



Sport Update

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Extreme sports?

With the Olympics due to take place in hot and humid Beijing this summer, an important question arises as to the possibility of sports organisers and officials incurring legal liability for not taking sufficient care of athletes and players. The International Olympic Committee (IOC) has indicated that it may cancel certain events if the weather conditions warrant it. Earlier this year a number of equestrian teams raised concerns about weather conditions in Hong Kong where the equestrian events are to take place this summer, citing concerns about the effects of the heat on horses. The organisers claim to be putting procedures in place to ensure horses are protected, including hosting events at night and keeping the horses in air-conditioned stables. Effective risk management diminishes the potential for litigation, but awareness of potential legal liability by sports governing bodies and officials is a necessary prerequisite to any such risk management.

In the US in 2003, the estate of Korey Stringer reached a settlement with the Minnesota Vikings' team physician Dr. David Knowles who was an independent contractor to the team. It was alleged that Stringer had not received proper medical care when he collapsed during a 2001 training camp. Stringer (who weighed over 23 stone) died of heat stroke. It was also alleged that Stringer had repeatedly suffered from heat stroke in previous training camps in 1998, 2000 and 2001. The assistant coach is reported to have observed Stringer vomiting and ridiculed him and the following day showed a newspaper picture of Stringer vomiting to his team mates as some form of humiliation. Later that day Stringer collapsed on the field and it is alleged that he lay there for a significant period of time unattended and that when he staggered to the first aid station, there were no qualified medical staff present to provide treatment for approximately 50 minutes. The family's legal claim against the Vikings team and its coaches was dismissed as there was insufficient evidence to determine that the conduct of the defendants constituted gross negligence, which is the state of Minnesota's legal standard in such a case.

In 2002, the Welsh Rugby Union (WRU) was held vicariously liable for an incident which left an amateur rugby player paralysed. Richard Vowles was a front row forward. In 1998, the match between Llanharan and Tondy took place in poor conditions with inexperienced front row forwards. However, the referee decided to allow the match to proceed as normal. Mr. Vowles broke his spine and will be wheelchair bound for the rest of his life. There was another aspect to this case, in that he was not an experienced front row player. The judge dismissed the argument that the imposition of a duty of care on the WRU would discourage participation in rugby by amateur players, officials and referees. The judge saw no reason why the WRU should not insure itself and its referees against such claims, as this would spread the cost of the risk across the whole game.

It is incumbent on governing bodies, officials and sports doctors to ensure proper procedures and a risk management strategy are in place to deal with playing conditions and other matters that affect players and athletes.

Stadium technology

US baseball team, the San Francisco Giants has teamed up with its founding partner, Visa, in rolling out a new system that allows fans to order food and drink using wireless devices at the team's AT&T Park. Fans can use their iPhones, personal digital assistants (PDAs) and other wi-fi gadgets to access the stadium's wireless network. The network can be used to view video highlights and statistics and also to play interactive games. Fans will now be able to access a touch screen menu to order items for pickup at two "Doggie Diner" stands within the stadium (it sounds really appetising). As Visa is a key sponsor, fans paying with Visa will get their orders first while non-Visa users will just have to wait in line.



Black market

There are fears that a community spirited measure from FIFA may backfire. In late 2007, FIFA announced that it would sell a category of cheap tickets for World Cup 2010 matches which would be available to South African residents only and these would be sold for a mere \$20. FIFA also intends to issue 120,000 free tickets via sponsors and community schemes to allow easier access to the matches for less wealthy sections of the South African population.

However, no foolproof system has been devised to prevent the tickets being sold at a profit to wealthier travelling fans or indeed travel agencies. It is reported that the Government had considered introducing legislation, but that the South African police service believed that the laws would be unenforceable. They felt they would have enough on their hands in adequately ensuring spectator safety.

FIFA does have a rigorous ticketing system in place for the allocation of tickets to travelling fans, but these local community schemes may not have the same structures in place that would allow FIFA to crack down on ticket touts.

Meanwhile the Olympic Games (both summer and winter) are taking steps to prevent ticket touting and counterfeit tickets. Beijing 2008 is using RFID (Radio Frequency Identification) tickets which were used for the 2006 World Cup but have not been used for any previous Olympic Games. The tickets will contain a chip which will hold only certain information (and make producing counterfeit tickets more difficult) and the ticketholder's name will be printed on the ticket. Similar to airline tickets, identification may be requested to be produced and the ticket will not be transferable.

Vancouver is taking steps to protect the integrity of the ticketing process for the 2010 Winter Games in light of the recent discovery that a ticket broker sold ten tickets to the 2010 men's ice hockey final for \$60,000. Lawyers for the organising committee are considering whether any legal action may be taken, but are hampered because reselling tickets is not illegal in British Columbia. However, the organising committee has vowed to take a strong stand against anyone inappropriately selling tickets which they receive as part of the "Olympic Family". Sponsors and other national Olympic committees are granted a certain number of tickets for each Olympic Games, with the remaining tickets (approximately 70% going on sale to the public). The organisers want to make sure none of these tickets end up in the hands of brokers for resale and are taking steps to ensure any such action is punished. The organisers have a number of methods, including sending out secret shoppers to buy tickets from resellers. The organisers will then check the bar code on the tickets and, if it is determined that the ticket came from one of the so-called "Olympic Family", they will invalidate the entire lot allocated to the committee or sponsor and put the block back on sale to the general public.

Stadium operator liability

A recent US case Joan Haymon (Guardian of LH, an infant) v Donald J. Pettit and Auburn Community Non-Profit Baseball Association has dealt with the potential liability of sports stadia operators and sport organisers for activities occurring outside the stadium. The case concerned the question of whether a baseball stadium operator owed a duty to warn or to protect persons who were injured while chasing baseballs which are hit out of the stadium. No such duty was found to exist.

The claimant's 14 year old son was injured when he was hit by a car when he chased the ball into traffic (while wearing headphones and failing to look both ways before crossing the street). The stadium operator had a scheme where it offered free baseball tickets to people who retrieved balls hit outside the stadium and returned them to the ticket office. The New York Supreme Court found that the stadium operator owed a duty to its fans outside the stadium to prevent them from chasing balls into a nearby street, as it was a "foreseeably dangerous condition which it took part in creating". This decision was reversed by the Appellate Division.

The claimant argued that the club's "foul ball" promotion carried with it a duty to protect its fans. The Appellate Division held that an owner/occupier of land owes no duty to protect others from the dangerous condition of an adjacent property unless the owner created or contributed to that condition. The court was of the opinion that the hazards of crossing the street existed regardless of the club's promotion. The club could not control a public street or the people who use it.

It seems clear that in the US at least, stadium operators have a limited duty to fans outside the stadium, even where the stadium operator's promotions or schemes have induced the actions of the claimant.



Sports models

There are two established league systems adopted by professional sports leagues. The first is the franchise system to which most American sports subscribe, for example, American football, ice hockey, basketball and baseball. Some leagues outside of America also adopt the franchise system, such as the Super 14 rugby competition in the southern hemisphere and the Australian Football League. There are also plans to launch franchise systems in other sports such as rugby league. The governing bodies are the franchisors and grant franchises to a fixed number of teams who exploit a geographical monopoly in a certain area and compete in leagues with no relegation or promotion. In Ireland, a draft means that someone has not closed the door, but in the US franchise system there are usually salary cap rules and 'draft' systems which aim to ensure that the playing talent is spread evenly among the franchisees (the worst team gets the first pick of the best college players).

For example, the recent launch of the Indian Premier League (IPL) franchise could have significant ramifications for the game of cricket and the structure of the competition could be a useful template for other sports governing bodies or breakaway factions. The IPL was the idea of Indian cricket administrator and businessman Lalit Modi and has adopted the Twenty20 form of cricket, which is an abbreviated form of the game and which is considered more appealing to people who may not traditionally be interested in cricket.

In the US many of the franchisees are huge multi-nationals who have a lot to gain from association with a successful team. In the IPL, the franchisees are mainly Indian based companies. The IPL staged an auction process in January for the eight available city franchises. A whopping \$756 million was paid for the renewable ten year franchise rights. Then there are the players who had signed up to the IPL. They were also auctioned and the franchisees paid a further total of \$40 million for their services. Important in all of this, is the fact that the IPL is sanctioned by the Board for Control of Cricket in India (BCCI) and the International Cricket Council (ICC), which is the world governing body for cricket (Modi is the vice-president of the BCCI). If the IPL had not been so sanctioned, players may not have been so willing to sign up, as they could have been on the receiving end of sanctions from their national governing bodies and/or the ICC for competing in a tournament which was not sanctioned by the ICC.

The other model is the European promotion and relegation system where clubs and teams are operated by independent companies (or individuals) who can be relegated or promoted. An obvious example in professional sport is the FA Premier League (FAPL). The FAPL is owned by the clubs who compete in the Premier League in a given season. Soccer's governing body in the UK, the Football Association, owns a different class of share from the clubs, which allows it a right of veto in certain key areas. There are usually no caps on player wages or draft systems.

Both structures are usually headed up by a central body which exploits the central media, sponsorship and other commercial rights and then shares a proportion of those revenues amongst the clubs/franchisees. Clubs/franchisees then have their own commercial revenue streams. In the IPL structure, there are two streams of revenue – 'central' which includes the media, sponsorship and official suppliers rights for the league itself and 'local' which comprises of tickets sales, sponsorship (title, shirt etc), licensing, merchandising and match day promotions for the teams.

Sporting franchises are different from ordinary business franchises such as the coffee shops and fast food 'restaurants' we see in every town and city. The franchisee is not 'piggy backing' on the franchisor's established brand, expertise and business model, but are stand-alone businesses which develop their own brand identity and customer/supporter base. Sporting franchisees also stand to benefit from a share in the central revenues and this is not the case with franchise operations in ordinary commerce. Sporting franchises are often considered financially more stable as there is no threat of relegation. Some argue that the franchise system is also fairer and more competitive, due to salary caps and draft systems.



Airlines crash

The national airline of New Zealand, Air New Zealand, may review its sponsorship deal with the New Zealand Rugby Union (NZRU), after it emerged that rival Emirates may be named as the official airline of the 2011 Rugby World Cup (RWC), which is to be held in New Zealand. The official airline for the 2011 RWC will enter a contract with the International Rugby Board (IRB) to be the tournament's official airline.

The story highlights the need for well drafted sponsorship contracts which attempt to avoid this scenario and contain provisions that allow such a matter to be dealt with quickly and effectively. There is an argument that governing bodies and tournament organisers should have a programme or structure in place so this sort of conflict does not occur with their subsidiary teams and clubs. The commercial rights of governing bodies and teams become less valuable if they keep cutting across each other.

Viewing habits

A recent study, conducted by electronics giant LG has found that 84% of European women watch sporting events on television, but only 56% watch sport because they enjoy it. The survey involved interviews with 12,000 women in 12 countries. A quarter of women questioned admitted to watching sport because it pleased their partner, while 3% watched it to admire the competitors' physiques.

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