

Biographies

Dr Mark James is a Reader in Law and Director of the Salford Centre of Legal Research. His general teaching and research interests lie in the field of Sports Law, which he has been teaching for nearly 20 years, and he is the author of the leading student textbook, *Sports Law* (2010: Palgrave). Together with co-author Prof Guy Osborn, he is a co-editor of the open access *Entertainment and Sports Law Journal* and has given papers on his research all over the world. Most recently, he has conducted a series of analyses of the UK's Olympic legislation and the criminal sanctions attached to their breach.

Professor Guy Osborn is Professor of Law at the University of Westminster School of Law, and Co-Director of the Centre for Law, Society and Popular Culture. In addition to co-editing *Entertainment and Sports Law Journal*, he is co-editor (with Steve Greenfield) of the Routledge Monograph Series *Studies in Law, Society and Popular Culture* and has written widely on areas of law and popular culture, including a number of books co-authored with Steve Greenfield, such as *Regulating Football*, 2001, Pluto Press; *Law and Sport in Contemporary Society* 2001, Frank Cass. His current research interests include a variety of analyses of cultural and commercial dimensions of Olympic law and work on event tickets and social inclusion.

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Sports Law: its History and Growth and the Development of Key Sources

Abstract: In this article Simon Boyes traces the development of the discipline of sports law as represented and effected by the literature in the field. The article identifies different aspects of sports law and the various levels and locations within which it operates and identifies the leading academic and practitioner works associated with each. The article also considers the major developments in the field and the way in which they have shaped the sports law literature.

Keywords: sports law; sport and the law; legal sources

THE DEVELOPMENT OF SPORTS LAW

Sports law is a relatively young sub-discipline in English law, though it has a much longer and stronger history in the activities of academics and attorneys in the United States. Indeed, in its formative years, it was often questioned whether such a discipline could genuinely be held to exist as a distinct and delineated subject area, or whether this could simply be regarded as being an instance of applied law:



Simon Boyes

“No subject exists which jurisprudentially can be called sports law. As a soundbite headline, shorthand description, it has no juridical foundation; for common law and equity creates no concept of law exclusively relating to sport. Each area of law applicable to sport does not differ from how it is found in any other social or jurisprudential category . . . When sport hits the legal and political buffers, conventional and ordinary principles

affecting the nature of the appropriate sporting issue concerned including parliamentary legislation are triggered into action.”¹

The debate has often centred on whether the appropriate term is “sport and the law” or “sports law”. The former connotes a simple confluence of the two areas – law that happens to apply to sporting situations; whereas the latter conceives of a more complex relationship between the two in which the sporting context has a material impact upon the applicability and application of the law.

Despite disputes about nomenclature, the area has gained increasing traction amongst both academics and practitioners, as an area of genuine interest and substance. It is now well established as an area of practice and there are a growing number of dedicated departments, with law firms and even specialist firms operating in the field. Similarly, there has been significant growth in the provision of opportunities to study sports law as a part of undergraduate law degree programmes and a number of postgraduate sports law Masters programmes are now well embedded at United Kingdom universities.

Classifications of Sports Law

Sports law has been described as being constituted of four types², each of which describe the level and ‘location’ of the legal activity. At its lowest level this can be described as being “domestic” in nature; relating to the internal rules, regulations and dispute resolution processes of national sports governing bodies. Though not law as such, these organisations undoubtedly fulfil similar functions and utilise law-like practices, as well as utilising existing legal frameworks, principally contract, to underpin and enforce their regulatory regimes. At the next level up, exists “national” sports law, concerning the interaction between sporting issues and national systems of law. Beyond that are systems of “regional” sports law – represented primarily by the interaction of sport with the European Union as the most significant and proactive regional agent in the sports law system. At the highest level comes the “international” aspect, derived from sport’s own regulatory and dispute resolution that operate at a supra-national level.

Early Sources and Evolution – the “national” level

At the domestic and national level in English law, the genesis of the area can largely be attributed to one man, the author of the quotation set out at the start of this article, the late Edward Grayson, who is widely regarded as being the father of sports law or, as he would have it, “sport and the law” in English law. His textbook, first released under that title in 1988, for many years provided

the sole substantial contribution in this field specific to English law.

Grayson’s book commences with a chapter that clearly sets his perspective as being rooted in the early twentieth century, in particular against the backdrop of the Corinthian spirit. In this respect, Grayson’s work forms an important contribution to the literature in this field, as it constitutes a compelling historical narrative of the development of the discipline up until its emergence in the mainstream, in the 1990s. However, the text can be challenging to read, best described as charmingly idiosyncratic, and often so packed with detail that the central theme of the work can become obscured. Grayson’s work is also typical of the “national” typology of sports law scholarship, which is characteristic of much of the literature of this early period.

It would be remiss to omit mention of the foremost academic in the formative stages of the development of sports law, Ken Foster. Foster was at the forefront of the development of the specialism as a genuine academic discipline, as well as the first to develop and teach a dedicated sports law module to law undergraduates. Foster’s early work in the field can be seen as providing an important critical and theoretical underpinning for those who have followed.³ Indeed, without Foster’s early analyses, sports law as an academic discipline would not have been able to develop as fully and quickly as it has.

The discipline gained momentum during the mid to late 1990s, in particular through the establishment of academic centres at Kings’ College, University of London and at, what is now, Anglia Ruskin University. The latter spawned one of the early specialist sports law academic journals, the *Sports Law Bulletin*. This publication, which has now been discontinued, was important at a period in time when the internet was in a period of relative infancy and information related to the area was not always readily available. The journal pulled together, in a monthly, newsletter-style, short articles and commentaries along with case notes and reviews of contemporary interest, which could not always be easily independently located. The Anglia Ruskin International Sports Law Centre also spawned the development of the textbook *Sports Law*, which replaced Grayson’s *Sport and the Law* as the principal title in the field and which moved towards an appreciation of the various levels of sports law beyond the “national”.⁴

A parallel development was the inception of the *British Association for Sport and Law (BASL)*, an organisation drawing together and representing the interests of sports lawyers from both practice and academia. BASL continues to enjoy the status of the pre-eminent sports law organisation and its journal, the *Sport and the Law Journal*, which was also one of the first to emerge, remains an important part of the suite of sports law journals. Similar to the *Sports Law Bulletin* in terms of its coverage, the *Sport and the Law Journal* carries articles of greater length, in addition to commentary and analysis on key updates in the field. Though submissions to the journal were not peer-reviewed

in the early years of its publication, latterly a move has been made towards full peer-review of articles.

During the early period of development of the discipline, these two journals were at the forefront of the provision of information on key developments in the field, because of the relative lack of sources of information.

The Emergence of a Specific Sub-Discipline

It was very much a characteristic of this period of development that though academics were writing and publishing on sports law issues, their work tended to be published through mainstream legal journals, rather than creating a cohesive body of sports law work.⁵ However, it is now the case that sports law has become embedded as a legal sub-discipline, and this much is evidenced by the emergence of a number of texts and journals focussed upon it. Foremost amongst these is the *Entertainment and Sports Law Journal* (published as a free online journal through the University of Warwick's Electronic Law Journals Project) which offers longer articles, shorter interventions (based around developments in case law or regulation) and book reviews. The journal began life in 2002 as a hard-copy based journal entitled simply *Entertainment Law*. However upon its move to electronic form in 2005 it changed its title to include sport. This change bears witness to the trend in the formative years of sports law as being bound up with a broader consideration of the law as it relates to culture, media and entertainment but emerging from this over a relatively short period of time, to be treated as a distinct area of law. The content of the journal is undoubtedly dominated by sport, particularly in respect of its shorter interventions, though retaining strong elements of the entertainment aspect throughout.

Sports law contributions to the *Entertainment and Sports Law Journal* are characterised by their contemporary nature, focussing principally on recent developments in the law and regulation of sport. Equally, there is a strong preponderance of contributions that, though concerned primarily with sport, overlap with the journal's other concerns; for example, focussing on the legal regulation of sports media rights, ticketing at major events, managing event safety and issues associated with football hooliganism.

This is also reflected in the texts now available written from the perspective of English law. Gardiner *et al*, *Sports Law*, has moved to a fourth edition and has evolved substantially to reflect contemporary approaches to sports law.⁶ The identically titled work authored by Beloff, Kerr and Demeteriou, first published in 1999 and shortly to move to a second edition is likely to reflect the multifaceted nature of the discipline and the often unnoticed overlap between "sports law" and "sport and the law" – often dealing with legal issues that relate to sport but are not necessarily defined or determined because of that context.⁷ Mark James' *Sports Law* is similar, but delivered in a very punchy

fashion, vying with Gardiner for to be the textbook of choice for students of sports law. Jack Anderson's *Modern Sports Law* carries an apt title, as being a more narrative exposition of a narrower set of themes that can genuinely be described as "sports law" proper and can claim to undertake the most analytical approach to the topic.⁸ For a comprehensive view of both "sports law" and "sport and the law" aspects, readers should refer to Lewis and Taylor's edited reference work *Sport: Law and Practice*.⁹ While it is always unwise to proclaim anything as being comprehensive, this work at least comes close and, while lacking the critical rigour of the other works is an excellent source of information for those studying or practising in the field. These broadly cast works are supported and enhanced by a number of titles focussed on particular aspects of the interface between sport and the law: business and commercial,¹⁰ personal injury¹¹ and, safety and risk management.¹²

EUROPEAN UNION LAW AS A DRIVER FOR THE DEVELOPMENT OF SPORTS LAW

There is little doubt that the relatively speedy growth of sports law as an academic and practical discipline can be substantially attributed to the rise of European Union law as a key player and stakeholder in the legal regulation of sport. In 1996 the Court of Justice of the European Union handed down a judgment in the case of *Jean Marc Bosman v URBSF*¹³ that has had a fundamental and lasting impact on the way sport is regulated and which effectively triggered the engagement of European Union law with sport on an ongoing basis.

In *Bosman* the Court of Justice outlawed rules restricting professional footballers from moving freely between clubs at the completion of their contracted periods and declared illegal any limits imposed on the number of 'foreign' players permitted to represent club teams, in as much as the restrictions affected nationals of EU Member States.

As well as encouraging further litigation in sports cases, the *Bosman* judgment also had the effect of encouraging the European Commission to become more proactive in respect of the economic aspects of sport, particularly in its capacity as the competition authority of the European Union. Since December 2009 the European Union has also possessed a specific, albeit 'soft', competence in relation to sport, following the insertion of Article 165 TFEU by the Lisbon Treaty.

Indeed, it can be seen that the shock induced by the delivery of the judgment in the case of *Bosman*, and its continuing after-effects, have also acted as a 'trigger' for the development of sports law as a discipline. This is evidenced by the emergence of key works in the period since the case was decided. In particular, the confluence of European Union law and sport has posed challenging questions to be resolved: does sport benefit from an exemption in the application of European Union law; to what extent does the existence of a sporting context

affect any application, and; are there aspects of sport that make it necessary for European Union law to treat it in a particular way?

These issues have engaged academics and practitioners from across, and beyond, the European Union and the result has been the development of journals and texts that focus around these and other international sports law issues. A key example is the *International Sports Law Journal*, established under the auspices of the Asser Institute, based in The Hague. The journal draws together articles, opinion pieces, reviews and updates alongside a cataloguing of important sports related legal documentation.

Though the title gives the journal an international character, there is little doubt that it is euro-centric in nature. The bulk of submissions focus around the legal regulation of sport either by the European Union or as it applies in the context of an individual Member State. This is certainly not inappropriate; the European Union and its legal system have an influence upon sport that reaches beyond its own geographic boundaries.

A good example are the rules set out by FIFA (the global governing body of association football); the *Regulations on the Status and Transfer of Players*, which govern the employment relationship between clubs and players and transfer of players between those clubs. These have been the subject of significant regulatory input from the European Union, such that rules shaped by the influence, or even demands, of European Union law are applied universally across the globe and well beyond its technical jurisdiction.

Discussion of this interrelationship between European Union law and sport's self-regulatory structures predominates in the content of the *International Sports Law Journal*. The journal is able to attract submissions from academics of the highest standing from across Europe, but retains strong connections with legal practitioners, which adds to the strong sense of cohesion engendered by the publication.

On any assessment of the journals available to academics, practitioners and students in sports law, the *International Sports Law Journal* certainly ranks highly for the depth, breadth and quality of its coverage, as well as the prestige contributors upon which it is able to draw.

European matters certainly take centre-stage, and it is arguable that this is rightly the case where the European Union has been at the forefront of a global development of the discipline. However the *International Sports Law Journal* does take account of sports law issues from beyond this continent and from non-European jurisdictions. In this much, it offers important and useful comparative insights into the different legal approaches adopted across jurisdictions.

The relationship between European Union law and sport has also stimulated the publication of a number of texts focussed exclusively on this aspect of sports law, all of which deal ably with some or all of the key questions posed above.¹⁴

Since the *Bosman* judgment, and now with the granting of a specific competence in sport to the European

Union, the reports, studies and documentation of the Union's institutions form a significant and growing resource for those with an interest in sports law. Because sport had no single place in the European Union's structures prior to the changes implemented by the Lisbon Treaty – it was split between a number of competences such as health, education, culture, competition and single market – much of the information available was scattered and disparate. However, the European Commission now has a dedicated Sports Unit and, although the Lisbon changes have not diminished the applicability of these diverse competences to sport, this now provides a single point of reference for issues and information pertaining to the relationship with sport.¹⁵ This is a valuable source of information for sports lawyers, pulling together as it does all matters European which may affect sport.

THE GROWTH OF GLOBAL AND INTERNATIONAL SPORTS LAW

If European Union law has been primarily responsible for the rapid rise of the discipline of sports law, it can now be seen – in sports parlance – to be passing the baton on to a growing body of genuinely international or global sports law.

The chief developments that have fuelled the development of a tangible and substantial international sports law are the creation of an international arbitral tribunal, the Court of Arbitration for Sport (as a forum for the resolution of sports disputes) and the establishing of the World Anti-Doping Agency, as a body harmonising the regulation and enforcement of anti-doping regulation across mainstream sports. In conjunction with the rules and regulations of sports federations themselves, in particular the International Olympic Committee's Olympic Charter, these have had a significant impact on the development of something that has been termed 'lex sportiva'. This is a body of law specific to sport and its institutions.

The Court of Arbitration for Sport

The Court of Arbitration for sport, more usually known by its acronym of the CAS, was established in 1984 with the express purpose of resolving disputes arising out of sport "within the family of sport", and developing and maintaining a set of legal principles upon which sport could be regulated, irrespective of national and legal systems of law. In its early years, the CAS dealt with only a handful of cases each year and those disputes it did arbitrate were often of marginal import. However its workload has burgeoned in the last two decades, and the importance of its rulings increased correspondingly, to a point where it is rare that any significant period of time goes by without a high profile case coming before the CAS. In the run up to the 2012 London Olympics it has heard two key cases on eligibility for selection for the games relating to the International Olympic Committee's 'Osaka' rule¹⁶ and the British Olympic Association bye-law

7.4. These cases, and numerous others, centre around the application and interpretation of the World Anti-Doping Code, administered by the World Anti-Doping Agency – in essence the first piece of sports ‘legislation’ to be universally applicable in terms of jurisdictions and sports – and which has made a significant contribution to the growth of the workload of the CAS.

The CAS, and other national sports arbitration bodies such as the United Kingdom’s *Sports Resolutions*, have grown in significance in particular because of the prevalence of arbitration clauses in the rules and regulations of sports governing bodies. Most mainstream sports federations now include such a clause in their constitutions and this has had the effect of diverting a significant number of cases that might have been litigated before the ordinary courts, down the path of arbitration. Notably the decisions of an arbitral body are usually binding and an appeal to the courts against their determinations are limited to narrow procedural grounds rather than providing an opportunity to re-assess the facts. The result is that the CAS and similar organisations have, to a degree, displaced or substituted the function that would ordinarily be conducted by the court system and, consequently their decisions have taken on a growing status.

The body of law established by the CAS, and its increasing significance, has spawned an emergent body of literature focused solely upon the organisation and its jurisprudence.¹⁷ With respect to academic journals, this has been taken on most vociferously by the *Sweet & Maxwell International Sports Law Review*. This should come as little surprise; the general editor of the journal is The Honourable Michael Beloff QC, a prominent member of the group of arbitrators who determine cases before the CAS, as well as one of English law’s most respected sports law practitioners, being also the President of the British Association for Sport and Law.

The journal adopts a relatively traditional approach for the most part, being constituted of longer articles, shorter legal analysis pieces, as well as case notes and publication reviews. The focus of articles and analysis is well balanced, with a spread of sports law topics, principally orientated around English and European Union law issues, but also involving contributions pertaining to domestic law from other jurisdictions. What makes this particular journal distinctive though, is its specific focus of its case notes, and to a lesser extent articles and analyses, on the internal regulatory processes within sports governing bodies and, more so, the reporting of cases determined by the CAS and by national sports arbitration bodies. This is of particular import for sports lawyers, whether they are students, academics or practitioners, because it highlights and explores the legal issues that are being encountered and resolved in a sub-litigation context. These can often provide valuable clues to the emergent trends likely to make their way before the courts or into sports arbitration in future. Similarly, exposure to important sports law issues from other jurisdictions is immensely helpful in identifying the character

of future disputes in a domestic context. Generating a raised awareness of cases in the pipeline in other jurisdictions and through sports arbitration is important, not least because – given the globalised nature of sports law and regulation – those cases which have a significant impact domestically are rarely ‘home-grown’.

The journal is also very good in its identification and reporting of otherwise unreported English cases which, while they may be of limited import in the development of the general law, have much to offer when subjected to a sport-centric analysis. That said, many of the cases reported in the journal are of a type where sport is on the periphery and, perhaps, not material to the outcome of the case which might reasonably be described as being “sport and the law” rather than sports law proper.

The *Sweet & Maxwell International Sports Law Review* should not be confused with the *International Sports Law Review Pandektis*, the journal of the International Association of Sports Law. This is very much focussed on an international and comparative approach to sports law, and includes academic papers, reviews and case notes and comment. As one might expect, the journal is eclectic and features contributions from a wide variety of jurisdictions, as well as focussing upon the jurisprudence and operation of the CAS.

Attention should also be drawn to the reporting of decisions of the CAS. One of the oft cited benefits of arbitration in general is that proceedings are confidential, thus the parties avoid the reputational damage and adverse publicity that might be associated with litigation. However, there is a presumption in favour of the publication of the decisions of the CAS, absent any pressing reason of privacy or confidentiality in any one case. The early decisions of the CAS were published in a three-volume compilation, edited by the CAS General Secretary, Mathieu Reeb.¹⁸ However, more recently the CAS website has been significantly enhanced to provide archival access to historic decisions as well as new determinations being published contemporaneously.

For all the reasons set out above, this is an increasingly important resource for sports lawyers, as the jurisdiction of the CAS has eclipsed the national courts in sports cases in respect of both volume and significance.

Other Jurisdictions

This also means that academic journals from other jurisdictions are useful to sports lawyers. In particular, as noted at the outset, the United States has a rich history in the discipline of sports law. As a part of this there is an impressive catalogue of academic journals in the area of sports law. They are too numerous to address individually, but a number of key journals stand out as being of particular relevance, having substantial content pertaining to the international aspects of sports law. Foremost amongst these is the *Marquette Sports Law Review*, developed out of the National Sports Law Institute at Marquette University Law School. Though principally

oriented around sports law in the United States, the journal has a demonstrable and sustained track record of publishing high-quality submissions analysing aspects of international sports law, in particular the operation of the CAS and the principles effected by it. Two other comparable American journals are worthy of mention. The *Texas Review of Entertainment and Sports Law* and the *Villanova Sports and Entertainment Law Journal* both encompass strong international themes alongside their domestic sports law coverage.

This is not to say that issues of United States domestic sports law are without interest to those operating in other jurisdictions, indeed there are growing parallels with American sports law as international elements have increasingly penetrated a previously hermetically-sealed legal sphere of sports such as baseball, American football, basketball and ice hockey.

SUMMARY

In summary, it would be reasonable to conclude that the sports law literature has matured astonishingly quickly given its relative youth. This is due, in no small part, to the significant developments in the field that have occurred over the last three decades. The acceleration of legal intervention brought about by the shock of the *Bosman* judgment and the subsequent re-regulation of many aspects of sports rules with economic aspects – under the influence of the European Union – combined with the internalisation of legal processes brought about through increased utilisation of arbitration mechanisms, has necessitated the development of a corresponding literature. The result is that, while previously starved of information, the sports lawyer now has a rich and varied array of resource from which to choose.

Footnotes

¹ Grayson, Edward. (1999) *Sport and the Law*. London, Butterworths, p xxxvii.

² James, Mark (2010) *Sports Law*. Basingstoke, Palgrave Macmillan, Chapter 1.

³ Foster, Ken (1986) "Sporting Autonomy and the Law" in Allison, Lincoln (1986) *The Politics of Sport*. Manchester, Manchester University Press.

⁴ Gardiner, Simon, Felix, Alexandra, James, Mark, Welch, Roger and O'Leary, John (1998) *Sports Law*. London, Cavendish.

⁵ See e.g. Beloff, Michael (1989) "Pitch, Pool, Rink...Court? Judicial Review in the Sporting World" *Public Law* 95; Morris, Philip and Little, Gavin (1998) "Challenging Sports Bodies Determinations" 17 *CJQ* 128.

⁶ Gardiner, Simon, O'Leary, John, Welch, Roger, Boyes, Simon and Naidoo Urvasi (2011) *Sports Law*. 4th ed. London, Routledge Cavendish.

⁷ Beloff, Michael, Kerr, Tim and Demetriou, Marie (1999) *Sports Law*. Oxford, Hart.

⁸ Anderson, Jack (2010) *Modern Sports Law*. Oxford, Hart.

⁹ Lewis, Adam and Taylor, Jonathan (2008) *Sport: Law and Practice*. 2nd ed. Haywards Heath: Bloomsbury Professional.

¹⁰ Griffith-Jones, David (1997) *Law and the Business of Sport*. London, Tottel.

¹¹ Kevan, Tim (2002) *Sports Personal Injury Law*. London, Sweet & Maxwell.

¹² Hartley, Hazel (2009) *Sport, Physical Recreation and the Law*. 2nd ed. London, Routledge Cavendish.

¹³ Case C-415/93 *Union Royale Belges des Sociétés de Football ASBL v Bosman* [1995] ECR I-4192.

¹⁴ Parrish, Richard (2003) *European Union Sports Law and Policy*. Manchester, University of Manchester Press; Parrish, Richard and Miettinen, Samuli (2008) *The Sporting Exception in European Union Law*. The Hague, TMC Asser Press; Gardiner, Simon, Parrish, Richard and Siekmann, Robert (eds) (2009) *EU Sport Law and Policy: Regulation, Re-regulation and Representation*. The Hague, TMC Asser Press; Weatherill, Stephen (2007) *European Sports Law: Collected Papers*. The Hague, TMC Asser Press.

¹⁵ http://ec.europa.eu/sport/index_en.htm

¹⁶ CAS 2011/O/2422 *United States Olympic Committee v International Olympic Committee*.

¹⁷ Blackshaw, Ian, Siekmann, Robert, Soek, Janwillem (2006) *The Court of Arbitration for Sport 1984–2004*. The Hague, TMC Asser Press; Mestre, Alexandre (2009) *The Law of the Olympic Games*. The Hague TMC Asser Press; Nafziger, James (2004) *International Sports Law*. Ardsley NY, Transnational Publishers.

¹⁸ Reeb, Matthieu (1998) *Digest of CAS Awards Volume I 1986–1998*. The Hague, Kluwer Law International; Reeb, Matthieu (2002) *Digest of CAS Awards Volume II 1998–2000*. The Hague, Kluwer Law International; Reeb, Matthieu (2005) *Digest of CAS Awards Volume III 2001–2003*. The Hague, Kluwer Law International.

Biography

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