

***Sports Law*, 4th edn, Simon Gardiner, John O’Leary, Roger Welch, Simon Boyes and Urvashi Naidoo (Routledge, London, 2012)**

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The fourth edition of *Sports Law* by Gardiner et al has arrived and is welcome after a hiatus of five years since the third edition was published in 2006. Although having a focus on sports law in the UK, there is considerable discussion of EU law as well as international regulation and decisions, in particular, involving the World Anti-Doping Code (WADA) and the Court of Arbitration for Sport (CAS).

As the Preface notes, the book’s approach is ‘to develop a text and materials book with extensive extracts from primary and secondary sources’. In short, the book’s primary focus is for law students, though, as with previous editions, it should prove a useful reference source for Australian and New Zealand academics and practitioners with its extensive citations of relevant case decisions (be it by courts, tribunals, or the CAS) as well as applicable UK and EU legislation.

The book’s main authors having taught sports law courses for a number of years at different universities in Britain, have obviously drawn upon their considerable expertise in teaching, researching and writing in the sports law area to continue to refine and develop such an important publication and for this they must be highly commended. It is a very good resource book.

If there is a criticism, it is, as previously identified by Dr Jack Anderson of the School of Law at Queen’s University Belfast in a review of the third edition, published in the *Entertainment and Sports Law Journal*, Volume 4, Number 2, October 2006, wherein he stated that ‘there are two minor points that need to be made regarding its structural and stylistic features.’ First, the number of contributors (there were seven to the third edition, five to the fourth edition). As Anderson noted, although ‘all are eminent, well-established authors in their areas of expertise; however, inevitably, their approaches differ in style and cadence’, which leads to a ‘jaggedness’ such ‘that readers are advised to treat chapters as separate entities.’ The second issue, which Anderson also observed,

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is that ‘although it occurs infrequently, the uneven nature of the text’s style is exacerbated by a propensity to cite at length from secondary sources.’

In fact, it is this second feature which may well be a problem for practitioners. Rather than succinctly paraphrasing secondary sources, there are on occasion great slabs of text with little explanation for their presence. If such slabs could be edited in any future edition, this would enhance what is becoming a landmark work.

By contrast, for academics teaching sports-related courses in Australia and New Zealand, Deborah Healey’s succinct publication, *Sport and the Law* (also in its 4th edition through UNSW Press) is an easy introductory read for students and can be, where needed, simply supplemented by articles compiled in a study kit. Perhaps, this is something Gardiner et al should consider should they decide to produce a fifth edition of their work. Alternatively, if they can get hold of a copy, the authors would be well advised to read G.M. Kelly’s *Sport and the Law: An Australian Perspective* (The Law Book Company, Sydney, 1987). Kelly was a New Zealand lawyer who later practised and lectured in Australia and his publication, although now 25 years old, is perhaps the best example of what an academic sports law text can achieve in satisfying the requirements of both students and practitioners.

In relation to practitioners, the large slabs of secondary sources could well be a distraction (if not an annoyance) when all that they might be seeking are comparable case law or decisions of note. This is the book’s main problem, if it can be so termed, in what is otherwise an excellent publication. That is, who is the book’s primary audience? For students studying sports law in Britain, it is the leading text and deservedly so and the new edition builds on that reputation. For practitioners and administrators, however, it is, perhaps, a useful resource. Similarly, for students and practitioners in Australia and New Zealand, it will also be a useful resource.

Interestingly, in its attempt to define ‘what is sport’, although providing an important excerpt from Rudolph Brasch’s important work *How did Sports Begin? A Look at the Origins of Man at Play* (first published in 1970 and revised in 1986 by Fontana, Sydney), it fails to provide a similar extract (or even cite) from Allen Guttmann’s 1978 landmark publication *From Ritual to Record: The Nature of Modern Sports* (Columbia University Press, New York, 1978). It also misses the subsequent debate from *Sports History Review*, vol. 32 of 2001, involving Guttmann in a retrospective critique of his own work, as well as commentary from Powell, Brownell, von der Lippe and Australia’s Douglas Booth (based in New Zealand), followed by ‘A Laconic Response’ from Guttmann. This absence is a pity. Also, an extract from Huizinga’s *Homo Ludens: A Study of the Play Element in Culture* (Routledge, London, 1944)

might have enhanced the discussion rather than the three lines cited, particularly Huizinga's first chapter on the 'Nature and Significance of Play as a Cultural Phenomenon'.

In addition, the book's attempt to define 'what is sport' fails to fully draw upon judicial attempts to answer this question. To be fair, the important decision from the House of Lords in *R v Brown* [1994] 1 AC 212 (that consensual sado-masochistic homosexual activity is illegal) is briefly mentioned in the context that 'an argument was expressed that the participants might have gained protection and exemption from criminal liability under the law of assault if they could be seen as being involved in the course of properly conducted games or sports.' As the footnote explains, 'the exemption from liability short of grievous bodily harm' in relation to a consensual sporting activity was 'laid down in *Attorney General's Reference (No 6 of 1980)*' [1981] QB 715.

Although at times the book draws upon Australian decisions in relation to some of the issues discussed throughout the book, it fails to discuss or even cite Justice Hill's landmark decision in the Australian Federal Court in *Teranora Lakes Country Club v Federal Commissioner for Taxation* (1993) 93 ATC 4078 in which he had to decide what is a sport and exempt for taxation purposes as prescribed under Australian-specific legislation. The book also misses the definition provided in a ruling by the Australian Taxation Office (TR 97/22) for sporting organisations 'seeking to determine whether they are exempt from income tax' differentiating between 'sporting or game-like activity' and hobbies or 'endeavours such as philately, numismatism, body building and train modelling ... keeping guinea pigs and fish' and 'car owner clubs' as well as social activities such as social dancing and playing bingo. Thus, whilst 'card games such as bridge and board games such as backgammon, chess and mah-jong' are included as a 'game', 'activities' such as 'bird-raising, bird-keeping and bird-watching; body building; car owners clubs/associations; dancing as a social activity (including ballroom dancing, line dancing, square-dancing and Highland dancing)', stamp and coin collecting, as well as 'breeding and showing of animals' are not considered to be a 'game or sport'.

Interestingly, body building is part of the World Anti-Doping Code and, in New Zealand, sheep dog trials (where a dog has to move sheep through several yards directed by a human) is a major televised event. So, are they not sports? Perhaps this is labouring the point, but for students this is an important issue to consider as the legal definitions of what is sport can have wider implications such as in terms of taxation, government funding and the applicability of legislation.

More importantly for an Australian audience, there is no reference to the work of either J. Neville Turner or Braham Dabscheck. Whilst conceding that this is primarily a UK publication, the latter's absence is surprising considering

his internationally recognised work on sporting industrial relations. His work on baseball or rugby, for example, is worth at least a reference if not an extract.

Surprisingly, there is no reference to some of the ‘Super League cases’ involving the attempt by News Limited to establish its own alternative rugby league competition in Australia and the many cases which flowed from it. For example, in *News Ltd v Australian Rugby Football League Ltd* (1996) 139 ALR 193, News Limited was eventually successful on appeal before the Full Court of the Federal Court of Australia in being allowed to establish its own competition as the Court found that the making of Commitment Agreements and Loyalty Deeds by the rugby league and its clubs contravened the *Trade Practices Act* and, as such, they were prohibited from giving effect to any of the exclusionary provisions contained in those agreements.

Also, in terms of a sporting body and self-regulation, whilst there is reference to the Western Suburbs rugby league case of *Wayde v NSWRL* (1994) 180 CLR 459, where the High Court of Australia permitted a sporting organisation, on a bona fide basis, to restructure its competition as it saw fit in the best interests of the game and thus to exclude a club, there is no reference to the further decision some years later (following settlement of the ‘Super League war’ at the end of 1997) which resulted in an agreement to reduce the competition to 14 teams and eventuated in the exclusion of South Sydney. In *News Ltd v South Sydney District Rugby League Football Club Ltd* (2003) 215 CLR 563, the High Court of Australia held that this provision ‘did not have the purpose of preventing, restricting or limiting the supply or acquisition of goods or services’ and, as such, was not in breach of the Trade Practices Act 1974 (Cth).

In terms of self-regulation and where a sporting body lost a legal case following a restructure, the *Drummoyne District Rugby Club Inc v New South Wales Rugby Union Ltd* (1994) Aust Contract R 90-039 is worth a reference. Indeed, although only the decision of a single judge in the Equity Division in the Supreme Court of NSW, the judgment of Justice Young is a superb learning tool for law students on how the Court found that Drummoyne had suffered detriment on the basis of what the NSW Rugby Union had promised (there would be no change to the competition for three years). Thus, the Court relieved the conscience of the NSW Rugby Union to do what it was bound to do, that is, admit Drummoyne to the competition for the following year.

There is also no reference to the various restraint of trade cases involving the movement of players such as *Buckley v Tutty* (1972) 125 CLR 353 where the High Court of Australia followed the decision in *Eastham v Newcastle United Football Club* [1963] 1 Ch 413 in finding that a retain and transfer system was an unreasonable restraint, as did the Full Court of the Federal

Court of Australia in the player draft case of *Adamson & Ors v New South Wales Rugby League Limited & Ors* (1991) 31 FCR 242.

More recently, there is no mention of the ‘sanctity of the contact’ case where a rugby league club with the support of the (Australian) national rugby league obtained an injunction in the Supreme Court of NSW to stop Sonny Bill Williams playing for the Toulon Rugby Club in France which eventually lead to a settlement (See *Bulldogs Rugby League Club Ltd & Anor v Williams & Ors* [2008] NSWSC 822 (8 August 2008)). Even if it was reported as an *ex tempore* judgment on Austlii, it did receive high publicity.

Despite the above reservations highlighting why the book can only be a secondary source for use in Australian and New Zealand sports law courses, there are some superbly written chapters with interesting observations drawn. The analysis of CAS, judicial review and the section on ‘substantive rights against sports governing bodies’ are each compulsory reading. Compared with the third edition (which was divided into five sections), the new fourth edition is far easier to follow with three major themes or parts (‘The Regulation and Governance of Sport’, ‘Legal Protection of the Commercial Integrity of Sport’, and ‘Legal Issues in the Sports Workplace’).

Within each of those three parts, there are set out various logical chapters. For example, ‘Part 3, Legal Issues in the Sports Workplace’ covers ‘The Regulation of Doping in Sport’, ‘Sport and Contracts of Employment’, ‘Sports Participants and the Law of Discrimination’, ‘Safety and Participants in Sport’, ‘Sports Venues and the Law’. It is neatly set out and covers such matters as the WADA Code, restraint of trade, the *Bosman* case and the transfer system, discrimination, civil and criminal liability and crowd management. It also discusses the important parts of the WADA Code as well as the code’s pros and cons. Similarly, it considers both sides of arguments concerning other major issues discussed in this section.

One minor quibble. The editor or authors may care to note the recent *Practice Direction: Citation of Authorities (2012)* released by the Lord Chief Justice of England and Wales. As paragraph 7 of that Practice Direction notes:

Where a judgment is reported in the Official Law Reports (A.C., Q.B., Ch., Fam.) published by the Incorporated Council of Law Reporting for England and Wales, that report must be cited. These are the most authoritative reports; they contain a summary of the argument. Other series of reports and official transcripts of judgment may only be used when a case is not reported in the Official Law Reports.

In pecking citation order, the most authoritative reports are then followed by the Weekly Law Reports (W.L.R.) or the All England Law Reports (All ER), then ‘any of the authoritative specialist series of reports which contain a headnote’, and then other reports.

Unfortunately, some of the citations in the text give preference to the Weekly Law Reports or the All England Law Reports rather than those from ‘the most authoritative reports’. For example, *R v Brown* is cited in the text by its 1993 All ER citation rather than its 1994 AC citation. Even in the ‘Table of Cases’, the 1993 All ER citation is listed first followed by the 1993 WLR citation and finally the 1994 AC citation. *Attorney General’s Reference (No 6 of 1980)* is also cited in the text by its 1981 All ER citation rather than its 1981 QB citation but is then listed in the ‘Table of Cases’ first by its QB citation followed by its All ER citation. *R v Barnes*, the landmark case by which the Court of Appeal of England and Wales provided guidance on when criminal proceedings should be brought in relation to sporting incidents (and where a conviction for inflicting grievous bodily harm for a tackle in an amateur football match was set aside), is cited both in the text and in the ‘Table of Cases’ solely by reference to its [2004] EWCA Crim 3246 citation. There is no reference to either the [2005] 2 All ER or [2005] 1 W.L.R. citations, or even the specialist citation [2005] 1 Cr. App. R. 30 from the Criminal Appeal Reports. Similarly, in relation to Australian cases, for example, *Wayde v NSWRL* is cited as (1985) 59 ALJR 798, that is, the Australian Law Journal Reports, rather than the more authoritative (1994) 180 CLR 459 from the Commonwealth Law Reports.

It is unclear whether this lack of consistency arose because when the book’s text was originally written only the less authoritative law report was available and the citation was not updated when the more authoritative report was subsequently available. What is clear, however, is that there needs to be a ‘spring clean’ of case citations before the next edition is published. This might seem a minor matter, but as this is primarily a textbook for law students it is imperative to assist them to get into a good practice of how to cite properly especially as the above Practice Direction was issued by the Lord Chief Justice ‘in order to clarify the practice and procedure governing the citation of authorities and applies throughout the Senior Courts of England and Wales, including the Crown Court, in county courts and in magistrates’ courts.’

Minor quibbles aside, overall this new edition is a vast improvement on its immediate predecessor and no doubt will maintain the publication’s spot as the market leader in Britain in the area of sports law. It is a worthy addition as a recommended resource for students undertaking any sports law or sports-related course in Australia or New Zealand.