# 1

# The Nature of Sports Law

## An Introduction to the Subject

**1.1** In the first edition of this book, published in 1999, we argued that the time had come to recognise 'sports law' as a valid description of a system of law governing the practice of sports. Over a decade later, in a new century and millennium, the law relating to sport is no longer in its infancy and is starting to come of age. Though not yet fully developed, it is now sufficiently developed for the term 'sports law' to command acceptance by the majority of legal practitioners in the field, and of sports governing bodies and administrators.

**1.2** In the 1990s, the existence of sports law as a distinct field of legal practice was not yet universally accepted among lawyers. Nor was the term then in common use among practitioners or administrators of sport. But its existence was then already recognised by the availability of pioneering sports law degrees at Manchester Metropolitan University and the Anglia Polytechnic University; the postgraduate Certificate in Sports Law at King's College London; and by the already active British Association for Sport and Law, bringing together lawyers, academics and sports administrators.[1]

**1.3** The British Association continues to publish (in association with De Montfort University in Leicester) the *Sport and the Law Journal*, and lists of experts in sports law appear in lawyers' directories such as *Chambers and Partners Directory* and *the Legal 500*. In the first edition of this book we noted that there was then already in existence the National Sports Law Institute at the Marquette University in Milwaukee, as well as its counterparts this side of the Atlantic. The last decade or so has seen such a proliferation of organisations involved in sport and the law that the website of the British Association for Sport and Law lists 19 other 'International Sports Law Bodies' across four continents.[2]

**1.4** As the title of this book implies, we continue to maintain that the subject merits recognition as a discrete field of law, and that in consequence it is legitimate to use the term 'sports law'. This is a less controversial thesis now than it was at the end of the twentieth

[1] The senior author of this book is the current President of the British Association for Sport and Law.

[2] They include the Sports Law Unit at the European Commission, Brussels; the Asser International Sports Law Centre, The Hague; the Centre International d'Etude du Sport, Neuchâtel; the Instituto Brasileiro de Direito Desportivo (Brazilian Sports Law Association), São Paulo; and the ANZSLA (Australia & New Zealand Sports Law Association), Melbourne.

century when we first advanced it.[3] Indeed in August 1999 (just too late for inclusion in the first edition of this book), the Court of Arbitration for Sport (CAS) stated:

> Sports Law has developed and consolidated along the years, particularly through the arbitral resolution of disputes, a set of unwritten legal principles—a sort of *lex mercatoria* for sports, or, so to speak, a *lex ludica*—to which national and international sport federations must conform, regardless of the presence of such principles within their own statutes and regulations or within any applicable national law, provided they do not conflict with any national 'public policy' (*ordre publique*) provision applicable to a given case.[4]

The *lex ludica* includes, according to the same CAS panel, 'the prohibition of arbitrary or unreasonable rules and measures'.[5] However, sports law, whether emanating from CAS or other sports tribunals, cannot of course override national or indeed international law. The International Olympic Committee sought unavailingly to persuade the Italian government to suspend its domestic law which provided for custodial penalties for use of prohibited substances by a competitor whereas the World Anti-Doping Code provided only for sporting sanctions.[6]

**1.5** It is useful to remind ourselves and our readers of the grounds for asserting the existence of sports law.[7] To make good the thesis that sports law exists, it is insufficient merely to show that there is a phenomenon, sport, which exists in our society, and that legal rules impact on its practice. The law intrudes into many aspects of public and private life: yet not every human activity has a body of legal rules to go with it. Some do and some do not. We travel by ship and by air, and we have shipping law and aviation law. We also do cooking and gardening, and there are laws which apply to both activities but one could not usefully speak of culinary law or horticultural law. To justify recognition of sports law, something more must be shown than the existence of laws which affect sport. Some insight into the question how a distinct field of law is identified can be gained by observing a distinction between branches of the law defined by reference to a particular human activity, for example, aviation law; and those which are identified by reference to the nature of legal rules themselves, for example the law of tort and the law of trusts.

**1.6** Both of the latter branches of the law describe categories of rules embodying rights and obligations which apply irrespective of the subject matter of a particular case in

[3] A full bibliography appears at the end of this book. The most comprehensive treatment of the subject in England is now the 2nd edition of Lewis and Taylor's *Sport: Law and Practice* (Tottel Publishing, 2008). For a historic compendium of sports laws of various nations in three volumes, see Wise and Meyer, *International Sports Law and Business* (Kluwer, 1998). Early works on sport and the law from which we drew inspiration were: Gardiner, Felix, O'Leary, James and Welch, *Sports Law* (Cavendish, 1997); Grayson, *Sport and the Law*, now in its 3rd edn (Butterworths, 2000); Griffith-Jones with Barr-Smith (consulting editor), *Law and the Business of Sport* (Butterworths, 1997); and Moore, *Sports Law and Litigation* (CLT Professional Publishing, 1997 and 2nd edn 2000); in the USA, Weiler and Roberts, *Sports and the Law*, 2nd edn (Gale Cengage, 1998; now in its 3rd edn, 2004). The major journals are Sport and the Law Journal, published by the British Association for Sport and Law (SLJ); and the International Sports Law Review (Sweet & Maxwell) (ISLR), incorporating the Sports Law Reports (SLR).

[4] *AEK Athens and Slavia Prague FC v UEFA*, CAS 98/200, para 156.

[5] Ibid, para 157. The case concerned a challenge to a rule prohibiting multi-ownership of clubs in the same competition. The challenge ultimately failed on the facts but its introduction was delayed by one season by interim order of the CAS because of procedural unfairness.

[6] See *Hoch v FISI*, CAS 2008/A/1513.

[7] See Beloff, *Is there a Lex Sportiva?* [2005] 3 ISLR 49; Nafziger, *Lex Sportiva and CAS* [2004] International Sports Law Journal (ISLJ), p 3; Beloff, *The Specificity of Sport. Rhetoric or Reality?* [2012] 3 ISLR.

which they are relevant. They could therefore be termed, so to speak, horizontal law; whereas the former categories of law defined by reference to a human activity could be termed vertical law. If, as we maintain, sports law exists, it exists principally as a vertically defined, or activity-led branch of the law which must take its content from rule-led branches of the law: tort, contract, restitution, crime and so on.

**1.7** The claim of sport to have a system of law of its own arises from its importance in ancient and modern social life. Sport is one of society's most important leisure activities. It is a primary and atavistic form of self-expression. Bill Shankly, the legendary manager of Liverpool Football Club, once said memorably that football is not just a matter of life and death; it is more important than that. (He also said somewhat unkindly on another occasion that there were two teams in Liverpool: Liverpool and Liverpool reserves.)

**1.8** Examples of the potency of sport as a force in civil society are legion. In South Africa the effort to end apartheid was driven forward, with considerable success, by the sporting boycott. Rights of full citizenship for all aroused high passions in South Africa, but so did rugby, cricket, athletics and soccer, for access to which white South Africans were prepared to pay a high political price.[8] And when Georgia became an independent state after the dissolution of the Soviet Union, one of the first acts of its inaugural government was to apply to join FIFA, the world governing body of association football. To the Georgian people, this was probably as much a badge of sovereign independence as formal recognition by other states, membership of the United Nations and other conventional indicia of statehood.

**1.9** Sport's importance in society also lies in its benign influence. The continuation of rivalry between Croatia and Serbia in the sporting arena after the fighting ended (and in football the superior achievement of Croatia, including finishing third in her World Cup debut in 1998) shows how beneficial is the substitution of goals for guns. Sport's detractors, who cannot understand why a ball entering a net merits our attention, should remember that people's attention may be more harmfully directed to alternative pursuits. Chariot races are better than riots and war and boxing preferable to gladiators in combat.[9] For that reason if no other, justice in sport is a serious matter.

**1.10** It cannot, then, seriously be disputed that sport is a vitally important and mainly benign social force. The thesis that sport influences politics (and association football more than any other sport) has been convincingly demonstrated[10] and is widely accepted. Sporting celebrities are respected and may turn this to political advantage, as in the cases of Imran Khan in Pakistan and Roger Milla in Cameroon.

**1.11** The central place of sport in civil society makes it important to ensure that it is properly regulated and justly administered. Legal norms have been developed to make

[8] In a case which never came to trial, the South African Athletics Federation argued that it had been invalidly expelled from the International Amateur Athletics Federation, alleging failure to follow the correct procedures and invocation of inappropriate grounds; see Beloff, *Pitch, Pool, Rink … Court? Judicial Review in the Sporting World* [1989] Public Law 95, 98 fn 14.

[9] Even global terrorists take time away from their grim work to watch and play football: see MSN News, 'Osama bin Laden and his years as an Arsenal fan', available (at the time of writing) at http://news.uk.msn.com/world/news-articles.aspx?cp-documentid=157274240. The late and unlamented Al-Qaeda supremo was reportedly a regular attender at Highbury in 2001, and bought his eldest son a replica shirt bearing the name 'Ian Wright'.

[10] In particular by the journalist Simon Kuper in his book *Football against the Enemy* (Orion Books, 1994).

this happen. Yet, as already conceded, to show that a system of law governing sport exists, it is not enough to show that sport is influential and that laws affect it. One must go further and propound a definition of sports law, however qualified and approximate such a definition may be. To define sports law one must delineate its scope, however indistinct its outline.

**1.12** Lawyers who may be sceptical of the utility of the term 'sports law' as a term of art, may argue that it amounts to no more than a series of examples of cases in which the parties happen to be concerned in sport. Thus a sporting dispute may in truth be one arising in the law of tort, contract or other 'true' fields of law. The traditionally minded, purist lawyer may indeed distrust any activity-led, 'vertical' field of law, preferring the surer, traditional ground of rule-led 'horizontal' law. We have sympathy with that position, and ourselves firmly reject the primacy of 'vertical' legal classifications over 'horizontal' ones. It is true that, traditionally, the bodies which regulate sporting activity have been treated by English lawyers as a species of domestic tribunal, governed by the same principles as apply to clubs (if unincorporated) or private companies (if incorporated). Likewise, sporting activity has, according to the traditions of English law, been treated as a private activity subject to the rules of private law.

**1.13** We do not, however, agree with the view still held by some lawyers active in sports related work that 'there is no such thing as sports law'.[11] The answer to the argument that sports law is merely law in which the parties happen to be involved in sport, is that the law is now beginning to treat sporting activity, sporting bodies and the resolution of disputes in sport differently from other activities or bodies. Discrete doctrines are taking shape in the sporting field which are not found elsewhere, not even necessarily in the case of non-sporting domestic tribunals. There are now clear signs that the courts are beginning to treat decisions of sporting bodies as subject to particular principles better known in the field of public than private law, but most accurately described as principles which are *sui generis*.[12]

[11] Charles Woodhouse, an eminent sports lawyer, quoted in Gardiner, *Birth of a Legal Area: Sport and the Law or Sports Law?* (1997) 5(2) SLJ 10, at 12. Gardiner also quotes the views of Professor Grayson, author of *Sport and the Law* (n 3) ('No subject exists which jurisprudentially can be called sports law … it has no juridical foundation'); of John Barnes, author of *Sports and the Law in Canada* (3rd edn, Butterworths, 1996) ('Sports law deals with state interests and the resolution of conflicts according to general legal norms'); and of Hayden Opie, author of *Sports Associations and their Legal Environment* ('"Sports law" is … applied law as opposed to pure or theoretical law; … [it] is concerned with how law in general interacts with the activity known as sport') (in McGregor-Lowndes, Fletcher and Sievers (eds), *Legal Issues for Non-Profit Associations* (Law Book Co, 1996)). Gardiner concludes that a legal theory of sports law is now needed, and suggests that either 'the law is providing a functional role in the context of the modern commercial complexity of sport … This fits in with a functionalist perspective on sport and society'; or that 'the law is a form of regulatory power, a form of control. This fits in with a critical perspective on sport and society.' Alan Sullivan QC, a distinguished CAS arbitrator, believes that while 'it is common nowadays to talk of a body of law called "Sports Law", strictly, there is no unique body of law which can be so labelled. Rather, participation in sport is regulated by the same laws as all other human activities and endeavours': Sullivan, *The Role of Contract in Sports Law* (2010) 5(1) Australia and New Zealand Sports Law Journal 3. Cf the intermediate view of Lewis and Taylor (n 3) at A3.5; and Szyszczak, *Is Sport Special?* in Bogusz, Cygan and Szyszczak (eds), *The Regulation of Sport in the European Union* (Edward Elgar, 2007) ch 1, 3–32. For a recent reconsideration of the issue see Boyes, *Sports Law: Its History and Growth and the Development of Key Sources* (2012) 12(2) LIM 86 ('... the sports law literature has matured astonishingly quickly given its relative youth').

[12] See, eg, *McInnes v Onslow-Fane* [1978] 1 WLR 1520, per Megarry J at 1535F–H; *Cowley v Heatley*, *The Times*, 24 July 1986, per Sir Nicholas Browne-Wilkinson V-C; *Gasser v Stinson*, transcript, 15 June 1988, per Scott J at pp 37–40; and *Stevenage Borough FC Ltd v The Football League Ltd*, transcript, 23 July 1996, per Carnwath J at pp 35–40.

**1.14** The cornerstone of what could be called the founding principles of sports law is the definition of the respective territories of the courts and the bodies which govern sport. The courts in England and elsewhere have firmly established a region of autonomy for decision making bodies in sport, a region within which—unless the reasons for doing so are compelling—the courts decline to intervene. Equally firmly they have charted the outer limits of that region and insisted that those limits be observed by the decision makers in sport, on pain of judicial intervention. We regard that relationship of constitutional equilibrium between courts of law and sports decision makers as the foundation of a developing law of sport.

**1.15** Few lawyers would now subscribe to the traditionalist notion that the law relating to sport can be regarded simply as part of ordinary private law, that is to say, as part of the corpus of law governing private transactions between citizens in which the state's only interest is to provide courts as a forum of last resort to enable disputes to be resolved. The public's limitless enthusiasm for sport and its importance to our cultural heritage make sports law more than mere private law. As long ago as 1997, that view received direct support from no less a figure than Lord Woolf MR in *Modahl v British Athletic Federation Ltd*.[13] Ms Modahl claimed damages for breach of contract after an appeal body reversed a disciplinary panel's decision that she had committed a doping offence. Her claim was held to be arguable, though ultimately it failed. On appeal against the Federation's partially successful strike out application, counsel for Ms Modahl invited the court to treat the relation between her and the Federation as one of simple contract, to reject the Federation's 'administrative law approach', and to draw a sharp distinction between an action for breach of contract and proceedings for judicial review, treating Ms Modahl's claim for damages as falling into the former not the latter category. Lord Woolf MR's response was that counsel was:

> wrong in suggesting that the approach of the courts in public law on applications for judicial review have no relevance in domestic disciplinary proceedings of this sort … the complaint in both cases would be based on an allegation of unfairness … I can see no reason why there should be any difference as to what constitutes unfairness or why the standard of unfairness required by an implied term should differ from that required of the same tribunal under public law.[14]

Lord Woolf's approach has since found expression in twenty-first century case law in which the High Court in England has directly and consciously applied principles akin to judicial review to the decisions of sports bodies in private law actions.[15]

**1.16** There is another feature of sports law which makes it unique. Most fields of law, defined by reference to the specific human activity or subject, are firmly grounded in legislative intervention by governments. Obvious examples are health, education, social security, consumer credit, compulsory purchase, and so forth. They exist as discrete fields of law in England because the legislature has consciously decided to create them by

[13] Transcript, 28 July 1997, CA; appealed on a narrower point: HL, transcript, 22 July 1999.

[14] Ibid (HL), 20F–21C.

[15] *Bradley v Jockey Club* [2005] EWCA Civ 1056; *Flaherty v National Greyhound Racing Club Ltd* [2005] EWCA Civ 1117; *R (Mullins) v Jockey Club Appeal Board (No 1)* [2005] EWHC 2197; *Mullins v McFarlane* [2006] EWHC 986 (QB); *Fallon v Horseracing Regulatory Authority* [2006] EWHC 2030 (QB); *McKeown v British Horseracing Authority* [2010] ISLR, SLR 87–151; cf *Chambers v British Olympic Association* [2008] EWHC 2028 (QB) (injunction refused where rule not in unreasonable restraint of trade). See also Beloff, editorial [2006] ISLR 1.

legislative intervention in society. These are the fields of law best suited to the modern form of loose leaf encyclopaedia, well known to English lawyers, based on the core governing statutes and regulations, regularly updated, and commented on in textual annotations. Such books are immensely useful to the specialist practitioner but, without any disrespect to the eminent lawyers involved in their compilation, they are sometimes necessarily light on discussions of principle.

**1.17** Sports law, however, differs markedly from such other activity defined or vertical fields of law, in that it is developing under its own impetus, without any legislative underpinning to speak of—at any rate in the United Kingdom.[16] Legislation is, after all, still mainly a national phenomenon, even in the era of the European Union, the European Convention on Human Rights and many other international legal instruments. Sports law, by contrast with other fields of law, is developing under its own steam. A powerful mixture of international competition, commercial interest and public demand is fuelling the development of legal doctrines particular to sport in a manner which marks sports law as inherently international in character. Its normative underpinning derives not from any treaty entered into between sovereign states, but from international agreements between bodies, many of which are constitutionally independent of their national governments—particularly the Olympic Charter and the rules of the various international governing bodies in sport. Thus sports law is not just international; it is non-governmental as well, and this differentiates it from other forms of law.

**1.18** We subscribe to the view that:

> international sports law provides a dynamic, although still incomplete process to avoid, manage and resolve disputes among athletes, national sports bodies, international sports organisations and governments.[17]

Such observations serve to confirm the obvious point that sports law is not a hermetically sealed, self-contained body of law. It crosses boundaries. It demands of its students and practitioners familiarity with traditional areas of horizontal law. What do they know of sports law, who only sports law know? To be a good sports lawyer one must also be a good non-sports lawyer (though, mercifully, not a good lawyer sportsman or woman[18]). But sports law now merits treatment as a branch of law in its own right.

**1.19** With that preamble, we offer the following definition of sports law: it is a body of rules governing the practice of sport and the resolution of disputes in sport. That body of rules straddles the boundaries between many well-known branches of our law, but has

[16] Contrast, for example, Malaysia, which is in a small minority of countries where sport is heavily regulated by statute. See also Lewis and Taylor (n 3) A1.7–10 ('The interventionist model of regulation of the sports sector').

[17] Polvino, *Arbitration as Preventative Medicine for Olympic Ailments: The Olympic Committee Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes* [1994] 8 Emory International Law Review 349–52, cited in Nafziger, *International Sports Law as a Process for Resolving Disputes* (1996) 45 International and Comparative Law Quarterly 130 at 131. Dean Kino of Magdalen College, Oxford submitted a doctoral thesis in 1999 on *The Incursion of the Law into the Rules of Governing Sports Bodies: A Commonwealth and EC Comparison*. See Weatherill, *Do Sporting Associations Make 'Law' or are they Merely Subject to It?* [1998] European Business Law Review, July/August, 217.

[18] Examples of lawyer-sportsmen include Lord Alverston CJ (judge), an athletics blue; Harold Abrahams (barrister), Olympic Gold medallist at 100 metres, Douglas Lowe (barrister), double Olympic gold medallist at 800 metres; Johnny Searle (solicitor), Olympic gold medallist oarsman; Brian Moore, litigation solicitor and British Lion; and Iain Higgins, London Broncos rugby league professional turned lawyer, now at the International Cricket Council.

at its centre an unusual form of international constitutional principle prescribing the limited autonomy of non-governmental decision making bodies in sport.

## The Aim of this Book

**1.20** When we devised the structure for the first edition of this book, we decided that the best way to give shape and cohesion to a then much looser body of rules was to describe the law relating to, first, the pre-competition stage; second, the competition itself; and third, its aftermath of disputes and disciplinary measures, and legal systems to resolve them. We believe that chronological way of looking at the subject remains useful and has stood the test of time, and have decided to retain it in this updated second edition.

**1.21** The first, pre-competition stage requires an explanation of the institutions that govern sport, their relations with each other and with participants in sport (from clubs to competitors to coaches to referees) and the means by which they are able to organise sport according to rules intended to protect its integrity and value; and the rules according to which selection for participation in sports competitions is determined. The most fundamental requirement of all is the principle of uncertainty of results. If the outcome of a competition is pre-ordained through cheating or unfairly tilted through doping, the game is changed from a noble contest to a degrading and pointless ritual.

**1.22** The second stage is to give an account of the law governing the sporting competition itself. This does not of course refer to the actual 'laws of the game'. These are virtually non-justiciable as explained later; the maxim drummed into schoolchildren that 'the referee is always right even when he is wrong' is part of international sports law. At the second stage, we explain the principles of criminal and tort law which delineate the responsibilities of clubs, players, coaches, referees and spectators to each other during the game itself, and immediately before and after the game. We also look at the law governing the commercial exploitation of sport, which includes the laws that apply in the marketplace for the provision to the public of live and broadcast sport.

**1.23** At the third stage we describe the principles governing the imposition of punitive measures against participants in sport alleged to have violated the cardinal principle of fair play, whether by doping, match fixing, use of force beyond what is acceptable in contact sports, or failure to follow the regulatory requirements of the competition intended to ensure fairness between participants. We then turn finally to the legal systems and structures for resolving disputes regarding those matters, at domestic and international level, which have become sophisticated and experienced, and are widely respected despite today being presided over by lawyers more often than used to be the case. The main engine of international dispute resolution in sport, the CAS, has contributed greatly to the evolution of an international legal order in sport. What used to be done by amateurs is now done by professionals.

**1.24** In devising the structure of this book, we have rejected conventional horizontal legal classifications, which would divide the subject by considering traditional fields of law (tort, contract, etc) and explaining their application to sport. This is because sports law straddles so many of them. Nor would it meet our objective to present the material by reference to specific sports (rugby, boxing, etc) since our law generally does not treat

as *ipso facto* relevant which sport is being practised; legal principles applied to tennis normally also apply to squash. To deal with different sports individually would take the concept of vertically defined law to an absurd extreme.[19]

**1.25** Our original legal background in commercial law, constitutional and administrative law, competition law, European Union law, tort and employment law, is as good a grounding as any for a sports law practice. In this book, we attempt to identify where the interface occurs in sports law between those fields, and others such as personal injury in which we are for the main part considerably less well versed.

**1.26** To the non-lawyer involved in sport as a player, coach or administrator, it may be unnecessary to think of sports law as anything more than simply the law which he or she encounters at work within the sports industries—irrespective of what label a lawyer would use to describe that law. This book is intended to assist in answering the questions that may confront practitioners of sport and administrators in the course of their work, and we hope it will be useful to non-lawyers as well as to lawyers. Our hope is fortified by the fact that administrators in sport are, not infrequently, qualified lawyers; and indeed a few lawyers are even notable sportsmen themselves. Some members of the CAS panel of arbitrators are Olympians and domestic sports tribunals often feature respected ex-players sitting alongside the lawyer chairman.

**1.27** However, we do not intend this book to serve as a reference manual for the sports administrator. Rather, it constitutes our attempt to provide something like a theoretical foundation for sports law. A *lex specialis* is taking shape from a line of decisions, especially of the CAS, some of which we mention in this book. Publication of reports of those cases is now frequent, aided by access to the internet and hampered only by obligations of confidentiality owed to and by participants in the relevant proceedings.

**1.28** A hallmark of a developed system of law is that its content can be easily ascertained by lawyers and by the public. This is now close to being achieved. Publications have proliferated in the past 10 years. We refer to some of them in the footnotes of the pages which follow. As for our own professional experience, we have had to restrict ourselves as to the degree of detail that we can condescend to in some cases, because of confidentiality obligations which we owe to our clients and to arbitral tribunals under their rules. Since the first edition of this book was published in 1999, domestic and international sports related case law has burgeoned to the point where it is no longer practicable or useful to cite every case. Sports law has evolved to the extent that there are now more cases that apply settled principles than cases which establish new ones.

**1.29** We have already stated that in our view, sports law is by nature international in character. Terms such as 'English sports law' or national sports law are of only limited utility and usually best avoided, since an account of the law relating to sport confined

[19] We have assumed throughout that sport is itself a recognisable concept, although lacking precise definition in English law. The law used to be that a trust for the mere promotion of a particular sport was not charitable as being for the promotion of education (*Re Nottage* [1895] 2 Ch 649); whereas a trust to provide sports facilities for students will be: *IRC v McMullen* [1981] AC 1. See also *R v Oxfordshire CC, ex parte Sunningwell Parish Council* [1999] 3 All ER 385, 396–7. Under the Charities Act 2006, the advancement of amateur sport became a charitable purpose in its own right, if it is 'for the public benefit' (s 2(1) and 2(2)(g)). As for the 'public benefit' test in s 3 (as applied to independent schools), see *Independent Schools Council v Charity Commission for England and Wales* [2011] UKUT 421 (TCC). See also the useful account in Lewis and Taylor (n 3) F1.66–83.

to one legal system, such as that of English statute and case law, would necessarily be fragmentary, incomplete and inadequate. One should think of sports law as a body of law which transcends international boundaries, like European Union law and public international law. The Olympic Charter as a *fons et origo* of international jurisdiction is a phenomenon unique to sports law. But every lawyer is conditioned by the jurisdiction in which he or she primarily practises. As English lawyers, albeit ones with a European Union law dimension and international dimension to our work, our account of the subject is necessarily Anglocentric. Accordingly, where we refer below to domestic law, we are referring to the domestic law of England and Wales except where we state otherwise.

**1.30** We recognise that our conception of sports law as a coherent body of rules is quite narrow and that this reflects our legal background as advisers, litigators and arbitrators in contentious disputes. We believe the subject tends to lose its cohesion and become amorphous if too broadly viewed. This book is therefore not intended to deal, except in passing, with non-contentious aspects of sports law, such as the practical considerations involved in negotiating a sponsorship or broadcasting contract, or a contract with a player. Specialist lawyers offer expertise in contract negotiation, the requirements for staging a sporting event, how to submit a tender for a contract to construct a stadium, and the like. These subjects are outside the scope of this book and our expertise.[20]

**1.31** There are other topics we have chosen not to include in this book, partly because they are not central to our expertise and experience, and partly because they seem to us to occupy territory at or near the edges, or even beyond the outer limits of, the subject. They include taxation of sporting activity;[21] planning and property law relating to sports premises including stadia; and sport in the law of education. Nor do we attempt to give an account of the political, administrative and commercial structures that govern sport in this country and internationally. Many have changed rapidly over the last decade and some may already be familiar to our readers. In any case their nature is not a matter of law, but of commerce and politics.

**1.32** We also pay tribute to earlier pioneers in the field, in particular the late Professor Edward Grayson, the 'onlie begetter' of the subject, David Griffith-Jones QC (now His Honour Judge Griffith-Jones QC), and Adrian Barr-Smith.[22] We have directed the reader at various junctures to their work and to that of more recent entrants to the field where we believe it would be advantageous to pursue a particular topic further. Our approach to the subject is different from that of other authors. There are now many players in this particular field but we hope our book still serves the purpose for which the first edition was written: to give a coherent account of sports law which builds on its theoretical foundations, insofar as they are yet in place.

[20] A much broader, indeed comprehensive treatment of the relationship between law and sport is provided in Lewis and Taylor's excellent *Sport: Law and Practice* (n 3), to which no fewer than 41 authors (including one of the present authors) from many different legal and sporting backgrounds contributed. See also Jack Anderson's helpful account of how the law influences the operation, administration and playing of modern sports in *Modern Sports Law: A Textbook* (Hart Publishing, 2010).

[21] For an account of tax laws applicable to sports activities of individuals and organisations see Lewis and Taylor (n 3) chs D8 and F3 respectively.

[22] The author and consulting editor of Griffith-Jones and Barr-Smith's *Law and the Business of Sport* (n 3).

**1.33** Our approach is to marry theory with practice. We believe the best way of moving towards a coherent account of sports law as a discrete body of rules is to proceed inductively, deriving principle from practical professional experience. As busy practising barristers, we lack the leisure to view the subject through the medium of profound academic scholarship and thorough research. We must leave that to others, and indeed academic research is increasing with useful contributions from academics at institutions such as De Montfort and Salford Universities in this country, Marquette University in Milwaukee, and the Asser International Sports Law Centre in The Hague.

**1.34** Any book on sports law carries with it the danger that it will contain little more than information. We have tried to avoid that, even at the risk of not providing enough information. As a field which has yet to be subjected to thorough treatment from a theoretical perspective, sports law lends itself well, in our view, to broad general chapter headings and discussion of principles under those headings untrammelled by detailed and narrow sub-headings, which could lead to the account becoming bogged down in detail, putting information above exposition.

**1.35** In a complex regulated society which often wearies the practising lawyer with its vast amount of regulatory detail and information overload, we have found this a refreshing experience, and we hope our readers will share in it.

## The Development of Sports Law

**1.36** The stakes in the world of sport have never been higher and they seem to go on rising. The psychological pressures on sportsmen and women in the competitive arena grow ever greater, as the gulf between success and failure tends to widen. At the same time, technological and financial sophistication is increasing the complexity of the regulatory machinery in sport. These developments have increased the potential for conflict between those who participate in sport and those who run it. Judges and arbitrators confronted with the task of adjudicating upon such conflicts in national courts have to strike a balance between avoiding, where possible, the courts becoming embroiled in sporting disputes, and the need to do justice where the facts demonstrate that the regulatory or disciplinary machinery in sport has operated unjustly.

**1.37** There has undoubtedly been a rise of legalism in the world of sport. It is often deprecated by sports administrators, though it is more often accepted now than 10 years ago. It is customary to deprecate the entrée of lawyers into new fields of law. Lawyers are not always popular with the public, but are often very popular with their clients when they win cases (and correspondingly less popular when they lose them). The rise of legalism in sport has been encouraged by lawyers, without doubt, but lawyers did not invent it. Their clients did. It is a natural function of raised financial stakes produced by increased sophistication, particularly of a technological nature, and by a ready market fuelled by the demands of a public whose craving for sport appears insatiable and undimmed by occasional doping and corruption scandals.

**1.38** More lawyers and more law in sport does not necessarily mean more justice in sport, but it may do, and it should do. The growth of legalism in sport is borne of a desire for higher standards of justice, demanded by the sporting community as a consequence of the rise of professionalism and the increase in earnings potential within sport. If one