kofi Annan stated,

‘The International Olympic Committee (IOC) has done

The power of the Olympics and its global reach is today huge: the Beijing Games attracted around 4.7 billion viewers. The Olympics are avidly followed all around the world

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some pioneering work in this field. Working together with the United Nations and several of its specialized agencies – such as the World Health Organisation and the Food and Agriculture Organisation – the IOC has demonstrated that sport can play a role in improving the lives of not only individuals, but whole communities. In short, my friends, the Olympic Movement and the United Nations share the same fundamental goals: to ensure that every child should have the best possible start in life; that every child should receive a good-quality basic education; and that every child should have the opportunities to develop his or her full potential and contribute to his or her society in meaningful ways.'

Additionally the IOC has been praised for its work in advancing the purposes and principles of the UN Charter and its fundamental values of freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. United Nations ideals and Olympic ideals have been linked in efforts to promote peace, health and human rights. Again to quote Kofi Annan, *'Olympic ideals are also United Nations ideals: tolerance, equality, fair play and, most of all, peace. Together, the Olympics and the United Nations can be a winning team. But the contest will not be won easily. War, intolerance and deprivation continue to stalk the earth. We must fight back. Just as athletes strive for world records, so must we strive for world peace.'*

This critically important relationship is symbolically reflected in the decision in 1997 to fly the United Nations flag at all competition sites during the Olympic Games.

It is my view that the UN has long understood the power of sport, its importance in society and its immense value as a tool for development and tackling problems in post-conflict situations. UNESCO envisages sport as a major contributor to a 'culture of peace', reflecting de Coubertin's founding Olympic ideal.

A persuasive argument can be made that modern Olympism and the way of life that it encompasses is the natural heir to the Corinthian spirit. Olympic values complement the enduring Corinthian values of fair play, honesty, loyalty, courage, team spirit and friendship, inspired as they were by the same original source. Both have the same emphasis on the importance of participation in sport and the pleasure derived therein.

Cheating in whatever form has no place in the new Corinthian spirit. One of the biggest challenges facing judges, officials and Olympic authorities today is the use of performance-enhancing drugs

The Olympic vision highlights the enormous power of sport and the inspirational role it plays in society at all levels. We know that sustained success in Olympic competition encourages future generations to seek to emulate their sporting heroes. Overall, the potential for resultant growth in participation in sport makes a real difference, improving lifestyles and increasing achievement in sport. Participation and the joy found in effort: what could be more evocative of the Corinthian spirit?

The power of the Olympics and its global reach is today huge: the Beijing Games attracted around 4.7 billion viewers. The Olympics are avidly followed all around the world – via television, the radio, newspapers, magazines and the internet. The 20,000 strong international media team in Athens in 2004 would have equalled the number of people in the whole stadium for the first modern Olympic Games in 1896.

Yet despite this, the Olympics Games still most closely reflect the Corinthian spirit at its best. Despite the sophistication of marketing and sponsorship, it is proof, if proof were needed, that money and television are not in fact, corrupting influences on sportsmanship or responsible for a decline in the values of fair play and team spirit. Despite fears that over-commercialisation could subsume the very values the Olympics were created to uphold, the Games have not fallen victim to their own immense success.

Instead, the Olympic Games continue to exercise a thrilling power over both participants and spectators. The Olympic experience is seductive and no one is immune to its allure. For athletes, it is a life-changing experience to turn Olympic

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dreams into reality. For spectators, it is an awe-inspiring experience to watch as records are broken, adversity is overcome and strength of will is triumphant. The victories of national teams are a source of great pride.

The modern Games have directly reflected the pace of sporting, political and social progress of the past century and their size and scope has increased in accordance with this. Although their high profile has often led to sport and politics colliding, memorably in recent times through the Cold War played out through the 1980 Moscow and the 1984 Los Angeles boycotts, the core of the Olympic movement has always been to bring people together from around the world to compete against each other in a friendly environment under the banner of sport.

If I were to define why the Olympic Games are the world's greatest sporting event, I would conclude that it is because of the Olympic values which differentiate them from any other sporting event. They are a unique showcase for a wide range of sports, both major and minor, underpinned by a movement whose values transcend sport alone and articulate a universal philosophy of life.

Conclusion: whither sport?

Sport is at a crossroads today and it is far from clear what will ultimately determine outcomes in sport and the framework which presently governs it. The powerful commercial forces unleashed by the mass media have been grafted on to a series of structures which were designed in a very different era for a self-regulating, predominantly social activity.

I have sought to cover the host of inherent contradictions and issues of principle which are now at stake. There are a number of signs at the crossroads: one seems to point in the direction of an increasingly commercialised model based on the box office value of exceptional athletic performance. A second seems to point to a model where funding is assured through central government, but where sport is increasingly micro-managed and sports policy is subject to the whims of revolving governments. A third points in the direction of sport as enjoyable pastime, with the primary emphasis on participation. These are not necessarily divergent directions. It is possible that a clearly defined map will show that they can converge and that this convergence will eventually lead us to the right destination.

As present-day guardians of sport, we cannot rebuild the sporting infrastructure from its foundations, nor should we seek to do so. But we can update it and make it fit for our generation. We have a once-in-a century opportunity, a de Coubertin moment if you like, to set the prevailing ethos for sport in the 21st century. Just as de Coubertin looked back to Ancient Greece and sought to reinvent the Olympic ideal and its values for a modern audience, we too can look back to the values which inspired the invention of modern sport and apply the best of those values to a model for sport for this century and into the next.

Sport is, and always has been, one of the most effective tools for bringing together people for a common purpose. It is a cultural phenomenon which transcends pure entertainment. In its purest form, it is a triumph of the human spirit. It is about heroes and it is about legends. Nor are those heroes necessarily the ones who fulfil the Olympic motto of 'Citius, Altius, Fortius'. While the majority could not name the winner of this year's London Marathon, they could name the truly inspirational Major Phil Packer, an injured Iraq veteran, told he would never walk again, who showed enormous courage, determination and commitment in completing the course in thirteen days. This is the modern day Corinthian spirit. If these outstanding qualities of self-discipline, selflessness, fortitude and endurance were more widely replicated, through sport, we would, in the words of the UN, succeed in making the world a better place.

I end with a final twist of irony, but one which would not have surprised our Corinthian man in the least. The idea that the battle of Waterloo was won on the playing fields of Eton was a familiar part of the Corinthian tradition. I have talked about the English public school's pre-eminent role in the development of sport and it is well documented, so it is fitting that Eton's facilities at Dorney Lake will host the rowing and flat-water canoeing events at the 2012 London Olympics.

In a sense, through London 2012, we have come full circle, back to the birthplace of the Corinthian spirit and the values of fair play it sought to promote. Modernised and updated for a 21st century society, in harmony with Olympic values, the Corinthian spirit as evidenced through the life and legal practice of Edward Grayson in the late twentieth century is clearly capable of flourishing in our generation and beyond. ■ **BASL**

Second Edward Grayson Memorial Lecture

Authored and delivered by Kate Hoey MP
Second Edward Grayson Memorial Lecture
Kings College London
2010

Thank you very much for inviting me here to deliver the second Edward Grayson Memorial Lecture. It was an invitation that I was absolutely delighted to accept, and this evening has been something to look forward to throughout what has been a particularly gruelling election campaign.

I am also, of course, especially pleased to follow in the footsteps of my fellow former sports minister and friend Colin Moynihan, who gave the inaugural Grayson lecture last year. In fact, about five years ago, Colin and I co-chaired an independent review of British Sport. We produced a report called *Raising the Bar*, which has actually stood the test of time remarkably well.

I'd like to think that, as Mr Clegg and Mr Cameron prepare to form a coalition government, we were ahead of the game in showing the positive side of cross-party working. When we were writing *Raising the Bar*, we included a chapter on Sport and the Law and in it we drew heavily on the work of Edward Grayson. He was a pioneer in his field and many of the values and principles that he stood upon have grown steadily more relevant with the passing of time.

He was also a great supporter of grass-roots sport and notably of sport in state education. As a former PE teacher this is a subject particularly close to my own heart and with this in mind it really is a huge honour to be invited to give this lecture.

So, let us turn to the question at hand: Do we get the sporting heroes we deserve?

It is a question that Edward Grayson himself might have enjoyed grappling with: although fundamentally simple, it is one that can very quickly have you going round in circles.

It is often said that sport is about heroes – about the creation of idols and icons. About role models. And, in one sense, this is true. Elite sport can be inspiring. It should be inspiring. It is about people – young men and women – testing the boundaries of physical and mental ability against one another. It is the culmination of years of effort and commitment and, often, real sacrifice. More superficially, it is visual; and visceral; and moving. At its best, it is inspiring.

And out of inspiration come heroes.

The next question must therefore be:

“What is the point of these heroes? What, if anything, do they bring to our society? Is there any value to them, other than as something worth watching?”

In theory of course, there is.

First, they inspire us to follow in their footsteps – quite some way behind, of course – but to take part, to participate, to get active. And second – and it is sometimes hard to say this with a straight face these days – they act as positive role models, teaching young people the values of hard work, commitment and fair play.

In theory – and I repeat, in theory – these are the benefits of this type of sporting hero. But, as we all know, the reality does not always deliver.

Let's consider the two elements to this in turn.

First, do our sporting heroes help increase participation? On balance, I believe that they do. There is no doubt that when people see England lift the rugby World Cup, or Chris Hoy dominate the Olympic track, many feel the urge to get involved themselves. It's the same with the so-called 'Wimbledon Effect' that occurs here each summer.

There is a school of thought that says that the ultra-competitive, aggressive, male-dominated world of elite sport and the physical perfection that comes with it actually puts off as many ordinary people as it turns on. That they feel so

inferior and intimidated that they cling even tighter to the safety of their sofa. It's a view that almost certainly holds true for some people.

But, on balance, I think that there is something to be said for our sporting heroes in terms of encouraging participation.

And, whilst levels of participation remain frustratingly low in this country, I would welcome the continued role of our sportsmen and women in reinforcing the benefits of sport and physical activity – especially over the next few years, whilst London 2012 keeps the issue near the top of the national agenda.

On the second point, the subject of sporting heroes as moral guides or role models, there is rather more to consider.

Now, we mustn't fall into the trap of putting on the rose tinted glasses. There is no point pretending that any sporting heroes have ever been models of perfection – far from it.

History is littered with tales of fallen sporting idols – from those who have cheated on the track or in the ring, to those whose private behaviour has caused such damage to themselves and their families.

What's more, the record books and anthologies no doubt still contain the names of many so-called heroes who are not worthy of the name – those who have simply “gotten away with it”.

But, as we move deeper into the 21st century, it does seem to me that we are reaching something of a nadir.

If you were to conduct a survey of the British population as to who their current sporting heroes are, the list would no doubt be dominated by footballers.

In fact, sport in general in this country is dominated by football. And the values currently being espoused by many – and I repeat many, not all – of our footballing heroes are the values of greed, arrogance, excess and selfishness. Think of

the players publicly sneering at an offer of 50 thousand pounds a week...

Or the almost constant reports of players being arrested after a night out on the booze, or far worse...

Or see the extraordinary scene on Sunday, during a Premiership title decider, when a star player and hero to millions around the world, openly sulks and moans during the game, because his team-mate takes a penalty kick instead of him...

It is absolutely extraordinary to think that such behaviour has now become commonplace. But this is the kind of hero that we now have... These are the images being thrust in our face and in the faces of our children every day... These are the heroes whose “brand” is used to sell us food and drink; clothes and televisions... To call them heroes does nothing but diminish the word, but this is what they are to millions.

So we must again return to the original question: are these the kind of heroes that we deserve? Are they the sporting heroes that our society merits?

Well, we are certainly complicit in their creation. As a society our twin obsessions of celebrity and football have led us to this point, where the two have become one – taking the worst points of each to create a whole which is worse still.

We must assume some responsibility for this. We buy the papers and revel in the drama. This has become part of our culture. And, to an extent, this is understandable. It is fascinating, in a car-crash kind of way.

But it is not admirable...

It is not about sport...

It is most certainly not heroic.

At this point, I would like to make it clear that I am a genuine football fan. I love the sport and worked in it for many years. I have followed the Northern Ireland team home and away for many many years.

SECOND EDWARD GRAYSON
MEMORIAL LECTURE

But I do worry about the dominance that it holds in this country and also that too often it is the negative aspects of the game that are to the fore, whilst the positive stories get lost and the positive role models overshadowed.

It also seems that football sometimes manages to obscure the positive stories and role models that are being generated in other sports.

I'm thinking particularly here of our Olympians and Paralympians who, but for a brief window every four years, are most often left to struggle on their own. My first real sporting hero was Eric Liddell – who of course withdrew from the final of the Olympic 100m in 1924 on religious grounds. He was a true Olympian and a true hero.

But the lot of an Olympian remains far tougher than that of many other athletes. As well as often being left without the support that they need to fulfil their talent, this also means that we as a society are missing out on some truly remarkable sportsmen and women – and on their potential as really positive role models for us and our children.

As I mentioned earlier, we do have the Olympic and Paralympic Games coming to London in just over two years time, and this does give us an opportunity to rectify the problem. Perhaps, the glow that comes from the Olympic flame will linger over the athletes and the sports that are involved and embed some of them into the national psyche for rather longer than normal. I hope so. In London we are seeking to ensure that the Games leaves a lasting legacy and our home-grown athletes will most certainly be a part of it.

So the conclusion at this stage must be that sportsmen and women do have the potential to inspire us – to encourage us to play sport ourselves; but also to be more rounded individuals. And that as things stand, we are missing a trick by allowing the best stories - and the best heroes, if you will - to slip by unnoticed.

In this sense, I suppose, the answer to the question must be “Yes, we do get the sporting heroes we deserve”.

And, if we took a narrow view of the question, this is where we might leave it.

But, you will be relieved to hear – or for some, perhaps, a little disappointed – I am not going to leave it here.

Because, as far as I am concerned, everything I have spoken about so far does not even come close to addressing the true heroes of British sport – the people that I consider to be heroes.

The people who devote their time and effort, their lives, to bringing sporting opportunity to others...

The coaches, the volunteers, the officials...

The administrators, the club treasurers...

The talented, dedicated people who know and understand the huge benefits that sport can bring to our communities and our society – and who act on this knowledge without fanfare or material reward.

Brian Dickens is a hero.

He is a former British 400m runner who now runs the Sports Action Zone – a community sports hub based in my constituency in Vauxhall.

Through his determination and resourcefulness – and through his sheer humanity – he has quite literally changed a community.

The SAZ is in a really deprived area with an incredibly diverse local population. Through Brian's work, we now have a place where people of any age, and of any nationality, feel comfortable about coming and getting involved.

We have a basketball gym installed by Michael Jordan's foundation; a football pitch coaxed out of Nike; tennis courts built by Barclays. And all because of the tireless badgering and lobbying of one man.

We have kids coming off the streets, getting involved in sport, being mentored through a coaching programme, gaining respect and self-esteem and then being helped to find work.

It is an amazing place making an amazing difference.

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It is a heroic achievement.

Ashley Icton is another hero.

For fifteen years he has run the Panathlon Challenge; fighting a constant, unremitting battle to find funding; filling in over 400 funding applications a year, by himself.

And he does this in order to provide a programme of competitive sport for profoundly disabled young people – children who, if it was not for Ashley, would never have the opportunity to participate.

Going to watch a Panathlon event is one of the most inspiring things that you can do. This year's final is at the Westway Sports Centre on June 24th and I urge you to go along if you can. It's an opportunity to see a real hero in action. I could go on and on. Over the years I have come across so many similar people... All operating far below the glare of publicity... Most struggling to find support on a daily basis... And each doing more for our society than any celebrity superstar could even imagine.

We are incredibly fortunate to have these people within our communities and yet, somehow, everything seems stacked against them.

From the complexity of funding streams, to the oppressiveness of government red tape, to the almost complete apathy of the media, it seems that people just don't care enough.

So if we go back once again to the original question:

“Do we get the sporting heroes that we deserve?”

I would turn this right around and say that in fact,

“We do not deserve the sporting heroes that we have.”

As a society, we do not appreciate what we have got right under our noses. We look to celebrities – fantasy figures – for our inspiration when the best examples are actually just down the street. And for the most part, we are not deserving of their heroic efforts.

This has got to change.

We need to start showing some real support to our real heroes. We will not lose them, because they will not give up. But we will waste them.

They have so much to offer at so little cost and it is madness that they find it so hard to help.

It is our responsibility as citizens, as administrators, as lawmakers to ensure that their efforts are rewarded; so that they can inspire the next generation...

To become the sporting heroes that we want...
And the sporting heroes that we deserve.

And as the Olympic Games approaches, and we do have this window of opportunity to get things done, I would urge you all to go out and investigate what is going on in your communities...

And offer these heroes the benefit of your not inconsiderable skills...

And think about the changes that you could help make to our society.

And if you do this, not only will you be ensuring that we get the real sporting heroes that we deserve; you might even become a British sporting hero yourself. **BASL**

Fourth Edward Grayson Memorial Lecture: The Specificity of Sport Rhetoric or Reality?

The Edward Grayson Lecture 2012
Michael J. Beloff QC. President, British Association of Sport and Law
Delivered at Charles Russell & Co.
15th May 2012

Edward Grayson, in whose memory this annual lecture sponsored by BASL, is named, has been aptly described as the founding father of sports law. Whatever may be the achievements of those who have later frolicked in this legal field, whether as academics, advocates or arbitrators, Edward has one claim to fame that can never be surpassed. He was there first.

I have many fond memories of Edward, a man as lovable as he was unorthodox. We once travelled together to a sports law conference in Potsdam – our journeys coinciding only because Edward had not uncharacteristically missed his earlier flight. As we shared a taxi from Berlin airport to the hotel, Edward took it upon himself to ask our driver what he had done during the war, a question which might have been tactless had it not also been superfluous since the driver could scarcely have been born before the swinging sixties. But throughout the balance of our stay Edward played the role of the elderly Englishman abroad to perfection, attracting the solicitous attentions of a cavalcade of beautiful frauleins, while I found myself assisted only by women of a certain – a euphemism for uncertain – age. I was pleased to be able to persuade the editors of the Dictionary of National Biography to include in this year's supplement an essay on Edward – a privilege usually only accorded to deceased holders of the highest judicial office – and to pen it myself; and we are delighted that Edward's wife Wendy and son Harry are here tonight.

Edward himself might have taken vocal issue with my perspective because, paradoxically, although sports law's only begetter, he firmly denied that there was any corpus of jurisprudence recognisable as sports law. He wrote of the debates about whether or not sports law exists as "*arcane, arid and artificial*" – he had a good ear for alliteration – and continued "*as a tabloid headline or sound bite the shorthand*

*version serves a convenient, practical and populist purpose. As a judicial concept, it never has and never will exist*¹".

A modern follower in Edward's footsteps, Dr Jack Anderson of Queen's University, Belfast, noted in a recent textbook "*There is no equivalent of the IOC within the common law whereby an area of law can lobby for official recognition or even associated status, though it is of interest to note that sport is not one of the 150 or so sub-headings within Halsbury's laws of England which includes well thumbed sections of the law relating to 'Library and other Scientific and Cultural Institutions' and the Law of Weights and Measures*"².

Pausing only to reflect on the lack of identity of the source of Dr Anderson's assertion that the sections are well thumbed, and on the limited lifestyle opportunities of a person whose thumbs are so frequently engaged in so mundane an activity, I note that his observation is obsolescent. Butterworth's is soon to publish in Halsbury a title on sports law, preceding stamp duty and statutes for alphabetical rather than associational reasons³, of which I am the general editor, and two of whose contributors are respectively my son and my niece showing that the age of nepotism is not entirely dead. I do not, however, intend simply to reprise that endless argument as to whether sports law does or does not exist. I intend rather to approach the issue crabwise, and ask what is, but also what might intelligibly be meant, by the much used phrase "*the specificity of sport*".

The origins of that phrase are obscure, but, like so much contemporary jargon, it is, I surmise, Brussels'-born Eurospeak. Certainly by the time the European Commission published its seminal White Paper on Sport on 2007 it could speak of the phrase as something "*often referred to*". That paper identified it as a concept to be approached through two prisms.

I shall mention the second first because it seems to me to be the less interesting of the two that is:

"the specificity of the sport structure, notably the autonomy and diversity of sports organisations, a pyramid

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structure of competitions from grass roots to elite level and organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis, and the principle of a single federation per sport”.

None of these factors seem to me of themselves to differentiate sport in any important sense from other areas of human activity, and all are subject to exceptions. Retailing encompasses autonomous and diverse entities ranging from Tesco to the neighbourhood corner shop; debating, music, and politically non - correct beauty contests have a pyramid structure – as indeed does “*Britain’s Got Talent*” – of which I would merely comment that the title’s proposition is too frequently disproved in the performance. I am touching later on what is, I think, meant by an “*organised solidarity mechanism*”, but suspect that whatever it is, it is not unique to sport. Income tax itself is an organised solidarity mechanism of a kind. Have not our Coalition Government after all assured us that we are “all in this together”?

Sport is, moreover, organised not only on a national, but also on an international basis, a point noted in the monumental judgment In Re *Televising Premier League Football Matches*⁴ (“TVPLFM”), which was concerned with whether agreements between the PL and Sky and BBC were contrary to the public interest tests under the now repealed Restrictive Practices Act 1976; and the notion that a single federation per sport is intrinsic to its activity is belied by recurrent discussion as to whether men and women of goodwill should set up a rival to FIFA or indeed the FIA, purged of the less savoury features of those two monopolies, and by the actuality of the alphabet soup of boxing organisations, balkanising the title of world champion, even if at present the seven soi-disant world heavyweight championships are shared between two Ukranian brothers. True it is that certainly in the liberal western world the administration of sport is regarded as better left to self-governing organisations but it is idle to pretend that the state, conscious of the contribution of sport to the national economy, the national health and, not least national prestige, does not in all countries in differing degrees, involve itself directly or indirectly in regulating sport,

sometimes, as in France by overarching legislation, and even more recently in England where the Government have nudged the Football Association into reformist mode. Sport, like the professions, law or medicine, is now part private, part servant of public policy.

However the first of the Euro-apothegms cuts closer to the heart of the matter in its reference to:

“the specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, the need to ensure uncertainty concerning outcomes and competitions and to preserve a competitive balance between clubs taking part if the same competitions”.

If I had to identify the features essential to sport – *sine quibus non* – they would be these. First that sport, like sex, requires not only the participation of at least two persons, but that, unlike most sex, the participation consists of a contest. Second – and by now the sexual analogy has truly all but exhausted itself – that contest should have an uncertain outcome. And third, that there must be a measure of relative equality between the contestants. Ordinarily competition in a pure capitalist model is intended to result in the elimination of the inefficient company or firm. But in the world of sport there must not only be plural competitors to guarantee competition, but also competitors, who are at least sufficiently viable and effective to ensure interest in the competition to the non-participant who wants to watch, listen to commentary on, or simply read about results in the newspapers. There is indeed a mutual interdependence of participants in sport. In the case already mentioned the Restrictive Practices Court stated that it was “*manifest*” that competitive balance is something which makes a football competition more attractive⁵ – a concept the court earlier described as embracing the “*unpredictability of the outcome of a high proportion of the matches played within the competition and thus uncertainty about which club will win the championship*”⁶. – even if nowadays the only uncertainty is – which of the two Manchester clubs will win it.

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As Sir Alex Ferguson with his gift for the succinct vernacular would say “Football. bloody hell”. The only certainty in football is that sometime in the season Joey Barton will be sent off – at least once.

The transatlantic decision in *US v NF League*⁷ distinguished between the desirability for professional teams to compete as hard as possible on the playing field but the undesirability of their so doing in a business context. It is, of course, the uncertainty of outcome that has made sport the most powerful magnet for the gambling industry – a parasite on sports’ body – with too often insalubrious consequences when participants and their puppet masters seek means of circumscribing the area of uncertainty as in the notorious case of the three Pakistani cricketers⁸.

The particular features of sport have led many prominent sports administrators to make a plea that sport be entirely excluded from the reach of EU law including Dr Jacques Rogge, the President of the IOC. But such was always a vain hope. As Professor Stephen Weatherill has pithily put it
*“Sport cannot have it both ways. It cannot scoop up the fruits of commercialization, yet aspire to keep community law entirely at bay”*⁹

Jacques Rogge was the modern equivalent of King Canute, but with this difference. The legal waves had already submerged him before he even sought to exercise his influence to repel them.

So the question became not whether, but to what extent community law, would affect sports rules and governance. Sport did not feature in any primary provision until the Lisbon treaty where it was identified as one of the competences of the European Union but that did not dissuade the Luxembourg judiciary from earlier intervention in the field.

Because sport is all about competition one might have imagined that it would have been in the area of competition law that the sport first felt the law’s pinch. It was not in fact so. As Lewis and Taylor observe

*“The competition rules of the EC Treaty were drafted with more orthodox industries in mind than sport. Concepts such as ‘undertakings, cartels and’ the single market do not translate easily when applied to the sports sector”*¹⁰.

In the Bosman case (1995)¹¹ to which I shall inevitably return, it was only the Advocate-General, Lenz and not the ECJ, who formulated its conclusions by reference to competition considerations; and it was not until *Meca-Medina*¹² a decade later (2006) that the Court said unequivocally that

*“the mere fact that a rule is purely sporting in nature does not have the effect of removing from the Treaty the person engaged in the activity governed by that rule or the body which has laid it down.”*¹³

And the Court made it clear too that just because rules of a purely sporting and non-economic nature might not fall within the scope of the free movement principle, *non sequitur* that they fell outside the scope of competition law too¹⁴, but held, on the facts, that anti-doping regulations were, as long as the sanction was not extravagant, a proportionate response in pursuit of a legitimate objective¹⁵. I should add by way of footnote to that case that the defence of the long distance swimmers, held guilty of a doping offence in that case, was that they had ingested what Dr Anderson somewhat squeamishly refers to a stew made of boars’ meat¹⁶. More specifically it was in fact a stew made of boars’ testicles. There was actually no evidence before the CAS Panel¹⁷, on which I sat that the dish was on the menu the night before the swimmers’ competition. The defence was indeed balls.

So what else – to revert to more decorous subjects – can justify that which would otherwise be unlawful anti competitive behaviour? There are many statements by the Commission that the benefit of solidarity through cross-subsidisation of funds from richer to poorer is a legitimate factor to take into account in a competition analysis. In the *UEFA Broadcasting Regulations*¹⁸ case which concerned the acquisition of broadcasting rights to football events – broadcasting being the good parasite on sports body, just as gambling is its opposite - the ECJ noted:

*“165. ... The Commission recognises that a cross-subsidisation of funds from richer to poorer may help achieve this. The Commission is therefore in favour of the financial solidarity principle, which was also endorsed by the European Council declaration on sport in Nice in December 2000.”*¹⁹

In the Commissions ‘orientation document’²⁰ on broadcasting rights it was expressly explained.

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“Such restrictive agreements must meet the four criteria for exemption of [what is now Article 101(3) TFES]. The fulfilment of these criteria should not be based on purely commercial considerations. The special characteristics of the sport in question have to be taken into account. These could include, for example, the need to ensure “solidarity” between weaker and stronger participants or the training of young players, which could only be achieved through redistribution of revenue from the sale of broadcasting rights.”²¹

And the Commission Working Paper which accompanied the White Paper 2007 itself in an Annex cast the net still more widely.²²

“When considering the criteria for possible exemption [for collective selling of rights], the characteristics of the sport must also be taken into consideration. It is often argued that it is important to take account the solidarity between the stronger and weaker economic actors or between the professional and amateur sides of the sport or that a sport is played by young people. It must also be considered how far the collective selling of rights by a sports association, when combined with a balanced distribution of the resulting revenue, can be seen as justified to promote sporting activities within the population, as well as providing for interesting sporting competitions.”

In pursuit of the same sport-specific objectives in 2009 UEFA unanimously approved a financial fair play concept as part of its club licensing and financial fair play regulations, requiring football clubs to break even over a period of three years before they can, as from 2014, be granted a licence to compete in the Champions League. The European Commission has endorsed the regulation. Observing that the

licensing system should respect the internal market and competition rules, they referred again to the specificity of sport in the application of EU law. The problems potentially posed to Mr Abramovich and the ruling family of Abu Dhabi need no elaboration.

Salary cap are current in rugby leagues, rugby union and basketball in England – and a contractual feature of the quartet of major professional sports in the USA, but, as is notorious and obvious, not – or not yet in professional football. They are clearly anti-competitive in that they restrict the ability of clubs to compete with each other for the best player – whether actually so like Cristiano Ronaldo or Wayne Rooney – or those optimistically thought to be so – like Alan Sugar’s comic caricature overseas import Carlos Kickaball. But a plausible argument can be founded in their favour on the specificity of sport, namely that they are necessary to preserve at any rate a measure of competition balance between clubs. Money does not necessarily guarantee success in football competitions, but equally success cannot be achieved without it: a glance at the Premier League hierarchy over the seasons of the first decade of the new century tells the tale. But until UEFA grasp the nettle, it is not a case of the Euro-jury being out, as of there being no summons to jury service.

To give one last example in *AEK PAE v SK Slavia Prague v UEFA*²³ a challenge was made by ENIC, an investment vehicle which had stakes in a number of well-known football clubs and challenged a rule prohibiting club and a common control from playing in the same UEFA club competition, I represented ENIC. Not only for that reason, ENIC lost the case. CAS held that the rule

“appears to have the effect of preserving competitions between club owners and between football clubs rather than appreciably restricting competition of the relevant market or on other football markets.”²⁴

The Commission later took the same view.²⁵

The only certainty in football is that sometime in the season Joey Barton will be sent off – at least once.

But it is not only competition law in which sport is governed by rules with a different subjacent philosophy to that which obtains in other walks of life. Employment law provides further examples and has been the soil from which many of the most famous sports law cases have sprung. In a normal industry an employee whose contract has expired is usually free, subject to any justifiable restrictive covenants to find

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new work with another employer. But, the contradictory concept of a player as a form of chattel was deeply embedded in the field of football despite the efforts of one Herbert Kingaby to free himself in 1911 from his contract with Aston Villa.²⁶ In *Eastham v Newcastle Football FC*²⁷ the England inside forward – the very description is redolent of an age gone by – successfully challenged the then ‘retain and transfer’ system in professional football by which the rules of the then Football League permitted a club to retain a player’s registration at the end of each season or otherwise seek a transfer fee for that player from another club.

The principles in *Eastham* were transplanted from football field to cricket pitch in *Greig v Insole*²⁸ on an analogous but not identical context in which the South African born England player – by no means the last of that particular genre – challenged, again successfully, the ICC/TCCB rule that any player who made himself available for Kerry Packer’s World Series Cricket would be on consequence ineligible for test cricket.

The litigation spotlight switched from England to Europe in *Bosman*²⁹. This footballer, whose actual sporting achievements provided scant copy for the back pages, guaranteed himself a Pele or Messi type immortality by challenging the transfer rule operating in Belgium under which a player whose contract had expired with Club A but who wished to play for Club B could not do so unless Club B paid a transfer fee as a *sine qua non* of the player’s receipt of a registration certificate to play for it. Bosman himself wanted to move from FC Liege in Belgium to FC Dunquerque in France, neither team being exactly Champions League material. UEFA, a party to the proceedings, submitted that in any application of fundamental free movement principles to professional football, a degree of flexibility would be essential because of the particular nature of the sport³⁰, in particular, that sporting equilibrium would be undermined if clubs who trained and developed players could not be compensated when they moved elsewhere. The ECJ accepted the legitimacy of the objective of maintaining a competitive balance “by preserving a certain degree of equality and uncertainty as to results”³¹ but held that the transfer regime then in place did not on the evidence promote such objective. As Dr Anderson graphically noted, Herbert Kingaby scratched at it; George Eastham cracked it; but Jean-Marc Bosman well and truly smashed the glass ceiling that

restricted the employment mobility of professional football players³².

I would add that Jean Louis DuPont, the players’ legal representative, also acquired a quantum leap in reputation and income, enjoying as a result of his success the sobriquet “the Bosman lawyer” rather like the James Stewart character, the brave but not sharp shooting sheriff, acquired in the eponymous film through a different stroke of good fortune the description “The Man who shot Liberty Valance”.

One consequence of Bosman was the production by FIFA of the Regulations on the Status and Transfer of Players³³. The basic position articulated in Article 13 is that the relationship of player and club is dictated by the contract between them; and while reflecting the desideratum of contractual stability in providing that no contract can be terminated during the course of a season (Article 16) otherwise permits such termination for ‘just cause’ (Article 14) and, more relevant, for ‘sporting just cause’ where an established player has appeared in fewer than a tenth of the matches in which his club has been involved during such season (Article 15.)

“Sporting just cause” is not defined otherwise than by reference to the need to determine it on a case by case basis taking into account the player’s personal circumstances. It has been held that a player has no right to be selected for a club’s first team³⁴ and that a player must at least indicate discontent with the lack of playing opportunities before he can rely on the defence³⁵. But while it is reasonably clear as to what

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sporting just cause is not, it is wholly obscure as to what it is. No player has to date succeeded in relying on it, and despite sundry rumours, that Carlos Tevez – to modernise a hoary quip a man with more clubs than Rory McIlroy – has not yet sought to do so. In neither instance are sporting sanctions – another self evidently sports specific concept, effectively ineligibility for matches, applied, but in the latter compensation may be payable to the affected club. Training compensation is itself a feature of football law, alien to other business spheres. As Marie Demetriou writes in her chapter in the 2nd edition of Beloff, Kerr, Demetriou and Beloff on “Sports law”³⁵ due out in autumn of this year, and long awaited, at any rate by the publishers, “it is difficult to think of another context in which prospective employers are subject to financial disincentives to recruitment”. If Sainsbury’s attract a trainee from Tesco’s (without any inducement of breach of contract being involved) it will not be expected to compensate Tesco’s for the education provided to that trainee

It is in the CAS case law on Article 17 which provides for the consequences of termination without just cause that the ghost of the argument as to whether a footballer is a chattel or a person lingers on. Article 17 bears all the hallmarks of a compromise between the two irreconcilable objectives of contractual stability and freedom of employment. Indeed the draftsman who appeared before me in a CAS case as an advocate by then in private practice candidly admitted as much in response to my question. It has been said that a camel is a horse designed by a committee. Article 17 resembles nothing other than Dr Doolittle’s Push me-pull you pulling simultaneously in two different directions.

I shall not recite all the factors listed as constituting the basis for calculation, but note only for present purposes that there is express reference to “the specificity of sport”. The first of the cases which sought to construe it involved Andy Webster, a Scottish international, who broke his contract with Heart of Midlothian to move to Wigan FC³⁶. Hearts claimed a sum of four and a half million pounds said to represent his market value. A CAS panel, of which I was a member, awarded only £150,000 representing the residual remuneration value of his contract. I betray no confidences in admitting what is apparent on the face of the record, that the Panel’s perspective was that there was no justification in treating a footballer differently from another employee, or indirectly sterilizing his ability to switch clubs by attaching too high a price tag to such a move.

At a later BASL conference at the Emirates I was congratulated by Gordon Taylor of the PFA but berated by Maurice Watkins of Manchester United for the award. The Webster decision was roundly criticised as “very damaging for football for those players and their agents who toy with the idea of rescinding contracts before they have been fulfilled. CAS did not properly take into consideration the specificity of sport” – a criticism which might have been more painful to the Panel, had it not fallen from the lips of none other than Sepp Blatter. Nonetheless, subsequent CAS Panel have effectively overruled, with courtesy if not comity, the Webster case; and in *Matuzelem*³⁷ – in broad terms – adopted a market value test.

Sport is of course on the radar of European law only to the extent that it is an economic activity: so that as early as *Walrave-Koch v UCI*³⁸ it was recognised that there was an extension to the principle of free movement in matters such as “the composition of sports teams, in particular national teams, the formation of which is a question of purely sporting interest, and as such has nothing to do with economic activity.”³⁹ It would evidently make no sense for a match to be billed as between France and England if at all the players playing for France were English and vice-versa.

But at a level below that it is less obvious why there should be any quota if home grown players for clubs in a particular national league: and none such presently exist. Arsenal, have from time to time, fielded teams without a single English player, let alone one from Highbury or Islington. *Bosman* itself rejected UEFA’s contrary arguments based on such factors as the need to enhance the pool for national teams: and the various formulae of 3 + 2 (UEFA) or 6 + 5 (FIFA), which are different in a way which it does not need a Stephen Hawking to unravel, are seeking to bypass the principle that there can be no discrimination of grounds on nationality, direct or indirect. The Commission has so far accepted the more nuanced UEFA rule that clubs participating in their competition must have a minimum of home grown players in their squad: but the Commission’s indulgence is not the law. *La lotta continua*.

Both the criminal law and the law of tort illustrate the exceptionality of sport. The general rule is that a person can consent to common assault, where no injury has been caused, but not to the application of the force which causes him actual bodily harm or worse. If such a rule were applied to

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sport, sport would not exist. So the rule is necessarily modified so as to avoid that unthinkable conclusion. A doctrine of implied sporting consent was introduced in a trilogy of late Victorian cases.⁴⁰

But how far does consent go?

In *R v Barnes*⁴¹ the question was whether a footballer should be convicted under Section 20 of the OAPA for a tackle causing senior injury to an opponent's leg and ankle. The Court of Appeal identified a number of factors which determined, within the sporting context, the acceptability or otherwise of a players' conduct, which would have no purchase in off-field deliberate aggressive bodily contact.

*"the type of sport, the level at which it is played, the nature of the act, the degree of force used, the extent of the injury, the state of mind of the defendant."*⁴²

Still more remarkable is the immunity of professional boxing from the scope of the criminal law since that sport is defined by the deliberate infliction of injury (pace the Queensberry rules) on another. Small wonder that a judge of the intellectual distinction of Lord Mustill was reduced to saying of an Australian judgment:

*"The heroic efforts of that learned judge to arrive at an intellectually satisfying account of the apparent immunity of professional boxing from the criminal process have convinced me that the task is impossible. It is in my judgment best to regard this as another special situation which, for the time being, stands outside the ordinary law of violence."*⁴³

The fact that the appeal was concerned with sado-masochistic activities of a kind too exotic to detail gratuitously in a public lecture, and so Lord Mustill's observations were strictly *obiter*, does not detract from their acuity.

The special relationship of sport and the criminal law was excellently summarised in a Canadian case:

*"The playing field is not a criminal law free zone. The laws of the land apply in the same way as they do elsewhere. The legal analysis of whether a crime has been committed on the playing field is the same as it is on the street, though contact sport presents a unique factual context of that analysis."*⁴⁴

Edward's ghost would applaud the first part of that analysis.

He wrote eloquently of the "corruption inherent in the bastard expression "professional foul", and noted correctly that "what has been called a professional foul in the past is in reality an actionable criminal and civil assault."⁴⁵

The civil imitates in this sphere in the criminal law. The case law when a participant in a sport owes or breaches a duty of care to another (and who that other is) is not entirely coherent⁴⁶ – and this is not the time or place to attempt a reconciliation – but a common thread, uniting all the major judgments, is that the sporting context (and the dangers inherent in it) mean that the threshold for liability is higher than it would be off pitch or off piste. As Judge LJ (as he then was) put it in *Caldwell v Maguire*⁴⁷ – a case in which our National Hunt Jockey claimed damages for injury sustained as a result of alleged careless riding.

"In the context of sporting contests it is also right to emphasise the distinction to be drawn between conduct which is properly to be characterised as negligent, and thus sounding in damages, and errors of judgment, oversights or lapses of attention of which any reasonable jockey may be guilty in the hurly burly of a race."

So it's a case of legal horses for courses.

Sex discrimination provides a further illustration of sports specificity: here not only carving out an exception to general rules of law, but subverting them entirely. It is axiomatic that the underlying principle of modern anti-discrimination legislation is equality of treatment between the sexes. Yet the Equality Act 2010 Section 195, building on Section 44 of the Sex Discrimination Act 1975 institutionalises such discrimination in competitive sport, making only modification of the earlier law by subsection 5 which states that whether a sport is a gender activity – the touchstone of segregation "it is appropriate to take into account of the age and stage of development of children who are likely to be competitors". Lord Denning, once in a case concerning a claim for equal pay with her male equivalent brought by a woman counter-hand in a betting shop in a rough area⁴⁸ pointed out that certain physical and mental qualities are not merely the prerogative of one sex or another

*"He may have been a small, nervous man who could not say "boo" to a goose. She may have been as fierce and formidable as a battle axe."*⁴⁹

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In the sphere of equal pay what was source for the gander proved also to be source for the goose. But if a woman cannot play in a man's team, the question of equal pay will not arise. Matthew Syed, an acute commentator on matters sporting, recently observed that, so deeply ingrained is sex discrimination in sport that separate competitions continue to be organised for men and women, even in table sports such as snooker or billiards, where there is no obvious basis for suggesting that it would be unfair, because of physiology, to unite them.⁵⁰

The importance attached to separate competitions for men and women in sports, which, unlike equestrianism, the activity is "*gender affected*" is exemplified by the sad case of Caster Semenya winner of the gold medal for the 800m in the World Athletics Championships in Berlin in 2009. She was said to have characteristics more masculine than feminine – to be in short an "*intersex*" person. In consequence the IAAF has adopted sophisticated rules⁵¹, to identify those eligible to compete in women's only competitions based on their quantum of hyper-androgens – an improvement on the sex tests of decades gone by where aspirants to women's competition when gender was in doubt had their unclothed bodies subjected to a visual examination – something that may have been appropriate for putative stars of pornographic movies but not for elite sports persons.⁵²

The law against disability discrimination has equality to take account of sport's specificity.

The definition of disability under the Equality Act 2010⁵³ is that an individual has a physical or mental impairment that has a substantial and long term adverse effect on the individual's ability to carry out normal day to day activities.

It is self-evident that, save exceptionally, such impairment will affect the individual's capacity. The escape hatch for employees of sportsmen and women or those who provide sporting facilities lies in the restricted definition of "*normal day to day activities*" which the Government Guidance suggests does not include playing sport⁵⁴ – a somewhat dispiriting approach for those who consider that sport is – or should be – a part of everyday life.

Of course in the same way as there are women-only competitions, so too are there competitions for the physically

or mentally impaired – of which the Paralympics are the pinnacle. And the question whether it ought to be possible for a disabled sports person to cross the boundary participate in open competition has been given focus by the case of Oscar Pistorious – the blade runner – who compensation for his disability by artificial limbs. Ordinarily there is no problem: the use of wheelchairs is the very badge of Paralympic sport.

The controversy over whether this gave him an advantage over able-bodied competition or merely reduced his disadvantage was laid to rest in his case by the CAS decision⁵⁵ which, however, the Panel stressed was based on the then available evidence.

On any view Mr Pistorious is a remarkable athlete and I suspect that no rival, domestic or international, would be minded to renew the challenge to his participation in the Olympics which is not to say that such a challenge, if brought, might not, on the basis of the most recent research, succeed⁵⁶.

No less complexity attends the relationship of sport and age discrimination. Under the Equality Act 2010 direct discrimination occurs⁵⁷ where a person (A) discriminates against another (B) if, because of a protected characteristic A treats B less favourably than A treats or would treat others.

But where the protected characteristic is age, A does not discriminate against another (B) in circumstances within the scope of the Act if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim⁵⁸.

Two sections of the Act (employment) potentially bear on sport and issues such as team selection. Under Section 29 of the 2010 Act a service provider (A) (which includes a provider of facilities) Section 31(2) must not discriminate a person (B) as to the terms on which (A) provides a service to B or by subjecting B to any other detriment.

Under Pt 7 of the Act concerned with Associations (which would cover clubs or regulators), an association (A) must not discriminate against an association (B) in the way it affords him access to a benefit or facility, or subjects him to any other detriment (Section 101(3)(a) and (d)).

Neither Section 29 nor Section 101 have yet to be fully

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bought into effect in respect of age discrimination. In the Consultation Paper, preceding the Act the Government explained:

“Age limits or age bands are currently used in sporting events where it is necessary to secure fair competition, or the safety of competitors. We proposed to include an exception to ensure this practice can continue. The benefits of allowing an exception for age-restricted sports competitions are as follows:

- *It enshrines the principles of fair competition – for many sports, success in competition is dependent upon the size, weight, strength, flexibility, dexterity, stamina or experience of the competitor. Taking account of a person’s age is important therefore in ensuring that a player does not gain an unfair advantage, as this would contradict the ethics of sport and fair play.*
- *It promotes safe competition – there are notable links between injury rates and the age of competitors. In response to this, some sports impose minimum age requirements to protect young athletes. For example, gymnastics, 89 weightlifting and contact sports competitions.*
- *The approach is in line with international practice – taking account of the age of a competitor is often necessary in order to comply with rules determined at an international level or by international sports governing bodies. For example, there are many different age requirements for sport at international level, such as under 21 football tournaments.”*

How this exception will be formulated is, for the future.

Sports regulation has itself other notable distinctive features. The concept of sporting nationality is distinct from that of nationality in the legal sense a topic of increasing importance as sporting mercenaries sell their talents to the highest bidder⁵⁹. And sporting bodies and sporting competitions do not align themselves with conventional political or geographical boundaries: words which bear one meaning in ordinary legal instruments may bear another in instruments governs sport⁶⁰. FC Monaco is treated as if it were a French club for the purposes of its transfer regulations.⁶¹ Taiwan as Lord Denning decided in *Reel v Holder* was a separate country for the purposes of the IAAF rules⁶², a decision

which prompted Primo Nebiolo, the President, to move the domicile of the Federation from England to Monte Carlo where the legal (not to speak of the meteorological) climate was more benign. And, at odds with its usual desire to multiply its membership, the IOC changed its criteria for becoming an NOC with the apparent objective of ensuring that the Gibraltar NOC was ineligible, a change whose retrospective application has been unsuccessfully challenged by the GOC in the Swiss Courts⁶³.

One feature which certainly differentiates sport from other industries is its developed pattern of global regulation with bodies such as FIFA, the IAAF, FINA and FIA exercising worldwide control over their particular sports, as well as the IOC whose control, because of the intermittent nature of its quadrennial competition, enjoys less width, but because of the Olympics special nature, but greater depth. WADA recently and successfully, praying in aid advice I gave them, locked horns with the BOA over the latter’s lifetime ban on Olympic participation for so-called drugs cheats. The very issue at stake was not whether the WADA rule was an adequate response to doping offences on which, with all due respect to Lord Moynihan, views may legitimately differ but whether a harmonized code allowed of no exceptions for the state signatories. The CAS held that it did not;

The case is only one of many which reminds us that sport, has too what is in nature, if not in name, in CAS a world court with a jurisdiction more far reaching in its areas than the ICJ or ICC. with new outposts in Shanghai, Kuala Lumpur, Cairo and Abu Dhabi supplementing those already established in Sydney and New York.

CAS has created and developed a number of specialist doctrines and principles which can have application only in a sporting context – the so-called *lex sportiva* – or for classical purists – *lex ludica*.

- the field of play doctrine which seeks to limit interference with an officials decisions.
- the concept of comfortable satisfaction as the standard of proof for sporting disciplinary offences.
- the strict liability rule in relation to doping violations.
- the bias towards eligibility.

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WADA recently and successfully, praying in aid advice I gave them, locked horns with the BOA over the latter's lifetime ban on Olympic participation for so-called drugs cheats.

The essence of the field of play doctrine is that it is for sporting bodies via their appropriate officials to take decisions relevant to the conduct of particular events. They only lose their immunity from review by CAS in circumstances of arbitrariness and bad faith, (meaning fraud, corruption or malice), or some equivalent vice.

The doctrine protects even the technology whose use to determine whether a ball was in or out in tennis, a batsman was or was not out LBW, whether a try, has or has not been scored is a notable, ingredient in modern professional sport, building on the more conventional use of photographic evidence to determine who, human or horse, crossed the line first. And it is necessary there, as well, for though the camera may not lie, it can be economical with the truth⁶⁴.

But the principled as distinct from the pragmatic basis for the doctrine is by no means clear.

In *Yang Tae Young* in the mens all round gymnastics final – the blue ribbon and of the sport – the official admittedly under marked the Koreans performance on the fourth apparatus out of vie which relegated him at the end of the competition to the silver medal position. The Panel, which I chaired, determined that the complaint of mis-marking should have been taken to the jury of appeal and said that it would not itself interfere with an official's decision just because he had made a mistake.

We reasoned:

“While in this instance we are being asked not to second guess an official but rather to consider the consequences of an admitted error by an official so that the ‘field of play’

jurisprudence is not directly engaged, we consider that we should nonetheless abstain from correcting the results by reliance of an admitted error. An error identified with the benefit of hindsight, whether admitted or not, cannot be a ground by reversing a result of a competition. We can all recall occasions where a video replay of a football match, studied at leisure, can show that a goal was given, when it should have been disallowed (the Germans may still hold that view about England's critical third goal in the World Cup Final in 1966), or vice versa or where in a tennis match a critical line was mistaken. However, quite apart from the consideration, which we develop below, that no one can be certain how the competition in question would have turned out had the official's decision been different, for a Court to change the result would on this basis still involve interfering with a field of play decision. Each sport would on this basis involve interfering with a field of play decision. Each sport may have within it a mechanism for utilising modern technology to ensure a correct decision is made in the first place (e.g. cricket with run-outs) or for immediately subjecting a controversial decision to a process of review (e.g. gymnastics); but the solution for error, either way, lies within the framework of the sport's own rules; it does not licence judicial or arbitral interference thereafter. If this represents an extension of the field of play doctrine, we tolerate it with equanimity. Finality is in the area all important; rough justice may be all that sport can tolerate.”

The common law recognises only two standards of proof beyond reasonable doubt for criminal cases, and balance of probabilities for civil cases the elusive notion that there was a sliding standard depending upon the nature of the issue had been discarded. It was said by no lesser a jurist than Lord Hoffmann that when the test of balance of probabilities is engaged, it may be more difficult to establish that the animal seen in the park was a lion than a dog⁶⁵ but does not mean that the test itself is different. However CAS has indeed invented a third concept – that of comfortable satisfaction⁶⁶, which, lies at some point between the two conventional standards and, in my view, aptly reflects the fact that disciplinary proceedings also occupy different legal territory to criminal proceedings on the one hand, and civil proceedings on the other; they are less serious than the former, but more serious than the latter.

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Fundamental to the idea of fairness to sportsmen and honesty of results is the strict liability rule in doping offences, in which even inadvertent absorption of banned substances is penalised. It is no defence to an athlete to claim that he was the victim of mislabelling, contaminated stock or faulty advice.

As was said in *Quigley v UIT*⁶⁷ (a case about a disqualified marksman)

“The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable persons, which the law cannot repair” ... It appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors.”

In this instance the interests of the many have to be preferred to the interests of the one.

There are further purely practical considerations. To prove guilty intent would be difficult when all the key facts were known to the athlete only. To prove actual enhancement of performance would necessitate of expert evidence. Litigation in which *mens’ rea* or efficacy was an issue would be damaging to finality of results and destructive of the budgets of many sports bodies.

Principled objections founded on such positive concepts as the presumption of innocence, natural justice, and right to work and such negative ones such as restraint of trade or anti competitive practice have proved insufficient to undermine the rule.

But the rigours of the strict rule are tempered by a number of considerations.

First CAS has demanded that a strict liability standard must be clearly articulated.

In *Quigley* CAS said:

“The fight against doping is arduous and it may require strict rules. But the rule makes and rule appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised

bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accreditation. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of de facto practice over the course of many years of a small group of insiders.”

Second, a bright line has been drawn between the sanctions relevant to the competition in which the athlete is proved to have had the presumed benefit of drugs and those relevant to the athlete’s long term future. In respect of the latter all circumstances may be taken into account, and here the degree of fault, if any, of the athletes, comes into critical focus.

A highly controversial disqualification at the Sydney Olympics was that of the teenage Romanian gymnast Raducan who underwent a doping test after the event on September 21, 2000 which revealed the presence of Pseudoephedrine. The IOC Executive Board decided to disqualify her from the women’s individual all-round event and to withdraw her gold medal.

The Panel said:

“The anti-doping code considers doping as a strict liability offence. This means that no intentional element is required to establish a doping offence. The mere presence of the forbidden substance in the urine sample is sufficient”.

“It supports the strict consequence of an automatic disqualification – severe as it may be in that it affects the gold medal winner – in a matter of fairness to all other athletes”.

“This is why factors such as the athlete’s age (she was 17 on September 30), her weight, the need for medication (there were other medicines available, as well as procedures to be followed, where medication with a banned substance is required for health reasons), the fact the drug may not have enhanced the performance, and the gymnast’s reliance on the team’s doctor were all held irrelevant. Such matters were, however, taken into account in not imposing a sanction beyond disqualification.”⁶⁸

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A constant theme of CAS decisions in that, whether possible, rules should be interpreted in a way which enables athletes to compete. In a recent appeal before the SDRP69 in which I represented the British women rhythmic gymnastics team and persuaded the arbitrator that British Gymnastics had wrongly interpreted their selection policy to bar the team from participating in London 2012, I was able to pray in aid certain basic principles of CAS case law.⁷⁰

- (i) First, an athlete has the right to know the criteria which he or she must meet in order to qualify for the Olympic Games⁷¹.
- (ii) Second, selection criteria should be as objective as possible⁷².
- (iii) Third, selection criteria should be clear, and not require oral elucidation.
- (iv) Fourth, where selection criteria are objective e.g. points in a given competition they must be adhered to. There is no residual scope for subjectivity⁷³.
- (v) Fifth, any alteration to selection rules must be timeously announced and properly communicated to those whom it affects⁷⁴.

At the same time CAS has stated that:

*“it fully endorses the objective of preserving a link between national team competitions and national terms, and the avoidance of a situation in which national terms are substantially or wholly composed of sporting mercenaries acquiring belatedly nationalities of convenience”*⁷⁵

Again relocation to another country in pursuit of personal objectives is unobjectionable, even admirable, in most areas of activity: but, once again sport is different. We have surely not heard the last of the argument about so-called Plastic Brits.

There are other eccentric but particular features of sport which I will mention by way of epilogue. Sporting celebrities, in particular footballers and even some football managers appear to enjoy, if not a modern equivalent of sovereign immunity from the criminal process, at least the benefit of a standard of proof which embraces not only reasonable, but quite unreasonable doubt, so that not only unsolicited

admissions or unblemished CCTV evidence is insufficient to inculpate. In the civil sphere their agreements are often treated not as a source of binding obligation but as a mere bargaining chip to be deployed in further negotiation; Sam Goldwyn, the Hollywood producer, once said that *“oral contracts aren't worth the paper they are not written on”*; but the same is sometimes true today even of sportsmen and women's written contracts. When a manager wails that his star strike is under contract till 2015, one knows that the player will be on the move within weeks to another more prosperous club⁷⁶.

Sport, or more precisely football, is the only walk of life which contemplates banning orders for supporters. Who ever heard, even thought, of a legislatively-sourced banning order for opera-goers or even members of a pop concert audience?

Professions are meant to be distinguished from other businesses or trades by their particular code of moral values; yet in sport the concept of *“professional foul”* inverts such notions of morality, and cheating, which should be met with ostracism, or at any rate, opposition, is part of the *règles du jeu*, the unwritten rules of the competition.

In Sport uniquely people take drugs not to get high but to run fast. So sport has developed a parallel code of sanctions for drug abuse to those reflected on the public law of the land.

Edward, with his alas anachronistic attachment to a Corinthian philosophy of sport, nourished by the amateur game, would have deplored-indeed in his lifetime did deplore-many of these developments; but he would also have recognized that it is many of the less disreputable aspects of the specificity of sport, which gives an organisation such as BASL its *raison d'être*. After all if sport – and in consequence the law appropriate to it – were not different, where would we all be? ■ **BASL**

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- 1 Preface to the third edition of *Sport and Law XIV*
- 2 *Modern Sports Law: Hart 2010* p.21
- 3 To be published in July 2012.
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- 8 When I, in my capacity as Chair of the ICE Code of Conduct Commission with Albie Sachs and Sharad Rao imposed cricket bans, complemented by prison sentences handed down at the Southwark Crown Court and upheld by the Court of Appeal (2011 EWCA, Crim 2194
- 9 Collected papers TMA Asser 2008 p.153
- 10 p.460
- 11 1995 ECR [I]-4291
- 12 [] 1996 ECR I-6991
- 13 para 27)
- 14 (paras 31-34)
- 15 ECR
- 16 CAS 99/A/234
- 17 CAS 99/A/235
- 18 Commission Decision: 19th April 2001
- 19 That Nice Declaration itself noted: "15. ... The sale of television broadcasting rights is one of the greatest sources of income today for certain sports. The European Council thinks that moves to encourage the mutualisation of part of the revenue from such sales, at the appropriate levels, are beneficial to the principle of solidarity between all levels and areas of sport."
- 20 In (1998:2) *Competition Policy Newsletter 18* "Broadcasting of sports events and competition law"
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- 42 At p.512
- 43 *R v Browne* 1994 1 AC 212
- 44 *R v CCC (2009) ONCS 249* *Can III Duncan J*
- 45 *Sport and the Law* 3rd ed p.254
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- 55 CAS 2008/A/480
- 56 La Shawn Merrit, the USA 400 metre runner, has raised the issue which is an example of chutzpah coming from someone who admittedly took a prohibited substance for-he claimed,penile enhancement
- 57 Section 13(1)
- 58 Section 13(2)
- 59 Most of the star track athletes of the Gulf States are ethnic Kenyans
- 60 See *Cowley v Healey* TLR 26 July 1986 (domicile for the purposes of the Commonwealth Games)
- 61 CAS 98/2001
- 62 *Reel v Holder* 1981 1 WLR 1226
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- 64 *Neykova v FLS CASOG SYD. 12]*
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- 69 S M SLR 2/12, SLR-23
- 70 Subsequently accepted in toto by another SDRP panel dealing with the appeal by Aaron Cook against his exclusion from the British Taekwondo team for London 2012
- 71 *Ciba v Japan ASAF* CAS 2000/A/278 para 10
- 72 *Dal Balcon v Coni* CAS ad hoc division OG Turin 06/08 para 112
- 73 *Schuler v Swiss OA* OG 06/002 para 35
- 74 *Dal Balcon v Coni* CAS: ad hoc Division OG Turin 06/08 para 16
- 75 CAS 2009/A/1988
- 76 Nick Bitel during a Q and A session at the end of the lecture also noted that it is in sport that the concept of image rights has developed,

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