Sports Law: Cases and Materials, 7th edn, by Ray Yasser, James R. McCurdy, C. Peter Goplerud and Maureen A. Weston, (LexisNexis, San Francisco, 2011).

Dr Thomas Hickie*

A pleasant surprise during the 2012–13 summer holidays was reviewing the seventh edition of *Sports Law: Cases and Materials* by Yasser et al. It is a superb publication.

Too often a 'cases and materials' textbook can follow an all too predictable format that makes one shudder to open it – great weighty tomes often containing enormous slabs of poorly written/edited judgments supplemented by boring articles written in turgid prose, punctuated by questions serving the quirky interest of the authors rather than the enlightenment of the reader. Needless to say, such 'textbooks' are so unrelated to the reality of legal practice that practitioners, after a quick browse, search for a more relevant publication to add to their practice library leaving the readership solely to a captive market of students who are required to purchase them under sufferance as part of a course's required reading.

Unsurprisingly, students in such situations shudder as to how they will ever 'understand' the law let alone be conversant with it. The end result being that soon after the end of the course, numerous copies are 'flogged' on the student second-hand book circuit or find new lives as bookshelf-dividers or doorstoppers in student 'digs'. Not so the future life for this publication – instead, a long and useful textbook life is predicted.

The book's style is largely 'problem-based', that is, there is a short introduction to each chapter followed by a hypothetical problem together with various court-based judgments and/or tribunal decisions and then 'notes and comments'. Such a format allows the reader to be guided, not so much to a definitive 'answer', but to the issues that the reader, be they a student or practitioner, will need to consider. This is surely the great strength of the publication and no doubt many students will wish to retain their copies upon graduation if considering a life in legal practice, not to mention many current practitioners and academics who may wish at various times, to refer to many of the gems within its pages.

At the same time, it must be cautioned that the book does not and, obviously cannot, cover the entire sports law field. Indeed, as the authors have explained in

* Dr Thomas Hickie, Barrister, Sydney. Dr Hickie teaches Sports Law courses at University of New South Wales.

their Preface, 'keeping a casebook alive through six editions is an accomplishment of sorts … But we have come to realize that no sports law text can keep up with current events'. Thus, the authors have decided to provide materials that, in their view, are 'sufficiently thorough and organized to facilitate discussion of just about any new and even surprising event' citing as an example the dispute between former New York Yankees pitcher, Roger Clemens, and his former trainer Brian McNamee.[1]

McNamee had alleged in a hearing before the US Congress that Clemens had used performance-enhancing drugs during his career. Clemens gave testimony denying such allegations for which he later stood trial of lying to Congress and was eventually acquitted.[2] As Yasser et al note, the dispute between Clemens and McNamee then 'ripened into dueling defamation actions, both of which can be fully discussed in light of the already existing defamation materials' within the textbook.[3]

Whilst it may be true that the publication will be useful in the classroom to facilitate discussion rather than attempting the impossible of keeping up with current events, the insular nature of the US-centric focus of the materials is the one drawback for both students and practitioners from Australia and New Zealand and why it will be at best a reference source. On this point, one is reminded of the prescient observation made by James A.R. Nafziger from Willamette University in Oregon, USA, writing in 1999 in the *Marquette Sports Law Journal* on the issue of 'Globalizing Sports Law':

> In twenty-five years we may wonder what became of anti-trust, labor law, and civil rights issues as the dominant themes of sports law. Quite likely, these kinds of issues will remain important but will no longer be dominant. Instead, issues of international eligibility, contracting, marketing, intellectual property rights, and dispute resolution will loom much larger. Sports activity across a full range of remuneration and commercialization is less and less constrained by national boundaries. The globalization of the sports arena is inevitable.
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> In training tomorrow's lawyers and sports professionals, legal education therefore has a responsibility to broaden the horizons of law students and non-law students alike to include the international dimensions of sports law. Legal educators can play four important roles to prepare students for the future: we can globalize otherwise strictly domestic courses in sports law, supplement courses in

[1] Ray Yasser, James R. McCurdy, C. Peter Goplerud and Maureen A. Weston, *Sports Law: Cases and Materials*, 7th edn, (LexisNexis, (San Francisco)), 2011, 'Preface', pg iii.
[2] *Pretrial schedule on tap*, 6 September 2012, Associated Press, <http://espn.go.com/mlb/story/_/id/8342696/roger-clemens-brian-mcnamee-lawyers-set-pretrial-schedule>.
[3] Yasser et al, pg iii.

> international law, offer seminars focused on international sports law, and add a new dimension to courses in exercise science and sports management.[4]

Nafziger then went on to note that 'in basic courses in sports law, the teacher's job is getting easier because the leading text books have introduced materials on Olympic Sports' citing two publications, one of which was the third edition of Yasser et al published in 1997.[5]

Nafziger argued (to his presumably largely American readership) that 'we need to take greater account of what is going on in the outside world. We have much to gain from comparative insights. And we need to address the issues within a prescribed framework of international law'.[6] Interestingly, 14 years on from when Nafziger made his observations, he is still at Willamette University, but he is also the current honorary president of the International Association of Sports Law based in Athens. By contrast, arguably, the seventh edition of Yasser et al has on one level, by remaining USA-centric in terms of both cases and materials, not taken that step spoken of by Nafziger 'to take greater account of what is going on in the outside world'.

On the other hand, the authors have noted in their preface that 'the emergence of a body of international sports law – a "lex sportiva"– gains coverage' in the textbook 'through both new problems and recently decided CAS cases',[7] even if they are restricted on the whole to mainly those involving US athletes and/or organisations. For example, in relation to the issue of arbitrations of doping and jurisdictional issues, Yasser et al set out the 1994 judgment of the US 6th Circuit Court in *Reynolds v IAAF* when American sprinter, Harry 'Butch' Reynolds, took on the might of the International Association of Athletics Federations ('IAAF') over whether correct urine samples were tested in a laboratory in Paris, France, following an international track meet in Monte Carlo, Monaco. The IAAF was based in London, the arbitration was heard there and it successfully argued before the US 6th Circuit Court that any appeal would be through the jurisdiction of the courts of England and Wales – despite the fact that an earlier arbitration (not recognised by the IAAF) had taken place in the USA.

Apart from jurisdictional issues, in the section dealing with the 'arbitration of Olympic disputes', the significant point is made that as 'yet there is no CAS "Supreme Court" to resolve conflicts among arbitral panel decisions or a consistent method for codifying emerging substantive rulings'.[8] But this raises a substantive issue avoided by many politicians and sports administrators the

[4] See James A.R. Nafziger, *Globalizing Sports Law*, (1999) *Marq. Sports L. J.* 225, Vol. 9, issue 2, spring, article 2, pp. 225–238 at 235, <http://scholarship.law.marquette.edu/sportslaw/vol9/iss2/2>.
[5] Ibid 236.
[6] Ibid 229.
[7] Yasser et al, pg iii.
[8] Ibid 937.

world over: there can be no 'precedents' from arbitration rulings as by their very nature they are simply that – arbitrations – not judicial decisions.

In addition, arbitrations of doping disputes do not and cannot question, for example, that the world anti-doping Code, with its absolute liability regime, may be in conflict with the domestic law of an athlete's country that requires proof of *mens rea* or allows the defence to be raised of an honest and reasonable belief. Further, what about the requirement that an athlete must now report each week where they are residing? How does an athlete challenge what may amount to be a flagrant breach of human rights? Some of this is touched upon by Yasser et al but requires further analysis.

Further, what happens when use of a non-performance-enhancing substance or 'recreational' drug is not illegal in an athlete's country of domicile? Is it then to be as with any other drug use – ie that the law of the country where the competition takes place applies or is the World Anti-Doping Agency ('WADA') saying that its Code takes precedence even if such use is not domestically illegal? This may have the potential as a 'rights' issue case heading for a US courtroom rather than being dismissed in a CAS arbitration (upholding the WADA Code), particularly in light of the recent 2012 US elections wherein the electors of Washington state and Colorado set up a showdown with federal authorities by legalising recreational use of marijuana – though as the Colorado Governor noted: 'Federal law still says marijuana is an illegal drug, so don't break out the Cheetos or gold fish too quickly.'[9]

This also raises questions as to how and who appoints CAS arbitrators and the limited decision-making powers of such arbitrators (as to whether or not to enforce awards and impose penalties) compared with, say, the exhaustive selection process of appointees to the US Supreme Court who have wide-ranging powers particularly in relation to declarations of rights. Perhaps these will be issues to be teased out in the next edition.

Drugs and the International Olympic Committee aside, however, surely one of the compulsory reading chapters for any aspiring practitioner is Chapter 9 on 'negotiation of sports contracts'. For in-house counsel employed by sporting organisations as well as state and local government lawyers, Chapter 10 on 'stadium and arena issues' is a 'must read'.

For sporting organisations generally in Australia, considering that some are now moving away from the membership-owned and democratically elected delegate

[9] *U.S. election: Marijuana legalized in Colorado, Washington; same-sex marriage approved in Maine and Maryland*, Toronto Star, 7 November 2012. <http://www.thestar.com/news/world/article/1283927--marijuana-legalized-in-colorado-washington>. See also *US states approve gay marriage, marijuana'*, ABC News (Australia), 8 November 2012, <http://www.abc.net.au/news/2012-11-07/voters-approve-progressive-legislation-as-obama-wins-re-election/4359494>.

model to one of private club franchises governed by a board of appointed directors/commissioners (aping the USA experience), then Chapter 5 on 'league decision making and commissioner power' is also compulsory reading as a guide for some of the potential icebergs ahead such as membership, relocation, merchandising/broadcasting, monopolies and the authority of commissioners. It never ceases to amaze that the proponents of such models within a sport and certain sections of the media somehow naively believe that by a sporting competition or the administration of a sport becoming less democratic and more autocratic that somehow the backbiting and power plays so often synonymous with sporting fiefdoms will magically disappear.

One only needs to read a biography of a business leader or family (such as Bridget Griffen-Foley's, *The House of Packer: The Making of a Media Empire*)[10] or to even peruse the business section of any daily newspaper to see that the world of sport pales in comparison with the daily power plays in the world of business. And make no mistake, players take their cues from observing such antics so that when a sport moves from being the selfless commitment of an amateur community product to a fulltime professional private company, the motto becomes no longer 'The game for the game itself'[11] but, perhaps, 'show me the money' as so hilariously demonstrated in the 1996 film 'Jerry Maguire'.[12] Welcome then to the business of sport. Hence, the issues and problems raised inYasser et al's publication should be compulsory reading for any serious sports administrator in Australia and New Zealand. Hopefully, the next edition will also cover some of the issues associated with gambling and corruption.

Apart from the one shortcoming (seen purely from an Australian and New Zealand perspective), – ie that the publication is focused on sports law in the USA, the wealth of material covered should prove a valuable addition to the library of any sports law practitioner or academic in Australia or New Zealand not to mention a wonderful reference source for law students. It is highly recommended.

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[10] Bridget Griffen-Foley, *The House of Packer: The Making of a Media Empire*, Allen & Unwin, St. Leonards, 2000.

[11] Hickie, T.V. and Hughes, A.T., *The Game for the Game Itself – The History of Sub-District Rugby in Sydney*, NSW Suburban Rugby Union, Potts Point, 2004.

[12] 'Jerry Maguire', TriStar Pictures and Gracie Films, 1996, <http://www.imdb.com/title/tt0116695/> , and full movie trailer, <http://www.youtube.com/watch?v=IyzVKca8RhA>.