



Sport Update

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Sport and criminal law: Don't bite off more than you can chew

In Beauchamps Sport Update Issue 25 we dealt with potential civil liability for on-field incidents in sport. Does the criminal law have any role to play in relation to on-field acts? Criminal action is not pursued in the majority of cases as implied consent is given by every participant to the ordinary rough and tumble of a game involving contact. For the most part the courts are willing to allow sports bodies to govern in this area and are reluctant to intervene. However, a clear distinction should to be drawn between the implied consent to unintentionally inflicted injuries and off-the-ball violence with the latter more likely to result in a criminal court appearance.

For the first time in modern history, a GAA player was this month jailed for an on-pitch incident after he bit another player on both ears during a match. The Fethard GAA club hurler, Thomas Keane who had no previous convictions, was sentenced to twelve months imprisonment with the final nine months suspended, and ordered Keane to pay the victim €12,000 in compensation. Keane had already been suspended by the GAA for ninety six weeks. There has been much media comment on this case and arguably some over-reaction. It does set a precedent, but the incident in question was also particularly savage - the injured player required reconstructive surgery.

There have been a number of previous incidents where GAA players were given custodial sentences, but these sentences were overturned on appeal and replaced by fines, community service and/or suspended sentences. In 1999 a GAA player was convicted in relation to an off the ball incident which left the victim with brain damage. He was sentenced to 9 months in prison, but the sentence was suspended in October 2000 when the Circuit Court was informed that the victim had been compensated to the tune IR£46,000. The payment was made out of the GAA's disability and loss of earnings scheme with a contribution of IR£17,000 from the defendant. In 2004 Down footballer James McCartan was found guilty of assault after breaking the jaw of an opponent. McCartan avoided jail time on the payment of a substantial donation to charity. Judge William Early presiding in the case stated that "striking without legal justification is a crime whether it takes place on the street, in the family home or the football pitch or elsewhere".

All this said, there have been relatively few criminal cases in Ireland dealing with these matters and despite the gravity of injury which can be afflicted as a result of on-field violence, few cases ever reach the courts. The reasons for this vary. For example, the victims may choose not to report an incident as most injuries are of a relatively minor nature; the issues are more easily sorted out on the pitch; or the governing body can more adequately punish the perpetrator and the injured player sees that punishment as more effective. It is clear that the imposition of bans by governing bodies alone is not sufficient to placate the courts against custodial sentences. The injured player in this case also received compensation from the GAA's player injury scheme. What can governing bodies do to prevent something similar happening in their sport?

Before answering that question, a number of points need to be made. The location of the ball is crucial to the possibility of a criminal conviction. If there is any likelihood that the perpetrator was going for the ball, or in any reasonable way was attempting to make a legitimate tackle or play then a conviction is highly unlikely. Even where off-the-ball incidents occur, issues such as provocation come into play and mean that a conviction is usually far from clear-cut. Thirdly, do governing bodies really want to protect players who are guilty of such an act as occurred in this case? Late night fights occur on the streets and in nightclubs when huge volumes of drink have been consumed and people are considered less inhibited and more aggressive. Sport requires aggression but controlled aggression. Drinking doesn't excuse extreme violence so why should the fact that a particular act took place on the pitch give sport a get out of jail card? That said, it would clearly be ridiculous if every punch or on-field fight ended up in court, but this simply will not happen in Ireland. Accordingly, the question might better be phrased as what can governing bodies do to prevent unnecessary recourse to the criminal courts?

Firstly, proper disciplinary rules and procedures should be in place to sanction the offender appropriately. There should be a defined set of procedures for dealing with off-the-ball incidents. Proper insurance or injury schemes should be put in place by governing bodies to allow injured players to receive compensation (including payments for missing work as is provided for under the GAA scheme). Governing bodies may also wish to make players more aware that such acts of violence can end up in court. In short, there are some limited measures a governing body can take, but the law will intervene where it is required.



McSponsorship deals

The Australian Medical Association (AMA) has called for the Australian State Governments to ensure that major sporting events will no longer be sponsored by fast food companies. In the absence of legislation to prevent fast food companies sponsoring sporting events, the AMA proposes that bodies such as VicHealth in Victoria and Healthway in Western Australia which both bought out tobacco sponsorships a number of years ago should do the same in respect of fast food. The move follows KFC's sponsorship of the Australian Domestic Twenty20 Cricket Competition. Although Cricket Australia (CA) has defended the sponsorship, fast food is clearly at odds with the promotion of sport and healthy living. On a similar note Cadburys has finalised a deal to become a sponsor for London 2012. The STG£20 million deal will see Cadburys as a tier two sponsor, joining Deloitte which was the first tier two sponsor to be announced. The deal has provoked criticism from health and anti-obesity groups. Five years ago Cadburys was criticised for launching an initiative called GetActive which allowed consumers to win sports equipment in return for buying chocolate. In Ireland, tobacco sponsorship is prohibited in Ireland under the Public Health (Tobacco) Act 2002, as amended. The recently introduced Alcohol Marketing, Communications and Sponsorship Codes of Practice in sport has sought to limit alcohol brands' sponsorship of sports events but is not legally binding.

And perhaps for good reason, as new research by an Australian University on high-level kiwi athletes has established a direct link between alcohol companies' sponsorship of sport and high rates of alcohol consumption among athletes. The study found that half of the 1,279 athletes surveyed received sponsorship that included free or discounted drinks. And surprise surprise when the alcohol was free the drinking levels rose substantially. The author of the study said that alcohol sponsorship of sport also increased drinking among athletes outside professional sport.

And now a word from our sponsors

On a not too dissimilar vein to the last story, Nestle has agreed to become the tenth official sponsor of Wembley Stadium. It will be the exclusive provider of all confectionery, water, ice-cream and hot beverages until July 2010. It will also have exclusive rights in its category to promote its association with Wembley. Nestle also has a similar arrangement with the O2 arena.

Meanwhile, Budweiser has extended its sponsorship deal with Manchester United until the end of 2009/2010 season. It will be granted exclusive pouring rights and also digital on-field signage which will be displayed in both English and Mandarin, due to Manchester United's huge Chinese fan base. The company will also have the right to use Manchester United's marks and player images in advertising, point of sale materials and packaging in key markets. It will also continue to have hospitality packages and match tickets for promotional activities as part of the deal.

Pepsi has terminated its pouring rights agreement with cricket's Indian Premier League (IPL) after its first season, despite signing a five year deal worth \$10.4 million (see *Beauchamps Sport Update Issue 22 for more on the IPL*). In-stadia drinks sales generated less than predicted and Pepsi is thought to be disappointed with the lack of television exposure. Indian broadcaster Entertainment Television agreed a category-exclusive advertising deal with Pepsi's main rival Coca-Cola, which was also a sponsor of one of the IPL teams. The IPL will now opt to allow the eight franchise teams to sell individual pouring rights, as it was too difficult to manage on a national scale. This story shows the importance of avoiding 'category clutter' and ensuring that sponsorship rights such as pouring rights are sold at the right level.

Australian rugby league club the North Queensland Cowboys is offering sponsorship of its coaches. The package includes branding at home games, on the media backdrop for interviews and on coaching staff gear, corporate hospitality and networking events as well as other related opportunities. The sponsorship of coaches has become commonplace in Australian Rules football and Collingwood coach Mick Malthouse is said to have generated AUS\$1.2million in media value for McDonalds.

The economic downturn has thrown into question financial institutions' major sports sponsorship deals. Even with state guarantees and capital injections, banks and financial organisations will have to tighten their belts and cut their sponsorship expenditure. There has been some speculation over the continuation of RBS' sponsorship of the Six Nations Championship which is due to expire in 2009, after the UK government took 60% stake in RBS. RBS also sponsors three golf majors - the British Open, the US Open and the US PGA Championship and has ties with the Ryder Cup. Lloyds TSB is a tier one sponsor for the London 2012 Olympic Games and has since taken over HBOS, with the UK Government buying shares in both RBS and HBOS. The London 2012 chief executive has said that he does not expect to sign any more tier one sponsors, despite two packages remaining unsold – automotive and clothing and homeware. Each deal would have been expected to recoup STG£40 million and so London 2010 could fall short of its target.



Blades looking to smash the hammers

In September 2008 an independent tribunal decided West Ham United should compensate Sheffield United for the latter's relegation from the FA Premier League (FAPL) for West Ham's breach of the FAPL rules in bringing Carlos Tevez to the club (for more detail see Beauchamps Sports update issues 14, 15 and 16). Damages have not yet been set by the independent tribunal, but West Ham has been found liable to compensate Sheffield United for damages. Furthermore a number of current and former Sheffield United players are seeking legal advice on whether they can also bring a claim against West Ham for losses suffered by them when Sheffield United was relegated. West Ham has sought to appeal the matter to the Court of Arbitration for Sport (CAS), but it would be surprising if CAS were to hear the matter, as FAPL rule K5(c) provides that all parties are deemed to have irrevocably waived any right to appeal, review or recourse to a court of law. CAS only agrees to hear sports related disputes where both parties have agreed that the matter can be referred or where there is a contractual arrangement in place which states that CAS is the final appeal body in a dispute. A decision from CAS as to whether it has the jurisdiction to hear the case is expected shortly.

By way of background, West Ham breached the FAPL rules by playing Carlos Tevez, "the economic rights" to whom were held by a company owned by an Iranian businessman. Tevez scored a number of key goals and West Ham avoided relegation at the expense of Sheffield United. All FAPL clubs are members of the FAPL and therefore are subject of the FAPL rules. In circumstances where it is accepted that there has been a breach of those rules, a player must prove that he has suffered a loss and that the loss is attributable to the breach of those rules. In relation to the loss as between the clubs, the independent tribunal found that the playing services of Tevez were worth at least three points to West Ham during the season. Not winning these points would have meant that West Ham would have been relegated in place of Sheffield United. Arguably the leap from Sheffield United having suffered a loss as a result of the breach of the rules to deeming that the players have also suffered losses when their contracts typically require a reduction of wages if the clubs are relegated, seems small. However, it is also possible to argue that in a team game, the contribution of one player (particularly a goal scorer) can be overestimated. Who is to say that if Tevez had not played some other player would not have scored a similar amount of goals? It would be a worrying precedent for professional sport if the players were to succeed in any action as it could lead to wholesale claims in respect of any breach of rules by any teams or players. What if a player commits a foul and gives away a penalty which alters the result of the game? What if a club approaches the manager of another club in breach of the FAPL rules and that manager ultimately joins the new club, improves the fortune of the club and leads to his former club being relegated? In that light, we hope that public policy arguments will win and that the players will not be successful in any action against West Ham, as a successful action would jeopardise the integrity of sport as a whole.

Vancouver to ambush the ambushers

The organising committee for the 2010 Winter Olympic Games in Vancouver, VANOC, has bought up billboards based in the Vancouver area worth C\$40,000,000 in order to prevent ambush marketing by companies which are not officially sponsors of the Games. The plan is to make the advertising space available to legitimate Olympic sponsors at cost price. Every square inch of outdoor advertising space has been bought by the Olympic Committee, including ad space on buses.

A Canadian civil rights watchdog, BC Civil Liberties Association, has called for the Canadian Competition Bureau to investigate whether the move constitutes an anti-competitive practice. The watchdog argues that the strategy does not allow anyone else to get their point of view across.

Ambush advertisers are not the only challenge that VANOC faces as ticket touts also pose a potential threat to the smooth operation of the Games. In Beijing, touts were rounded up and either summarily deported if they were foreigners or sent for "re-education" if they were Chinese. Lacking the tools of a totalitarian state, VANOC has devised a strategy to avoid abuse by touts. Instead of putting tickets for the Winter Olympics up for sale on a "first come, first served" basis, VANOC has put the tickets up for sale on a "no need to rush" basis. A closing date for ticket orders was given and all orders have an equal chance of being filled as ticket allocation will be determined by way of a lottery. This is not the first time the organisers of major sporting events have adopted this strategy as it was effectively used in both the rugby and soccer world cups.



Secret doping procedures

The UK's Information Commissioner's Office (ICO) has upheld a decision by a testing laboratory at King's College in London not to reveal its standard operating procedures for testing on samples provided by athletes, as it was feared that such information could aid the creation of undetectable substances. The ICO accepted that "releasing details of the procedures would help chemists create performance-enhancing drugs that are undetectable under the existing testing procedures". King's College referred to the notorious BALCO steroid distribution ring in the US which resulted in a successful test being developed for THG after a sample was provided by a whistleblower. The ICO accepted King's College's argument that the reverse could also be possible.

In its decision the ICO did recognise the public interest in improving people's understanding of drug use in sport and accepted that greater transparency about methods used to test athletes would improve accountability and confidence in the testing process. However, it believes that the health of athletes would be endangered by such disclosure and greater knowledge of relevant procedures could make it easier to manufacture undetectable drugs. The ICO concurred with the laboratory's decision to refuse the release of such information under Section 38 of the UK Freedom of Information Act 2000.

Encourage your kids to be inactive

Amazingly, computer gaming is planning to launch a campaign to gain Olympic recognition and ultimately seek a place in future Olympic games. The chief executive of eSports Association, which is the UK's national electronic sports governing body has a long-term goal of getting eSports onto the Olympic schedule. So encourage your kids to stay inside, become obese and improve their dexterity with computer games and you could be the proud parents of an Olympic medal winner.

Fore!!!

US Professional Golfer John Henry Isenhour III (whose nickname is Tripp) has been charged with cruelty to animals and killing a migratory bird after he shot golf balls at a hawk who made noise while he was trying to make a television show. At first he tried to hit the bird from a distance of 300 yards and as you can imagine he had little success. He drove closer to the bird in his golf cart and started hitting balls at the bird from 75 yards. He managed to kill the hawk which is a protected migratory species with one of his shots. It is unknown whether Mr. Isenhour received a sentence and so we will avoid all birdie jokes!

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