

## MAIN FEATURES

# Sports Law 101

**Abstract:** When sport gets complicated, which it tends to do these days, it's time to call on the specialists, such as sports law lawyers. But just what is sports law, what are the rules of the game, what sort of cases crop up, and what do the lawyers need in terms of resources. **Lereesa Easterbrook** and **Said Sufi** of Bird & Bird give us a fascinating – and in this Olympic year timely – insight into this burgeoning legal field.

**Keywords:** sports law; information resources; sport and the law

## 1. WHAT IS SPORTS LAW?

'Sports law' is not a neatly defined area of practice. It is best described as the application of many different types of law and areas of legal practice in a sporting context, whether that be contract law, intellectual property law, competition law, employment law or dispute resolution, to name but a few.

Similarly, there is no neatly defined job description for a sports lawyer. Some sports lawyers will be general practitioners providing legal advice and representation for clients in any matter relating to the sports industry, whereas other sports lawyers will specialise in a particular area of law relevant to the sports industry.

In this article, we take a look at:

- International sports law principles
- Typical areas of work
- Typical clients
- Resources and know-how

## 2. INTERNATIONAL SPORTS LAW PRINCIPLES

While sports law is not a neatly defined area of legal practice, there are a number of sports-specific transnational legal principles (known as the *lex sportiva*), which have been recognised and applied by the Court of



*On the line? Decisions made on the field of play will often be final*

Arbitration for Sport (CAS) (an arbitral institution dealing solely with sports-related matters) as well as other sports tribunals, although it is important to note that these principles have not (to the authors' knowledge) been invoked as the sole basis for a decision.

## 2.1 Field of play

The field of play doctrine is about respecting decisions that are made 'on the pitch' and is one of the defining characteristics of the *lex sportiva*. It is about shielding what happens on the field of play (e.g. during a match or a race) from the reach of the law so that decisions made by referees and umpires cannot be challenged before a court or tribunal, unless the rules of a sport specifically say that they can. This ensures the authority of the referee and other match officials and also promotes finality. In practice, this means that the outcome of a sporting event can only be altered after the event in very limited situations defined by the rules of the game.

## 2.2 Fairness

Fairness lies at the heart of sport. This includes procedural fairness and substantive fairness. An example of where this principle comes into play is in athlete selection procedures, which must be as fair and objective as possible. For example, in the case of *Dal Balcon v CONI* (CAS OG 06/008), an Italian snowboarder who satisfied the original criteria for selection but was not selected after those criteria were amended (as she did not satisfy the amended criteria), succeeded in getting her non-selection overturned on the basis that the amended criteria were arbitrary and unfair.

## 2.3 Respect for the rules

Legal rules form the bedrock of sports law and respect for them is paramount. This works both ways: respect for the rules by sports participants and, importantly, respect by sports regulators for their own rules. A sports regulator that seeks to ignore or misapply its rules may be estopped from doing so or have its decisions overturned. In a case before the CAS in connection with the 2004 Athens Olympics (*CNOSF, BOA, USOC v FEI and NOCG, CAS OG Athens 04/007*), the CAS Panel stated that: "Rules are there to provide guidance to administrators and those who are administered; if inconvenient or obsolete, they should be constitutionally altered, not simply ignored."

## 2.4 Legal basis for action

Specific rules dictate the actions that a sports governing body may or may not take. It follows that sports governing bodies may not act or make decisions in the absence of any rule permitting them to do so. This principle was applied in a case concerning a decision to suspend the entire Bulgarian weightlifting team following three positive drugs tests recorded by members of that team at the

Sydney Olympic games. The Panel hearing the case stated that it was "of the clear view that a suspension of an entire federation from participation in the Olympic Games, including innocent athletes who have not committed a doping offence, at least requires an explicit and unambiguous legal basis". (*Tsagaev v IWF OG Sydney 2000/010*).

## 2.5 Access to competition

Athletes must be allowed to participate in competitions unless there are legitimate rules and / or reasons that mean they cannot do so. Sports tribunals will seek where possible to interpret and apply rules in a manner that gives effect to this principle. This principle is particularly relevant in the context of competing sports leagues, where athletes might want to participate in more than one league but are prohibited from doing so because of the rules of the league they are currently competing in (PGA Tour / LIV golf is an example).

## 2.6 Paramourcy

Paramourcy is about ensuring the uniform application of sporting rules at an international level, such that those rules are not applied differently from country to country, depending on the applicable national governing law. Accordingly, rules laid down by an international sports federation must be respected and should not be undermined or subject to different interpretation by the domestic law of any country. If that is not the case, then there is no guarantee of equal treatment for athletes from different nations.

## 2.7 Enforcement

Rules are only effective if they are enforced. Sports governing bodies must therefore have effective structures and mechanisms in place to ensure they are able to enforce their rules and regulations. This may include powers to carry out investigations and access information, establishing tribunals to hear and determine rule violations, and having the power to impose sanctions on participants for rule violations or for failing to cooperate with a request or investigation commenced by the sports governing body.

## 3. TYPICAL AREAS OF WORK

### 3.1 Commercial

Commercial sports lawyers deal with the business aspects of sports and are concerned with protecting and advancing the commercial interests of the clients that they represent. The work of a commercial sports lawyer may involve:

- Helping rightsholders to establish their available inventory of rights and to plan and structure

commercial rights programmes to maximise the value from those rights.

- Drafting and negotiating sponsorship deals for both rightsholders and sponsors. For example, our sports team frequently advises football clubs on sponsorship deals, including shirt-sponsors and stadium naming rights.
- Advising clients on the grant, exploitation and protection of media rights, including host broadcasting and production arrangements, the structuring and tendering of rights packages and the drafting and negotiation of media rights agreements.
- Advising clients on licensing arrangements and licensing strategies, including in relation to merchandising programmes, e-commerce platforms and digital content.
- Advising clients in relation to all aspects of the organisation and staging of major sports events and competitions, including event financing, hosting agreements, participation agreements, ticketing, merchandising, and hospitality programmes.

### 3.2 Regulatory

Sports regulation is centred around the creation, application and enforcement of the rules and regulations that underpin a sport. The work of a sports regulatory lawyer may include:

- **Anti-Doping.** Prosecuting and / or defending athletes or other sports participants for violations of the World Anti-Doping Code, e.g. the use of performance-enhancing drugs.
- **Disciplinary Proceedings.** Acting for or against athletes and other participants in respect of disciplinary charges issued by a sports regulator, e.g. abuse of an official, conduct that brings the sport into disrepute or other types of off-field misconduct.
- **Integrity / Corruption matters.** Advising and representing sports clients on matters such as match-fixing, illegal betting and other integrity matters.
- **Investigations.** Advising and assisting sports governing bodies in carrying out investigations in relation to rule breaches and misconduct. By way of example, our sports team regularly advises sports governing bodies on investigating breaches of financial regulations.
- **Safeguarding.** Advising and representing clients in relation to safeguarding matters. Our sports team regularly advises sports governing bodies in relation to the development and implementation of safeguarding policies, regulations, and procedures, as well as on the conduct of safeguarding investigations and proceedings.
- **Regulatory challenges.** Advising and representing sports organisations in respect of challenges mounted

by sports participants or other sporting bodies to the validity of their rules or to decisions that they make.

By way of example, our sports team frequently represents sports governing bodies in connection with appeals by athletes to selection decisions (e.g. a decision to or not to select a particular athlete to represent their nation in the Olympic Games or other sporting competitions).

- **Rules and regulations.** Drafting rules and regulations or regulatory frameworks for sports governing bodies and other organisations to ensure good governance of the sport. This could include disciplinary regulations, appeal procedures, financial regulations, and anti-doping rules, amongst other things.
- **Sports Governance.** Advising clients on how to create and implement effective governance structures and practices. By way of example, our sports team has drafted the constitutions for a number of sports governing bodies and has advised sports governing bodies on the establishment of independent integrity units.

### 3.3 Other areas of work

Other types of sports work include the following:

- **Intellectual property law.** Sports clients often need advice on protecting and commercialising their intellectual property, including their logos and brand names. This could include registering trademarks, enforcing intellectual property rights against third parties and writing cease-and-desist letters to those seeking to sell counterfeit products or merchandise.
- **Immigration law.** As they operate in such a highly competitive / results-driven industry, it is common for clubs and other sporting organisations to want to recruit the best talent from the global marketplace. This often requires a player or coach to obtain a visa (which requires sports lawyers to understand the key requirements of immigration law) as well as complying with other sports-immigration requirements. In the UK, this could include, for example, analysing whether a player qualifies for a Governing Body Endorsement under the International Sportsperson visa, advising on right-to-work checks under a League's registration requirements or considering whether an athlete's immigration status means that they are a domestic or foreign player for league / tournament quota purposes. There will also likely be business immigration issues to consider for individuals holding commercial roles at a sporting organisation.
- **Employment law.** Athletes are often employees and therefore employment law has a role to play in sports law, for example drafting and negotiating player and manager contracts, advising clubs on their HR legal obligations including, for example, in relation to health

and safety, pregnancy and maternity rights of athletes, or employment disputes in the event that an employment contract is terminated or there is a claim for unlawful discrimination. A recent example of our team's work in this area includes advising a rugby organisation on the appointment of a head coach, and drafting the contracts for senior employees of a sports organisation.

- **Competition law.** Competition law is now a fundamental element of most legal issues relating to sports law. In particular, it is increasingly invoked in the context of challenges to regulatory decisions or the creation and implementation of sporting rules. This is particularly the case in relation to access to competitions and leagues for new entrants as well as the creation or sanctioning of new sports leagues and competitions. Recently, the European Union's Court of Justice (ECJ) issued three significant rulings which primarily concerned the interplay between EU competition law and sports regulation. Specifically, the ECJ provided insights from a competition law perspective into regulations for various sports leagues, competitions, and tournaments set by private governing bodies. In those judgements, the ECJ established that rules which empower a sports governing body to subject new competitions to its approval and to impose penalties on athletes who participate in unauthorised competitions are unlawful, by-object restrictions of competition where there is no framework providing for substantive criteria to ensure such rules are guaranteed to be transparent, objective, non-discriminatory and proportionate.

As with any other organisation holding significant market power, sports governing bodies are also subject to rules on abuse of dominance, and have a special responsibility not to conduct themselves in a manner that might restrict or distort competition by reason of that dominance (for example, making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations [such as tying or bundling], refusal to give access to essential facilities, and discrimination).

Other areas where competition law plays a vital role include in the context of commercial agreements involving, for example, media rights, sponsorship deals and use of trademarks.

Infringement of competition law rules can lead to severe consequences, including significant fines, director disqualification (in the UK), and reputational damage.

- **Corporate transactions / financing.** Advising clients on a range of corporate transactions, including mergers and acquisitions involving the sale and purchase of sports related companies, assets and businesses. Sports lawyers are also well versed in advising clients on restructuring and reorganisation projects as well as equity investments via venture

capital or private equity, debt financings and listings on equity capital markets via IPOs.

- **Data protection.** Advising sports organisations on their obligations to protect athlete data, advising and drafting information sharing arrangements and privacy notices, as well as assisting sports organisations in responding to subject access requests.

#### 4. TYPICAL CLIENTS

In the world of sports law, the clientele is as diverse as the field itself. Here is a look at some of the types of clients that a sports lawyer may represent:

- **Athletes.** At the heart of the sports industry are the athletes themselves. Sports lawyers can play a pivotal role in their careers, including drafting and negotiating sponsorship contracts, employment contracts and agent contracts, and representing athletes in disciplinary proceedings and other contentious matters.
- **Teams and clubs.** Sports lawyers may advise teams and clubs on a variety of contractual matters, including sponsorship agreements, broadcasting and media rights, player transfer contracts, etc.
- **Agents.** Sports lawyers may advise agents in connection with agency contracts, agency disputes and the application of agency regulations, amongst other things.
- **Leagues.** Sports lawyers may advise sports leagues on their rules and regulations, the contractual arrangements with those participating in the league, the protection of intellectual property rights owned by the league, and, in respect of competition law, challenges regarding access and entry to a league or competition, etc.
- **Sport governing bodies.** Sports governing bodies are responsible for the regulation and governance of their sports, whether on a national level or an international level. Sports lawyers regularly act for sports governing bodies in connection with a variety of regulatory and governance matters, including the drafting of rules and regulations, representation in connection with anti-doping, disciplinary and safeguarding proceedings, conducting investigations, and defending challenges to regulatory decisions.
- **Sports facility owners and operators.** These clients may need legal assistance with issues such as contract negotiation, acquisition financing, and corporate transactions, e.g. in connection with the purchase or construction of a sports stadium or training facility or the lease to operate such a facility.
- **Sponsors and broadcasters.** Sports lawyers may advise clients who are seeking to sponsor a sports team or acquire broadcasting or other media rights from a sports organisation.

## 5. RESOURCES & KNOW-HOW

Here at Bird & Bird we have access to a number of useful resources to aid us with our work. Like most firms, we have access to a variety of online legal databases, including LexisNexis, Westlaw and Practical Law. However, these databases do not have dedicated sports content and so we frequently use other resources to assist with our work, including:

- Sports law textbooks

*Sport: Law and Practice.* by Adam Lewis KC and Jonathan Taylor KC

*The Code of The Court of Arbitration for Sport,* by Despina Mavromati and Matthieu Reeb

- Sports publications

*International Sports Law Review*  
*LawInSport*

- Sports specific case databases:

CAS database of CAS awards

Sports Resolution decision database

Decision databases created and maintained by sports governing bodies

In addition to the resources mentioned above, given that there is no single database of all sports law decisions and not all sports decisions get published, the Bird & Bird Sports Team has created our own internal sports case database comprised of sports law decisions handed down in the cases we work on as well as those sports law decisions published on other platforms (including those listed above). This internal database is maintained and updated on a monthly basis with the assistance of the Bird & Bird Knowledge Team.

## Biographies

**Lereesa Easterbrook** is a Senior Associate in the Bird & Bird Sports team and Co-Head of the Women's Sport practice. Lereesa specialises in regulatory and contentious matters, acting primarily for national and international sports governing bodies, federations and sporting organisations across a range of sports including motorsport, tennis, cricket, rugby, athletics, football and equestrianism.

In particular, Lereesa's practice involves representing clients in relation to a wide range of issues such as challenges to regulatory decisions, disciplinary disputes (including misconduct and anti-doping cases), safeguarding matters, rule drafting and advisory work and broader commercial disputes. Lereesa has experience acting for clients in a range of dispute resolution forums including the Court of Arbitration for Sport, a number of different international arbitration institutions, internal appeal tribunals, as well as the English, DIFC and ADGM courts. She is also a Board Member of England Korfbal.

**Said Sufi**, a key contributor to the Bird & Bird Sports team, is known for his skilful management of intricate regulatory and contentious issues within the sports sector. His knowledge extends across a wide array of challenges, encompassing regulatory decision disputes, disciplinary cases including misconduct and anti-doping, as well as rule drafting and advisory services. Said's assistance in these areas has been instrumental in successfully representing clients in various dispute resolution forums.