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Introducing the Student Services Team

Your Student Services Team is based in the Faculty Office in Room 118, Southbourne, Collegiate Campus. We are here if you want to talk to someone about your course or life at the University. Access to your team is via the Helpdesk in the Southbourne Building.

We are:

Howard Mitchell
h.mitchell@shu.ac.uk
Tel: 0114 225 4370

Nicola Pearson
n.pearson@shu.ac.uk
Tel: 0114 225 2313

Georgina Whitehead / Jo Luff
g.whitehead@shu.ac.uk / j.luff@shu.ac.uk
Tel: 0114 225 2236

For general queries: Faculty Helpdesk
Telephone: 0114 225 2543

Your student services team can offer help and advice on:
• What to do if you are unable to attend
• What to do if you are unable to submit assignments for a deadline date
• Progression through the course
• Queries relating to Blackboard
• University Regulations and procedures
Module Descriptor – Level 5

<table>
<thead>
<tr>
<th>TITLE</th>
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MODULE AIM(S)

The module aims to introduce students to the fundamental legal principles relating to sport and to provide students with an understanding of how these principles may impact upon participants, practitioners and administrators at all levels. Through examination and analysis of the contemporary statutory, case-law, arbitration and codification framework students will develop a detailed knowledge of the substantive law, enabling them to critically evaluate the present law, and identify, explain and apply key legal principles to complex real world scenarios and analytical academic questions. By situating the law in its social and economic context the module seeks to highlight key ethical issues which may arise in this area and allow students to appreciate the practical impact and importance of this area of law.

MODULE LEARNING OUTCOMES

By engaging successfully with this module a student will be able to:

- Develop a firm understanding of the basic concepts, values, principles and rules involved in the study of sports law
- Identify and evaluate key research issues and relevant primary and secondary sources of information in sports law
- Evidence an awareness of and be able to critically analyse the social, political and economic context in which sports law operates
- Evaluate the applicability of legal AND quasi legal methods in the administration of sport
- Explain how the law has influenced the development of the sporting environment

INDICATIVE CONTENT

- Introduction to sports law/sport and the law
- The legal regulation of violence in sport
- Governance of Sport
- Crowd control and disorder
- Sports Dispute Resolution
- The Legal Regulation of Drugs in Sport
• Sport and the Workplace - discrimination in sport
• The Commercial Exploitation of Sport

LEARNING AND TEACHING METHODS

Students will be supported in their learning, to achieve the above outcomes, in the following ways:

Lectures

There will be weekly one, (or two), hour lectures for this module. Lectures will be used to introduce the major concepts, principles and theories relevant to each topic, and to identify and explain key terms, cases and statutory provisions. Visual aids, such as PowerPoint, will be used in most lecture sessions and extensive use will be made of videos to support learning outcomes throughout the lecture series.

Seminars

There will be one seminar per fortnight for this module. Seminars will be used to reinforce and expand upon the material covered in the lectures and provide students with the opportunity to demonstrate and develop their analytical, problem solving and (oral) advocacy skills.

Students are required to prepare answers to a series essay-based questions and periodic problem based questions in advance of attending each seminar. These questions are set out in the module manual.

Seminars will typically involve essay based questions designed to encourage students to consider issues widely debated in the still relatively young academic discipline. Students are required to identify and explain relevant legal principles, critically reflect upon, evaluate and analyse key arguments in each subject area, and draw reasoned conclusions which are supported by cogent argument and relevant authority.

Virtual Learning Environment (VLE) - Blackboard

The module has a dedicated Blackboard site, which students are expected to access on regular basis. The Blackboard site is used to communicate information to students outside of contact sessions (via the ‘Announcements’ page). In addition, the Blackboard site includes:

• An electronic (PDF) version of the Sports Law module manual
• Links to lecture/PowerPoint slides
• Links to key cases, statutes, journal articles and reports
• External links to various useful websites (e.g. Court of Arbitration for Sport, UK Sport, Law Commission, British Association of Sport and Law)
• Links to guidance on referencing
• Details regarding the assessments
• Link to lecture and additional podcasts
• Multimedia material used to supplement lectures
**Clinical Learning**

Clinical learning is integrated into the module through the seminar questions and structure and also through the first assessment task which is designed to place the students into an interview situation and to test their ability to answer a series of questions on the given topic in a short period of time without material in front of them.

**Weekly surgery/meetings**

The module tutors each have weekly “surgery” times where the students may arrange one to one meetings with the module team. The times of these surgeries are published on the module blackboard site. Staff are also available via email and telephone and outside surgery times at prearranged times.
Module Descriptor – Level 6

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<tr>
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<td>Peter Charlish</td>
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Further Information About This Module

Additional information is available to support this module, including details of learning resources and Key readings, and how you will receive feedback relating to your assessment tasks.

This information can be found:
- Within the Module Manual
- On the Sports Law Blackboard Site
## Module Delivery Plan

This is a provisional plan only and is subject to change

<table>
<thead>
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<th>Wk No</th>
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<td>24&lt;sup&gt;th&lt;/sup&gt; Sept</td>
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<td>Regulation of Violence on the sports field – law of torts</td>
<td>1 - Introduction</td>
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<td>Negligence on the sports field - participants</td>
<td>1 - Introduction</td>
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<td>15&lt;sup&gt;th&lt;/sup&gt; Oct</td>
<td>Negligence on the sports field - participants &amp; referees</td>
<td>2 – Reckless Disregard</td>
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<td>13</td>
<td>22&lt;sup&gt;nd&lt;/sup&gt; Oct</td>
<td>Negligence on the sports field – governing bodies &amp; occupiers</td>
<td>2 – Reckless Disregard</td>
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<td>Criminal liability on the sports field</td>
<td>3 - Tort Law in the Playing Environment</td>
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<td>Criminal liability on the sports field</td>
<td>3 - Tort Law in the Playing Environment</td>
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<td>12&lt;sup&gt;th&lt;/sup&gt; Nov</td>
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<td>19&lt;sup&gt;th&lt;/sup&gt; Nov</td>
<td>The legality of fighting sports</td>
<td>4 - Criminal Law on the field of play</td>
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<td>Disasters, Hooliganism &amp; Crowd Control</td>
<td>4 - Criminal Law on the field of play</td>
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<td>Disasters, Hooliganism &amp; Crowd Control</td>
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<td>Disasters, Hooliganism &amp; Crowd Control</td>
<td>5 - Assessment Preparation</td>
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<td>Brief Generic Feedback on Assessments</td>
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Referred/Deferred Assessment Period
**Plagiarism**

Students must understand that work submitted must be entirely their own. If students use someone else’s words or ideas then this is plagiarism **unless** you attribute those ideas or words via references to the original source.

The un-attributed use of others’ work can result in your assignment being given a mark of zero, and may have more serious repercussions for your academic (and later, professional) career. When quoting from books and articles, always use either quotation marks, or indent and single space longer quotes. In addition, give the name of the author, the work and the page number in brackets following the quotation.

If in doubt about this issue or anything else then ask your tutor.

Please refer for more details to the University regulations on Collusion and Plagiarism which can be found on the student intranet.

http://students.shu.ac.uk/rightsrules/index.html
Student Responsibility

We assume that you will take responsibility for your own learning and we expect you to attend all classes, as learning is a shared experience and you have a part to play in promoting collective understanding.

Attendance is necessary to:

- gain understanding of the relevant legal principles and their application
- help you to prepare for all your assessments
- undertake any practical work
- Receive information about the module.

Preparation for seminars

It is essential that you prepare the seminar material as indicated in the module handbook.

There is a direct correlation between attendance and seminar preparation and success in the module.

If you miss classes it is important not to fall behind with your coursework and you must inform your tutor as soon as possible. If you are absent for any significant period of time you must also inform the law administrative team in Southbourne.

If the absence is due to illness or other personal problems, which may affect your coursework or assessments, you may need to submit an Exceptional Extension Request Form or an Extenuating Circumstance Form. These are available on shuspace (formerly the Student Portal) or from Southbourne Reception. Please see the submission of exceptional extension requests and the submission of extenuating circumstances for more information.

Please also familiarise yourself with the SHU assessment and plagiarism regulations on shuspace.
Coursework Requirements for assessed interactive presentation 2012/2013

- Students will be required to sit a 20 minute interview where they will be questioned by one or more members of the module staff on one subject area from the sports law module.

- Your interview will be based around the area of negligence in sport. You will be given more details later in the course.

- You will not be permitted to bring any material of any kind into the interview

- Students are required to adhere to the interview timetable published by the module leader. Failure to attend your designated interview without valid reasons may result in a mark of ZERO. Students must ensure that they familiarise themselves with the operation of this process – details and the standard exceptional circumstance form are available on the Student Intranet. Any student who may have problems which may affect the quality of their interview or their ability to attend on time should seek advice.

- Interviews will be held in late December; exact dates and times to be confirmed.

- You will get individual audio feedback on your assessment which will be delivered via blackboard within one week of the final assessment taking place. Group feedback seminars will also be held after the Christmas break. Students are also encouraged to speak with a member of the module team to get further individual feedback.
Advice on preparing and presenting law essays
(Included for reference)

Introduction

Study for a law degree involves independent research leading to the production of written work. This must be of an acceptable scholarly standard. This note is designed to help you to achieve that standard by outlining how to prepare a written assignment or coursework and how to present the material once prepared.

You can get a feel for what is required by seeing legal argument presented in good books, articles in legal periodicals and in the judgments of the appeal courts. Read these with an eye not only to their content, but also to their form. Legal writing should be accurate and as simple, direct and attractive as it can be. You should take pains over your written work. Re-drafting and practice pay dividends. Clear and careful expression should be the hallmark of legal prose.

This note is intended as general advice about the answering of 'problem' and essay type questions. Particular assignments may require a different format (e.g. report, drafting exercise etc). The module tutor will indicate where this is so.

Presentation

You must use an 'Assignment Cover Sheet' available from the School Office on which you should provide the following information:

- Course and year
- Name of seminar tutor in that module
- Title of coursework

You must word-process your coursework on A4 paper. Use double spacing and a wide margin (at least 1 inch) down both sides to provide space for tutor's annotations and comments.

Make sure that your work is securely stapled or otherwise bound together.
It is not necessary to reproduce the (problem) question set, though you should indicate which question you are attempting where there is a choice.

The word limit does not apply to materials listed in your bibliography, table of cases or table of statutes, or footnotes. Only references should be placed in your footnotes, (case citations, statutes, journal articles etc). Any additional material in your footnotes other than the above will be disregarded by your marker. If you are using the Harvard referencing system then these references need NOT be included in your word count.

**Work which is more than 10% over the word limit cannot receive a mark of more than 40%.**

Indicate the number of words you have written at the end of your essay.

Your sources must be listed separately at the end of your assignment. More information concerning the presentation of tables of statutes and cases and of a bibliography is given later.

**Style**

When answering problem questions, it is unnecessary to repeat the given facts at the outset or to rehash the problem in your own words.

It is often helpful, however, to have an opening paragraph which sets the problem in context, defines the issues to be addressed and indicates briefly the lines of inquiry the answer will pursue. Your assignment should comprise a logical sequence of self-contained paragraphs.

It is sometimes convenient to organise your material and present your answer by using subheadings. These should be underlined or italicised. Thus:

\[
X's \text{ Remedies for Misrepresentation or}
\]

\[
X's \text{ Remedies for Misrepresentation}
\]

A number of judges in recent times have begun to adopt similar devices when delivering their judgments.
Use formal language and avoid slang. Aim for clarity and concision. Pay close attention to grammar, punctuation and spelling. Write in the third person. Avoid such phrases as 'I think' or 'In my opinion...' This reflects best practice in legal and scholarly writing.

Avoid gender specific pronouns where possible. Thus 'Shareholders are owed a fiduciary duty by the company's directors' is preferable to 'A company director owes a fiduciary duty to his shareholders.'

When quoting from cases, case names should be *italicised* and the year given in brackets. For example, *Donoghue v Stevenson* (1932)

When referring to legislative material be specific. For example,

s.2(4)(a) Occupiers Liability Act 1957; para. 3, Schedule 1, Unfair Contract Terms Act 1977

The 'short title' and the calendar year must be given. 'Section' is usually abbreviated to s. 'Schedule' may be abbreviated to Sch.

References to statutory instruments should provide the short title, the year of enactment and the number. Thus: The Abortion Regulations 1991 SI 1991/499

**Substance**

When answering problem questions in particular, 'research', 'analysis' and 'application' are what get marks. At the outset, you will need to decide: what issues (there will usually be more than one) of fact and law the problem raises; who may be in a position to sue; what cause or causes of action are available (e.g. breach of an implied term in a contract and misrepresentation: negligence and breach of statutory duty); who is to be sued; and whether any defendant is likely to be able successfully to plead some defence or other extenuating circumstance (such as the expiry of a relevant limitation period) or to join somebody else as a further defendant (from whom a contribution or an indemnity may be sought).

Where there are multiple characters in the problem it will usually make sense to deal with them separately unless there is some issue which is common to more than one of the potential litigants.

Your answer should be balanced, viz. it should reflect the importance and difficulty of the competing issues and treat counter arguments fairly.
It may not always be possible to come to one settled conclusion. This may be because the factual information provided is inadequate, because there are competing lines of authority or because it is uncertain what the law is or how it should be applied. You should give reasons for any doubts or reservations you have. It is important to understand that the law is not simply a set of clear and easily applied 'rules'.

**Cases**

Choose the case(s) which are most relevant and apt, i.e. closest factually and in terms of legal principle to the issue before you.

Legal reasoning essentially proceeds by analogy, that is to say it looks for links between the case at hand and preceding cases.

It is often not necessary to recite the full facts of a precedent case - though you may want to draw attention to certain of its facts in order to highlight relevant similarities to your problem or, alternatively, to distinguish the case and so to explain why its reasoning is inapplicable and should not be followed. What matters is the **reasoning** which led to the outcome rather than simply the fact that one party won and the other lost. Careful reading of the reasoning in cases should help you analyse the problem and suggest plausible solutions. Dissenting judgments often provide alternative arguments and place the contentious nature of the dispute into sharper focus.

You must **apply** the reasoning which is relevant and actually **make** the arguments which lead to and support your conclusions: You will get few marks simply for recounting the facts of a couple of cases which happen to relate to the same general area of law as the problem, followed by a weak conclusion, such as 'it could be argued that X is liable to Y.' This is true, but what exactly is the argument and how likely is it to be successful? Nor can you abdicate responsibility by saying, 'Of course, the court will have to decide' since the question will usually have asked for your opinion and advice upon the problem set.

There are various strategies available when making a plausible argument. Arguing by analogy essentially asserts that the problem should be solved by the application or extension of existing precedents because it is sufficiently similar to those existing authorities. Additionally or in the alternative, it may be possible to argue that the problem should be resolved in a particular manner because that will best advance one of the law's purposes (such as certainty, equality of
treatment, the provision of compensation or some other remedy, etc). Appeals to conceptions of 'public policy' may also be persuasive (e.g. that allowing a claim in the circumstances of the problem may compromise the administration of justice by provoking an unmanageably large number of similar claims or that it would impose an unfair or intolerable burden on defendants).

**Quotations and Referencing**

Passages taken from the work of others must be suitably acknowledged with the use of speech marks and a clear reference to the source.

Accurate quoting and referencing give credit both to you and to those whose work you have used.

References and quotes reflect your research and indicate the depth of reading you have undertaken. They also allow others to follow up on the work that you have done.

If you do not accurately reference your work you may commit plagiarism. This is a disciplinary offence under the University's Assessment Regulations, is regarded as cheating (whether intentional or not), and normally will result in the coursework being marked as zero. More serious consequences are also likely to follow. You should be aware that the Law Society and Bar Council requires all applicants for membership to declare whether they have ever 'committed an act of plagiarism or cheating in any form of assessment' and will require two referees to provide written statements to the Society concerning the issue. You should also be aware that employers are extremely reluctant to hire people who have been found guilty of acts of dishonesty.

It is important, therefore, to make a careful note of your sources of information as you are doing your research and collecting materials to incorporate in your answer so that you can identify and acknowledge them when writing up and list those sources in your bibliography.

**References- footnotes**

Each time you use a resource, directly or indirectly, the reference must be accompanied by a footnote giving details of the source, as outlined below.

Your footnotes will give the details of the resource, including page or paragraph numbers where appropriate.
Substantial quotations (of three lines or more) should be single spaced, indented from the margin and preceded by a colon. This ensures that there is a clear distinction between your own words and the words you are quoting. Thus:

Howarth has argued that:

In cases involving injuries caused by the police in the course of apprehending suspects, whether the injury is to the suspect or to third parties, a relevant consideration is the public interest in the punishment and prevention of crime. The more dangerous the criminal to public safety, the more risks the police should be entitled to take.\(^1\)

The\(^1\) after the quote links to a footnote giving details of the source quoted, including the page(s).

Shorter quotes should be enclosed in quotation marks but remain in the main body of the text and NOT indented.

**How to footnote specific materials**

The rules for footnotes are based on OSCOLA- see [http://www.law.ox.ac.uk/publications/oscola.php](http://www.law.ox.ac.uk/publications/oscola.php) for details.

**For a quick reference guide to OSCOLA - see Appendix 3**

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\(^1\) D Howarth *A textbook on tort* (Butterworths 1995) 51
Learning Centre Services and Materials

Learning Centre: Resources and Services
The Collegiate Learning Centre provides a range of resources and services to help you with your studies.

In the Learning Centre you will find books, journals, newspapers and recordings of TV and radio programmes. There is a variety of spaces for you to use the materials in, from silent study to bookable group study areas. You can also use the Adsetts Learning Centre and borrow items from there.

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- Collect articles you have ordered
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- Buy software
- Get assistance with IT
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Subject guide
On the Library Gateway you will find a link to the Law subject guide. The guide has news from the Learning Centre and selected law news sources, guides to the main law databases, links to the catalogue, and links to useful sites.

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- If you need an appointment with the Information Adviser, mail the address above and it will be directed to them, or a colleague if they are not available.

Books and Print Journals
The books for Law can be found in the silent study room on the first floor. Current and back issues of print journals can also be found in this area. You can search for books and journals using the catalogue.
Some books are reference only, such as the Law Reports and encyclopaedias. Books for loan are generally one week loans; be careful to check, as some books are day loans which cannot be renewed. You can issue and return books yourself using the self-service machines.
There are reference only books in Key Texts on the ground floor. These can only be used in the Key Text area; you can make a copy of a chapter for use outside Key Text if you wish. Journals cannot be borrowed; you will need to photocopy any articles you need from print journals.

Online resources
You can read law reports, statutes and journal articles online. These services are available on campus through PCs in the Learning Centre
and computer rooms, and if you have a laptop you can use it to access the University wireless network. If you have Internet access at home or work you can access these resources off-campus as well. To use these resources, you will need to login to Shuspace and then follow the Library Gateway link. From here you can access LitSearch, which gives you the links to the law databases:

- BAILLI
- Lawtel
- Lexis Library
- Westlaw

LitSearch also gives you access to databases for other subjects which may be useful, e.g. Social Sciences.
Reading List

Recommended Text

http://tinyurl.com/7vqxnhu

http://tinyurl.com/7xeozx7

James M., *Sports Law* (Palgrave, 2010). It covers most of the key issues in the area, if rather superficially. Pitched to a lower level than the Anderson book.

Journal Articles: - You will be referred to more articles throughout the course, but these are a good start


Anderson J. 'Personal liability in Sport: Emerging Trends' (2008) 16(2) Tort Law Review 95

Charlish, P. 'Drugs in sport' (2012) 12 (2) Legal Information Management 109


Goodhart A. 'The Sportsman’s Charter' (1962) 78 LQR 78 490

Mcauley D. 'They think it’s all over … It might just be now: Unravelling the ramifications for the European football transfer system post-Bosman' (2002) 23(7) European Competition Law Review 331

Yasser R. 'In the heat of competition: Tort liability of one participant to another; why can’t participants be required to be reasonable': 5 Seton Hall J. Sports L. 253 (American article available on Lexis Nexis)

**Case List:** - **Again, this is just a brief overview and you will be referred to many more cases throughout the course**

*Caldwell v Maguire and Fitzgerald* [2001] EWCA Civ 1054
*Condon v Basi* [1985] 1 WLR 866; [1985] 2 All ER 453
*Greig and Others v Insole and Others* [1978] 1 W.L.R. 302
**Nabozny v Barnhill** 31 Ill. App 3d 212, 334 N.E.2d 258
**PGA Tour, INC v Casey Martin** No. 00-24 532 U.S. 661
*R v Coney* (1882) 8 QBD 534
*R v Disciplinary Committee of the Jockey Club ex parte. Aga Khan* [1993] 1 W.L.R. 909
*R v Brown* [1993] 2 W.L.R. 556
*R v Barnes* [2004] EWCA Crim 3246
*R v Barnes* [1993] 2 W.L.R. 556
*R v Barnes* [2004] EWCA Crim 3246
*Smolden v Whitworth and Another* [1997] ELR 249
***Union Royale Belge des Societes de Football Association ASBL v Jean-Marc Bosman* (Case C-415/93) [1996] 1 CMLR 645; 15 December 1995
*Watson v BBBC and Others* [2001] ISLR 170 – Court of Appeal

- * Australian Cases
- ** US Cases
- *** European Cases
Introduction and Overview

Reading:

- Brasch, R, "How did Sports Begin?”, 2\textsuperscript{nd} Edit (1990), Sydney: Angus and Robinson
- Smith, M.D., Violence and Sport, 1983, Butterworths, Toronto

Course Overview

- What is Sport?
- The Development of Modern Sport
- The Role of Sport and its context within Society
- The development of “sports law”
- Sports Law v Sport and the Law
- The Law of the land on the sports field
Regulation of Safety in the Sports Environment

Introduction

The Role of Tort Law

Reading:

- *Blake v Galloway* [2004] EWCA (Civ) 814**
- *Caldwell v Maguire and Fitzgerald* [2001] EWCA Civ 1054**
- *Condon v Basi* [1985] 1 WLR 866; [1985] 2 All ER 453
- *Hall v Brooklands Auto Racing Club* [1933] KB 205
- *Mountford v Newlands School and Another* [2007] EWCA Civ 21
- *Murray v Harringay Arena Ltd* [1951] WN 38
- *Nabozny v Barnhill* 31 Ill. App 3d 212, 334 N.E.2d 258
- *Smolden v Whitworth and Another* [1997] ELR 249**
- *Vowles v Evans and others* [2003] EWCA Civ 318
- *Watson v BBBC and Others* [2001] ISLR 170
- *Watson v British Boxing Board of Control Ltd and Another* [2001] QB 1134
- *Watson and Another v Gray and Another* (1999) unreported
- *Watson and Bradford City AFC Ltd v Gray and Huddersfield Town AFC* 1997 QBD (unreported)
- *Wilks v Cheltenham Homeguard Motorcycle and Light Car Club* [1971] 1 WLR 668
- *Wooldridge v Sumner* [1963] 2 QB 43**

The Nature of the duty owed by one participant to another

Trespass to the Person

- *McNamara v Duncan* (1971) 26 ALR 584
- *Canterbury Bankstown Rugby League Football Club Ltd v Rogers; Bugden v Rogers* (1993) NSW LEXIS 7995 (unreported transcript)
• James M & McArdle D., "Player violence, or violent players? Vicarious liability for sports participants" (2004) 12 Tort L Rev 131

Tomjanovich v California Sports Inc – Successful action in trespass

http://youtu.be/5JnUXaOGdv0

Pepe on Messi 2012 – Deliberate? Unlawful?

http://youtu.be/Z6WNHCcINzw

John Hartson kicks team-mate Eyal Berkovic – a battery?

http://youtu.be/iF8zzT2alaU

Carroll v Gravil & Anor – Successful action in trespass

http://youtu.be/iijuFpQi7gk

Participant Negligence – (The origins of reckless disregard)

• Wooldridge v Sumner [1963] 2 QB 43

“The practical result of this analysis of the application of the common law of negligence to participant and spectator would, I think, be expressed by the common man in some such terms as these: “A person attending a game or competition takes the risk of any damage caused to him by any act of a participant done in the course of and for the purposes of the game or competition, notwithstanding that such act may involve an error of judgment or a lapse of skill, unless the participant's conduct is such as to evince a reckless disregard of the spectator's safety”.

Diplock LJ at p68

Criticism of the decision in Wooldridge:

• Goodhart A. “The Sportsman’s Charter”, LQR 1962, 78, p490**

Retreat from Wooldridge:

• Wilks v Cheltenham Homeguard Motorcycle and Light Car Club [1971] 1 WLR 668

“In a race the rider is, I think, liable if his conduct is such as to evince a reckless disregard of the spectators' safety; in other words if his conduct is foolhardy”.

Denning MR at *670

“Lord Denning MR has already referred to the decision of this court in Wooldridge v Sumner n4 and I respectfully share his difficulty in accepting the view there expressed that a competitor in such events as this is to be held liable only if he acts in reckless disregard of the spectators' safety. For my part, I would with deference adopt
the view of Dr Goodhart that the proper test is whether injury to a spectator has been caused 'by an error of judgment that a reasonable competitor, being the reasonable man of the sporting world, would not have made”

Edmund Davies LJ at *673-674

“It is, however, important to remember that the test remains simply that of negligence and that whether or not the competitor was negligent must be viewed against all the circumstances -- the tests mentioned in Wooldridge v Sumner are only to be applied if the circumstances warrant them”.

Phillimore LJ at * 676

Ordinary negligence established:


“...in a case such as the present, it must always be a question of fact, what exoneration from a duty of care otherwise incumbent upon the defendant was implied by the act of the plaintiff joining in the activity. Unless the activity partakes of the nature of a war or of something else in which all is notoriously fair, the conclusion to be reached must necessarily depend, according to the concepts of the common law, upon the reasonableness, in relation to the special circumstances, of the conduct which caused the plaintiff's injury. That does not necessarily mean the compliance of that conduct with the rules, conventions or customs (if there are any) by which the correctness of conduct for the purposes of the carrying on of the activity as an organized affair is judged for the tribunal of fact may think that in the situation in which the plaintiff's injury was caused a participant might do what the defendant did and still not be acting unreasonably, even though he infringed the "rules of the game". Non-compliance with such rules, conventions or customs (where they exist) is necessarily one consideration to be attended to upon the question of reasonableness but it is only one, and it may be of much or little or even no weight in the circumstances”.

Kitto J at p37

- NB Nabozny v Barnhill 31 Ill. App 3d 212, 334 N.E.2d 258 – United States
- Condon v Basi [1985] 1 WLR 866; [1985] 2 All ER 453

“The standard is objective, but objective in a different set of circumstances. Thus there will of course be a higher degree of care required of a player in a First Division football match than of a player in a local league football match”.

Donaldson M.R. Condon v Basi [1985] 1 WLR 866 *867


- Elliott v Saunders and Another QBD (1994) unreported
• McCord v Swansea Football Club and Another, The Times, 11 Feb 1997

• Watson and Another v Gray and Another (1999) unreported - CA
• Watson and Bradford City AFC Ltd v Gray and Huddersfield Town AFC 1997 QBD (unreported)
• The video shows the tackle that led to the first ever successful negligence action between professional footballers. http://youtu.be/3C49HJWSXrE

An Alternative Approach?
• Caldwell v Maguire and Fitzgerald [2001] EWCA Civ 1054

"As to the law, the judge said that the "primary guidance" for him must come from the Court of Appeal. He noted that this court had never had to consider an entirely similar situation, but had considered analogous situations in five cases, which he reviewed. From these cases he extracted five propositions:

"(1) Each Contestant in a lawful sporting contest (and in particular a race) owes a duty of care to each and all other contestants.

(2) That duty is to exercise in the course of the contest all care that is objectively reasonable in the prevailing circumstances for the avoidance of infliction of injury to such fellow contestants.

(3) The prevailing circumstances are all such properly attendant upon the contest and include its object, the demands inevitably made upon its contestants, its inherent dangers (if any), its rules, conventions and customs, and the standards, skills and judgment reasonably to be expected of a contestant. Thus in the particular case of a horse race the prevailing circumstances will include the contestant's obligation to ride a horse over a given course competing with the remaining contestants for the best possible placing, if not for a win. Such must further include the Rules of Racing and the standards, skills and judgment of a professional jockey, all as expected by fellow contestants.

(4) Given the nature of such prevailing circumstances the threshold for liability is in practice inevitably high; the proof of a breach of duty will not flow from proof of no more than an error of judgment or from mere proof of a momentary lapse in skill (and thus care) respectively when subject to the stresses of a race. Such are no more than incidents inherent in the nature of the sport.

(5) In practice it may therefore be difficult to prove any such breach of duty absent proof of conduct that in point of fact amounts to reckless disregard for the fellow contestant's safety. I emphasise the distinction between the expression of legal principle and the practicalities of the evidential burden."

Tuckey LJ
http://shura.shu.ac.uk/714/

Blake v Galloway [2004] EWCA (Civ) 814

“I recognise that the participants in the horseplay owed each other a duty to take reasonable care not to cause injury. What does that mean in the context of play of this kind? No authority has been cited to us dealing with negligence in relation to injury caused in the course of horseplay, as opposed to a formal sport or game. I consider that there is a sufficiently close analogy between organised and regulated sport or games and the horseplay in which these youths were engaged for the guidance given by the authorities to which I have referred to be of value in the resolution of this case. The only real difference is that there were no formal rules for the horseplay. But I do not consider that this is a significant distinction. The common features between horseplay of this kind and formal sport involving vigorous physical activity are that both involved consensual participation in an activity (i) which involves physical contact or at least the risk of it, (ii) in which decisions are usually expected to be made quickly and often as an instinctive response to the acts of other participants, so that (iii) the very nature of the activity makes it difficult to avoid the risk of physical harm.

I would, therefore, apply the guidance given by Diplock LJ in Wooldridge, although in a slightly expanded form, and hold that in a case such as the present there is a breach of the duty of care owed by participant A to participant B only where A's conduct amounts to recklessness or a very high degree of carelessness”.

Dyson LJ at paras 15-16

http://shura.shu.ac.uk/676/

The Position of Referees


“The second defendant's first and main defence was that he had not committed any actionable breach of duty. But he pleaded that if, contrary to that main defence, he had committed such an actionable breach of duty, then the plaintiff had consented to the risk of injury of the type sustained by him by voluntarily playing as a member of the front row of his team's pack of forwards and/or by voluntarily participating in the
practice of collapsing, thereby also increasing the risk that the opposing front row might seek to do the same. .... The plaintiff had of course consented to the ordinary incidents of a game of rugby football of the kind in which he was taking part. Given, however, that the rules were framed for the protection of him and other players in the same position, he cannot possibly be said to have consented to a breach of duty on the part of the official whose duty it was to apply the rules and ensure so far as possible that they were observed. If the plaintiff were identified as a prime culprit in causing the collapse of the scrums, then this defence (and contributory negligence) might call for consideration. But that is not the case*.

Bingham CJ at *p146-147

- **Smolden v Whitworth and Another**, The Times 23 April 1996
- **Vowles v Evans** [2002] EWHC 2612 QB
- **Vowles v Evans and others** [2003] EWCA Civ 318
  http://shura.shu.ac.uk/703/
- **Allport v Wilbraham** [2004] EWCA Civ 1668 – Another rugby union case this time the claimant was unsuccessful

**The position of Selectors**

- **Mountford v Newlands School and Another** [2007] EWCA Civ 21

  http://shura.shu.ac.uk/1022/

**The spectator experience;**

- **Murray v Harringay Arena Ltd** [1951] WN 38
- **Francis v Cockrell** [1870] 5 QB 501
- **Bolton v Stone** [1951] 1 All ER 1078
- **Wooldridge v Sumner** [1963] 2 QB 43
- **Cleghorn v Oldham** (1927) 43 TLR 465
- **Wilks v Cheltenham Home Guard** [1971] 1 WLR 668
- Occupiers Liability Act 1957, s2**
- **Alcock v Chief Constable of South Yorkshire** [1991] 4 All ER 907
- Hillsborough Stadium Disaster (Final Report), Cm 962
- Fire Safety and Safety of Places of Sport Act 1987, (NB The Bradford Fire)
Football (Offences) Act 1991
Football Disorder Act 2000**

**The Position of Governing Bodies and event providers:**

- Watson v BBBC and Others [2001] ISLR 170**
- Watson v British Boxing Board of Control Ltd and Another [2001] QB 1134
- NB - Agar and Others v Hyde; Agar and Others v Worsley 173 A.L.R. 665
- NB - Haylen v New South Wales Rugby Union Ltd [2002] NSWSC 114
- Hall v Brooklands Auto Racing Club [1933] KB 205
- Murray v Harringay Arena Ltd [1951] WN 38
- Simms v Leigh Rugby Football Club Ltd [1969] 2 All ER 923
- Wattleworth v Goodwood, Royal Automobile Club and Federation Internationale d’Automobile [2004] EWHC 140 (QB)
- Woods v Multi-Sport Holdings Pty Ltd [2002] HCA 9 460

**Volenti non fit injuria**

- Wooldridge v Sumner [1963] 2 QB 43

**Some Questions to Consider**

- What was the approach suggested in Wooldridge v Sumner? Why was it controversial?
- What is the variable standard of care proposed in Condon v Basi and what problems may it cause if implemented?
- Explain the relevance of volenti non fit injuria to negligence in sport?
- What is meant by the playing culture of a sport and what is its relevance following the decision in Caldwell v MaGuire & Fitzgerald?
The role of the criminal law.

Reading:

- *R v Barnes* [2005] 1 WLR 910**
- *R v Billinghurst* (1977) Crim LR 553
- *R v Bishop* (1986) Times 12 October
- *R v Brown* [1994] 1 AC 212**
- *R v Johnson* [1986] 8 Cr App R (S) 343

Sports Participation and the Criminal Law

“[n]o rules or practice of any game whatever can make that lawful which is unlawful by the law of the land”

- *R v Bradshaw* (1878) 14 Cox CC 83 at 84 per Bramwell LJ

The Nature of Modern Sport

Playing by the rules?
**The offences:**

a) Breach of the Peace

b) Assault occasioning actual bodily harm (s47)

c) Assault inflicting grievous bodily harm (s20)

d) Assault intending to cause grievous bodily harm (s18)

e) Manslaughter

f) Murder

g) Liability as an accessory

**Defences:**

- Consent to injury and the importance of the *playing culture*
- Self-defence
- Involuntary reflex

- Sentencing

*R v Barnes* [2005] 1 WLR 910

“in highly competitive sports conduct outside the rules could be expected to occur in the heat of the moment which, even if it justified a warning or a sending off, still might not reach the threshold required for it to be criminal” – Woolf CJ

- Lord Woolf’s threshold test?
- Threshold v Public Policy considerations?
- The role of “internal” sanctions

**Combat Sports**

- The Legal Status of Boxing

- Martial Arts and other combat sports
Some Questions to Consider

- What is the role of consent in sport?
- What is meant by Lord Woolf's "Threshold" test?
- What conflicts may there be between this test and the public interest requirement for any criminal prosecution?
- Why is *R v Coney* generally thought of as the case which "legalised" boxing and why might we draw a modern distinction between the legal status of professional and amateur boxing?
- What justification is there for the continued legality of boxing?
Football Hooliganism

Reading:

Gough v Chief Constable of Derbyshire [2002] QB 1213**
Football Spectators Act 1989
Football Disorder Act 2000**
Football, (Offences and Disorder) Act 1999
Ian Blackshaw, "Football hooligans and human rights", NLJ, 151.7005 (1562)

Background and Historical Overview:

- **The Ibrox Disaster 1971**
  - WARNING – This video contains distressing scenes:

The Bradford Fire Disaster (1985):

- WARNING – This video contains distressing scenes:
  - [http://youtu.be/EkKIEM0AI80](http://youtu.be/EkKIEM0AI80)

- 56 Deaths
- **The Fire and Safety of Places of Sport Act 1987**
- **The Popplewell Report** – “Committee of Inquiry into Crowd Safety and Control at Sports Grounds” (Interim Report), Cmd 9585, 1985
- **The Popplewell Report** – “Committee of Inquiry into Crowd Safety and Control at Sports Grounds” (Final Report), Cmd 9710, 1986

Exporting Hooliganism:

- Leeds United v Bayern Munich 1975
• The Heysel Stadium Disaster 1985, (Brussels), (Liverpool v Juventus)
  • WARNING – this video contains distressing scenes
    o The European Cup Final
    o 39 Deaths
    o 5 Year Ban for all English & Welsh Clubs from European Competition

The Hillsborough Disaster (Sheffield)
  • April 15th 1989
  • 96 Deaths
  • WARNING – These videos contain distressing scenes

  The shape of things to come? A warning from 1981
  http://youtu.be/0x02XP5jFTI

  The Hillsborough Disaster unfolds
  http://youtu.be/eHP3ItjEvZs

  The movement of the crowd
  http://youtu.be/hdoKgcuSmaE

  An interview with a survivor
  http://youtu.be/pmW8ZwPMkRU

  Peter Jones – Hillsborough – the next day
  http://youtu.be/0WpYtihDqng
Match of the Day – The Hillsborough Story
http://youtu.be/xtn2dsj2vec

A problem gone? – EURO 2012
http://youtu.be/LJOwPox8K1A

**The Release of the Papers (September 12th)**

Here we have it – just after the manual went to press.
http://hillsborough.independent.gov.uk/

**Legislation:**

- Pre Hillsborough – General Public Order Acts
- Taylor Report
- *Football Spectators Act* 1989
- *Football (Offences)* Act 1991
- *Football (Disorder)* Act 2000
  - *Section 14(A)* – Banning order on Conviction
  - *Section 14(B)* – Banning order on Complaint
- Banning Orders & European Law
Some Questions to Consider

- Explain the distinctive types of banning order
- Why might one of these be considered to be more controversial than the other?
- Explain the arguments presented in *R v Gough* concerning the compatibility of banning orders with human rights laws and European laws on free movement
Doping – The impact of performance enhancing drugs

The Legal Regulation of Drugs in Sport

Reading:

- CAS 2011/A/2495 FINA v. César Augusto Cielo Filho & CBDA
- David Meca-Medina and Igor Majcen v Commission of the European Communities EU: Case C-519/04; Celex No. 604J0519
- Gasser v Stinson and Another (1988) unreported
- Korda v ITF Ltd (t/a International Tennis Federation) [1999] All ER (D) 84, Times, 4 February; revsd [1999] All ER D 337, Independent, 21 April CA
- Korda v ITF CAS 99/A/223 (31 August 1999, unreported)
- Modahl v British Athletic Federation Ltd (22nd July 1998, HL, Unreported)
- Modahl v British Athletic Federation Ltd (in administration) [2001] EWCA Civ 1447; [2002] 1 WLR 1192
- Pechstein v International Skating Union CAS 2009/A/1912
- Wilander v Tobin [1997] 2 Lloyd’s Rep 293
- WADA Code 2003
- Ioannidis G., "Legal regulation of doping in sport and the application of criminal law on doping infractions: can a coercive response be justified?", I.S.L.R. 2006, 1(MAY), 29-39
- Charlish P., “Cricket pair not out ...” [2007] 4 ISLR 57-66
**Historical Overview**

- A cheat’s charter?

- Tommy Simpson - Death in the Alps
  [http://youtu.be/YtAyGvZqiwk](http://youtu.be/YtAyGvZqiwk)

- Institutional abuse, state sponsored doping
  [http://youtu.be/9jpVQujslVc](http://youtu.be/9jpVQujslVc)

- Seoul 1988 – A turning point I?
  [http://youtu.be/s2_MXEi0YqU](http://youtu.be/s2_MXEi0YqU)

- 1998 - *Festina* and the creation of the World Anti-Doping Agency – A turning point II?
  [http://youtu.be/cn7aTZwL0mM](http://youtu.be/cn7aTZwL0mM)

- 2006 & 2007 Tour De France

  - Profiling – The Biological Passport, (WADA approved Dec 1st, 2009) – A turning point III?
  - *Pechstein v International Skating Union* CAS 2009/A/1912 [http://shura.shu.ac.uk/4706/](http://shura.shu.ac.uk/4706/)

- Oh Lance!
Why regulate “doping” in sport?

- Competitive integrity?
- A level playing field?
- Public opinion/Public Policy?
- Contradictions – No such thing as a level playing field!
- Non-performance enhancing substances?
- Therapeutic use – see article 4.4 WADA Code 2007

The legal basis for regulation

- Contractual
- Procedural fairness
- Right to a fair hearing – see article 8 WADA Code 2007

The regulation of “doping” in sport

1. UNESCO Convention
2. Regulation by the International Olympic Committee
3. Regulation by International Governing bodies & National Governing Bodies
4. Regulation by National Anti-Doping Agencies
   a) UK Sport → NADO → UKAD (UK Anti-Doping)
   b) British Olympic Association

WADA Code 2007: (Jan 2009)

<table>
<thead>
<tr>
<th>Article</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>The presence of a <em>Prohibited</em> substance or its <em>Metabolites</em> or <em>Markers</em> in an <em>Athlete's</em> bodily specimen</td>
</tr>
<tr>
<td>2.2</td>
<td><em>Use or Attempted Use of a Prohibited Substance</em> or a <em>Prohibited Method</em></td>
</tr>
<tr>
<td>2.3</td>
<td>Refusing, or failing without compelling justification to submit to <em>Sample</em> collection after notification as authorized in applicable anti-doping rules or otherwise evading <em>Sample</em> collection</td>
</tr>
<tr>
<td>2.4</td>
<td>Violation of applicable requirements regarding <em>Athlete</em> availability for <em>Out-of-Competition</em> testing including failure to provide required whereabouts information and missed tests which are declared based on rules which comply with the</td>
</tr>
</tbody>
</table>
国际标准用于测试

2.5 Tampering or Attempting to tamper, with any part of Doping Control

2.6 Possession of Prohibited Substances and Methods

2.7 Trafficking in any Prohibited Substance or Prohibited Method

2.8 Administration or Attempted Administration of a Prohibited Substance or Prohibited Method to any Athlete or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted violation

**Proof of doping**

- Strict Liability
- Non-analytical positives
- Profiling – the biological passport, (WADA approved Dec 1\textsuperscript{st}, 2009)
  - Pechstein v International Skating Union CAS 2009/A/1912
- Reduction or elimination of ineligibility – specified circumstances
- Reduction or elimination of ineligibility - Exceptional Circumstances
- Therapeutic Use Exemption – Article 4.4
- Aggravating circumstances which may increase the period of ineligibility – Article 10.6
- Disqualification
- Ineligibility

**Article 10 - Sanctions on Individuals:**

- 10.3 - Ineligibility for Other Anti-Doping Rule Violations
  - 10.3.2 - 4 year possibility for first offence
- 10.4 – Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances
  - N.B. The Prohibited List and The Specified List
- 10.5 – Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances
  - CAS 2011/A/2495 FINA v. César Augusto Cielo Filho & CBDA
  - CAS 2006/A/1067 IRB v Keyter
  - CAS 2009/A/1930 WADA v ITF & Richard Gasquet
  - CAS 2006/A/1190 WADA v Pakistan Cricket Board & Akhtar & Asif
• 10.6 - Aggravating Circumstances

**Article 14 – Confidentiality and Reporting**

• 14.3 – *Athlete* Whereabouts Information

• Elite athletes subject to *ADAMS* system - WADA database management tool
  http://youtu.be/RuDhKkKdcco

• *CAS 2006/A/1067 IRB v Keyter*
  http://shura.shu.ac.uk/704/

• *CAS 2006/A/1190 WADA v/Pakistan Cricket Board & Akhtar & Asif*  http://shura.shu.ac.uk/708/

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**Some Questions to Consider**

• What is meant by *strict liability*?

• Why is *strict liability* seen as crucial in the battle against doping in sport?

• How does the WADA Code define *exceptional circumstances*?

• How might *exceptional circumstances* undermine the fight against doping and in particular the principle of *strict liability*?

• What is meant by a *non-analytical positive*?

• What arguments may be presented to suggest that the current banned status of non-performance enhancing drugs is inconsistent with the aims of the WADA code?
Governance of Sport and Dispute Resolution

Reading:

- Deutscher Handballbund v Kolpak (C-438/00) [2003] E.C.R. I-4135 ECJ**
- Eastham v Newcastle United Football Club [1963] 3 All ER 139
- Greig v Insole (for the TCCB) [1978] 1 WLR 302**
- Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol (Case C-265/03), European Court Reports 2005 page I-02579
- Kingaby v Aston Villa (1912) The Times, 28 March
- McInnes v Onslow-Fane [1978] 1 WLR 1520
- R v Jockey Club exp Aga Khan [1993] 1 WLR 909**
- Radford v Campbell (1890) 6 TLR 488
- Union Royale Belge des Societes de Football Association ASBL v Jean-Marc Bosman (Case C-415/93) [1996] 1 CMLR 645; 15 December 1995**
- Walrave and Koch v Union Cyclismo Internationale [1975] 1 CMLR 320; (Case 36/74) [1974] ECR 1405
- Anderson J. "An Accident of History: Why the Decisions of Sports Governing Bodies are not Amenable to Judicial Review", CLWR 35 3 (173) 2006**

Introduction – The role of governing bodies:

Public or Private?

- R v Football Association Ltd ex p Football League Ltd
• **R v Jockey Club exp Aga Khan** [1993] 1 WLR 909  
• *Shergar “The Wonder Horse”*  
• [http://youtu.be/Xdw-m8h_I9s](http://youtu.be/Xdw-m8h_I9s)

• *The Aga Khan’s pride and joy*  
• [http://youtu.be/2wUVOFdRkio](http://youtu.be/2wUVOFdRkio)

### Obligations - Act within the rules – substantive and procedural

- *Enderby Town Football Club v FA* [1981] 1 Ch 591  
- *Jones v Welsh Rugby Union* The Times 6 January 1998**  
- *McKeown v British Horseracing Authority* [2010] EWHC 508

### Human Rights Act

**Refs:**  

### Restraint of trade

a) The basis of the doctrine of restraint of trade  
b) Application to the rules and actions of governing bodies  
- *Greig v Insole* [1978] 1 WLR 302  
- *Newport v Football Association of Wales* [1995] 2 All ER 87 – interlocutory hearing  
- *Newport v Football Association of Wales* (12 April 1995 unreported)  
- *Leeds Rugby Ltd v Iestyn Harris & Bradford Bulls Holdings Ltd* [2005] EWHC 1591 QB
• *Chambers v British Olympic Association* [2008] EWHC 2028 (QB)
• [http://shura.shu.ac.uk/1090/](http://shura.shu.ac.uk/1090/)

**European Law & Free movement obligations**

a) Application of competition rules
   - Article 81
   - Article 82

b) A sporting context

c) Free Movement rules and their application to sport (see later)

**Player Transfers**

**Historical Overview:** (Ref – McArdle: “From Boot money to Bosman”)

- The FA’s Player Registration Scheme and the *Radford* Case
- The Football League’s Player Registration Scheme and the *Kingaby* Case
- The Legality of Transfer Rules:
  - Restraint of trade – Eastham, (the abolition of the maximum wage) & Post Eastham reforms

**Bosman and Beyond**

**Pre Bosman:**

- *Walrave and Koch v Union Cyclismo Internationale* [1975] 1 CMLR 320; (Case 36/74) [1974] ECR 1405
- The *Quota* System

**The Earth Moves – Bosman**

- The impact of *Bosman* domestically & internationally

**Beyond Bosman**

- Free Movt – Bosman and Lehtonen
- Competition Law
Developments since Bosman
Lehtonen (Jyri) & Castors Canada dry Namur-Braine v Federation Royale Belge des Societes de Basketball ASBL (Belgium Basketball Federation) (Case C-176/96) judgment of 13 April 2000
Deutscher Handballbund v Kolpak (C-438/00) [2003] E.C.R. I-4135 ECJ
Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol (Case C-265/03), European Court Reports 2005 page I-02579

Resolving sports disputes, ADR and the growing importance of the CAS

a) Internal Proceedings
   - Korda v ITF (1999) Times, 4 February; [1999] All ER (D) 84
   - IAAF v UKA and Walker [2001] 4 ISLR 264 and [2000] 2 ISLR 41

b) Attempts to oust the jurisdiction of the courts
   - Enderby Football Club v FA [1971] Ch 591

c) External Arbitration – The role of the CAS
   - www.tas-cas.org - Court of Arbitration for Sport
   - Cases before the CAS
   - Ad Hoc division
   - Challenging CAS decisions

d) Mediation
   - Assessing mediation
   - Woodhall/Warren

Some Questions to Consider

- Explain the nature of Judicial Review
- Why have sports governing bodies traditionally not been subject to Judicial Review?
• What arguments may be presented in favour of making sports governing bodies susceptible to Judicial Review?
• Explain the requirement for governing bodies to adhere to the principles of Natural Justice
• Explain the retain and transfer system
• What is meant by restraint of trade? Can one be justified?
• Explain the practical considerations raised in Greig v Insole and the Court's decision in the case
• What changes did the Bosman case introduce?
• How has this developed since Bosman?
• Assess the impact on professional sport of Bosman
• What is the likely view of the Courts to the proposals by both FIFA and UEFA
• What advantages may there be in resolving a problem via alternative dispute resolution/mediation?
Sport and the workplace, discrimination in sport.

Reading:

- Bennett v Football Association (1978) unreported, CA Transcript
- Couch v British Boxing Board of Control (1998) unreported, IT No 2304231/97**
- Hussaney v Chester City FC (1997) unreported, IT No 2102426/97**
  Hardwick v FA (1997) unreported, IT No 2200651/96
- Nagle v Feilden and Others [1966] 2 QB 633
- Petty v British Judo Association [1981] ICR 660 (EAT)
- Sterling v Leeds Rugby League Club (unreported, October 30th 2000 (ET)); I.S.L.R. 2001, 2(JUN), 201-207
- Heather Sue Mercer v Duke University No. 01-1512 50 Fed. Appx.643
- PGA Tour, INC v Casey Martin No. 00-24 532 U.S. 661
- Richards v United States Tennis Association et al 400 N.Y.S.2d 267
- Race Relations Act 1976
- Sex Discrimination Act 1975
- Gender Recognition Act 2004
- McArdle, D. (2008) Swallows and Amazons, or the Sporting Exception to the Gender Recognition Act, 17(1), Social and Legal Studies
Introduction

Common Law
Statutory Law
European Law

- Gus Poyet interviewed about Luis Suarez

- Alan Hansen on Luis Suarez affair
  http://youtu.be/F6Qi-sho0Qs

- Lets kick homophobia out of football
  http://youtu.be/BMipIPAdPVo

- Lets kick sexism out of football
  http://youtu.be/x1D0R0u7rwU

- Racism in football – Football Focus Report
  http://youtu.be/ZJymcmZOb2c

- Oscar Pistorius – running v able-bodied athletes
Discrimination on the grounds of gender:

- Sex Discrimination Act 1975
- NB s44 Defence
- Case Law:
  - Bennett v FA (1978)
  - GLC v Farrar (1980)
  - Petty v British Judo Association [1981]
  - Couch v British Board of Boxing Control (1998)
- NB McArdle 3 stage test for application of s44 defence
- The Equality Act 2010

Discrimination on the grounds of race:

- Race Relations Act 1976
- The Equality Act 2010
- Harassment v Insults
- Hussaney v Chester City FC (1997) unreported, IT No 2102426/97
  - S2 RRA 1976 Complaint - Victimisation
- Sterling v Leeds Rugby League Club (unreported, October 30th 2000 (ET)); I.S.L.R. 2001, 2(JUN), 201-207

"Turning to our findings on the first issue of racial discrimination, we have no difficulty in accepting the pre-season judgment of the second respondent in rating the applicant in sixth place as a winger. The applicant did not challenge it. That the judgment about selection for a first team place subsequently proved to be wrong is a matter of hindsight. Professional judgments sometimes do turn out to be wrong. What concerns us is the second respondent's decision that, irrespective of his performance in training and in A-team matches, the applicant would not be selected for a place in the first team. We find that, because no other player was treated in that way, the applicant was treated less favourably than the second respondent would have treated another player whose performance and potential he did not rate. Other white players moved on during the current season so that there was a difference of racial origin. The decision not to select the applicant for the first team irrespective of performance was made in the face of advice by Mr Curtis. Mr Curtis was confident that the applicant would be fit, not necessarily at the start of the season but when he needed to be. Mr Curtis was satisfied that the applicant was up to playing through the current season. The inference is that the second respondent ignored that advice. Thus, whilst we have a satisfactory explanation for a decision in early February that the
applicant would not be chosen to play in the first team, we do not have any satisfactory explanation for the decision to deny to the applicant the opportunity to improve and, thereby, compete for a place in that team. We have decided that it is proper to draw the inference in this case that the principal reason for that decision was the applicant's racial origin. We do that having regard to the remark by the second respondent which suggested that, somehow, black Afro-Caribbean players were not seen by the second respondent at least as being as well suited as others to playing rugby league football in Australia”.

- Employment Tribunal P206

- Recent events & the response of sport:
  - Ron Atkinson - TV Pundit
  - Jose Luis Aragones - Former Head Coach of Spain
  - FIFA Response - Eliminating racism
  - R v John Terry 2012
    - [Link: http://tinyurl.com/blo3kyp]
  - Luis Suarez v Patrice Evra 2012
    - [Link: http://tinyurl.com/c3dqnm6]
  - McGammon v Gillingham Football Club 2012

**The position of transsexuals**

- Gender Recognition Act 2004
- NB s19
  - " (1) A body responsible for regulating the participation of persons as competitors in an event or events involving a gender-affected sport may, if subsection (2) is satisfied, prohibit or restrict the participation as competitors in the event or events of persons whose gender has become the acquired gender under this Act.

55
• (2) This subsection is satisfied if the prohibition or restriction is necessary to secure-
  (a) fair competition, or
  (b) the safety of competitors"

• (4) A sport is a gender-affected sport if the physical strength, stamina or physique of average persons of one gender would put them at a disadvantage to average persons of the other gender as competitors in events involving the sport.

An American Perspective
  • *Heather Sue Mercer v Duke University* No. 01-1512 50 Fed. Appx.643

The DDA 1995
*PGA Tour, INC v Casey Martin* No. 00-24 532 U.S. 661

The Equal Pay Act 1970

When is discrimination unlawful?

Statutory exemptions
  • Single-sex sporting activities
  • Nationality discrimination
Some Questions to Consider

- Explain the application of McArdle’s 3 stage test?

- What possible weaknesses does the sex discrimination act have in relation to sport, particularly at the highest level?

- How is the s44 defence applied in areas of sex discrimination?

- To what extent might disabled athletes learn from the success seen by transsexual participants in gaining access to sport at the highest level?
The Commercial Exploitation of Sport

Reading:
- Olympic Symbol etc Protection Act 1995
- London Olympic Games and Paralympic Games Act 2006
- Viacom v Youtube 2010
- FA Premier League v Youtube et al Case 1:07-cv-03582-UA
- British Horseracing Board Ltd v William Hill Organisation [2001] EWCA Civ 1268
- Football Dataco Ltd v Stan James [2010] EWHC 841
- Football Dataco Ltd and others v Yahoo! UK Limited (Case C-604/10
- IRC v Muller [1901] AC 217
- Trade Marks Act 1994
  - Harmonisation of Trademarks EEC 89/104
- Arsenal FC v Matthew Reed [2003] Ch 454; [2003] 1 All ER 137; [2003] 3 All ER 865
- Copyright Designs & Patents Act (1988)

Background
- The economy of sport
- Sport as a global business
- Sports Assets – Their legal protection

Major Events
- Legislation
  - Olympic Symbol etc Protection Act 1995
  - London Olympic Games and Paralympic Games Act 2006

Protected Games Marks

Brand protection – LOCOG Interpretation
Using the brand – London 2012

What businesses need to know – London 2012
http://www.ipo.gov.uk/ipinsight-200911-4.htm

The Gay Games – IOC & USOC 1882
http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume4/number1/symons_warren/

**Intellectual Property Rights & Sport**

- Football Finance

**Sports Sponsorship**

- Mutually beneficial?
  - The sponsor’s perspective
  - The sporting perspective
- Impact of negative publicity?
  - Get out clauses

Marcos Bagdatis Destroys his Tennis Rackets
http://youtu.be/u8hIDedwrqs

**Rights and their Protection**

**Trade Marks**

- Trade Marks Act 1994
- Harmonisation of Trademarks EEC 89/104
- *Arsenal FC v Matthew Reed* (2002)
- Registered Trade Marks

David Seaman – “Safehands” v Brazil
http://youtu.be/5cYt4j2EyGQ
David Seaman – “Safehands 2”  
http://youtu.be/qKVAHdnvHww

- Unregistered Trade Marks
- Passing Off

**Copyright**
- Requirements?
- Viacom v Youtube 2010
- *FA Premier League v Youtube et al*
  - http://www.youtubeclassaction.com/
- British Horseracing Board Ltd v William Hill Organisation [2001] EWCA Civ 1268
- Football Dataco Ltd v Stan James [2010] EWHC 841
- Football Dataco Ltd and others v Yahoo! UK Limited (Case C-604/10
- *FA Premier League v QC Leisure C-403/08 & C-429/08 Conjoined – Judgment of the Grand Chamber*
- *FA Premier League v QC Leisure [2012] EWHC 108 (Ch) (The Karen Murphy Case)*

Karen Murphy case - brief explanation  

The significance of media generated content: Champions League logos/Anthems  
http://youtu.be/v1vER1jcC7c

**Protect sports “moves” & copyright?**

Thomas Flares  
http://youtu.be/fReb05W5r00
Fosbury Flop
http://youtu.be/xyfuxKqjzmM

Cruyff Turn
http://youtu.be/vDFENS0ttGk

**Ambush Marketing**
- Germany 2006 – Bavaria Beer
- Vancouver 2010 - Lululemon
- South Africa 2010 – Bavaria Beer; Kulula.com

Ambush Marketing Basics
http://youtu.be/4r75eQIJ5V0

Ambush Marketing – FIFA World Cup
http://youtu.be/h1TTOn4lqUk

Ambush Marketing – Messages on Hold
http://youtu.be/FFaUyNDSfiI

Ambush Marketing – Paddy Power over Cheltenham
http://youtu.be/LMmu6-8TQ5w

Ambush Marketing – Pringles Ad
http://youtu.be/Kd_BNA1P41M
Financial Fairplay
The importance of income generation beyond match day sales can be seen with the introduction of UEFA’s Financial Fairplay Rules.


What is Financial Fairplay?
Why have UEFA Introduced these rules?
How do the rules work?
Consequences of non-compliance?
Seminars
Seminar 1

Current Issues - Introductory Seminar:

- Collect Newspaper articles from the beginning of the course concerning any sporting story examining legal issues. Be prepared to analyse and discuss those newspaper articles.

Compulsory Reading:

- *Condon v Basi* [1985] 1 WLR 866; [1985] 2 All ER 453

Optional Reading:


1) Explain what is meant by the *variable standard* seen in *Condon v Basi*. What strengths and weaknesses might such an approach have?

2) Explain the approaches taken by Kitto and Barwick in *Rootes v Shelton*, as reported by Donaldson MR. What flaws can you identify in the approach suggested by Barwick
Seminar 2

Compulsory Reading:

- *Wooldridge v Sumner* [1963] 2 QB 43

Optional Reading:

- McArdle, D., “The Enduring Legacy of Reckless Disregard”, *CLWR* 34.4(316)

1) Why did the Court of Appeal suggest that the appropriate negligence *standard* of care to apply in this case may be that of *reckless disregard*?

2) Explain what is meant by *reckless disregard*

3) Why did the decision in *Wooldridge v Sumner* cause such debate? Was this debate justified?

4) How, (if at all), does the approach advocated in *Wooldridge v Sumner* differ from the approach to negligence liability ordinarily adopted?

5) Bart is an enthusiastic ice hockey fan and as a special treat his dad Homer takes him to see the Springfield Isotopes play their local rivals The Shelbyville Rebels. Bart and Homer have prime seats, in the front row right on the halfway line. With just 1 minute to go the score is 1-1 and Springfield’s ace player Moe is skating down the wing and with a 3 v 1 a goal seems certain. Unfortunately he is scythed down by Barney, the arch henchman for The Shelbyville Rebels. Barney poleaxes Moe causing him to catapult head first into the boards, breaking Moe’s neck, causing him permanent paralysis. Advise Moe as to his rights in tort.
Seminar 3

Tort Law in the Playing Environment

Compulsory Reading:

- *Blake v Galloway* [2004] EWCA (Civ) 814
- *Caldwell v Maguire and Fitzgerald* [2001] EWCA Civ 1054
- Nabozny v Barnhill 31 Ill. App 3d 212
- *Watson v British Boxing Board of Control Ltd and Another* [2001] QB 1134

Optional Reading:

- *Smolden v Whitworth and Another* [1997] ELR 249
- *Vowles v Evans* [2002] EWHC 2612 QB
- *Agar and Others v Hyde; Agar and Others v Worsley* 173 A.L.R. 665

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1) Explain the approach taken to negligence in sport seen in the USA in *Nabozny v Barnhill* 31 Ill. App 3d 212.

2) It has been suggested that *Caldwell v MaGuire and Fitzgerald* bridged the gap between the decisions in *Condon v Basi* and *Wooldridge v Sumner*. To what extent do you agree with this?

3) What is the significance of the 3rd proposition in *Caldwell v MaGuire & Fitzgerald* to breach of duty.

4) Why did the Court decide that the BBBC owed Michael Watson a duty of care? Does this decision mean that all governing bodies will owe all participants a duty of care?

5) Continuation of the problem question from the last seminar:

   ... Due to arena renovations, the usual protective Perspex protecting the crowd is not present around the whole arena and a stray shot from Barney flies over the boards and hits Bart directly in the nose, breaking it instantly. Some bone fragments from his nose pierce the membrane behind Bart's left eye, causing him to lose sight in that eye.

Advise Bart as to his rights in tort.
Seminar 4

Criminal Law in the Playing Environment

Compulsory Reading:

- *R v Barnes* [2005] 1 WLR 910**
- *R v Brown* [1994] 1 AC 212** (Just section dealing with combat sports)
- *R v Coney* (1881-82) L.R. 8 Q.B.D. 534

Optional Reading:

- Attorney-General’s Reference (No. 6 of 1980)
- Anderson J. “Pugilistic prosecutions: prize fighting and the courts in nineteenth century Britain”, *School of Law, University of Limerick, Ireland*

1) How is reckless defined in non-fatal offences against the person? How does it differ from intention?
2) What do you understand by Lord Woolf’s comments about the “threshold” required for conduct to be classified as *criminal*?
3) Explain the difficulties which might be encountered in attempting to reconcile Public Policy issues with the “threshold” test.

4) What is consent and why do the courts allow a consent defence to injuries caused during sporting activities? What are the limits of the consent defence in boxing and in sport in general?

5) Should boxing be banned?
Seminar 5

This seminar will be devoted to looking at your upcoming assessment. Before your seminar you must watch the assessment example posted on blackboard.
Seminar 6
Football & Banning Orders

Compulsory Reading:

- *David Brown v Inner London Crown Court* [2003] EWHC 3194
- Blackshaw, I., "Football Hooligans and Human Rights" *NLJ* 151.7005 (1562)
- Football (Disorder) Act 2000
- Football Spectators Act 1989

Optional Reading:


1) Explain the reasoning of the Court in *Gough v Chief Constable of Derbyshire* [2002] QB 1213

2) Did the punishment in *Brown* fit the crime? What justification did the court give for refusing the appeal?

3) Are banning orders an unnecessary infringement on the human rights of football fans?

4) Explain the different types of banning order?
Seminar 7

Drugs in Sport

Compulsory Reading:

- WADA Code
- Baxter v IOC CAS 2002/A/376
- Pechstein v International Skating Union CAS 2009/A/1912
- WADA v ITF & Richard Gasquet CAS 2009/A/1930

Optional Reading

- CAS 2011/A/2495 FINA v. César Augusto Cielo Filho & CBDA
- Edwards v IAAF CAS 0G 04/03
- United States Anti-Doping Agency v Tim Montgomery CAS 2004/0/645
- United States Anti-Doping Agency v Chryste Gaines CAS 2004/0/649

1) Explain the principle of strict liability

2) Why is strict liability seen as being of fundamental importance in the fight against doping?

3) Discuss what weaknesses strict liability may have

4) Explain the role exceptional circumstances plays in the WADA Code. What are its strengths and weaknesses.

5) Pechstein v ISU highlighted the use of the Biological Passport. Explain how this works and the strengths and weaknesses of the system
Seminar 8

Before the seminar you should take a look at the questions and answers in Appendices 2. Mark each question, (using the mark sheet following each answer), correcting it and commenting where appropriate and give it a final grade at the end, (out of 100). Be prepared to justify your comments and grade.
Seminar 9

Governance of Sport/Player Rights

Compulsory Reading:

- Greig v Insole [1978] 1 WLR 302*
- Jones v Welsh Rugby Union The Times 6 January 1998
- R v Jockey Club exp Aga Khan [1993] 1 WLR 909*
- Union Royale Belge des Societés de Football Association ASBL v Jean-Marc Bosman (Case C-415/93) [1996] 1 CMLR 645; 15 December 1995*

Optional Reading:

- Deutscher Handballbund v Kolpak (C-438/00) [2003] E.C.R. I-4135 ECJ
- Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol (Case C-265/03), European Court Reports 2005 page I-02579
- Lehtonen (Jyri) & Castors Canada dry Namur-Braine v Federation Royale Belge des Societes de Basketball ASBL (Belgium Basketball Federation) (Case C-176/96) judgment of 13 April 2000
- Walrave and Koch v Union Cyclismo Internazionale [1975] 1 CMLR 320; (Case 36/74) [1974] ECR 1405
- William Mullins v The Board of Appeal of the Jockey Club [2005] EWHC 2197 (Admin)

1) Explain the reluctance of the courts to submit the decisions of sports governing bodies to Judicial Review
2) What do you understand by natural justice? Explain its importance in the governance of sport
3) What were the crucial factors in the court assessing the actions of the TCCB as an unreasonable restraint of trade in *Greig v Insole*.

4) Explain what generally applicable principles concerning player bans may be derived from the decision in *Greig v Insole*.

5) Explain the fundamental changes brought about by *Bosman*. Why did the arguments presented by the football authorities against Bosman fail?

6) How has the law developed since *Bosman*?
Seminar 10

Discrimination in Sport

Compulsory Reading:

- Arbitration CAS 2008/A/1480 Pistorius v/ IAAF, award of 16 May 2008
- PGA Tour, INC v Casey Martin No. 00-24 532 U.S. 661
- Richards v United States Tennis Association et al 400 N.Y.S.2d 267
- Gender Recognition Act 2004
- BOA guidance on transsexuals in sport

Optional Reading:

- Heather Sue Mercer v Duke University No. 01-1512 50 Fed. Appx.643
- Olinger v. United States Golf Association 205 F.3d 1001
- Sex Discrimination Act 1975
- Equality Act 2010

1) Is the use of a golf cart a reasonable adjustment to make to enable a golfer to compete on the USPGA Tour?
2) Explain why Oscar Pistorius can compete in both the Paralympic Games and the Olympic Games
3) Can sport ever be considered an appropriate environment for equality between the sexes?
4) What measures have been taken in the last 40 years to reduce gender inequality in sport?
5) Is gender equality an achievable goal in sport?
6) Anneka Sorenstom and Michelle Wie have both recently played on the PGA Golf tour. What arguments may be presented both in favour of this and against?
7) Rebecca is a post operative transsexual who has lived under her adopted gender for 5 years. During that time she has been competing in marathon “fun runs”. Since she gave up her job last year to concentrate fully on running, her times have dramatically decreased to such a degree that she is now considered a certainty to qualify for the British team for the next major championships. The BOA has recently received a complaint from the fourth ranked athlete suggesting that Rebecca competes with an unfair advantage.

Discuss
1. Caldwell v MaGuire & Fitzgerald [2001] EWCA Civ 1054 introduced the concept of the playing culture into sports negligence. Explain how this concept may impact on the question of liability and its impact on the possibility of a variable standard of care and the relevance of the defence of *volenti non fit injuria*.

2. With reference to case law, explain the application of the Offences Against the Person Act 1861 and appropriate defences to violence and foul play on the sports field.

3. “The athlete biological passport adds a powerful tool to support the fight against doping in sport”

   – WADA Director General David Howman

Discuss this and other measures that aid the fight against doping in sport.

4. “It sets a bad precedent to start acting in advance of any crime, also that blanket banning orders are filled with danger, and that innocent people will be affected by this”

   – Barry Hugill – Liberty.

Discuss this statement in the context of the Banning Orders introduced by the Football Disorder Act 2000.
5. "Its, (s19 Gender Recognition Act 2004) very existence is also symptomatic of the confused and incoherent approach to transgendered participation in sports – an approach that is, in its turn, a consequence of the sporting field’s equally confused and incoherent antipathy towards most forms of difference" (McArdle D., Swallows & Amazons 2007)

Discuss

6. With reference to case law, explain to what extent over the last 50 years the balance of power has shifted from the clubs to the players with regards to free movement of personnel.

2 Hours + 10 minutes reading time - Unseen exam
Appendix 2 – Exam Answers 2011

Question 4

“It sets a bad precedent to start acting in advance of any crime, also that blanket banning orders are filled with danger, and that innocent people will be affected by this”
– Barry Hugill – Liberty.

Discuss this statement in the context of the Banning Orders introduced by the Football Disorder Act 2000.

Answer 1

The football Disorder Act 2000 introduced banning orders in order to prevent disorder from being carried out. The act was introduced and brought into force with the Public Order Act to control football hooliganism and prevent spectators from being injured.

Before the act came into force, many legislative reports were made in order to come to a conclusion on how to control disorder such as membership schemes and the criminalising of alcohol.

Before the act it was held the main cause of disorder was alcohol fuelled. This made spectators violent and enabled them to clash with rival fans. In order to overcome this the Scottish law enabled anyone to be found with alcohol or drunk when entering a football match to be held liable for a criminal offence.

In many disasters that have occurred in recent years such as the St Andrews football stadium collapse which injured passers by it was held the governing bodies of football clubs should improve their grounds such as erecting high fences to maintain disorder breaking out and also the introduction of cctv to be brought in so the police could identify relevant offenders and ban them from attending football matches for a certain period of time. However none of this was brought into force until the breakout in the Heysel stadium. Where the Taylor report suggested membership schemes and cctv should be brought in and also the powers to stop and search for police should be extended under the police and criminal evidence Act which would allow any police officer at the rank of constable to stop and search if they have reasonable suspicion that a weapon was being carried.
The Taylor report held the membership scheme was of no effect as it slowed down ticketing process and held this would enable disorder rather than prevent it.

In many cases of disorder it is stated that the main cause of such disorder was due to racial chanting and throwing of missiles therefore the football disorder act made it an offence if any of these activities were carried out and if someone is found liable upon conviction would receive a football banning order from a minimum of 3 years to a maximum of 10 years. The intention is had therefore to discover when such disorder is being carried out therefore intention is not considered in order to place a ban.

It can be stated many innocent people can be affected by the use of banning orders as they will not be able to attend football matches whether abroad or in the UK. However, the courts have held if the ban is there and is proportionate to prevent disorder from breaking out it will be just and reasonable to impose such a ban.

Under section 14 of the football act it is stated a ban can be imposed even if the defendant does not have an occurring history of football related violence. This was shown in the case of Hughes where a defendant punched a rival fan and on prosecution was given a football banning order for 3-5 years.

Section 14b states a ban could be imposed even if the defendant has not been convicted. In this situation it is held if there is a reasonable suspicion that crowd disorder could break out a ban could be imposed in order to save the integrity of sport. This was shown in the leading case of Gough where the defendant was given a football banning order for 3 years and appealed stating there was no evidence for football related violence and it also infringed EC law of free movement. The courts held the ban was justifiable in order to maintain spectator safety.

When a football banning order is in place and football is being played abroad the defendant must hand in his passport 5 days before the start of the match until the end of the finals. If the defendant breaches his banning order he may be convicted for a further offence and having a further ban being imposed.

The Taylor report has suggested not much use is being made of the banning orders and also the use of CCTV may have decreased disorder in football stadiums but disorder is still carried outside the playing field.
In R on the application of White it was held a banning order could be placed to give a warning to spectators not to run on the playing area and chant abuse.
# FEEDBACK SHEET - ESSAY ASSESSMENT - Grade=

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## Introduction

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## Body of Essay

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## Conclusion

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## Other Features

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Please note that each section does not carry the same weighting. The final mark reflects the academic worth of the assignment as a whole.

### ADDITIONAL TUTOR FEEDBACK

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83
**Answer 2**
The football disorder act 2000 brought in two different types of banning orders which both must have a civil burden of proof on a balance of probabilities.

Firstly s14(a)(1) which is a banning order on conviction. It is stated that this section applies to people who have been convicted of a relevant offence. If a person has committed a criminal offence, they may be given their sentence and then a banning order on top of that. In (2) it is stated that if there are reasonable grounds to believe that issuing a banning order would help to prevent disorder and violence, then they must issue the offender with such an order.

Secondly there is a banning order on suspicion which carries much criticism in regards with innocent people being affected. This order is governed by s14(b)(2), and it is a banning order on suspicion. The person does not have to have committed any offence to receive this banning order which is where the criticism lies. It is stated that there has to be an application for a banning order in regards to any person made by the chief office of police if the person has caused or contributed to any violence or disorder in the UK or anywhere else. The maximum banning order someone can receive for this is 5 years and the minimum is 3 years. This banning order was criticised by Mr Nick Hawkins who stated that the grave defect of the bill is that it talks about detaining people on mere suspicion. The main case on this is Gough v Chief Constable of Derbyshire, where a number of issues were raised. Firstly the fact that it infringed article 2 of directive 73/148, which states that nationals of member states have a right to go to other member states as recipients of services. However, this issue was overruled by article 8 of directive 73/148 which states that you can derogate away from the rules based on public policy, public health and public security. It was held that the banning order was proportionate with regards to the legitimate aims of the orders, there was nothing less which could have been done to help prevent disorder and violence. Other issues involved are the right to a fair trial on the basis that there must be a civil burden of proof. However the courts stated that the amount of evidence which needs to be brought before the court to issue a banning order is so substantial that it more or less mirrors the criminal burden of proof of beyond all reasonable doubt.

It was stated that the banning order could be read as disproportionate. However, it could also be read as proportionate and thus it did not matter. The banning order was seen as proportionate as the magistrates must be satisfied that the person caused or contributed to
disorder or violence and that by giving them a banning order it would help to reduce violence and disorder. Also the fact that each case was given individual consideration. Finally people could apply to be exempt from the banning order and they must prove where they want to go and why.

When a person is issued with a banning order they are required to give in their passports at certain times. An innocent person may receive a banning order and having to give in their passport could affect their lives a lot which is unfair.

To conclude there are many issues with the banning orders on complaint. However case law has got around this by the idea of being proportionate.
### FEEDBACK SHEET - ESSAY ASSESSMENT - Grade=

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ADDITIONAL TUTOR FEEDBACK
Answer 3

The banning orders introduced by the Football Disorder Act 2000 came as a result of the growing problem of hooliganism in the century previous to their introduction. They were introduced as the main weapon to use in the battle to end a hooligan problem, which can be seen as a major factor in the disasters of the Heysel stadium in 1985 and the Hillsborough stadium in 1989. These disasters lead to the deaths of many (96 at Hillsborough), and the serious injury of many more. While the Belgium Minister of the Interior stated after Heysel that everyone knew the disaster was caused by “violent groups amongst the English fans”, and that this was a problem for the whole of “English Society” to try and solve. Leading to the desire to control crowds at football matches more effectively, in order to avoid this violence and disorder.

Banning orders attempt to prevent violence and disorder at certain football matches by stopping people either convicted or suspected of violence or disorder at previous matches from travelling within a certain distance of matches involving the club they support, or from travelling abroad when international games are on. It does this mainly by ordering the person to hand in their passport 5 days before given matches. But the ability under s14(B) of the Football Disorder Act, in which a banning order can be given to a person who is merely suspected of contributing towards violence and disorder at previous football matches, raises key issues of whether banning orders comply with EU law and especially the European Convention on Human Rights (ECHR). This issue was raised by MP Nick Hawkins in Hansard on 13th July 2000, in which he stated that banning orders posed a real threat as it aims to punish those who aren't already convicted of a crime. This argument was also seen in the key cases of Gough v CC Derbyshire and David Brown v Inner London County Court in which the claimants argued that their respective banning orders had infringed their human rights as stated under EU law. In the case of Gough v CC Derbyshire the claimants argued that as their banning orders were given under s14(B), and so hadn’t needed a conviction, their right to free movement in order to receive goods, under article 2 ECHR had been blocked. The Court of Appeal dismissed this argument, stating that under article 8 of the ECHR, they could block this right for reasons of public policy, security or health. Clearly the prevention of allowing suspected violent hooligans to travel abroad where they may be involved in hooliganism is a danger not only to public security but also policy as the UK wishes to decrease the bad image of England’s football fans. This was seen furthermore as if the claimants had a reasonable and honest wish to go abroad (i.e. for a family holiday), the court would allow them to seek an
exemption period from the ban in order to do so which would be given consideration.
The case of David Brown v Inner London County Court involved a banning order given after conviction under s14(a) of the Football Disorder Act 2000. But this conviction was not for a violence offence but instead for ticket touting. The claimant argued that by receiving a banning order he had not been given the right to a fair trial under article 6 ECHR and that the banning order was disproportionate to the crime he was convicted of. The court held that this appeal would be dismissed. Brown’s rights under article 6 had not been prevented as he was convicted of touting in a fair trial, the banning order was not another offence but further punishment. The banning order was not disproportionate even though Brown himself wasn’t guilty of violence or disorder, instead the court held that it was enough that his action had the possibility of leading to an increase in the risk of violence and disorder. As he could sell home tickets to away fans and vice versa, when the mixing of fans is prohibited in football because it often led to trouble in the past. Overall as Nick Taylor stated in his article on football banning orders and their compliance with EU law and the ECHR, it is “somewhat surprising that legislation so draconian in its effect ... may abide by EU law and the ECHR”. But although this may be the case, that it seems to prevent the human rights of people to whom banning orders are given, they are held as legal under EU law and so are a legitimate means of ending hooliganism amongst football fans. They have also been effective in this time with the number of incidents of football violence reducing since their introduction.
# FEEDBACK SHEET - ESSAY ASSESSMENT - Grade=

<table>
<thead>
<tr>
<th>Grade</th>
<th>1\textsuperscript{st} 70% and over</th>
<th>2:i 60 - 69%</th>
<th>2:ii 50 - 59%</th>
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**ADDITIONAL TUTOR FEEDBACK**
Banning orders became apparently needed to protect the image of UK football and its clubs position in European competitions. Historically English teams have been banned from competing in European competitions. Following the Heysel disaster in 1985, English teams were banned from European competitions for five years and Liverpool for 6. If this were to happen in the Premier League now you would find huge gaps in the clubs revenue, it would be a disaster for English football.

The issues set out in the statement are whether the banning orders contravenes with the European Convention on Human Rights as put into UK law by the Human Rights Act. Banning orders go against the right to free movement and the presumption of guilt is against Art 6 the right to a fair trial. These notions were tested in the case of Gough v Chief Constable. The courts held that because art 8 allowed member states to opt out of certain articles in the interests of public policy and safety that the football disorder act 2000 was not incompatible with EU law and could stand. A burden of proof would not be required by the state in order to obtain a banning order because its prevention of a potential act, football hooliganism, was proactive enough to substitute the need for want of proof. Figures have shown that as the number of bans have gone up, the number of arrests have dropped, this could be claimed to be as a direct result of imposing bans, so would seem to satisfy the proactive component of burden of proof.

It still raises moral if not legal groundpoints, not allowing free movement affects our liberty, it is a step towards a police state, the government having control over what we do and where we may or may not go. It is a danger of a start of a slippery slope to total control. Although I do think it was allowed to stand because of policy too.

Belgium had asked for English help in reducing the threat of football hooliganism, so it could be seen as a benefit for the European state that banning orders be upheld to be legal. It also would help to secure future English hosting of events, if hooliganism was as rife as it was in the 1980s and 90s England would not easily have been able to host the Champions League Final 2010 or the Olympic Games 2012. Banning orders have calmed football hooliganism and helped bring events to England which will see huge economic benefit to the country.

Banning orders can be seen to have some bad points but as they usually last 2-5 years and a person can still apply to go on holiday, it is not removing all their right to free movement, just to watch football, which for the positive result of reduced hooliganism is a step worthwhile.
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**ADDITIONAL TUTOR FEEDBACK**


Answer 5
Hillsborough was one of the major starting points with regards to the introduction of banning orders. Although Hillsborough was not concerned with football hooliganism per se it was related to the legacy of it in that it was the high fencing used that caused 96 people to be crushed to death. Prior to Hillsborough there was little specific spectator legislation. What was mostly used were Public Order Acts. The Taylor report followed which saw the introduction of the Football Spectators Act 1986. This introduced restriction orders which can be seen as a precursor to banning orders. However, it was the riots of Euro 2000 that was the catalyst to the most significant piece of legislation concerning football hooliganism. This was the Football Disorder Act 2000 which introduced banning orders. The justification for this can be found in a statement by Jack Straw in that he stated the riots were caused by little known football hooligans but rather a great number of drunken white men!

The Football Disorder Act (FDA 2000) introduced a 14(a) banning order (conviction with prison sentence max 10 yrs min 6 yrs, without prison max 5 yrs min 3 yrs), which took in relation to a football related conviction as was seen in the case of David Brown who was a ticket tout. This was considered a football related offence as it mixed up the crowds in football which had the likelihood of resulting in disorder. He was given a 14(a) banning order. However, football related offences have been interpreted widely by the courts such as the case or Parks & Cartwright, where it was held that a fight that broke out in a pub was football related even though the match in question had been cancelled. This illustrates what Barry Hughill mentions in that it could see the introduction of blanket bans in that now it seems that many are being imposed more readily.

A 14(b) banning order does not involve conviction but takes place on complaint by Chief Officer of Police. The maximum ban is 3 years and the minimum is 2 years. This is an issue as it reflects what Barry Hughill mentions in that it is a bad precedent to cite in advance of a crime due to the fact that a crime has yet to be committed. Banning orders are seen as a preventative measure in that they stop suspected trouble makers from travelling both at home and abroad to cause trouble. A banning order requires a civil burden of proof, (on the balance of probabilities), and to be successful it must be shown that the defendant was involved in the activity and that by giving them an order this will prevent them creating or contributing to further trouble. However, as was raised in the case of Gough there are many issues of concern with such banning orders. For instance with regards to restrictions on an individual’s free movement. Art 2 of Directive 73/148 states that an individual has the right to leave their member state to
receive goods and services in another member state and they must be
given a passport for this reason. Banning orders are clearly in conflict
with this - s21(b) of the FDA states that an individual must surrender
their passport 5 days before England & Wales play in a match outside
their country. This is seen as a major restraint especially in line with a
14(b) banning order which is based on mere suspicion. As stated by
Barry Hughill this can be seen as a bad precedent as it is acting before,
or without a crime ever being committed. However, article 8 of Directive
73/148 provides grounds to derogate in line with public policy, security
and health. In the case of Gough this was based on grounds of public
policy. However, in order for derogation the measure must be
considered proportionate to the legitimate aim, as will be discussed
later. Furthermore there are issues with interference with an individual’s
human rights under the ECHR. Under Art 8 ECHR, an individual is
granted a right to a personal private life. However it could be stated
that the vast amount of information held by the police on football
hooligans could be said to be in breach of this right. However s8(2)
goes on to justify this on grounds that it is sufficient as it prevents
disorder and furthermore, the fact that an individual can be detained on
mere suspicion, (s14(b)) and the burden of having a football banning
order could be seen as a breach of articles 5 & 6 of ECHR. Article 5
provides a right to liberty and security whilst art 6 is regards criminal
proceedings and as was held in the case of Gough, banning orders are
not criminal convictions and are based on the civil burden of proof.
However, many believe that the scrutiny that the courts put the cases
under could be seen as more akin to the criminal burden of proof which
is beyond all reasonable doubt. This was seen in Gough due to the
serious nature of the case. However, the courts in Gough confused this
matter by providing a narrow interpretation of penalty in that it was a
preventative rather than a punitive measure. Whether banning orders
are to be considered punitive in line with the criminal law or
preventative in line with civil law is very significant mainly with regards
to the legality of a 14(b) banning order due to the fact that it doesn’t
require a conviction but the main point of criminal law is to punish those
for doing wrong. If there is no criminal conviction then there should be
no punishment.
Justification appears for such breaches of these human rights and free
movement issues if they can be objectively justified in that the reason
for them is seen as sufficiently important. This is mainly with regards to
protect the UKs reputation and with regards to international solidarity in
that other countries are asking the UK to stop these individuals from
going to these countries and causing disorder. Furthermore football
hooliganism has become known as the “football disease” in other
countries and the UK sees preventing such people going abroad and
shaking off this label as sufficient justification. Lastly football hooliganism has seen to be taking off certain clubs from International competition, this has led to great financial issues. Furthermore this objective justification must be seen as proportionate as previously mentioned. It must be shown that the individual was involved in the disorder. It must be shown that by giving them a banning order will help prevent trouble and that there is not a less restrictive measure that would achieve the same aim. The courts have held the fact that safeguards are in place make this measure proportionate to the argument that it breaches the individual’s liberty as each case is given individual consideration and they may ask for exemption from travelling abroad. If they can prove that they want to travel abroad for holiday etc in a different country from that in which the match is taking place. However there are those that argue less restrictive measures exist in the form of altering police tactics abroad. As it appears how the police respond to football supporters by treating them automatically as hooligans causes more disruption. Furthermore it is felt that self policing may be a better measure to encourage. By encouraging fans to take part in non-violent activities will mean that those wanting to take part in violent activities can be segregated and so a blanket ban can be avoided.
## FEEDBACK SHEET - ESSAY ASSESSMENT - Grade=

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### Introduction

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Appendix 3 – OSCOLA Guide Summary

OSCOLA Quick Reference Guide

Primary Sources
Do not use full stops in abbreviations. Separate citations with a semi-colon.

Cases
Give the party names, followed by the neutral citation, followed by the Law Reports citation (eg AC, Ch, QB). If there is no neutral citation, give the Law Reports citation followed by the court in brackets. If the case is not reported in the Law Reports, cite the All ER or the WLR, or failing that a specialist report.


Page v Smith [1996] AC 155 (HL)

When pinpointing, give paragraph numbers in square brackets at the end of the citation. If the judgment has no paragraph numbers, give the page number pinpoint after the court.


Bunt v Tilley [2006] EWHC 407 (QB), [2006] 3 All ER 336 [1]–[37]

R v Leeds County Court, ex p Morris [1990] QB 523 (QB) 530–31

If citing a particular judge:

Statutes and statutory instruments
Act of Supremacy 1558

Human Rights Act 1998, s 15(1)(b)

Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, SI 2004/3166


**EU legislation and cases**


**European Court of Human Rights**

*Omojudi v UK* (2010) 51 EHRR 10

*Osman v UK* ECHR 1998–VIII 3124

*Balogh v Hungary* App no 47940/99 (ECHR, 20 July 2004)

*Simpson v UK* (1989) 64 DR 188

**Secondary Sources**

**Books**

Give the author’s name in the same form as in the publication, except in bibliographies, where you should give only the surname followed by the initial(s). Give relevant information about editions, translators and so forth before the publisher, and give page numbers at the end of the citation, after the brackets.


Gareth Jones, Goff and Jones: *The Law of Restitution* (1st supp, 7th edn, Sweet & Maxwell 2009)


**Contributions to edited books**

Encyclopaedias

Journal articles

When pinpointing, put a comma between the first page of the article and the page pinpoint.


Online journals

Command papers and Law Commission reports
Department for International Development, Eliminating World Poverty: Building our Common Future (White Paper, Cm 7656, 2009) ch 5

Law Commission, Reforming Bribery (Law Com No 313, 2008) paras 3.12–3.17

Websites and blogs

Newspaper articles
Jane Croft, ‘Supreme Court Warns on Quality’ Financial Times (London, 1 July 2010) 3
INSTRUCTIONS TO CANDIDATES:

1. The University Regulations on academic conduct, including cheating and plagiarism, apply to all examinations.

2. The normal examination regulations of the University apply (see script answer book).

3. Please do NOT start writing until told to do so by the Invigilator.


5. The memory of any programmable/graphical calculator used during this examination must be cleared before the start of the paper.

6. Candidates must answer three questions

7. Candidates may use a clean and unannotated copy of the statutes and WADA Code (these may be highlighted)

8. Start each question on a separate sheet of paper

STATIONERY REQUIREMENTS PER STUDENT:

- 1 x 16 Page Answer Booklet(s)
1. Explain the application of *ordinary negligence taking account of all the circumstances* to the question of negligence liability in sport. To what extent, (if any) does this differ from *reckless disregard*?

2. With reference to appropriate case law; explain the potential application of Lord Woolf’s "threshold test" from *R v Barnes* [2004] EWCA Crim 3246; and explore what possible difficulties there may be in reconciling this test with the public interest requirement in pursuing a criminal prosecution for on-field violence.

3. "It was difficult to formulate the precise distinction between those fights which were assaults, and, as such, criminal offences, and those which were manly pastimes, exercise of strength, skill and activity, and, as such, lawful, but the question must be determined by reference to the intention of the parties and the mode and conditions of the particular encounter, for it was now not possible to place boxing matches into one or other of mutually exclusive categories of, on the one hand, prize fights, and, on the other, sparring exhibitions". *Pallante v Stadiums Pty Ltd* [1976] McInerney J. - Discuss

4. "The purpose of Football Banning Orders was to prevent those convicted of 'football-related' offences from attending future football matches in England and Wales in the hope that the removal of these 'troublemakers' from matches would lead to a reduction in disorder" - Pearson G., & James M., *JoCL* (2006) - Explain the nature of Football Banning Orders; and assess whether they are fit for purpose:

5. "So, while there is no doubt that the eradication of doping is a legitimate aim, the methods used have caused considerable debate as to whether they are necessary in order to achieve this aim" – Trainor N., *ESLJ* 2010 - Critically discuss this statement.

6. The Olympics "Brand" has been described as LOCOG’s most valuable asset. Explain the measures that major events and sports organisations may take to raise money and to protect their brand; and explain what issues may undermine these measures.

END