



# Sport Update

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### Club held liable for player punch

A recent UK decision concerning an off-the-ball punch, if followed by the Irish Courts, could lead to sports clubs being exposed to much greater liability in relation to off-the-ball incidents. In *Andrew Gravil v Richard Carroll and Redruth Rugby Football Club*, [2008] EWCA Civ 689, the Court of Appeal held that Redruth Rugby Club was vicariously liable for an off-the-ball incident which resulted in a player requiring reconstructive surgery following a punch in his eye. Vicarious liability is where employers are held liable for the wrongful acts of their employees which are done during the course of employment. Whether the employer condoned the act or was negligent in not preventing it, is irrelevant as vicarious liability is strict liability tort. Therefore, once it is established that a tortious act has been committed by a player, the employer's conduct is irrelevant.

The Court was asked to decide the extent of the club's liability for the deliberate punch that its player, Richard Carroll, inflicted on an opposing player during the course of a National League Division Two rugby union match. The trial judge and the judge who heard the first appeal held only Carroll liable, as they viewed his punch as independent of the club and as a private act of retaliation. Carroll was employed full time elsewhere and played for the club on a part-time/semi-professional basis. The Court held that regardless of the fact that he was primarily playing rugby for the love of the game, he was also playing pursuant to a contract of employment. His contract was set out in a letter listing his obligations as a player both on and off the field and this letter was sent to him by the club and counter-signed by him.

A "close connection test" was applied by the Court of Appeal, where it asked whether the wrongful act was so closely connected with what was authorised or expected of the employee that it would be fair and just to hold the employer liable. The Court rejected the lower Court's finding that the punch was an act of private retaliation, but rather held that it was "in a real sense part of the game". It followed that there was a close connection between the punch and Carroll's employment. The Court referred to the judgment of McCrachlin J in the Canadian case of *Bazley v Curry*, (1999) 174 DLR (4th) (a case which dealt with sexual abuse of children) where it was said that "vicarious liability is generally appropriate where there is a significant connection between the creation or enhancement of a risk and the wrongs that accrue therefrom, even if unrelated to the employer's desires." It was also noted in the judgment that clubs are in a better position than individuals to obtain insurance against liability of this kind.

On the question of liability in situations where players do not have employment contracts with their clubs, the Court stated that it was not until clubs employ their players that the question of vicarious liability arises. It is likely that a player could be found to be in employment despite the absence of a written contract. The Court did not take any cognisance of the fact that the club was a not-for-profit entity or that written contracts of employment were entered into by the club largely to stop other clubs poaching its players or that his match fee was only Stg£250.

Many questions arise, such as how far removed in time and place from the match will the Courts hold clubs vicariously liable? What about incidents after the final whistle or in the club bar afterwards? When does an employment situation arise and how would the Courts view situations where a club pays only a nominal fee to a player, or situations where players receive expenses or government grants? What is clear is that clubs must ensure they are properly insured to cover both on and off-the-ball incidents and incidents which happen off the field of play. Governing bodies should also ensure their rules are enforced so as to minimise the occurrence of off-the-ball incidents.



## Oktoberfest for the German alcohol industry

The German sports and alcohol industries have been breathing a sigh of relief lately with the news that proposed alcohol advertising and sponsorship ban will not be implemented by the German Government. The German Council for Alcohol and Addiction had been seeking to prevent sports teams from signing sponsorship deals with alcoholic drinks manufacturers in the future, but after talks between leading sports groups and the German substance abuse commissioner, Sabine Bätzing the ban will not go ahead. A plan involving 'education and prevention' was agreed on by Bätzing in a meeting with the German soccer governing body, the DFL, the country's professional soccer league and the German Olympic Sports Federation. Bätzing however is keen to ensure that beer brands are not visible on children's replica kits or in youth soccer.

## I ain't gonna Stanford it baby

Texas billionaire Allen Stanford has organised the world's richest cricket series between England and a Caribbean selection team called the Stanford Superstars, but a commercial dispute over sponsorship rights has threatened the series. Digicel (of Denis O'Brien fame) sponsors the West Indies Cricket Board (WICB) and claim that its five year deal with the WICB covers one of the matches which is due to be held in Antigua. The organisers of the series insist that the Stanford Superstars are not an official team and that the Digicel agreement with the WICB does not apply, which would allow the organisers to sell the sponsorship rights for the stand alone event. A High Court hearing in London is due to take place in October.

This case illustrates a number of overlapping aspects which are important for event organisers including governing body recognition, participation agreements and sponsorship agreements. In order for a new event to get off the ground, it can be key to have governing body approval, failing which it may be difficult for the organisers to get the clubs/countries to release their players for the event. The England and Wales Cricket Board and WICB entered agreements with Allen Stanford and the interplay between those participation agreements and the Digicel sponsorship agreement with the WICB shows how important it is for governing bodies and event organisers to think through their package of rights, to have a clear overall picture of all the commercial issues and to ensure their agreements are drafted to avoid these conflicts.

## We're voting for roller sports!

Seven sports have been shortlisted for possible inclusion in the 2016 Olympic Games: baseball, softball, karate, roller sports, golf, squash and rugby sevens. The International Olympic Committee (IOC) has issued rules of conduct for the international sports federations of any sports seeking to be added to the Olympic Games. The rules are similar to those which govern cities bidding to stage the Olympic Games, and seek to eliminate direct approaches by the international federations to individual members of the IOC. There is a list of criteria by which the Olympic sports and disciplines or those wanting to join the games are judged, under the following eight headings: history and tradition; universality (no wonder beach volleyball is an Olympic sport!); popularity of the sport; image; athlete's health (anti-doping policies); development of the international federation; costs; and general (anything not covered under the other headings).

In the context of rugby sevens, the main obstacle in the inclusion of rugby sevens in the Olympics is its perceived lack of universality. Reports indicate that 97% of the 33 million people who watched the last Rugby World Cup on television came from just eight countries: England, Scotland, Wales, Ireland, France, Australia, New Zealand and South Africa. While that may be the case, rugby is attracting growing support in Asia, Africa and Spanish speaking countries. Need we cite the example of beach volleyball again?!



## Taking it away from the touts

Ticket touting is a problem for governing bodies, but a new perspective seems to be emerging on the other side of the pond. The National Football League (NFL) in the US has launched a secondary ticket partnership with Ticketmaster. This follows on from a similar partnership announced by Major League Baseball in 2007. Through the ticket exchange, fans can sell or buy tickets to all games. There is no limit on ticket prices and this represents a move away from the traditional anti-touting (or scalping) approaches adopted by most sports governing bodies. This means that the NFL and Ticketmaster will get a slice of the 'secondary market' for tickets. The NFL is of the view that the so-called anti-touting laws are not that effective and there are obvious problems with enforcement. One US study in 2006 found that average ticket prices were higher in states with anti-touting laws than in those without such laws.

The economic argument also seems to have been taken on board. The new ticket exchanges provide a way for supporters to sell unwanted tickets and this can create a market where tickets are sold for prices lower than face value depending on demand. Arguably, it also protects against the sale of counterfeit tickets. The 'secondary market' is said to only represent 5-10% of the market for tickets for NFL games and this new policy still requires the governing body to keep tight control over the distribution of tickets (and to have other rules and systems in place) so as to ensure that genuine fans do receive tickets and that the corporate customers of sports events (or others who can afford to pay) are the ones who pay a premium for the tickets on the 'secondary market'. It remains to be seen whether this approach prevails in Europe.

## The foreigners aren't the ones who need English language tests

The US Ladies Professional Golfers Association (LPGA) was all set to implement a new requirement that all its members be able to communicate effectively in English. All players who have been on the tour for two years or more would be suspended if they failed to pass an oral evaluation of their English proficiency. The aim was to make LPGA players more approachable for sponsors and the media. However, State Farm, an insurance company which sponsors the LPGA tour has said that it would have to review its sponsorship if the policy was implemented. Ultimately the LPGA reversed its decision and now a punishment free program will be used. Presumably the oral exam could cause a few difficulties for some of the American players.

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